

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:05 a.m. on January 16, 1996 in Room 254-E of the Capitol.

Members present were: Senator Gooch
Senator Hensley
Senator Jones
Senator Oleen
Senator Papay
Senator Jordan
Senator Praeger
Senator Ramirez
Senator Tillotson
Senator Vidricksen
Senator Walker

Committee staff present: Mary Galligan, Legislative Research Department
Mary Torrence, Revisor of Statutes
Nancy Wolff, Committee Secretary

Conferees appearing before the committee:

Barb Hinton, Legislative Post Audit
Representative Jim Lowther

Sen. Oleen introduced Barb Hinton of Legislative Post Audit who proceeded to give the committee the background on **SB407**, a bill that came from Legislative Post Audit relative to legislative post audit reports, confidentiality (Attachment 1). She stated that she would simply codify the LPAC's practice of the past seven years that allow audit reports to be mailed to LPAC members and other appropriate legislators four days before they become available to the public or the media.

Senator Vidricksen related that his previous experience had been that the media had contacted him relative to a LPAC report before he had received the report. The practice of mailing the reports to the Legislators in advance of public availability allows the legislators an opportunity to review the information before being required to answer questioning by the media.

Senator Ramirez questioned whether this legislation would satisfy the press. Senator Hensley also responded that it had been his experience that the press had followed him around the statehouse for two days in an effort to receive a LPAC report before it had been released to the public. Senator Tillotson stated that this legislation was the outcome of a unanimous vote by the interim committee.

Representative Jim Lowther testified in support of **SB407** and the need for a piece of legislation to codify the current practices regarding the disbursement of LPAC reports.

Senator Jones expressed concern over the wording of the bill in lines 18 and 19 which refer to "an" open meeting. He questioned if the wording should be more specific to refer to a "scheduled" meeting or "next" meeting. Following discussion, Senator Jones made a motion to change the language in lines 18 and 19 to refer to the next scheduled meeting. The motion was seconded by Senator Hensley. The motion passed. Senator Tillotson made a motion to pass **SB407** favorably as amended and Senator Jones seconded the motion. The motion passed.

Senator Oleen informed the committee that on Wednesday, there will be a briefing on the Compliance Lottery Report and the confirmation hearing on Greg Robinson and Jim Cates for the Lottery Commission.

Senator Jones introduced his Legislative Intern, Dawn Puderbaugh and Senator Oleen introduced her Committee Secretary, Nancy Wolff and her Legislative Intern, Dayna Krannawitter.

There being no other business, the meeting was adjourned at 11:40 a.m.



LEGISLATURE OF KANSAS
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January 12, 1996

Senator Lana Oleen, Chair
Senate Federal and State Affairs Committee
Room 136-N, Statehouse
Topeka, Kansas 66612

Dear Senator Oleen:

As you know, the Legislative Post Audit Committee (LPAC) has introduced legislation (SB 407) that, in brief, would make audit reports prepared by Legislative Post Audit confidential until they are presented at an open meeting to the Committee or to another legislative committee.

As Committee rules currently require, those reports would become public at the start of the meeting where they are presented. The proposed legislation would simply codify the LPAC's actual practice for the past seven years.

Background Related to SB 407:

1. In 1989, the LPAC adopted rules allowing audit reports to be mailed to its members and other legislators who requested copies four days before they became available to the public or the media. In 1990, the LPAC revised its rules to specify that reports would be distributed to members no more than four days before they were scheduled to be presented to the LPAC or another legislative committee.

That practice was designed to give the LPAC and legislators who requested audits a chance to read audit reports before the media questioned them about those reports, and to prepare questions before those reports were presented at a meeting. This practice also gave the agency a chance to publicly present its point of view and answer questions about the audit findings at the Committee meeting, before the audit was reported in the press.

To help ensure that reports remained confidential until they were presented, the LPAC unanimously agreed in January 1993 not to make audit reports public before a meeting. The LPAC has asked other legislators who receive advance copies to honor its agreement.

In establishing the four-day advance mailing period, the LPAC believed it was in technical compliance with the Kansas Open Records Act. Under that Act, audits become public once they are distributed to a majority of a quorum of the Committee. However, the Act also says "each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received."

2. On October 5, 1995, Rep. Jim Lowther, then-Chair of the LPAC, Barb Hinton, and Jim Wilson met with Terry Nuckolls of the Attorney General's Office to discuss issues surrounding when audit reports become public documents. The issue arose because the press had requested access under the Open Records Act to a performance audit of the KU Medical Center's heart transplant program the day before it was scheduled to be presented.

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Attachment 1

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I did not provide the advance copy as requested because LPAC rules prohibit staff from releasing an audit report until the start of the meeting. In addition, it was the LPAC's and my belief that, by providing a copy of the report "not later than the end of the third business day following the date the request is received," we were in compliance with the Open Records Act. The press and public received copies of the Medical Center report at the start of the meeting the next day.

Ms. Nuckolls indicated she thought the Committee could not use its rules to prohibit the release of an audit report once that report had been mailed to a majority of a quorum of a legislative body.

3. At its November 9 meeting, the LPAC voted to amend the Legislative Post Audit Act to make audit reports confidential and not subject to disclosure under the Open Records Act until they are presented at a meeting (**SB 407**). This amendment would eliminate questions about whether Post Audit reports are public before the meeting, or whether they can be considered to be "final draft reports" when they are mailed to the LPAC, which would exempt them from the Open Records Act.

4. The LPAC is committed to ensuring public access to public records. For example, unlike lawmakers in some other states, the LPAC has decided to make public not only audit reports, but also audit working papers, once the report has been presented at a public meeting.

However, the LPAC also believes it is good policy for its members to be able to receive advance copies of audit reports to prepare for a meeting--and for agency officials to be able to present their points of view and answer questions about the audit findings--before an audit is reported in the press. The LPAC also believes its legislative oversight function is enhanced if reports are heard at an LPAC meeting at the same time they are made public.

If you or your Committee should have any questions about the Legislative Post Audit Committee's proposed amendment, I would be happy to try to answer them. I am available at your convenience.

Sincerely,



Barbara J. Hinton
Legislative Post Auditor

cc: Members, Legislative Post Audit Committee
Jim Wilson, Revisor of Statutes Office