

Approved April 5, 1983  
Date

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at  
Chairperson

2:34 ~~xx~~ p.m. on April 4, 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:

Tuck Duncan - Assistant City Attorney - Topeka  
John Koepka - Kansas Association of School Boards  
Rick von Ende - University of Kansas  
Walter Scott - Attorney for DeHart Associates

The committee met for further discussion on House Bill 2327.

Tuck Duncan discussed his areas of concern in this bill stating that they need some exemptions on tapes and exemptions on discussions with new industry.

Two balloon versions of House Bill 2327 were distributed to the committee (Exhibits A and B) and considerable discussion ensued.

John Koepke elaborated on the three proposed amendments from his organization and explained why they felt the amendments were necessary. (Exhibit C)

Ernie Mosher spoke briefly and answered questions on their proposed amendments.

At this point, Senator Hein assumed the Chair and he suggestion that Mr. Mosher and Norm Furse get together and go over the amendments on the two balloon versions to be sure that they were in agreement.

Rick von Ende addressed the committee on the various amendments and expressed the fact that his interest depended on the availability of information that they received from the public records.

Walter Scott was present to answer questions and make some brief comments.

No action was taken on this bill and the committee was adjourned at 3:45 p.m. by the Vice-Chairman, Senator Ron Hein.



HOUSE BILL No. 2327

By Representatives Whitaker and Louis

2-9

EXHIBIT A

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

enacted by the Legislature of the State of Kansas:

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

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

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

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

(b) "Criminal investigation records" means records of an investigatory agency or criminal justice agency as defined by subsection (e) of ~~K.S.A. 22-4701~~ and amendments thereto, compiled in the process of preventing, detecting or investigating violations of eriminal law, but does not include records of arrests, police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by ~~K.S.A. 21-3405~~ and amendments thereto ~~history record information has the meaning provided by ~~K.S.A. 22-4701~~~~

PROPOSED AMENDMENTS

1. John Koepke, Kansas Association of School Boards
2. Richard Von Ende (KU)
3. William Kauffman (Board of Regents)
4. John M. Wylie II, Region 7, Sigma Delta Chi
5. Association of News Broadcasters of Kansas and Sigma Delta Chi, Wichita Chapter
6. Walter Scott, Jr., - comments on use of motor vehicle registration lists for commercial purposes
7. K D E D
8. Attorney General Robert Stephan (Brad Smoot)
9. Davis Merritt, Jr., Executive Editor, Wichita Eagle-Beacon
10. E. A. Mosher, League of Kansas Municipalities

Caveat: In regard to other persons who appeared, either they did not make proposed amendments or I did not receive a copy of the proposals they may have made. If a proposal has been overlooked or not translated correctly in this balloon, please let me know. (127)

Ex. A

048 and amendments thereto. ["investigation records" means rec-  
049 ords of an investigatory agency or criminal justice agency as  
050 defined by K.S.A. 22-4701 and amendments thereto, compiled in  
051 the process of preventing, detecting or investigating violations of  
052 criminal law, but does not include police blotter entries, court  
053 records, rosters of inmates of jails or other correctional or deten-  
054 tion facilities or records pertaining to violations of any traffic law  
055 other than vehicular homicide as defined by K.S.A. 21-3405 and  
056 amendments thereto.]

057 (c) "Custodian" means the official custodian or any person  
058 designated by the official custodian to carry out the duties of  
059 custodian under this act.

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

064 (e) (1) "Public agency" means the state or any political or  
065 taxing subdivision of the state, or any office, officer, agency or  
066 instrumentality thereof, or any other entity receiving or expend-  
067 ing and supported in whole or in part by public funds appro-  
068 priated by the state or by public funds of any political or taxing  
069 subdivision of the state.

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

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

079 (g) "Undercover agent" means an employee of a public  
080 agency responsible for criminal law enforcement who is engaged  
081 in the detection or investigation of violations of criminal law in a  
082 capacity where such employee's identity or employment by the  
083 public agency is secret.

084 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 Von Ende - KU

access to the public record is not granted E. A. Mosher

change to whatever consistent with line 101 E. A. Mosher

The custodian may refuse to provide access to a public record  
or to permit inspection, if E.A. Mosher

E. A. Mosher

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.

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.

providing access to or furnishing copies

E. A. Mosher - see line 145

John M. Wylie II, Sigma Delta Chi and ANBK

to make the information available

Von Ende-KU

✓ Von Ende-KU

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

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

165 (d) Except as otherwise authorized pursuant to K.S.A. 75-  
166 4215 and amendments thereto, each public agency within the  
167 executive branch of the state government shall remit all moneys  
168 received by or for it from fees charged pursuant to this section to  
169 the state treasurer in accordance with K.S.A. 75-4215 and  
170 amendments thereto. Unless otherwise specifically provided by  
171 law, the state treasurer shall deposit the entire amount thereof in  
172 the state treasury and credit the same to the state general fund,  
173 except that the cost of charges for the services of the division of  
174 computer services may be credited to the fee fund of the agency  
175 to defray such cost.

176 (e) Each public agency of a political or taxing subdivision  
177 shall remit all moneys received by or for it from fees charged  
178 pursuant to this section to the treasurer of such political or taxing  
179 subdivision at least monthly. Upon receipt of any such moneys,  
180 such treasurer shall deposit the entire amount thereof in the  
181 treasury of the political or taxing subdivision and credit the same  
182 to the general fund thereof, unless otherwise specifically pro-  
183 vided by law.

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

188 New Sec. 6. (a) Each public agency shall adopt procedures  
189 to be followed in requesting access to and obtaining copies of  
190 public records, which procedures shall provide full access to  
191 public records, protect public records from damage and disorga-  
192 nization, prevent excessive disruption of the agency's essential  
193 functions, provide assistance and information upon request and  
194 insure efficient and timely action in response to applications for  
195 inspection of public records.

act

E. A. Mosher

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.

business days

E. A. Mosher

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

access to or

E. A. Mosher



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-*

Request to simplify language in New Sec. 7 -- feels too many  
exemptions. John M. Wylie II, Sigma Delta Chi, ANBK and  
Sigma Delta Chi, Wichita

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.~~

E. A. Mosher

such a private individual

E. A. Mosher

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, 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,

ANBK and Sigma Delta Chi of Wichita object to provision of bill  
allowing rural water districts to close some information about  
water records - no precise reference to bill given.

Keep  
in

John M. Wylie II, Sigma Delta Chi

as  
shown

John Koepke; William Kauffman, E. A. Mosher

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:

or other public service

or service

E. A. Mosher

E. A. Mosher

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,

(30) Information related to potential or existing litigation or administrative proceedings involving the agency as a party before any administrative or judicial body.

John Koepke

(31) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

E.A. Mosher

(32) 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 state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

E. A. Mosher and KDED

8 mandamus or other appropriate order, on application of any  
9 person.

10 (b) In any action hereunder, the court shall determine the  
11 matter *de novo*, and the burden of proof shall be on the official  
12 custodian of the record to sustain the action of the public agency.  
13 The court on its own motion, or on motion of either party, may  
14 view the records in controversy *in camera* before reaching a  
15 decision.

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

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

27 (e) Except as otherwise provided by law, proceedings arising  
28 under this section shall take precedence over all other cases and  
29 shall be assigned for hearing and trial at the earliest practicable  
30 date.

31 ~~New Sec. 9. No public agency nor any officer or employee of  
32 a public agency shall be liable for damages resulting from the  
33 failure to provide access to a public record in violation of this act.~~

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

38 (1) Applications or petitions for executive pardon, commuta-  
39 tion of sentence or clemency;

40 (2) applications or petitions for the appointment of a named  
41 individual to public office when a vacancy occurs and when the  
42 governor is restricted to the appointment of nominees so sub-  
43 mitted;

44 (3) applications or petitions for the appointment of a person

Von Ende - KU

the agency's denial of

John Koepke

not in good faith and without a reasonable basis in fact or law

John  
Koepke

Von Ende - KU

John M. Wylie II, Sigma Delta Chi; Attorney General

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

No changes

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-

Change  
Policy  
Decision  
For the Gov.  
Papers to apply  
to all universities  
and not just  
Regents



dence and other papers shall become public records.

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

New Sec. 10 11. (a) Except to the extent otherwise authorized by law, no person shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records of the division of motor vehicles of the department of revenue.

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

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

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

New Sec. 12 13. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

New Sec. 14. Records of the office of the ombudsman of corrections or of the corrections ombudsman board which relate to complaints by correctional inmates or employees shall not be disclosed directly or indirectly to any person except as authorized by the ombudsman of corrections or by a majority vote of the corrections ombudsman board.

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

Walter Scott, Jr. - delete New Sec. 11 and substitute SB No. 310 (as amended by Senate Committee) (not in his written comments but evidently the basis for them.)

Von Ende - KU

Davis Merritt, Jr., feels "new section 15 addresses a narrow problem with too broad a brush. . . ." Doesn't recommend amendment, however.

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 *Sec. 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*

Sec. 16. Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record.

E. A.  
Mösher

17  
the director of property valuation or to the board of tax appeals in the event of proceedings before that board.

Sec. 13 ~~17~~ [16]. K.S.A. 45-202, 45-203 and ~~45-204~~, [and] 45-204 and ~~58-2233b~~ and K.S.A. 1982 Supp. 45-201 and 75-104 are hereby repealed.

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

[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

EXHIBIT B

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 criminal 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 criminal 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 reo-*  
0047 *ord information has the meaning provided by K.S.A. 22-4701*

Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record.

To clarify intent.

LKM  
RE  
KASB

Ex. B

\* LKM - League of Kansas Municipalities  
KASB - Kansas Assn. of School Boards  
BR - Board of Regents

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-

AMENDMENTS

COMMENTS

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  
[access to the public record is not granted  
[give

[second  
[The custodian may refuse to provide access to a  
[public record or to permit inspection if

To simplify and make understandable  
to custodians.

To make consistent with line 101

To clarify. While line 115 relates  
to "producing", line 119 relates  
only to "inspection".

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KASB

AMENDMENTS

COMMENTS

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.

[providing access to or furnishing copies

To make consistent with lines 145,  
155, 159 and 162.

LKM

*RE*  
KASB

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.

BR

*RE*

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.

X

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.

BR

*RE*

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.

(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.

[act

Fees are authorized by section 4 as well as section 5.

LKM

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*KASB*



AMENDMENTS

COMMENTS

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~~ <sup>[business days]</sup> 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 <sup>[access to or]</sup> 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

Business days defined in line 34.

LKM  
KASB

To be consistent with lines 145,  
155, 159 and 162.

LKM  
KASB

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-~~

AMENDMENTS

COMMENTS

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.~~ [a private individual.

X

X

To extend application to appraisals  
or engineering estimates for all  
property.

LKM

To clarify meaning; see line 300.

KASB  
LKM

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)~~ <sup>(P)</sup>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,

X  
X  
X

See presentations by Committee  
by BR, LKM and KASB.

KASB, LKM, BR

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].

{or other public service  
{or service

Sewerage service and refuse col-  
lection has individual customer  
billings but are not, by law,  
a "utility".

LKM

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

X

Specifications are also prepared  
for open and auction bidding.

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

LKM

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

KASB

AMENDMENTS

COMMENTS

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,

(30) (Films and tapes.)

Some exemptions needed for radio  
tapes, video tapes, film, etc.

LKM

(31) (Prospective industries.)

The Kentucky statute has this ex-  
emption: "Public records pertain-  
ing to a prospective location of a  
business' or industry's interest  
in locating in, relocating within  
or expanding within the Common-  
wealth. Provided, however, that  
this exemption shall not include  
those records pertaining to  
application of agencies for per-  
mits or licenses necessary to do  
business or to expand business  
operations within the state, ex-  
cept as provided in paragraph  
(b) above."

LKM

(32) Information related to potential or existing  
litigation or administrative proceedings involv-  
ing the agency as a party before any administra-  
tive or judicial body.

KASB

(33) (Personal privacy.)

The Kentucky statute has this ex-  
emption: "Public records con-  
taining information of a personal  
nature where the public dis-  
closure thereof would constitute  
a clearly unwarranted invasion of  
personal privacy."

LKM

KASB

AMENDMENTS

COMMENTS

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

X

X

X

and the custodian did not act in good faith or  
without a reasonable basis in fact or in law.

See lines 435 and 436.

BR



KASB, LKM



BR



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

X  
X

BR

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 to 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*

## 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(a0)(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. C