

Approved February 17, 1987  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at  
Chairperson

3:30 ~~xxxx~~ p.m. on February 3, 1987 in room 526-S of the Capitol.

All members were present except:  
Representatives Jenkins, Peterson and Solbach, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mike Hein, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes office  
Mary Jane Holt, Secretary

Conferees appearing before the committee:

Representative Ben Foster  
Tom Bell, Kansas Hospital Association  
Walt Scott, Attorney, Stormont-Vail Hospital  
Bob Bean, Director of Patient Accounting, Wesley Medical Center  
Pam Bailey, Counsel, Wesley Medical Center  
Representative Mike O'Neal  
Cindy Lutz, Kansas School Boards  
Jim Kaup, League of Kansas Municipalities

Hearing on H.B. 2070 - Hospital lien against patients' personal injury damages. By Rep. Foster

Rep. Ben Foster testified this bill increases the lien limitation of hospitals against patient's personal injury damages to \$50,000. It is currently \$5,000. He said the \$50,000 figure is arbitrary, however, a \$5,000 lien limitation is too low.

Tom Bell testified in support of H.B. 2070. It will assist hospitals in dealing with the increasing amount of bad debts they incur. He stated the last time the lien limitation was raised was in 1972. The limitation was raised from \$1,500 to \$5,000. (see Attachment I)

Walt Scott explained he often negotiates for an amount lower than the amount of the debt so that the hospital, injured party, and other interested parties all receive something.

Bob Bean stated Wesley Hospital is willing to compromise with patients as some collection is better than none. A patient would not be willing to negotiate if he was not going to receive some of the settlement. He supported the \$50,000 figure.

Pam Bailey urged the Committee to recommend passage of this bill. She stated as of January 1987 there were 46 outstanding liens on file for Wesley Medical Center in the amount of \$533,134.88. Many of the liens are for accounts with balances of \$50,000. She said they do compromise with patients on the balances of their accounts, (see Attachment II). She informed the Committee she prefers the dollar amount in the bill, rather than a percentage of the settlement.

The hearing on H.B. 2070 was closed.

Hearing on H.B. 2095 - Access to public records

Rep. Mike O'Neal testified H.B. 2095 is an amendment to the open records act. This amendment provides that an individual shall have access to public records and a reasonable opportunity to obtain copies prior to discussion and action in an open meeting. The intent of the bill is not to allow an individual of a community to hold up decisions that have to be made. He said the bill may need some redrafting to make the language more specific.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

room 526-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 3, 1987

Cindy Lutz testified in opposition to H.B. 2095. She informed the Committee this bill defeats many of the exemptions in K.S.A. 45-221(a) and would encourage ill-informed decision making, especially in emergency situations, and increase the amount of pressure exerted on board members by outside forces in the decision making process, (see Attachment III).

Jim Kaup informed the Committee the League of Kansas Municipalities has some concerns about the amendment proposed to the open records act. He recommended the procedure for making requests for access to public records remain unchanged and proposed any "public agency" under the open records act maintain, for public inspection, at least one copy of each open public record relating to a matter under discussion by, and held by a majority of a quorum of the body. Such records must be available for inspection by the public no later than the time of discussion and action on that matter, (see Attachment IV).

The Committee considered H.B. 2022, H.B. 2085, H.B. 2083 and H.B. 2012 for final action.

Representative Sebelius moved and Representative O'Neal seconded to report H.B. 2022 favorably for passage. The motion passed.

A motion was made by Representative Buehler to report favorably H.B. 2085 for passage and be placed on the consent calendar. The motion was seconded by Representative Douville. The motion passed.

Representative Bideau moved to amend H.B. 2083 by striking Section 2. Representative Adam seconded and the motion passed.

A motion was made by Representative Buehler and seconded by Representative O'Neal to report favorably for passage, as amended, H.B. 2083. The motion passed.

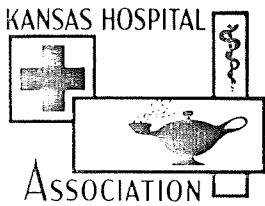
A motion was made by Representative Fuller to amend H.B. 2012 by striking the word exploited wherever it appears in the bill. The motion was seconded by Representative Kennard and the motion passed.

Representative Wagnon moved to report favorably for passage, as amended, H.B. 2012. Representative Whiteman seconded and the motion passed.

The Committee meeting was adjourned by the Chairman at 5:05 p.m.

The next meeting will be Wednesday, February 4, 1987, at 3:30 p.m. in room 313-S.





**Donald A. Wilson**  
President

OUTLINE OF STATEMENT OF  
THE KANSAS HOSPITAL ASSOCIATION  
REGARDING H.B. 2070

House Judiciary Committee  
February 3, 1987

- I. KHA supports H.B. 2070.
  
- II. H.B. 2070 will assist hospitals in dealing with the increasing amount of bad debts which they encounter. Kansas hospitals currently provide over \$75 million per year in uncompensated care. A portion of that would go to persons involved in accidents without sufficient insurance coverage. H.B. 2070 would allow hospitals some hope of recovery for these charges.
  
- III. H.B. 2070 needs to be updated. The last time the lien amount was changed was 1972. Before then, it was amended in 1957 and 1951. Original enactment was in 1939.

Attachment I  
House Judiciary 2/3/87

PAMELA E. BAILEY

Testimony before House Judiciary Committee

February 3, 1987

- I. INTRODUCTION. Mr. Chairman and members of the Committee. Thank you for allowing me the opportunity to appear before you today during your hearing on House Bill 2070. My name is Pamela Bailey and I am an attorney with the law firm of Boyer, Donaldson & Stewart in Wichita, Kansas. For many years, our firm has represented Wesley Medical Center. Included within our duties as general counsel has been the collection of patient accounts for the hospital.
  
- II. KANSAS HOSPITAL LIEN STATUTE. In 1939, the Legislature of the State of Kansas passed the first hospital lien statute establishing a \$200.00 lien on behalf of the hospital. Twelve years later, in 1951, the Legislature revised the lien statute and raised the amount of the lien to \$700.00. In 1957, the Legislature again raised the amount of the lien to \$1,500.00. It was not until fifteen years later, however, in 1972, that the lien amount was raised to \$5,000.00. It is now 1987, fifteen years since the last revision of the hospital lien statute, and the amount of the hospital lien remains at \$5,000.00.

III. THE HOSPITAL LIEN AMOUNT NEEDS TO BE RAISED. As of January, 1987, my lawfirm had 46 outstanding liens on file for Wesley Medical Center. The balance due and owing on these 46 liens is \$533,134.48. Very few of these liens are for accounts with a balance of less than \$5,000.00. In fact, many of these liens are for accounts with balances of \$50,000.00.

It is not unusual for the hospital to be paid its \$5,000.00 lien amount and not be paid the balance of its account. For example, I have an account for \$66,000.00 in which Wesley received only its \$5,000.00 lien amount and the balance is currently outstanding. If the hospital lien amount were unlimited or greater, I know that I would be able to collect a greater portion of the hospital outstanding accounts.

IV. CONCLUSION. As an attorney for a hospital here in the State of Kansas, I would urge this committee to recommend passage of House Bill 2070. It has been fifteen years since the hospital lien amount has been raised, and in that fifteen years, the cost of health care has risen dramatically. Oftentimes, the hospital bills for which liens are filed are far in excess of \$5,000.00. Many of these patients receive large settlements from third parties, yet never pay the hospital more than \$5,000.00 for the services the hospital has rendered. Please do not allow the cost of health care to rise in this state for everyone because of individuals who have the funds to pay hospital bills but do not wish to do so.

Thank you for the opportunity to speak to you today.  
Should you have any questions or if I can be of further assistance,  
please feel free to contact me at the following address:

Pamela E. Bailey  
Boyer, Donaldson & Stewart  
1030 First National Bank Building  
Wichita, Kansas 67202  
(316) 264-7321

KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606  
913-273-3600

TESTIMONY ON HOUSE BILL NO. 2095  
BEFORE THE HOUSE JUDICIARY COMMITTEE

By

CYNTHIA K. LUTZ, STAFF LEGAL COUNSEL  
Kansas Association of School Boards  
February 3, 1987

Mr. Chairman, members of the committee, thank you for the opportunity to appear before you on behalf of our member school districts.

House Bill 2095 would amend the Open Records Act to require that the public be given access to, and a reasonable opportunity to copy any public record distributed to a majority of a quorum of a body having authority to take actions on matters to which the record pertains prior to discussion and action on such matters in an open meeting.

We oppose this amendment for several reasons.

First, if the amendment would only require access and an opportunity to copy documents which are already deemed to be public records by the provisions of the Act, the law would provide access to those public records without the amendment.

Second, if the amendment is intended to require prior access to any materials distributed to a majority of a quorum, the amendment would effectively destroy many of the specific exemptions delineated in K.S.A. 45-221(a). Many of the provisions of the exemption section provide that materials such as notes, research data, recommendations, etc., do not become public records until they



are either publicly identified, cited at an open meeting, or in the agenda for a public meeting. Similarly specifications for competitive bidding do not become public records until they are specifically approved, nor do sealed bids and related documents become public records until one bid is accepted, or all bids are rejected. This amendment could substantially erode those exemptions.

Third, the purpose of both the KOMA and KORA Acts is to assure the public can obtain information about the acts of public bodies. Neither Act grants the public a right to participate in the decision making process. The public has a right to see these materials once they are used by the public body in its decision making process under current laws.

Finally, the amendment would encourage ill-informed decision making, especially in emergency situations, and increase the amount of pressure exerted on board members by outside forces in the decision making process.

We request that you recommend House Bill 2095 adversely.



# League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL / 112 WEST SEVENTH ST., TOPEKA, KANSAS 66603 / AREA 913-354-9565

TO: Chairman Bob Wunsch and Members,  
Housing Judiciary Committee  
FROM: Jim Kaup, League Attorney  
RE: **HB 2095, amending the Kansas Open  
Records Act**  
DATE: February 3, 1987

It is the general observation of the League that the Kansas Open Records Act (ORA) has been, and is, a good law. We watched its creation closely in the 1983 Session, and participated in its drafting. We have also been involved in the implementation of the ORA--preparing a compliance manual for local government officials, having the ORA as a program topic at conferences and workshops, and answering hundreds of questions over the past four years on the ORA.

We believe we know and understand both the purpose behind the ORA, and the mechanics of its operation.

Because we believe the law is fundamentally a reasonable and workable one, we will watch closely over any proposals to change it. Over presence here today is in that spirit. We have no quarrel with the ongoing purpose of the ORA--to ensure that government operates in the open. Nor do we object with the stated intent of HB 2095--to better enable citizens to access those public records which form the basis for deliberations and actions by public agencies at meetings. Instead, the purpose of the League's presence is to do what we can to keep the ORA procedurally realistic. The substantive guarantees citizens of Kansas have as the result of the ORA can be compromised or lost if the Act itself becomes so procedurally complicated that it unnecessarily impedes government action.

It is out of this concern for the effect, not the intent, of HB 2095 that we appear. We think that vagueness in the proposed language would raise a number of serious questions for the courts to answer, and we fear that the wording in the bill may have broader consequences than is intended. Accordingly we offer our incomplete list of problems with HB 2095, and offer for this Committee's consideration a conceptual alternative.

**Present Law.** Under K.S.A. 45-218 of the ORA, requests to see public records are to be made by a person to the designated record custodian. That custodian is under a duty to act on the request "as soon as possible", but no later than three days following the request. The person's obligation to direct a request to the custodian of the record, and the custodian's duty to honor that request "as soon as possible" apply to all records designated by the ORA as "public records." No distinction exists presently for different types of records to be requested in a special way. No distinction exists presently for different types of record requests to be responded to in a special way. HB 2095 would create such distinctions. While the merits of the intent behind HB 2095's creation of a special rule for certain records may be agreeable to all concerned, the way those special rules would be implemented needs to be carefully considered.

**HB 2095.** The bill essentially accelerates the period of time in which to act on a request for documents held by a "body having authority to take action or make recommendations." Instead of responding "as soon as possible", the public agency must cease discussion and action upon the subject-matter of the requested record until access to it has been accomplished. The request for the record may come days before the meeting of the "body" or it may come at any time when record requests can lawfully be made in accordance with K.S.A. 45-220. The League assumes no intent in HB 2095 to allow requests to be made in any manner unlike that which already is allowed under the ORA. This is an important point, as an amendment to the ORA that would allow a formal record request to be made at any time and to any person other than a record custodian could lend itself not only to inconvenient disruption of government proceedings, but also to deliberate harassment intended to delay or postpone government actions.

For example, if a formal request for a record could be made at the time the meeting of the body is being conducted, the discussion and action would have to be postponed until the request has been complied with and an opportunity to get a copy of the record has been given to the requester. This would mean a hearing before this Committee would have to be stopped on this bill if someone were to now request any document held by a majority of a quorum of the Committee that relates to the consideration of HB 2095. This would include requests for documents prepared by staff, testimony of conferees, letters, and other materials, some of which you may have no control over, or knowledge of. While it may sound extreme, changing the ORA's procedure for making requests would also allow persons to interrupt action on the House floor, and hearings before the Kansas Supreme Court, as well as city council meetings.

Even if HB 2095 only creates an accelerated procedure for gaining access to certain records, it still raises some questions of vagueness in the wording of the amendment:

- (1) Again the League assumes the phrase "If access is sought..." refers to the general record access procedures spelled out in K.S.A. 45-218 and 45-220 of the ORA, and does not amend present law on requesting records.
- (2) The scope of the proposed amendment is somewhat uncertain as to which government "bodies" would be affected. This uncertainty comes from the phrase "...with regard to the matters to which such record pertains..." (lines 43:44).
- (3) "Reasonable opportunity to obtain a record" (lines 44:45) means...? We don't know. If the record can be photocopied, and a copy machine is in the same building, must a copy be made before the meeting can proceed? What if the nearest machine is one block away? In a locked office? No copier exists? The requested record cannot be photocopied?
- (4) By when must access to the record be given? The bill says "prior to discussion and action on such matters in an open meeting" (lines 45:46). Can preliminary discussions be held before access is given? Can any discussion short of final action be taken?
- (5) HB 2095 does not specifically distinguish between "public records" which any person has a statutory right to inspect under the ORA, and "public records" that are exempted from the mandatory disclosure requirements of the ORA (see K.S.A. 45-211). The League assumes the bill does not intend to "open" up records that are otherwise not statutorily required to be available. Otherwise, for example, a citizen would be able to request a criminal or medical investigation report on an employee being considered for discharge by a grievance board, even

though such is document is otherwise exempted from mandatory disclosure under the ORA.

**League Proposal.** The point of discussion has not been whether or not these requested documents are open public records. Nor is it whether the public has, or should have, a right to inspect them. The point is how and when the request for access should be made, and how quickly the opportunity to inspect must be given after the request.

We believe the procedures in the ORA governing how to make a record request are reasonable and workable--the request must be "acted upon as soon as possible", but not later than three business days following the request.

If this Committee believes a special rule is necessary to ensure that records in the possession of legislators, judges, city and county governing bodies, etc. must be available to the public before that "body" acts on the subject-matter of the record, then we propose a simpler alternative than HB 2095:

- (1) The ORA's procedure for making requests for access to public records would remain unchanged.
- (2) Courts, legislative bodies, city councils, etc.--any "public agency" under the ORA--would have to maintain, for public inspection, at least one copy of each open public record relating to a matter under discussion by, and held by a majority of a quorum of the body. Such records must be available for inspection by the public no later than the time of discussion and action on that matter. This Committee should carefully consider whether this requirement should exist for only those records that are prepared by or for the "body" or whether it should also cover "outside" records, i.e. documents given to the "body", before or at the time of the meeting, that are unanticipated and unsolicited.

Under this proposal, citizens would not be bound by the general requirement to make a formal request for a document. While they may choose to make such a request they will also know that, when they attend a meeting, a copy of each open record held by the "body" will be there for their inspection, and that they may so inspect it regardless of whether they have made a prior, formal request.