

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at
Chairperson

1:35 ~~xxx~~/p.m. on March 29, 1983 in room 531N of the Capitol.

All members were present except:

Senator Gaines
Senator Gaar

Committee staff present:

Norm Furse - Revisor
Julian Efird - Legislative Research

Conferees appearing before the committee:

Representative Dave Lewis - Co-sponsor of H.B. 2327
Brad Smoot - Attorney General's Office
Jamie Schwartz - Department of Economic Development
Davis Merritt - Wichita Eagle Beacon
Walter Scott - Attorney, Dehart Assoc.
Bill Kauffman - Board of Regents
Russ Townsley - Russell Daily News
Mark Elloit - Association of News Broadcasters of Kansas
Ernie Mosher - League of Municipalities
John Koepke - Kansas Association of School Boards
Rick von Ende - Executive Secretary Kansas University

Representative Dave Lewis addressed the committee on behalf of House Bill 2327 stating that he felt the current law is very confusing and detrimental to the public as the bill gives all public equal rights and is open and available to anyone. He expressed two concerns with the amended version, one being that computers have made information less accessible to the public, and the second being all the exemptions to the bill. He suggested the committee look very carefully at the "laundry list".

Brad Smoot presented comments from the Attorney General's Office stating that Attorney General Stephan emphatically supports this bill. It was felt that Kansas needs a comprehensive public records law and this bill has been well-researched and carefully drafted and deserves support. He did suggest that the committee consider removing New Section 9 to a separate bill to avoid this constitutional question. Otherwise, their office urged the committee to act favorably on House Bill 2327. (Exhibit A)

Jamie Schwartz distributed two copies of memos received from his staff expressing concern about the impact House Bill 2327 might have on the Development Division's activities. (Exhibit B)

Davis Merritt distributed copies of his testimony stating that this version of the Open Records Act has been in the legislative process since 1979 and has been thoroughly researched, tested and blended and should promptly become law so that the ambiguities and problems of the present law can be corrected. He urged that this bill be reported out of committee as rapidly as possible. (Exhibit C)

Walter Scott spoke on behalf of this bill stating that motor vehicle registration lists are a valuable tool for direct mail sellers, charitable organizations and political candidates and Kansas can benefit from the sale of motor vehicle lists. He suggested that sales of listings of all vehicles registered in Kansas would bring in revenue each year of \$840,000. Mr. Scott suggested substituting Senate Bill 310 for New Section 11 on page 15. (Exhibit D) He then answered questions and there was brief discussion on this suggestion.

William Kauffman presented testimony on behalf of the Kansas Board of Regents expressing their concern relating to the exemption as contained in section 7(20) of the bill. He proposed that section 7a(20)(B) be stricken in its entirety. (Exhibit E)

CONTINUATION SHEET

Minutes of the Senate Committee on Governmental Organization, March 29, 1983

Russ Townsley testified in support of House Bill 2327 stating that newspapers need access to information in the public records in order to keep the public informed.

Mark Elloitt presented testimony on behalf of the Society of Professional Journalists, Wichita Chapter stating that their groups support House Bill 2327. He expressed some concerns about the proposed bill, one of them being the number of exemptions from the act. (Exhibit F) He urged the committee's support for this bill and recommended favorable action.

The League of Municipalities testimony was presented by Ernie Mosher who presented several suggested amendments and comments regarding House Bill 2327. (Exhibit G) He submitted a proposed amendment for lines 100-111 on page 3 of the bill; this amendment was outlined in page 3 of his written testimony.

The prepared testimony of John M. Wylie II, Region 7 Freedom of Information Director of Professional Journalists, Sigma Delta Chi, was distributed to the committee (Exhibit H) but there was no comment or discussion on this statement.

John Koepke submitted a copy of suggested amendments from the Kansas Association of School Boards, copies of which will be made and distributed to the committee members at a later date. (Exhibit I). Due to a shortage of time there was no discussion on this.

Rick von Ende presented a "balloon version" of amendments to House Bill 2327 and explained the suggested changes. (Exhibit J)

The meeting was adjourned at 2:35 p.m. by the Chairman.

GUEST LIST

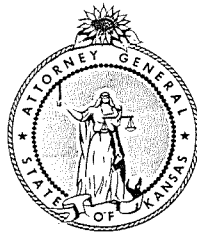
COMMITTEE: Senate Governmental Organization DATE: March 29, 1983

NAME	ADDRESS	COMPANY/ORGANIZATION
Ginda Lee Rose	RR1 Box 211 Wamego	
Lynn Crotalus	Box 24 St. George	
Bob Kasper	Rep. League of Ks Municipalities	
Bob Galt	2101 SE 21st Terr Topeka	Intern
Tom Christensen		KDEID
Walt Scott	Topeka	Dehart Assoc
Tom Kussler	Topeka	Dehart Assoc
Charles Jimmy	Topeka	Dept. of Corrections
Travis Taylor	Topeka	Kansas Energy Office
Lyle Galt	Topeka	Kansas Energy Office
Tom Harris	CHARITE	KANS. PRESS ASSIST
Luella Dunsley	Russell	Russell Daily News
Englwe N. Alden	Topeka	KS. STATE HIST. Soc
BRAD SMOOT	Topeka	Atty Gen's Office
Davis Merritt	Wichita	Eagle - Beacon
Ann Hellbert	Topeka	
John Keesler	Topeka	KASB
Ed Schaub	Topeka	SWBT
Pat Gordon	Shawnee	Right To Life
Bill Anderson	Mission	Water Dist #1 Soc
Pat Casey	Topeka	KDHE
Julie Brown	"	
Betsy Jones	Shawnee	Eagle Forum
Swad Galt		Shawnee
H. Harva	Topeka	Gen. Sowers
B. Katchura	"	SOWERS

GUEST LIST

COMMITTEE: Senate Governmental Organization DATE: Mar 29, 1983

<u>NAME</u>	<u>ADDRESS</u>	<u>COMPANY/ORGANIZATION</u>
<i>Manfred</i>	<i>1330 Perry, # 5, M. Wichita</i>	<i>SPX/ANBK</i>
<i>Charles S. ...</i>	<i>KRED</i>	
<i>James R. Cobler</i>	<i>Topeka</i>	<i>Dept of Adm</i>
<i>Cathy Behan</i>	<i>"</i>	<i>AP</i>
<i>Jeff Taylor</i>	<i>Lawrence</i>	<i>Daily Kansan</i>
<i>Nora Crowe</i>	<i>Topeka</i>	<i>Rep Whitaker</i>
<i>W. E. Cooke</i>	<i>Wichita</i>	<i>City of Wichita</i>
<i>S. ...</i>	<i>"</i>	<i>Empire Gen</i>
<i>Bill Kaufman</i>	<i>Topeka</i>	<i>Board of Regents</i>
<i>Gerardo ...</i>	<i>"</i>	<i>ombudsman</i>



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 29, 1983

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

The Honorable Ben E. Vidricksen, Chairman
Senate Committee on Governmental Organization
Room 143-N, Statehouse
Topeka, Kansas 66612

Dear Mr. Chairman and Members:

Thank you for this opportunity to comment on 1983 House Bill No. 2327. Attorney General Stephan emphatically supports this bill and we have enclosed a copy of his remarks to the House Federal and State Affairs Committee.

Kansas needs a comprehensive public records law. The current law does not clearly disclose the legislature's desires as to which records should be open and which should be closed. Only the legislature should make such determinations, not administrators or the courts. Other specific problems of the present system are detailed in Attorney General Stephan's attached statement.

House Bill No. 2327 is a well-researched and carefully drafted piece of legislation. It reflects the various interests of the numerous conferees who have testified to the legislature over the four years this measure has been under consideration. We believe the bill deserves your support.

Since the specific exclusions from public access which have been included in this bill are matters of public policy for legislative determination, the Attorney General has refrained from commenting except as to criminal investigation records. We are satisfied with the treatment of such records under HB 2327, as amended by the House Committee of the Whole.

Our only remaining concern involves New Section 9, added by the House Committee. We certainly support the intent of this provision but we are somewhat concerned that a section restricting tort liability in a bill dealing with public records may be contrary to the single subject rule of Article 2, Section 16, of the Kansas Constitution. See Cashin v. State Highway Comm., 137 Kan. 744 (1933). The Committee may wish

Ex. A


Ben E. Vidrio sen
Page Two
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to remove New Section 9 to a separate bill to avoid this constitutional question. Otherwise, Attorney General Stephan urges the Committee to act favorably on House Bill No. 2327.

Thank you for your time and attention.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN


Bradley J. Smoot
Deputy Attorney General

BJS:hle

Enc.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

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

TESTIMONY OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
HONORABLE NEAL WHITAKER, CHAIRMAN

Re: House Bill 2327

February 22, 1983

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to confer with you on 1983 House Bill No. 2327, a proposed comprehensive open records law. I am pleased to offer my wholehearted endorsement to this measure. The bill addresses a wide range of complex legal and practical problems of public access to government records and does so in a clear, complete and thoughtful fashion. House Bill No. 2327 should be enacted by the 1983 Kansas Legislature.

With your indulgence, allow me to discuss the need for this proposed legislation and some details of the bill I believe to be significant. Most of you will recall that in 1979 I asked the

Legislature to review the present public records act, K.S.A. 1982 Supp. 45-201 et seq. During the 1980 and 1981 legislative sessions this committee permitted the Attorney General to comment on open records legislation similar to House Bill No. 2327. During our testimony on those proposals we characterized the current Kansas open records law as a "closed records law." We stated that the approach of the present law was inadequate and needed to be changed. We continue to believe that government documents are the property of the public and that the public should have ready access thereto, absent countervailing reasons justifying privacy. Further, we believe that the law needs to be as clear as possible. Confusion has a chilling effect on the exercise of this statutory right. The law needs to be workable for the average citizen. We continue to believe that the present law is unworkable and unnecessarily burdensome to the public.

You will also recall that we identified a number of specific recommendations to deal with the inadequacies of existing law.

1. Broaden the scope of the act. We asked that any new law clearly identify the agencies to which it applies and the records available for inspection. The present law is restrictive in regard to public access and an effort should be made to enlarge and clarify the parameters.

2. We asked you to consider a provision for the awarding of court costs and attorneys' fees in cases where private citizens have successfully pursued legal recourse in order to obtain access to public records under the act. We believe a provision of this type may encourage judicial interpretations through case law.

3. We suggested the elimination of criminal sanctions and creation of private legal recourse in the form of mandamus to enforce government compliance. Such a change would liberalize interpretation of the law to favor public access.

4. We suggested coordination of the public records law with other relevant statutes, including laws relating to destruction of public records, and other provisions requiring or prohibiting disclosure.

5. To protect government employees and other citizens we noted that disclosure of individual personnel data and other confidential information must be prohibited. These prohibitions should be as specific as possible and provision should be made for editing of records to delete restricted information. This will encourage a greater degree of public access to otherwise unrestricted information.

6. Finally, it was our recommendation that the statute should identify the classes of documents that are not to be subject to public access. Such classifications must be based on

identified public policy considerations, such as the protection of public health and safety, protection of individual privacy, or where public access substantially impairs officials in the performance of their legal duties.

In the interim since these recommendations, much has happened in the law regarding public access to government records. I filed suit against the state Department of Social and Rehabilitation Services to permit access to certain payment records of that agency. The Kansas Supreme Court agreed with me that such records were open to public access and the case established a number of important principles under the existing law: Computer tapes are "public records" under the law and public officials have no discretion to refuse public access to such records. Confidential data must be deleted from otherwise public information and a public record may not be kept secret in its entirety because it contains confidential data.

In addition, a recent court of appeals case suggests that the "kept and maintained" language of current public records act may be construed broadly to include records made in the convenient, appropriate or customary methods of discharging the duties of a public office.

These judicial interpretations and the recommendations we have previously made generally are incorporated in House Bill No. 2327.

First, House Bill No. 2327 does not discriminate as to who may have access to the information of government. All citizens are equally entitled under the bill to view government records. In many jurisdictions, by statute and common law, persons have had to demonstrate a special need or legal interest to gain access. We prefer that the law continue to distinguish between types of records and not between citizens.

Secondly, the bill changes the focus of the law -- records will be open unless closed. And those records closed to public scrutiny are determined by the legislature, not by an agency, city or other municipalities. No longer will only those records which are required to be "kept and maintained" by law be available to the public. We are convinced that there will be greater access to state and local documents.

Third, the burden for determining what records are available has been shifted to the governmental agency or unit and lifted from the taxpayer.

Fourth, time limits are placed on the agency to produce the requested materials or provide in writing the reasons for denying access. This we believe will speed up the process for the benefit of citizens.

Fifth, the new law would provide for judicial review and encourage persons to seek judicial relief where they have been wrongfully denied access to public records. Criminal sanctions are removed.

I must say that this is a particularly important provision. I know that there are some who believe that the only way to force compliance with such laws is through the use of criminal sanctions. With such persons I must respectfully disagree. Public officials are performing public service, often for no compensation, and are doing the best job they can under complex and sometimes confusing statutes. Such persons are not criminals and should not be treated as such. The equitable remedies provided by this bill provide an effective and proven method of enforcement.

Sixth, the bill is coordinated with the open meetings law to solve the recurring problem of public access to documents used during public meetings.

Seventh, with regard to those provisions concerning access to criminal investigation records, I am generally pleased. We have some concern that the exclusion of "arrest records" in the definition of "criminal investigation records" contained in new section 3(b) may conflict with provisions of the criminal history records information act in those cases in which the arrest is over one year old and without disposition. This problem may be

easily remedied by deletion of the phrase "arrest records" or reference to the latter act and I will be happy to prepare a technical amendment for your consideration if you so desire.

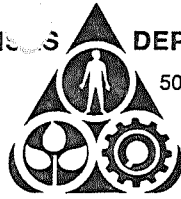
Finally, I have only one remaining recommendation. As most of you know, there are nearly one hundred statutes which specifically close certain government records. That list of "closed" records is not indexed as such in the Kansas Statutes Annotated. I would very much like to see that both lawyers and lay persons have ready access to that list. Hence, I urge the Committee to require a comprehensive indexing of closed records. Publication of such a list would be invaluable to all concerned.

Thank you again for this opportunity to express my support for 1983 House Bill No. 2327. We need this bill and I hope each of you will be able to support its passage this year.


I would be pleased to answer any question.

KANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT

503 KANSAS—6th FLOOR, TOPEKA, KANSAS 66603



TO: Jamie Schwartz

FROM: Roger Christianson 

DATE: March 24, 1983

Many companies we work with considering Kansas as a location for a new manufacturing facility expect that we work with them in confidence. In most instances their identities in the initial visit(s) to Kansas communities are kept confidential. This is a service that manufacturers and business have come to expect from state development agencies.

If HB 2327 is passed without an exemption for the Development Division's work with industrial prospects, this could mean that any community we visit with these prospects could ask us the identity of that prospect and the background and we would have to reveal it to them. Also, as you know, in many instances the local paper will find out that a prospect has visited a community and call us looking for details on that prospect visit. If we are required to respond to these requests, we stand a very real possibility of losing some new facilities that are under consideration. We also run the risk of decreasing the use of the state economic development agency by companies who become aware of the situation in Kansas.

I outlined in a previous memo (copy attached) some of the reasons for companies requiring confidentiality in their search for new facilities. Again, I think it is important to emphasize that irregardless of the reasons for the company's wishes to remain confidential, it is absolutely essential that we respect their wishes. Again, if we do not, or legally cannot, respect their wishes we may well be dropped from consideration for new projects in Kansas.

Attachment

Ex. B

KANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT

503 KANSAS—6th FLOOR, TOPEKA, KANSAS 66603



TO: Jamie Schwartz
Jim Murphy

FROM: Roger Christianson

A handwritten signature in dark ink, appearing to read 'Roger Christianson', is written over the printed name.

SUBJECT: HB 2327 - An act concerning
public records

DATE: March 9, 1983

I am concerned about HB 2327 and the impact it might have on the Development Division's activities. In our efforts to attract new industry to Kansas we work on a regular basis with companies from outside the State of Kansas who are looking for locations for new facilities and wish to work with us on a confidential basis. We provide information to them regarding the details of doing business in Kansas, information on Kansas communities, industrial sites and available industrial buildings. We also coordinate visits of these companies to inspect Kansas communities. These visits are oftentimes on a confidential basis. That is, the community is not aware of the identity of the firm.

Our clients require confidentiality for a variety of reasons. Just a few of these are: 1) when companies are looking for new locations they may personally visit several states and several communities within each state. When states or communities are eliminated the company representatives do not want to be badgered by local representatives of the community trying to influence their decision. 2) companies oftentimes want to keep their decision to locate new facilities confidential to avoid their competitors finding out about these plans. 3) companies want to avoid any negative publicity that might evolve as a result of not selecting a community for a new operation. e.g. a newspaper headline "ABC company eliminates Mudville as possible location for new manufacturing facility! What's wrong with Mudville Mayor Doe asks President of ABC?"

These are only three examples of reasons companies require confidentiality. Whatever their reasons it is imperative that we respect their wishes. If not, we may well risk being dropped from consideration for new facilities.

I would suggest that we do what is necessary to get an amendment that includes the work of the development division with companies investigating Kansas as a location for new business facilities in New Sec. 7.

Statement before the Senate Government Organization Committee

March 29, 1983

Davis Merritt, Jr., Executive Editor
Wichita Eagle-Beacon

The proposed revision of the Kansas Open Records Act now before this committee has a substantial history, despite the fact that it is only now formally before the Senate.

This version of it has been in the legislative process since January of 1979. It has been before at least one joint committee-- a committee on which some of you served. It has been the subject of at least a half dozen full-blown hearings in the House. It ran afoul one year of the abortion issue. It lay dormant, for the most part, last session. It has been pushed through the mills of every bureaucracy and special interest group in the state. Every special problem that it raised has been attended to, or compromised responsibly.

It is, in short, a thoroughly researched, tested and blended bill that should become law so that the ambiguities and problems of the present law can be put behind us.

This bill will not suddenly unlock the drawers to thousands of files that have not been the public's business before. The public has always had the right to the records covered in this bill. But Kansas law has failed to recognize that right because of the wording of the present law, which restricts access to records "required by law to be kept."

Ex. c

That meant a Kansan interested in a record had to find a specific statute authorizing the keeping of the record--and few of the massive numbers of files kept by government were specifically authorized.

The proposed statute recognizes the flaw in thinking represented by the present law. Government, finally, is supposed to operate in the public interest as defined by this body. Therefore, any record kept by government should be kept in the public interest, whether it is kept because it is specifically required; or kept in pursuance of an official duty; or kept out of necessity created by statute. Whatever the case, as a general, philosophical proposition, if the government keeps it, you and I who pay the bill should have access to it.

But, of course, that's too simplistic. We all recognize that government, particularly in the areas of regulation and welfare, must accumulate for its operational purposes information that is proprietary and/or private.

Therefore, any open records law must include exceptions to protect the private affairs of business and individuals.

The bill before you recognizes that. In the time it has been the subject of study, 29 exclusions have been added, most of them for good and useful purpose. Criminal records are protected where

necessary. Proprietary business information is protected. Security data is protected. Attorneys work product, copyrights, computer software, personal privacy where appropriate, all are protected.

In fact, the laundry list of exemptions threatens to outweigh the bill itself.

But it doesn't, for a simple reason: despite the specific exemptions, this bill insures citizen access to the great bulk of government records that the public clearly has a right to. It does this in several important ways:

--It declares openness to be the policy of the State of Kansas, and requires a liberal construction of that.

--It defines public records in a broad and simple way, then lets the exclusions take care of special problems.

--It provides for citizen access to district court 'de novo' to settle a dispute, with the burden of proof, properly, on the custodian who is refusing the record. Yet it protects those custodians from personal liability under the Tort Claims Act for refusal.

To be frank, I am personally troubled by some of the exclusions; and would prefer they not be there. In particular, new section 15 addresses a narrow problem with too broad a brush and may cause some litigation. And the lack of specificity in

the technical question of access to computerized records and the fees attached to that give me pause. I suspect they, too, will be subject to litigation.

But even given that, this bill is so large an improvement over the present situation that I strongly urge this committee and the Senate to pass it. The exclusions and problem areas demonstrate, more than anything, the extensive inspection that this proposal has undergone these last four years. Any statute this complex is certain to have elements of it tested in court, and so be it.

My immediate concern, in looking over the long history of this badly needed legislation, is that substantial change at this point will once again cause it to be bypassed in the crush of other legislative business. This legislature has many miles to go on other important issues before the blessed day of adjournment. This bill is, in my opinion, ready. And if you can satisfy yourselves on that, I urge that it be reported out as rapidly as possible and submitted to the full Senate before the inevitable crunch of other affairs.

If, by responding to your questions, I can help you satisfy yourselves about it, I stand prepared to do so.

WALTER N. SCOTT, JR.
ATTORNEY AT LAW
420 WEST 33RD
TOPEKA, KANSAS 66611

TELEPHONE OFFICE 266-4220

Use of Motor Vehicle Registration Lists
for Commercial Purposes

..."(when a company) acquires records from, say, a State motor registry, it is doing no more than any citizen could do."*

Motor vehicle registration lists are a valuable tool for direct mail sellers, charitable organizations and political candidates and groups because the list is annually updated and provides a current and correct name and address.

Motor vehicle registration lists are used by small merchants selling goods, charitable and public interest groups raising funds, and political leaders seeking constituent advice and support.

Small business: two-thirds of the holders of third-class bulk-mail permits are companies doing less than half a million dollars in business per year.

The Postal Service estimates that in 1974, charities and public interest groups raised \$20 billion, or 80 percent of all contributions through direct mail.

Political leaders and government agencies send out questionnaires to obtain citizen perspective. Political candidates solicit support for their campaigns and programs.

Companies that use motor vehicle registration lists include magazine publishers, automobile dealers inviting prospective customers to their

* Personal Privacy in an Information Society. The Reports of the Privacy Protection Study Commission, July, 1977, U.S. Government Printing Office, Washington, D.C.

showrooms, furniture companies, lawn services, retail stores, travel clubs, book publishers, and local merchants offering discount coupons to stimulate business.

The Privacy Commission identified several societal benefits of direct mail:

a marketing tool for small businesses

a fundraising mechanism for charities

political fundraising (especially in light of new election laws)

the economic importance of direct mail advertising generally

Kansas can benefit from the sale of motor vehicle lists. The state earns revenue from each sale if it follows the practice of most other states. A sale of the listing of all vehicles registered in Kansas would bring in revenue each year of \$840,000. *

The sale of motor vehicle lists would be helpful to the Kansas direct mail industry as well. In these harsh economic times, the direct mail industry is healthy and growing.

The sale of motor vehicle registration lists does not violate a citizen's right to privacy.

When we drive our car, we do so in the public arena and it certainly is not privileged or confidential information. Motor vehicle registration records are "public" records and accessible to anyone.

* Based upon a comparison with Illinois revenues.

In Lamont v. Commissioner of Motor Vehicles, the court considered constitutional and common law privacy issues. Plaintiffs sought to enjoin New York's Motor Vehicle Commissioner from selling registration records, and claimed that a constitutional and common law invasion of privacy arose from the selling of names and addresses. Plaintiffs claimed that registrants were subjected to considerable annoyance, inconvenience and damage as a result of advertising and solicitation mail. The court granted defendants' motion to dismiss and said:

The mail box, however, noxious its advertising contents often seem to judges as well as other people, is hardly the kind of enclave that requires constitutional defense to protect 'the privacies of life.' The short, though regular journey from mail box to trash can...is an acceptable burden, at least so far as the Constitution is concerned. *

The court concluded that direct mail advertising does not violate the Constitution.

A state motor vehicle department can protect registrants who do not wish their names to be rented or sold. For example, the department can inform registrants that lists may be sold and institute a procedure whereby any registrant can tell the agency that he does not want his name used for this purpose. The Privacy Commission recommended this approach.

Recommendation (3):

That each State review the direct-mail marketing and solicitation uses that are made of State agency records about individuals and for those that are used for such purposes, direct the State agency maintaining them to devise a procedure whereby an individual can inform the agency that he does not want a record pertaining to himself to be used for such purposes and have that fact

* 391 U.S. 915

noted in the record in a manner that will assure that the individual's preference will be communicated to any user of the record for direct-mail marketing or solicitation. Special attention should be paid to Department of Motor Vehicle records and the practices of agencies who prepare mailing lists for the express purpose of selling, renting or exchanging them with others. *

The Privacy Commission also considered how the department can inform purchasers which names are "no send" and concluded:

It should be enough to note next to an individual's name on a public record that he does not want his name used for marketing or solicitation. The public record compiler would still be able to copy the record, just as any other member of the public can, but it would be on notice that the individual had objected to having his name on a list, and presumably, for economic reasons, would not include that name on lists it develops for its clients. **

There is another way for an individual to remove his name from most mailing lists: The Mail Preference Service (MPS). MPS is an industry measure to enable consumers to get off or get on mailing lists. An individual who wants less or more mail writes to the Direct Mail/Marketing Association *** and requests a name/removal or name/add form. His name will be deleted or added on computer tapes regularly circulated to the over 1400 participating association members. The Mail Preference Service is regularly publicized in national magazines and in newspapers.

The motor vehicle department can be fully aware of the uses made of the registration listing. The department can prepare a contract for signature by the department and the purchaser or renter of the list. The contract can require a description of the mailings that will be

* Personal Privacy, page 153.

** Personal Privacy, page 153.

*** Mail Preference Service, 6 East 43rd Street, New York, New York 10017

sent to registrants, and the department can request a sample mailing. This way the department knows how the names will be used.

The motor vehicle department can police compliance with its rules regarding lists by inserting fictitious names in the computer printout directed to departmental employees.

Some of our products:

The Story of Civilization by Will and Ariel Durant -- all volumes

The World's Great Museums

Solar Heating and Cooling

The Family Medical Guide

Step by Step Plumbing

Beethoven's Symphonies

The Epic of Flight

World War II

A Treasury of Christmas Crafts and Foods

The Oxford English Dictionary

Cookbooks of the World

Recordings of the Great Band Era

We believe many Kansas citizens would find some of these of interest to them and their children. This is particularly true in the rural areas where direct mail is often the main source of books, records, etc.

DeHart Associates

DeHart Associates, Inc., established 1967, is a public affairs consulting firm and works with individual companies, industry groups and other organizations to help them achieve their legitimate objectives in Washington and throughout the United States.

DeHart clients have included: Coca-Cola, McDonald's Corporation, Book-of-the-Month Club, Borden Chemical and Borden Foods, Time-Life Books, M&M/Mars, Reader's Digest, a coalition of 300 colleges and universities, the Recording Industry Association of America, Inc., a Foundation, a railroad conglomerate, and others.

Edward H. DeHart, President
Anne Darr, Vice President
(202) 659-4000

SENATE GOVERNMENTAL ORGANIZATION COMMITTEE
H.B. 2327

Testimony of William R. Kauffman
on behalf of the Kansas Board of Regents

March 29, 1983

Mr. Chairman and members of the Committee, I am William Kauffman, General Counsel for the Kansas Board of Regents. It is on behalf of the Board that I appear today to indicate one significant concern about House Bill 2327 being considered by the Committee today.

Our concern relates to the exemption as contained in section 7(20) of the bill. That section provides for the closing of preliminary notes and recommendations in which opinions are expressed or policies are proposed, unless the item is publically cited or identified in an open meeting or an agenda of an open meeting; or unless the item is distributed to a majority of a quorum of any body which has the authority to act on the item and which action is required to be taken during an open meeting. While the exception to the exemption concerning the citing or identifying of an item in an open meeting is legitimate, we must propose that the other provision concerning those items that are distributed to a majority of the quorum be stricken. Unlike many executive agencies of the State of Kansas, the Board of Regents may not meet with its staff for the discussion of issues pending before that Board without such meeting being an open meeting under the terms of the Kansas Open Meetings Law. The Board of Regents and the staff of

Ex. E

the Board of Regents accept this fact and thus do not quarrel with requiring that items publically cited or identified in an open meeting be available with the agenda under the terms of the proposed Open Records Law. To then say, however, that any material sent to a majority of the quorum must be disclosed will have a detrimental impact on the functioning of the Board. In a time when shrinking budgets and/or enrollments make planning all the more important, the provisions of this bill would require that any plans that are developed by staff and submitted to the Board, regardless of the remoteness of the implementation of those plans, would immediately be discoverable under the terms of the Act. The Board of Regents currently has a planning process whereby institutions are required to submit plans as to what action would be taken if enrollment falls below a certain level. Those plans cite programs and positions that may be cut in such an eventuality. Although such cuts at certain institutions may be very remote, the provisions of this law would require that those plans be available to the public as soon as the plans are sent to members of the Board of Regents. The effect of this provision is to make those plans a self-fulfilling prophecy. When individuals learn that a certain department at a certain university may be closed if the enrollment drops, the consequence more likely than not will be that the enrollment in those departments will drop resulting in a need to implement the plan.

I would further point out that in those instances where the Board would be in the preliminary stages of reviewing whether a

whole department or school within a university should be discontinued, significant amounts of emotional alarm could be triggered prematurely. Educationally sound decisions would be nearly impossible to make in a climate heated by individual claims of survival. This could lead to a war of "all against all," and unnecessarily deflect the focus of pertinent discussion.

Questions were asked during the recent Senate confirmation hearings of several of the new Regents as to whether they would be willing to make the hard decisions that may even include the closing of a Regents institution. It would be impossible for the staff to make any recommendations to the Board of Regents as to the feasibility of closing an institution without such materials becoming available upon the dissemination to the Board under the provision of section 7a(20)(B). One proponent of the bill has suggested that this is precisely the type of information that should be available and that it is inappropriate for a body to surprise the public without any notice of the possible action. I respectfully submit, however, that when any action might be taken with respect to the plans, it would be placed on the agenda of the appropriate board and under the provisions of 7a(20)(A) would be available at that point in time. It is important that you recognize the potentially debilitating effects of this provision on boards and commissions of this State and balance the public's "need" or "right" to know against the harm that may result by premature disclosure of that information. I propose that section 7a(20)(B) be stricken in its entirety.

Thank you, Mr. Chairman, for the opportunity to appear before you.

Association of News Broadcasters of Kansas

and

Sigma Delta Chi - the Society of Professional Journalists
Wichita Chapter

My name is Mark Woolsey. I am appearing today on behalf of both the Association of News Broadcasters of Kansas and the Wichita chapter of Sigma Delta Chi, the Society of Professional Journalists. I'm here to convey our organizations' thoughts and feelings on House Bill 2327.

First of all, let me say our groups support HB 2327. We are delighted that such a measure is being considered by your committee. As we understand it, this bill represents many years of work by legislators of both parties and of all major political philosophies. Work on an open records law such as this one goes back to 1976, when it was introduced by Republican State Representative Carlos Cooper of Bonner Springs.

The current bill is the work of two years of work and study by the legislature and shows how the public and private sectors can work together for quality legislation.

Our organizations are pleased to see a bill that would make the issue of open records less nebulous, a bill that would declare all records open unless specifically closed, spelling out precisely what is and is not available to the public and news media.

Our groups do have a trio of concerns about the proposed bill, however, and we would like to share those with you.

First of all, the bill, in its present form, allows the agency keeping a record to recover costs associated with its retrieval. While we certainly have no objection to paying for copying costs, we are concerned about a provision of the bill that allows for reimbursement for staff time of over one hour in the location and retrieval of records.

We are unsure if this provision is one hour per visit, or an accumulated total for several visits. If the latter is true, we think the provision would place a financial hardship on small newspapers and on one person broadcast news shops around the state. These types of news operations are predominant in Kansas.

We are concerned the language of the bill could lead to a few agencies charging a great deal of money for record retrieval. We do not believe that to be the intent of the bill, but the proposed language does leave some questions.

Secondly, we are concerned about a provision of the bill that would allow rural water district officials to close ^{some} information about individual water records to media and public view. Several of our reporters have, at various times, been contacted by water utility customers who have been concerned about their billing and have asked us to look at water records in an attempt to determine whether they're being overcharged or whether the utility is following proper billing procedures. Under this proposed law, media and members of the public would no longer be able to compare water records in an attempt to get a handle on how their local water utility is operating.

Thirdly, we are concerned about the number of exemptions from the act. As you surely know, they number more than two dozen. We feel that the number of exemptions in the current bill should be carefully reviewed by lawmakers. We are concerned that the current "laundry list" could potentially become unwieldy and unworkable, and we urge you to carefully review the exemptions as they stand now before taking final action.

Aside from the reservations we've noted, we support HB 2327 wholeheartedly, and urge your committee to act favorably on the proposal.

To the Senate Committee on Governmental Organization
 By E.A. Mosher, Executive Director, League of Kansas Municipalities
 Statement on HB 2327--Open Records
 March 29, 1983

The League of Kansas Municipalities has a convention-adopted policy statement on public records, which reads as follows: "State laws governing public access to official records should be clarified and codified, made practical and workable at the local level, and provide for confidentiality when necessary to protect private rights and the public interest."

Thus, we do not oppose HB 2327. Our primary concern is that the final act be practical and workable at the local level. Designing a single law which applies equally to the University of Kansas and to a township cemetery district presents some practical problems. We are dealing with a proposed act which applies to the state and all its hundreds of agencies, to 105 counties, to 627 cities, to 326 school districts, to 1,419 townships, and to a couple of thousand special districts. On top of this, we assume that such agencies as the planning commission, board of zoning appeals, board of electrical examiners, library board, recreation commission, and so on, are all public agencies covered by the act. The total number of public agencies affected by HB 2327 appears to be in the range of five to six thousand.

As a result, most of our comments relate to its practical application at the local level. Incidentally, HB 2327 appears to be the best drafted bill on the subject we have seen.

Proposed Amendments and Comments

1. Records Retention. Present public records retention schedules deal primarily with records required by law to be maintained. How long must an "open record" under HB 2327 be maintained? For example, a memo from a city manager to the governing body on January 2, 1984 and included in the council agenda, would be a open public record under subsection 20, page 9. What happens if someone requests a copy in 1985? The bill is silent as to retention requirements, but certainly raises some public expectations than an open record today is an available record in the future--yet everything can't be kept. To resolve this possible problem, a new section is proposed, as follows: "Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record.

2. Page 3, line 100. We are confused as to the meaning of the four sentences in lines 100 through 111. The word "request" is given different meanings. At the end of this report, a simple amendment is proposed, which we think people who have to administer the act will understand.

3. Page 3, Line 115. The phrases "unreasonable burden" on line 115, and "preponderance of the evidence" on line 120, may cause some practical, local problems. If a requested record, like the 1955 sewer special assessment on Sam Jones' property is buried in a box in the attic, is it unreasonable not to produce it? What if it simply can't be found? This is not the same as to "refuse to permit inspection" (line 118). The custodian would be glad to provide it, once it's found. To change the thrust, it is suggested that (a) line 115 be amended to insert at the beginning of the sentence: "The custodian may refuse to provide access to a public record, or to permit inspection," and (b) that line 118 and 119 be amended by striking all after the comma.

4. Page 4, line 122. Subsection (f) at the top of page 4 is not consistent with the provisions of line 145 in Section 5. On line 123, the word "inspection" should be stricken and

Ex. G

the following substituted: "providing access to or furnishing copies" (same words as in line 145).

5. Page 5, Line 178. The word "section" should be changed to "act". Fees are authorized by sections other than this section 4.

6. Page 6, line 207. We are perplexed as to the practical application of HB 2327 to the many, very small local units where there are no "regular office hours" kept by the clerk. I do not know where the term "weeks" in line 207 came from; perhaps "business days" is more appropriate.

7. Page 6, Line 229. To be consistent with lines 145, 155, 159 and 162, line 229 should read: "The fees, if any, charged for access to or copies of . . .".

8. Page 8, line 296. Subsection (13) on page 8 exempts from the public records act real estate appraisals and engineering estimates as to the acquisition of real property, prior to contracts. While a city engineer's estimate of the probable contract cost of a bridge, for example, may involve "real estate" it would seem advisable to strike the words "real estate" on line 296, and "real" on line 298. The result would be the exemption of all property appraisals or estimates prior to contract letting.

9. Page 8, Line 306. What does "from the individuals to whom distributed" mean? Should it say "from such a private individual"?

10. Page 10, Line 369. Sewerage service and refuse collection involve residential customer billings but are not considered a "utility". It is proposed that subsection 26 on page 10 be amended as follows: on line 370, after "utility" insert "or other public service" and on line 371, after "utility" insert "or service".

11. Page 10, Line 375. The term "sealed" in exception (27) should be removed. Some local bidding is done by telephone or open bidding.

12. Page 12, lines 420-436. It seems to us that the provisions for court costs and attorney fees in subsection (c) and (d) have a double standard. The plaintiff maintaining the action is subject to court ordered costs and fees only if they acted "frivolously, not in good faith or without a reasonable basis in fact or law." What happens when a city clerk denies a record, acting in good faith and upon reasonable basis of fact or law, and even with an opinion of the city attorney that it is not in fact a public record?

13. Memos and Letters as Public Records, page 9, subsections 20 and 21. One of the most substantive policy changes in HB 2327 is the requirement that drafts, notes, memoranda, recommendations or other "records" in which opinions are expressed or policies or actions are proposed are open public records under certain circumstances. This includes their being cited or identified in an open meeting or on an agenda, or the distribution of the "record" to a majority of a quorum. These are not now records required by law to be maintained, and therefor are not now public records.

Under our representative system, we have a responsibility to keep the determination of public affairs as open as possible. However, I would suggest that we have an equally important concurrent responsibility to help governments to function effectively, particularly as to those governmental units which exist primarily to provide direct public services to the public. In my judgement, elected governing body members should have unfettered access to suggestions and information from their staff and employees. State laws should not discourage the exploration of options, or restrain the development of imaginative choices in public decision-making, by the fear that everything put in writing will be made public.

Striking subsection (B), beginning on line 337, would soften the initial impact of the bill. It would permit, for example, a letter from the city manager to the mayor to be sent also to one other commissioner with a 5-member governing body, without the need to provide copies to anyone who requests it.

14. Films and tapes. Presumably, pictures, radio tapes, video tapes and films, produced by a public agency or in the possession of a public agency, are all open public records, which anyone can get a copy of by paying the required fee. If this is the intent, it is suggested that any exceptions be specified.

15. Kentucky Law-Personal Privacy. The Kentucky statute has this exemption: "Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

16. Kentucky Land--New Industry. The Kentucky statute has this exemption: "Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. Provided, however, that this exemption shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (b) above."

0100 (d) Each request for access to a public record shall be acted
0101 upon as soon as possible, but not later than the end of the second
0102 business day following the date that the request is received. If access to the public record is not granted
0103 ~~the request is not acted upon~~ immediately, the custodian shall give
0104 ~~give an explanation of the cause for delay. If the request is~~
0105 ~~granted, the custodian shall make the record available for in-~~
0106 ~~spection at the time the request is granted unless the custodian~~
0107 ~~gives~~ a detailed explanation of the cause for further delay and the
0108 place and earliest time and date that the record will be available
0109 for inspection. If the request for access is denied, the custodian
0110 shall provide, upon request, a written statement of the grounds
0111 for the denial. Such statement shall cite the specific provision of
0112 law under which access is denied and shall be furnished to the
0113 requester not later than the end of the first business day follow- (should be second if consistent with line
0114 ing the date that the request for the statement is received. 101)

PREPARED TESTIMONY OF JOHN M. WYLIE II
REGION 7 FREEDOM OF INFORMATION DIRECTOR OF PROFESSIONAL JOURNALISTS
SIGMA DELTA CHI

Re: House Bill 2327

Mr. Chairman and Honorable Committee Members:

I am John M. Wylie, II, 5112 Nall, Roeland Park, Kansas, 66202, and am representing the society's hundreds of Kansas members whose newspapers, wire services, radio and television stations serve every citizen of the state. I regret that today's municipal election prevents my appearance in person before the committee.

We applaud House Bill 2327, especially the purpose stated in line 28 to 31. My brief testimony today offers some suggestions for fine tuning.

On page 4, I urge that the first four words of line 145 be stricken. The purpose of this section, as I understand it, is to allow government agencies to recoup the cost of extensive computer searches or similar special cases, a legitimate goal. But the current language appears to leave the way open for government agencies to use charges for access to public records as a profit center. This would be unfair to tax payers who conceivably, could be charged twice for, say, the minutes of a city council meeting - once to produce the documents and a second time to read them. I am certain this is not the legislature's intent.

Second, I fear that the list of exemptions as now constructed is so long and complex that many smaller government entities will have difficulty using the law. I urge committee members to seek ways to simplify this language so that the intent set forth in line 28 to 31 is not inadvertently thwarted.

Third, I urge the removal of the words, open, "unfunded grant proposals" from line 331 on page 9. Such records provide an important way for the public to keep track of how large amounts of tax payer money are -- and are not -- spent. Exemptions already in the law would seem to cover any potential invasion of privacy without requiring complete closure of such records.

Finally, I urge that new section 9, lines 441 to 443 inclusive, be stricken as being in opposition to the stated purpose of this bill. The doctrine of government immunity would seem to cover the legitimate needs in this area.

I would be happy to answer any questions the committee may have about our stand and to make available any information that might be helpful to the committee from the society's considerable experience in dealing with open records law throughout the nation. Thank you for your consideration.

Ex. H

INTEROFFICE MEMO

Date March 28, 1983

To: John Koepke

From: Dennis McFall

Subject: Proposed amendments to H.B. 2327

1. Delete Section 7(a)(20)(B), which requires that any memorandum, preliminary draft, recommendation or other opinion expressed or policy proposed be made available to the public if it is distributed to three or more members of the board of education (agency).

This section will require public disclosure, upon request, of all communications between the school administration and the board of education. This hampers the administrators' ability to discuss problems in their early stages and to propose solutions to the various conditions which might evolve from a budding problem, such as excessive staff or superfluous school buildings. The informal, but very informative, "for your information" letter to the board from the administration would be available for page one of the daily newspaper. A reasonable compromise exists in Section 7(a)(20)(A), which provides that these memoranda must be made available to the public if they are cited or identified in an open meeting of the board (agency). The board of regents also specifically advocates deletion of this provision.

2. Add another exclusion from disclosure, as Sec. 7(a)(30): I suggest: "Information related to potential or existing litigation or administrative proceedings involving the agency as a party before any administrative or judicial body."

Note--Discussions involving such legal matters must be in an open meeting unless the agency is actually meeting with its attorney, so that H.B. 2327 would require public access to any memorandum from the administration to the board discussing legal matters, since the attorney would not be involved in that communication.

3. Amend the attorney fee section, Sec. 8(c), by adding the underlined phrase: ". . . the court may award court costs and attorney fees to the person seeking access to a public record if the court finds that the agency's denial of such person's access was not in good faith and without a reasonable basis in fact or in law."

Note: Under the bill's present form, the agency would be absolutely liable for fees and costs if it lost a court case, since no provision is made for discretion on the court's part in awarding them. Even if there were an honest disagreement about the applicability of the law, the agency would still have to pay if its interpretation of the law were later found to be in error.

Ex. I

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1983

HOUSE BILL No. 2327

By Representatives Whitaker and Louis

2-9

0021 AN ACT concerning public records; amending ~~K.S.A. 58-2223b~~
0022 ~~and~~ K.S.A. 1982 Supp. 75-104 and repealing the existing
0023 ~~section sections~~ [section]; also repealing K.S.A. 45-202, 45-203
0024 and 45-204 and K.S.A. 1982 Supp. 45-201.

0025 *Be it enacted by the Legislature of the State of Kansas:*

0026 New Section 1. Sections 1 through 8 9 shall be known and
0027 may be cited as the open records act.

0028 New Sec. 2. It is declared to be the public policy of this state
0029 that public records shall be open for inspection by any person
0030 unless otherwise provided by this act, and this act shall be
0031 liberally construed and applied to promote such policy.

0032 New Sec. 3. As used in the open records act, unless the
0033 context otherwise requires:

0034 (a) "Business day" means any day other than a Saturday,
0035 Sunday or day designated as a holiday by the congress of the
0036 United States, by the legislature or governor of this state or by
0037 the respective political subdivision of this state.

0038 (b) "~~Criminal investigation records~~" means records of an
0039 investigatory agency or eriminal justice agency as defined by
0040 subsection (c) of K.S.A. 22-4701 and amendments thereto, com-
0041 piled in the process of preventing, detecting or investigating
0042 violations of eriminal law, but does not include records of arrests,
0043 police blotter entries, court records, rosters of inmates of jails or
0044 other correctional or detention facilities or records pertaining to
0045 violations of any traffic law other than vehicular homicide as
0046 defined by K.S.A. 21-3405 and amendments thereto *history rec-*
0047 *ord information has the meaning provided by K.S.A. 22-4701*

EXHIBIT J

Ex. J

~~0048 and amendments thereto.~~ ["investigation records" means rec-
0049 ords of an investigatory agency or criminal justice agency as
0050 defined by K.S.A. 22-4701 and amendments thereto, compiled in
0051 the process of preventing, detecting or investigating violations of
0052 criminal law, but does not include police blotter entries, court
0053 records, rosters of inmates of jails or other correctional or deten-
0054 tion facilities or records pertaining to violations of any traffic law
0055 other than vehicular homicide as defined by K.S.A. 21-3405 and
0056 amendments thereto.]

0057 (c) "Custodian" means the official custodian or any person
0058 designated by the official custodian to carry out the duties of
0059 custodian under this act.

0060 (d) "Official custodian" means any officer or employee of a
0061 public agency who is responsible for the maintenance of public
0062 records, regardless of whether such records are in the officer's or
0063 employee's actual personal custody and control.

0064 (e) (1) "Public agency" means the state or any political or
0065 taxing subdivision of the state, or any office, officer, agency or
0066 instrumentality thereof, or any other entity receiving or expend-
0067 ing and supported in whole or in part by public funds appro-
0068 priated by the state or by public funds of any political or taxing
0069 subdivision of the state.

0070 (2) "Public agency" shall not include any entity solely by
0071 reason of payment from public funds for property, goods or
0072 services of such entity.

0073 (f) "Public record" means any recorded information, regard-
0074 less of form or characteristics, which is made, maintained or kept
0075 by or is in the possession of any public agency, but shall not
0076 include records which are owned by a private person or entity
0077 and are not related to functions, activities, programs or opera-
0078 tions funded by public funds.

0079 (g) "Undercover agent" means an employee of a public
0080 agency responsible for criminal law enforcement who is engaged
0081 in the detection or investigation of violations of criminal law in a
0082 capacity where such employee's identity or employment by the
0083 public agency is secret.

0084 New Sec. 4. (a) All public records shall be open for inspec-

0085 tion by any person, except as otherwise provided by this act, and
0086 suitable facilities shall be made available by each public agency
0087 for this purpose. No person shall remove original copies of
0088 public records from the office of any public agency without the
0089 written permission of the custodian of the record.

0090 (b) Upon request in accordance with procedures adopted
0091 under section 6, any person may inspect public records during
0092 the regular office hours of the public agency and during any
0093 additional hours established by the public agency pursuant to
0094 section 6.

0095 (c) If the person to whom the request is directed is not the
0096 custodian of the public record requested, such person shall so
0097 notify the requester and shall furnish the name and location of
0098 the custodian of the public record, if known to or readily ascer-
0099 tainable by such person.

0100 (d) Each request for access to a public record shall be acted
0101 upon as soon as possible, but not later than the end of the ~~second~~
0102 business day following the date that the request is received. If

0103 the request is not acted upon immediately, the custodian shall
0104 give an explanation of the cause for delay. If the request is
0105 granted, the custodian shall make the record available for in-
0106 spection at the time the request is granted unless the custodian
0107 gives a detailed explanation of the cause for further delay and the
0108 place and earliest time and date that the record will be available
0109 for inspection. If the request for access is denied, the custodian
0110 shall provide, upon request, a written statement of the grounds
0111 for the denial. Such statement shall cite the specific provision of
0112 law under which access is denied and shall be furnished to the
0113 requester not later than the end of the first business day follow-
0114 ing the date that the request for the statement is received.

0115 (e) If a request places an unreasonable burden in producing
0116 public records or if the custodian has reason to believe that
0117 repeated requests are intended to disrupt other essential func-
0118 tions of the public agency, the custodian may refuse to permit
0119 inspection of the public records. However, refusal under this
0120 subsection must be sustained by a preponderance of the evi-
0121 dence.

third

0122 (f) A public agency may charge and require advance payment
0123 of a fee for inspection of public records, subject to section 5.
0124 New Sec. 5. (a) Any person may make abstracts or obtain
0125 copies of any public record to which such person has access
0126 under this act. If copies are requested, the public agency may
0127 require a written request and advance payment of the prescribed
0128 fee.

0129 (b) Copies of public records shall be made while the records
0130 are in the possession, custody and control of the custodian or a
0131 person designated by the custodian and shall be made under the
0132 supervision of such custodian or person. When practical, copies
0133 shall be made in the place where the records are kept. If it is
0134 impractical to do so, the custodian may allow arrangements to be
0135 made for use of other facilities. If it is necessary to use other
0136 facilities for copying, the cost thereof shall be paid by the person
0137 desiring a copy of the records. In addition, the public agency
0138 may charge the same fee for the services rendered in supervising
0139 the copying as for furnishing copies under subsection (c) and
0140 may establish a reasonable schedule of times for making copies
0141 at other facilities.

0142 (c) Except as provided by subsection (f) or where fees for
0143 inspection or for copies of a public record are prescribed by
0144 statute, each public agency may prescribe reasonable fees for
0145 providing access to or furnishing copies of public records, sub-
0146 ject to the following:

0147 (1). In the case of fees for copies of records, the fees shall not
0148 exceed the actual cost of furnishing copies, including the cost of
0149 staff time required.

[to make the information available

0150 (2) In the case of fees for providing access to records main-
0151 tained on computer facilities, the fees shall include only the cost
0152 of any computer services required in excess of one hour or the
0153 cost of any staff time required in excess of one hour, including
0154 staff time required ~~in excess of \$20.~~

[.

0155 (3) Fees for access to or copies of public records of public
0156 agencies within the legislative branch of the state government
0157 shall be established in accordance with K.S.A. 46-1207a and
0158 amendments thereto.

0159 (4) Fees for access to or copies of public records of public
0160 agencies within the judicial branch of the state government shall
0161 be established in accordance with rules of the supreme court.

0162 (5) Fees for access to or copies of public records of a public
0163 agency within the executive branch of the state government shall
0164 be subject to approval by the director of accounts and reports.

0165 (d) Except as otherwise authorized pursuant to K.S.A. 75-
0166 4215 and amendments thereto, each public agency within the
0167 executive branch of the state government shall remit all moneys
0168 received by or for it from fees charged pursuant to this section to
0169 the state treasurer in accordance with K.S.A. 75-4215 and
0170 amendments thereto. Unless otherwise specifically provided by
0171 law, the state treasurer shall deposit the entire amount thereof in
0172 the state treasury and credit the same to the state general fund,
0173 except that the cost of charges for the services of the division of
0174 computer services may be credited to the fee fund of the agency
0175 to defray such cost.

0176 (e) Each public agency of a political or taxing subdivision
0177 shall remit all moneys received by or for it from fees charged
0178 pursuant to this section to the treasurer of such political or taxing
0179 subdivision at least monthly. Upon receipt of any such moneys,
0180 such treasurer shall deposit the entire amount thereof in the
0181 treasury of the political or taxing subdivision and credit the same
0182 to the general fund thereof, unless otherwise specifically pro-
0183 vided by law.

0184 (f) Any person who is a certified shorthand reporter may
0185 charge fees for transcripts of such person's notes of judicial or
0186 administrative proceedings in accordance with rates established
0187 pursuant to rules of the Kansas supreme court.

0188 New Sec. 6. (a) Each public agency shall adopt procedures
0189 to be followed in requesting access to and obtaining copies of
0190 public records, which procedures shall provide full access to
0191 public records, protect public records from damage and disorga-
0192 nization, prevent excessive disruption of the agency's essential
0193 functions, provide assistance and information upon request and
0194 insure efficient and timely action in response to applications for
0195 inspection of public records.

0196 (b) A public agency may require a written request for in-
0197 spection of public records but shall not otherwise require a
0198 request to be made in any particular form. A public agency shall
0199 not require that a request contain more information than neces-
0200 sary to properly identify the requester and the requester's name
0201 and address and the information necessary to ascertain the rec-
0202 ords to which the requester desires access. A public agency may
0203 require proof of identity of any person requesting access to a
0204 public record. No request shall be returned, delayed or denied
0205 because of any technicality unless it is impossible to determine
0206 the records to which the requester desires access.

0207 (c) A public agency shall establish, for weeks when it does
0208 not maintain regular office hours, reasonable hours when per-
0209 sons may inspect and obtain copies of the agency's records. The
0210 public agency may require that any person desiring to inspect or
0211 obtain copies of the agency's records during such hours so notify
0212 the agency, but such notice shall not be required to be in writing
0213 and shall not be required to be given more than 24 hours prior to
0214 the hours established for inspection and obtaining copies.

0215 (d) Each official custodian of public records shall designate
0216 such persons as necessary to carry out the duties of custodian
0217 under this act and shall ensure that a custodian is available
0218 during regular business hours of the public agency to carry out
0219 such duties.

0220 (e) Each public agency shall provide, upon request of any
0221 person, the following information:

0222 (1) The principal office of the agency, its regular office hours
0223 and any additional hours established by the agency pursuant to
0224 subsection (c).

0225 (2) The title and address of the official custodian of the
0226 agency's records and of any other custodian who is ordinarily
0227 available to act on requests made at the location where the
0228 information is displayed.

0229 (3) The fees, if any, charged for copies of the agency's rec-
0230 ords.

0231 (4) The procedures to be followed in requesting access to and
0232 obtaining copies of the agency's records, including procedures

0233 for giving notice of a desire to inspect or obtain copies of records
0234 during hours established by the agency pursuant to subsection
0235 (c).

0236 New Sec. 7. (a) Except to the extent disclosure is otherwise
0237 required by law, a public agency shall not be required to dis-
0238 close:

0239 (1) Records the disclosure of which is specifically prohibited
0240 or restricted by federal law, state statute or rule of the Kansas
0241 supreme court or the disclosure of which is prohibited or re-
0242 stricted pursuant to specific authorization of federal law, state
0243 statute or rule of the Kansas supreme court to restrict or prohibit
0244 disclosure.

0245 (2) Records which are privileged under the rules of evidence,
0246 unless the holder of the privilege consents to the disclosure.

0247 (3) Medical, psychiatric, psychological or alcoholism or drug
0248 dependency treatment records which pertain to identifiable pa-
0249 tients.

0250 (4) Personnel records and, performance ratings or individu-
0251 ally identifiable records pertaining to applicants for employ-
0252 ment, except that this exemption shall not apply to the names,
0253 positions, salaries and lengths of service of officers and employ-
0254 ees of public agencies once they are employed as such.

0255 (5) Information which would reveal the identity of any un-
0256 dercover agent.

0257 (6) Letters of reference or recommendation pertaining to the
0258 character or qualifications of an identifiable individual.

0259 (7) Library, archive and museum materials contributed by
0260 private persons, to the extent of any limitations imposed as
0261 conditions of the contribution.

0262 (8) Information which would reveal the identity of an indi-
0263 vidual who lawfully makes a donation to a public agency, if
0264 anonymity of the donor is a condition of the donation.

0265 (9) Testing and examination materials, before the test or
0266 examination is given or if it is to be given again, or records of
0267 individual test or examination scores, other than records which
0268 show only passage or failure and not specific scores.

0269 (10) Criminal investigation records *history record informa-*

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0270 ~~tion~~ [investigation records], except that the district court, in an
0271 action brought pursuant to section 8, may order disclosure of
0272 such records, subject to such conditions as the court may impose,
0273 if the court finds that disclosure:

0274 (A) Is in the public interest;

0275 (B) would not interfere with any prospective law enforce-
0276 ment action;

0277 (C) would not reveal the identity of any confidential source
0278 or undercover agent;

0279 (D) would not reveal confidential investigative techniques or
0280 procedures not known to the general public; and

0281 (E) would not endanger the life or physical safety of any
0282 person.

0283 (11) Records of agencies involved in administrative adjudi-
0284 cation or civil litigation, compiled in the process of detecting or
0285 investigating violations of civil law or administrative rules and
0286 regulations, if disclosure would interfere with a prospective
0287 administrative adjudication or civil litigation or reveal the iden-
0288 tity of a confidential source or undercover agent.

0289 (12) Records of emergency or security information or pro-
0290 cedures of a public agency, or plans, drawings, specifications or
0291 related information for any building or facility which is used for
0292 purposes requiring security measures in or around the building
0293 or facility or which is used for the generation or transmission of
0294 power, water, fuels or communications, if disclosure would
0295 jeopardize security of the public agency, building or facility.

0296 (13) The contents of real estate appraisals or engineering or
0297 feasibility estimates or evaluations made by or for a public
0298 agency relative to the acquisition of real property, prior to the
0299 award of formal contracts therefor.

0300 (14) Correspondence between a public agency and a private
0301 individual, other than correspondence which is intended to give
0302 notice of an action, policy or determination relating to any
0303 regulatory, supervisory or enforcement responsibility of the
0304 public agency or which is widely distributed to the public by a
0305 public agency and is not specifically in response to communica-
0306 tions from the individuals to whom distributed.

0307 (15) Records pertaining to employer-employee negotiations,
0308 if disclosure would reveal information discussed in a lawful
0309 executive session under K.S.A. 75-4319 and amendments
0310 thereto.

0311 (16) Software programs for electronic data processing and
0312 documentation thereof, but each public agency shall maintain a
0313 register, open to the public, that describes:

0314 [(A) The information which the agency maintains on com-
0315 puter facilities; and

0316 [(B) the form in which the information can be made available
0317 using existing computer programs].

0318 (17) Applications, financial statements and other information
0319 submitted in connection with applications for student financial
0320 assistance where financial need is a consideration for the award.

0321 (18) Plans, designs, drawings or specifications which are
0322 prepared by a person other than an employee of a public agency
0323 or records which are the property of a private person.

0324 (19) Well samples, logs or surveys which the state corpora-
0325 tion commission requires to be filed by persons who have drilled
0326 or caused to be drilled, or are drilling or causing to be drilled,
0327 holes for the purpose of discovery or production of oil or gas, to
0328 the extent that disclosure is limited by rules and regulations of
0329 the state corporation commission.

0330 (20) ~~Preliminary drafts, notes~~ Notes, preliminary drafts, re-
0331 search data in the process of analysis, unfunded grant proposals,
0332 memoranda, recommendations or other records in which opin-
0333 ions are expressed or policies or actions are proposed, except that
0334 this exemption shall not apply when such records are:

0335 (A) Publicly cited or identified in an open meeting or in an
0336 agenda of an open meeting; or

0337 (B) distributed to a majority of a quorum of any body which
0338 has authority to take action or make recommendations to a public
0339 agency with regard to the matters to which such records pertain,
0340 if the body is required to discuss such matters in an open
0341 meeting pursuant to K.S.A. 75-4317 *et seq.* and amendments
0342 thereto.

0343 (21) Records of a public agency having legislative powers,

0344 which records pertain to proposed legislation or amendments to
0345 proposed legislation, except that this exemption shall not apply
0346 when such records are:

0347 (A) Publicly cited or identified in an open meeting or in an
0348 agenda of an open meeting; or

0349 (B) distributed to a majority of a quorum of any body which
0350 has authority to take action or make recommendations to the
0351 public agency with regard to the matters to which such records
0352 pertain.

0353 (22) Records of a public agency having legislative powers,
0354 which records pertain to research prepared for one or more
0355 members of such agency, except that this exemption shall not
0356 apply when such records are:

0357 (A) Publicly cited or identified in an open meeting or in an
0358 agenda of an open meeting; or

0359 (B) distributed to a majority of a quorum of any body which
0360 has authority to take action or make recommendations to the
0361 public agency with regard to the matters to which such records
0362 pertain.

0363 (23) Library patron and circulation records which pertain to
0364 identifiable individuals.

0365 (24) Records which are compiled for census or research pur-
0366 poses and which pertain to identifiable individuals.

0367 (25) Records which represent and constitute the work prod-
0368 uct of an attorney.

0369 (26) Records *of requests for temporary voluntary discontin-*
0370 *uance of utility services* [of a utility pertaining to individually
0371 identifiable residential customers of the utility, except that in-
0372 formation concerning billings for specific individual customers
0373 named by the requester shall be subject to disclosure as pro-
0374 vided by this act].

0375 (27) Specifications for sealed competitive bidding, until the
0376 specifications are officially approved by the public agency.

0377 (28) Sealed bids and related documents, until a bid is ac-
0378 cepted or all bids rejected.

0379 (29) Correctional records pertaining to an identifiable in-
0380 mate, except that:

0381 (A) The name, sentence data, parole eligibility date, disci-
0382 plinary record, custody level and location of an inmate shall be
0383 subject to any person other than another inmate; and

0384 (B) the ombudsman of corrections, the corrections ombuds-
0385 man board, the attorney general, law enforcement agencies,
0386 counsel for the inmate to whom the record pertains and any
0387 county or district attorney shall have access to correctional rec-
0388 ords to the extent otherwise permitted by law.

0389 (b) As used in this section, the term "cited or identified"
0390 shall not include a request to an employee of a public agency that
0391 a document be prepared.

0392 (c) If a public record contains material which is not subject to
0393 disclosure pursuant to this act, the public agency shall separate
0394 or delete such material and make available to the requester that
0395 material in the public record which is subject to disclosure
0396 pursuant to this act. If a public record is not subject to disclosure
0397 because it pertains to an identifiable individual, the public
0398 agency shall delete the identifying portions of the record and
0399 make available to the requester any remaining portions which
0400 are subject to disclosure pursuant to this act, unless the request is
0401 for a record pertaining to a specific individual or to such a limited
0402 group of individuals that the individuals' identities are reason-
0403 ably ascertainable, the public agency shall not be required to
0404 disclose those portions of the record which pertain to such
0405 individual or individuals.

0406 (d) The provisions of this section shall not be construed to
0407 exempt from public disclosure statistical information not de-
0408 scriptive of any identifiable person.

0409 (e) Notwithstanding the provisions of subsection (a), any
0410 public record which has been in existence more than 70 years
0411 shall be open for inspection by any person unless disclosure of
0412 the record is specifically prohibited or restricted by federal law,
0413 state statute or rule of the Kansas supreme court or by a policy
0414 adopted pursuant to K.S.A. 72-6214 and amendments thereto.

0415 New Sec. 8. (a) The district court of any county in which
0416 public records are located shall have jurisdiction to enforce the
0417 purposes of this act with respect to such records, by injunction,

0418 mandamus or other appropriate order, on application of any
0419 person.

0420 (b) In any action hereunder, the court shall determine the
0421 matter *de novo* ~~and the burden of proof shall be on the official,~~
0422 ~~custodian of the record to sustain the action of the public agency.~~
0423 The court on its own motion, or on motion of either party, may
0424 view the records in controversy *in camera* before reaching a
0425 decision.

0426 (c) In any action hereunder, the court may award court costs
0427 and attorney fees to the person seeking access to a public record
0428 if the court finds that such person's access was denied in viola-
0429 tion of this act. The award shall be assessed against the public
0430 agency that the court determines to be responsible for the viola-
0431 tion.

0432 (d) In any action hereunder in which the defendant is the
0433 prevailing party, the court may award to the defendant court
0434 costs and attorney fees if the court finds that the plaintiff main-
0435 tained the action frivolously, not in good faith or without a
0436 reasonable basis in fact or law.

0437 (e) Except as otherwise provided by law, proceedings arising
0438 under this section ~~shall take precedence over all other cases and~~
0439 shall be assigned for hearing and trial at the earliest practicable
0440 date.

0441 **New Sec. 9. No public agency nor any officer or employee of**
0442 **a public agency shall be liable for damages resulting from the**
0443 **failure to provide access to a public record in violation of this act.**

0444 **Sec. 9 10. K.S.A. 1982 Supp. 75-104 is hereby amended to**
0445 **read as follows: 75-104. (a) The governor shall keep and maintain**
0446 **a full and complete record of the following applications or**
0447 **petitions made to the governor:**

- 0448 (1) Applications or petitions for executive pardon, commuta-
0449 tion of sentence or clemency;
0450 (2) applications or petitions for the appointment of a named
0451 individual to public office when a vacancy occurs and when the
0452 governor is restricted to the appointment of nominees so sub-
0453 mitted;
0454 (3) applications or petitions for the appointment of a person

0455 from a list of persons submitted by an association, agency or
0456 committee where the governor is limited to make an appoint-
0457 ment only from that list;

0458 (4) applications for the approval of grants where the gover-
0459 nor's approval is a condition precedent to the making of such
0460 grants either by a state agency or by the federal government;

0461 (5) applications or petitions for declarations of emergency;

0462 (6) petitions for the calling of a special session of the legisla-
0463 ture pursuant to section 5 of article 1 of the constitution of the
0464 state of Kansas; and

0465 (7) applications or petitions directed to the governor and
0466 requesting that he or she take action in accordance with subsec-
0467 tion (c) of K.S.A. 75-3711 *and amendments thereto* and exercise a
0468 function otherwise specified by statute for the state finance
0469 council.

0470 (b) The record required to be kept under subsection (a) and
0471 all records of the financial affairs and transactions regarding the
0472 receipt and expenditure of state moneys shall remain on file in
0473 the office of each governor during the governor's term of office
0474 and for a period of three years following the expiration of such
0475 term.

0476 (c) Following the three-year period prescribed in subsection
0477 (b), all records kept and maintained pursuant to subsection (a)
0478 shall be transferred to the custody of the state historical society
0479 and the records of the financial affairs and transactions kept and
0480 maintained pursuant to subsection (b) shall be kept in the office
0481 of the governor, subject to disposal as may be authorized by the
0482 state records board.

0483 (d) All records, correspondence and other papers of the gov-
0484 ernor which are not required to be kept and maintained under
0485 subsections (a) or (b) shall be the personal property of the
0486 governor and shall not constitute official public records of the
0487 state. No person shall have access to such records, correspon-
0488 dence or other papers during the governor's term of office except
0489 upon the consent of the governor.

0490 (d) *Records, correspondence and other papers of the gover-*
0491 *nor which are not required to be kept and maintained under*

0492 *subsection (a) or (b) shall not be subject to review or audit by the*
0493 *legislative post auditor under the legislative post audit act.*

0494 (e) Upon completion of the term of office ~~as of a governor, a~~
0495 ~~former governor shall determine which all~~ records, correspon-
0496 dence and other papers not required to be kept and maintained
0497 under subsections (a) or (b) *which* relate to the former governor's
0498 public duties while governor. ~~The records, correspondence and~~
0499 ~~other papers which the former governor determines relate to the~~
0500 ~~former governor's public duties while governor shall be trans-~~
0501 ~~ferred to the custody of an institution of higher education in the~~
0502 ~~regents system of state universities in Kansas designated by the~~
0503 ~~former governor or, if the former governor does not designate an~~
0504 ~~institution of higher education in the regent system of state~~
0505 ~~universities in Kansas as the depository, such records, corre-~~
0506 ~~spondence and other papers shall be transferred to the custody of~~
0507 ~~the state historical society. During the lifetime of the former~~
0508 ~~governor, no person shall have access to such records, corre-~~
0509 ~~spondence and other papers except upon the consent of the~~
0510 ~~former governor. Two years after the death of the former gover-~~
0511 ~~nor, such records, correspondence and other papers shall be~~
0512 ~~come public records. During the lifetime of the former governor,~~
0513 *no person shall have access to any such records, correspondence*
0514 *or other papers which are not required to be disclosed under*
0515 *section 7, except upon consent of the former governor, and the*
0516 *former governor shall be considered the official custodian of*
0517 *such records, correspondence and other papers which are not*
0518 *required to be disclosed.*

0519 (f) Upon the death of a governor while in office, all records,
0520 correspondence and other papers of such deceased governor not
0521 required to be kept and maintained under subsections (a) or (b)
0522 which relate to such governor's duties while governor ~~shall be~~
0523 ~~transferred to the custody of the institution of higher education~~
0524 ~~in Kansas designated by such governor or, if such governor did~~
0525 ~~not designate an institution of higher education in Kansas as the~~
0526 ~~depository, such records, correspondence and other papers shall~~
0527 ~~be transferred to the custody of the state historical society. Two~~
0528 ~~years after the death of such governor, such records, correspon-~~

0529 ~~dence and other papers shall become public records.~~

0530 (g) *The provisions of this section, as amended on January 1,*
0531 ~~1982~~ 1984, *shall apply only to persons elected or succeeding to*
0532 *the office of governor on or after that date. Any person elected*
0533 *or succeeding to the office of governor prior to January 1, 1982*
0534 *1984, shall be governed by the provisions of this section prior to*
0535 *its amendment on that date.*

0536 New Sec. ~~10~~ 11. (a) Except to the extent otherwise autho-
0537 rized by law, no person shall knowingly sell, give or receive, for
0538 the purpose of selling or offering for sale any property or service
0539 to persons listed therein, any list of names and addresses con-
0540 tained in or derived from public records ~~of the division of motor~~
0541 ~~vehicles of the department of revenue.~~

0542 (b) Violation of this section is a class C misdemeanor.

0543 New Sec. ~~11~~ 12. (a) All records provided to be maintained
0544 under K.S.A. 44-550 and amendments thereto shall be open to
0545 public inspection.

0546 (b) This section shall be part of and supplemental to the
0547 workmen's compensation act.

0548 New Sec. ~~12~~ 13. If any provisions of this act or the applica-
0549 tion thereof to any person or circumstances is held invalid, the
0550 invalidity shall not affect other provisions or applications of the
0551 act which can be given effect without the invalid provisions or
0552 application and, to this end, the provisions of this act are sever-
0553 able.

0554 New Sec. 14. Records of the office of the ombudsman of
0555 corrections or of the corrections ombudsman board which relate
0556 to complaints by correctional inmates or employees shall not be
0557 disclosed directly or indirectly to any person except as autho-
0558 rized by the ombudsman of corrections or by a majority vote of
0559 the corrections ombudsman board.

0560 New Sec. 15. (a) The state corporation commission shall not
0561 disclose to [or allow inspection by] anyone[, including but not
0562 limited to parties to a regulatory proceeding before the commis-
0563 sion,] any trade secret or confidential commercial information of
0564 a corporation, partnership or individual proprietorship regulated
0565 by the commission unless the commission finds that disclosure is

0566 warranted after consideration of the following factors:

0567 (1) Whether disclosure will significantly aid the commission
0568 in fulfilling its functions;

0569 (2) the harm or benefit which disclosure will cause to the
0570 public interest;

0571 (3) the harm which disclosure will cause to the corporation,
0572 partnership or sole proprietorship; and

0573 (4) alternatives to disclosure that will serve the public inter-
0574 est and protect the corporation, partnership or sole proprietor-
0575 ship.

0576 (b) *The state corporation commission shall adopt rules and*
0577 *regulations classifying by subject matter those records which*
0578 *are open to public disclosure pursuant to this section and those*
0579 *records which are not subject to public disclosure pursuant to*
0580 *this section.*

0581 [(b) If the state corporation commission finds that disclosure
0582 is warranted pursuant to subsection (a), the commission shall
0583 give the corporation, partnership or individual proprietorship
0584 notice before disclosing the trade secret or confidential com-
0585 mercial information.]

0586 *See. 16. K.S.A. 58-2223b is hereby amended to read as fol-*
0587 *lows: 8-2223b. "Value shall," in the case of any deed not a gift,*
0588 *be is the amount of the full actual consideration thereof, paid or*
0589 *to be paid, including the amount of any lien or liens assumed.*
0590 *Such The certificate of value shall contain a statement of the*
0591 *classification and subclassification to which such the property*
0592 *belongs for the purpose of determining the fair market value of*
0593 *the property. Such The certificate shall not be filed of record*
0594 *but shall be retained for a period of two (2) years at which time*
0595 *they it shall be destroyed. The contents of said certificate shall*
0596 *be made available not only to the county clerk for the purpose of*
0597 *preparing the report to the director of property valuation but the*
0598 *information in such certificates shall be made available to the*
0599 *county assessor and appraisers employed by the county for*
0600 *appraisal of property located within the county, if any, and to the*
0601 *board of county commissioners but shall not be otherwise dis-*
0602 *closed by any party having access to them to anyone other than*

603 the director of property valuation or to the board of tax appeals in
604 the event of proceedings before that board.

605 Sec. ~~13 17~~ [16]. K.S.A. 45-202, 45-203 and ~~45-204~~, [and] 45-
606 204 ~~and 58-2223b~~ and K.S.A. 1982 Supp. 45-201 and 75-104 are
607 hereby repealed.

608 Sec. ~~14 18~~ [17]. This act shall take effect and be in force on
609 and after January 1, 1984, and its publication in the statute book.