

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Chairperson Carlos Mayans at 3:30 p.m on March 14, 2000 in Room 519-S of the State Capitol.

All members were present.

Committee staff present: Michael Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:

Representative Joe Shriver
Dean Carlson, Secretary, Kansas Department of Transportation
Steve Phillips, Assistant Attorney General
Sandra Jacquot, League of Kansas Municipalities
Randy Allen, Kansas Association of Counties
William Sneed, Legislative Counsel, The State Farm Insurance Companies
Cynthia Lutz Kelly, Attorney, Kansas Association of School Boards
Bob Totten, Public Affairs Director, Kansas Contractors Association
Dana Fenton, Intergovernmental Relations Coordinator, Johnson County
Trudy Aron, Executive Director, AIA Kansas
Patrick Mulvihill, Assistant Chief Examiner, Kansas Insurance Department
(Written Testimony) Sally Finney, Executive Director, Kansas Public Health Association, Inc.
(Written Testimony) David Hanson, Legislative Counsel, Kansas Insurance Associations

Others attending: See Guest List, Attachment 1

Chairperson Mayans opened the meeting for discussion of the twelve exemptions to the Kansas Open Records Act listed in the committee's agenda and welcomed conferees. He reviewed his meeting last Friday with Governor Graves, who indicated approval of the committee's work on **HB 2864** (Powers and duties of attorney general and agencies subject to the open public records act and the open public meetings act); and he indicated he did not wish to create a new bureaucratic structure, but did request that the bill be acted upon.

The Chair explained he had met with committee staff to begin formulation of committee amendments to the bill, and he encouraged sponsors of other bills on the subject and interested persons to actively participate in the deliberations.

Beginning deliberations, the Chair referred members to the memorandums authored by Mike Heim, relating to *Policy Issues and Open Records and Certain Exceptions to Openness Requirement* (Attachment 2). He then asked conferees to present their testimonies. The following were heard:

- KDOT Secretary Dean Carlson opposed deletion of exemptions (13) and (33), stating release of appraisal, engineering or feasibility estimates before acquisition of public improvements would be damaging to involved landowners and the state. (Attachment 3)
- Steve Phillips described his office's administration of exemptions (30) and its interpretation of exemptions (14) and (20). (Attachment 4)
- Sandy Jacquot advocated retention of all exemptions, citing the possibility of new exemptions because of the proliferation of electronic databases. (Attachment 5)
- Randy Allen cautioned deletion of exemptions (6), (13) and (30). (Attachment 6)

CONTINUATION SHEET

- Bill Sneed opposed deletion of exemptions (39), (40) and (42) stating actuarial memoranda could include proprietary information that is generally protected by various trade secret and propriety information laws. ([Attachment 7](#))
- Cynthia Lutz Kelly opposed deletion of exemptions (6), (14), (20), and (30); each one relating to correspondence that schools consider as privacy items. ([Attachment 8](#))
- Bob Totten opposed deletion of exemption (34) which keeps financial statements closed on the qualifications of a contractor. ([Attachment 9](#))
- Dana Fenton essential opposed deletion of (6), (13), (30), and (31). However, with respect to (32) and (34) he commented that Johnson County releases bidder lists without financial information prior to award or rejection of bids. ([Attachment 10](#))
- Trudy Aron expressed opposition to the deletion of items (33) and (34). ([Attachment 11](#))
- Patrick Mulvahill expressed opposition to deletion of (39), (40) and (42) because of the possible loss of the Insurance Department's accreditation by the National Association of Insurance Commissioners. ([Attachment 12](#))
- Representative Joe Shriver offered suggestions and changes including separating access of public information from enforcement of public information, and recommending that all 44 exemptions be referred to interim study. ([Attachment 13](#)) Also, he suggested KORA education data could be placed on the Kansas Information Network to educate a substantial segment of the public. He recommended a solution be sought to the costly storage of paper records, suggesting investigation into use of electronic storage as an answer.

The Chair indicated that written testimonies opposing deletion of an exemption to the Open Records Act had been received and distributed from Sally Finney, Executive Director, Kansas Public Health Association, Inc. ([Attachment 14](#)) and David Hanson, Legislative Counsel, Kansas Insurance Associations ([Attachment 15](#)).

The Chair asked the committee their wishes for action, such as amending the law to include a five-year sunset clause for all exemptions and requesting an interim study of exemptions. "Sunset" would mean that if an exemption is not validated by the end of five years, the exemption would be deleted. Representatives Welshimer and Jeff Peterson indicated support for these suggestions.

Representative Welshimer suggested that the committee agree on the policy issues outlined in Mr. Heim's memorandum ([Attachment 2](#)) and that each issue be spelled out for study. The Chair asked Mr. Heim to prepare the study for the next meeting.

The Chair then asked the committee to decide whether each exemption should be deleted. Representative Flower disagreed; and the Chair responded that a "no" vote could be indicated if a member was in favor of retaining each one. Then, by a show of hands, the committee voted for and against each exemption posted in the agenda. The majority agreed to deletion of item (32). The committee also agreed to request the Legislative Coordinating Council to hold an interim study this summer on the exemptions to the law.

The Chair indicated the "balloon" amendment will be drafted for committee approval at the next meeting.

The meeting was adjourned at 5:55 p.m.

The next meeting of the committee is scheduled for March 16, 2000.

HOUSE COMMITTEE ON LOCAL GOVERNMENT
GUEST LIST
MARCH 14, 2000

[PLEASE PRINT]

NAME	REPRESENTING
Sandy Jacquot	League of Ks Municipalities
Jandy ARON	Am Inst of Architects
Dana Axon	Johnson County
Kelly Kuitala	City of Overland Park
Harriet Lange	Ks Assn of Broadcasters
Janet Stubbs	Ks. Bldg. IND. ASSN.
Sally Baltus	KDOG & H
J. Chubb	SOS
Bill Sneed	State Farm
JOHN C. BOTTENBERG	DELTA DENTAL
JOHN MUGLER	American INDEPENDENT LIFE
DAVID FURNAS	Ks PRESS
Patrick Mulvihill	Ks. Insurance Dept.
Cindy Kelly	KASB
Beth Lange	SRS
David Hanson	Ks Insur Assns
Bob Tolson	Ks Contractors Assn
Diane Gjerstad	Wichita Public School
Mark Tallman	Ks Assoc of School Bds
Mike Rees	Ks AGT
Joe Krahn	KDOT
Stan Parsons	Snow & Assoc.
Nancy Bogina	KDOT
E. Dean Carlson	KDOT
Bill Watts	KDOT

March 14, 2000

Policy Issues

1. **Public Access Officer.** Create a public access officer within the Attorney General's office.

Duties:

- educate public official on KORA and KOMA
 - educate public
 - issue advisory opinions on both laws
 - act as a hearing officer for formal complaints and informal complaints
 - rules and regulation authority
2. **Expanded Powers.** County or District Attorney powers are expanded under HB 2864 New Section 1 (d).
 3. **Posting Signs.** Require signs stating the rights of the public under both the open meeting and open records laws.
 4. **Open Meeting—Executive Session.** Require the executive session be recorded and recording be available if challenged.
 5. **Exemptions—KOMA.** Establish a five year sunset on all KORA exemptions. Repeal 13 of the current 44 exceptions under the KORA.
 6. **Attorneys Fees.** Public entity must pay attorneys fees when as opinion was issued by the Public Access Officer regarding KOMA and KORA and the public entity does not follow the opinion and the person wins in court.
 7. **Timeliness of Producing Recording.** Require records on site be produced immediately; offsite-at the end of third business day; and if record needs to be constructed-at the end of the seventh day.

8. **Liability.** Establish a \$500 fine for violation of the KORA against the public entity not the individual.
9. **Refusal of Access.** Allow records custodian to refuse access to record if request is unreasonable or intended to disrupt—clear and convincing evidence is needed to sustain this.
10. **Confidential Information.** Allow disclosure of confidential information to legislator and require legislator not to disclose.
11. **Public Money.** When public money is received by private entity records of the entity must be open.

March 14, 2000

To: House Local Government Committee
From: Mike Heim, Principal Analyst
Re: Open Records and Certain Exceptions to Openness Requirement

The following is a review of 13 of the 44 exceptions to the Kansas Open Records Act (KORA) that Representative Carlos Mayans, Chairman, has suggested the Committee consider repealing as part of legislation that it may recommend to amend the Kansas Open Meetings Act and KORA.

Introduction

KORA is comprehensive in its coverage, contains a declaration that the public policy of the state is "that public records shall be open for inspection by any person," and contains a directive that the "act shall be liberally construed and applied to promote such policy." See KSA 45-215.

The law became effective February 9, 1984, after five years of effort to revise the open records policy of the state. The law has been described as reflecting "a fundamental policy change in favor of citizen's access to governmental records, a significant departure from a previous records law more aptly described as a 'Closed Records Act'." See Frederickson, *Letting the Sunshine In: An Analysis of the 1984 Open Records Act*, 33 Kan. L. Rev. 205 (1985).

Proposed Repeal of Certain Exceptions to Openness

KORA contains 44 exceptions to the requirement that records be open. KSA 45-221(a) provides that a public agency "shall not be required to disclose" records that fall within one of the 44 categories. The act, however, does not prohibit the disclosure of these records. There is merely no affirmative duty to disclose the records under exceptions 2 through 44. The following is a discussion of the 13 exceptions cited by Chairman Mayans as candidates for repeal. The discussion consists of portions of comments contained in the 1985 Frederickson article or are based on Attorney General opinions or Kansas Appellate Court cases.

6. Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

(Two interests are protected by this exception: the interest in encouraging an honest evaluation of an applicant, based on the theory that evaluators will be less candid if their comments are made public; and the personal privacy interests of the person being evaluated. Frederickson)

13. The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(This provision exempts appraisals, estimates, or evaluations made by an agency or by and outside party on behalf of the agency before the purchase of real or personal property. Once the contract has been executed, such appraisals should be disclosed. Frederickson)

14. Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy, or determination relating to any regulatory, supervisory, or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(This was designed to exempt constituent correspondence, so that private persons would be encouraged to write letters to public officials and agencies without fear of having the contents disclosed. However, the language of the statute, which refers to correspondence "between" the individual and the agency would appear to exempt correspondence initiated by the public agency, a result not foreseen by legislators. This exemption does not cover correspondence intended to give notice of an action, policy, or determination relating to any regulatory, supervisory, or enforcement responsibility of the agency. It also does not protect information widely distributed to the public by the agency not in response to communications from a private individual. Frederickson)

20. Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations, or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(Exceptions 20, 21, and 22 are similar in purpose and redundant to some extent. All are intended to protect an agency's internal predecisional deliberations from early disclosure. Agency decision makers theoretically are unlikely to receive the benefit of frank and uninhibited dialogue from and between staff members unless tentative proposals, opinions, drafts

of legislation, and supporting research are protected from premature public scrutiny.

The problem is that the Legislature appears to have created three exceptions when only one was needed; the result may be exception-shopping by an agency seeking to justify withholding documents. Another result may be unnecessary hair-splitting by courts trying to determine which of these three exemptions apply. (Frederickson)

See Op. Att'y Gen. 14 (1990) which said memoranda written by school board staff wherein opinions were expressed or policies or actions were proposed need not be disclosed unless publicly cited or identified in a public meeting.

Records in possession of the Legislative Division of Post Audit are public records. These records may be closed if they are subject to a duty of confidentiality. Audit working papers prior to release of the audit report may be closed under the discretionary authority of KSA 45-221(a)(20). After the audit is released, these records must be disclosed. See Op. Att'y Gen. 138 (1991).

Internal policy memoranda, guidelines, and instructions for enforcement of the corporate income tax law may not be subject to disclosure. See Op. Att'y Gen. 6 (1995).

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

This exception to the openness requirement is actually a more generic statement of several other specific exceptions. See, for example, exception No. 2 dealing with privileged information; No. 3 dealing with medical, psychiatric, psychological, or alcohol or drug treatment records; No. 4 dealing with personal records; No. 6 dealing with letters of reference; No. 22 concerning library patron records; and No. 29, covering correctional records dealing with identifiable inmates. The exception represents the basic dichotomy of competing public policies which are both reflected in this act: a policy of ensuring the public's right to know versus an individual's right to personal privacy.

Note under the old Kansas Inspection of Public Records Act, the court, in *State ex rel Stephan v. Harder*, 230 Kan. 573, 641 P.2d 366 (1982), held that the disclosure of the names of physicians who had performed abortions at public expense and the amount of money they were paid would not infringe upon either the patient's or physician's constitutional rights to privacy. The rule of this case does not appear to have been changed by the enactment of the KORA exception discussed herein.

The Attorney General has issued several opinions touching on this exception. One opinion said that the clerk of the Appellate Court could delete attorneys' Social Security numbers from a list of Kansas attorneys kept by that office and which is subject to disclosure since KSA 45-221(a)(30) gives the clerk discretion to delete the Social Security numbers. See Op. Att'y Gen. 168 (1987). See also Op. Att'y Gen. 105 (1985) which said that a person did not have a right to inspect every record bearing his or her name or Social Security number nor does a parent have an absolute right to inspect SRS child abuse or neglect records pertaining to their child. The Attorney General has also said that disclosure of the home address of school teachers does not constitute an invasion of privacy under KSA 45-221(3). See Op. Att'y Gen. 106 (1989).

A city police department may refuse to disclose the name, address, and telephone number of an alleged rape victim until such matter is made public or brought to trial under the authority of KSA 45-221(a)(30) and the Victim's Bill of Rights. See Op. Att'y Gen. 149 (1992). See also Op. Att'y Gen. 52 (1997) which said a request for the home addresses of public employees by a requester who was not a union could be denied under this section.

31. Public records pertaining to the 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 to agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(This exception does not include those records pertaining to applications of agencies for permits or licenses necessary to do business or to expand business operations within the state. It was added in the Senate committee at the request of Jamie Schwartz, Kansas Secretary of Economic Development, who said companies considering relocation in Kansas often insisted upon confidentiality so that premature publicity would not alert competitors and speculators, or result in adverse publicity. Frederickson)

See Op. Att'y Gen. 48 (1986) which discussed records of a Job Development Council created by a city, county, and local chamber of commerce and said that names of prospective businesses had to be disclosed if discussed in an open meeting or listed on an agenda.

32. The bidder's list of contractors who have requested bid proposals for construction projects from any public agency, until a bid is accepted or all bids rejected.

(Exceptions 32, 33, and 34, respectively, were added to the bill on the floor of the Senate upon the motion of Republican Senator Robert Talkington of Iola. The first two are meant to preserve the integrity of the bidding process. Number 32 prevents one bidder from finding out the names of other potential bidders and altering his bid accordingly. Number 33 prevents potential bidders from finding out the public agency's own estimates for the cost of an improvement project on which bids will be accepted. Number 34 is designed to protect the privacy interests of a contractor who has submitted a bid or is negotiating for a contract on a public improvement project. Disclosure of such information to competitors also could be harmful to that contractor's interests. Frederickson)

33. Engineering and architectural estimates made by or for any public agency relative to public improvements. See comment to No. 32.
34. Financial information submitted by contractors in qualification statements to any public agency. See comment to No. 32.
39. Risk-based capital reports, risk-based capital plans, and corrective orders including the working papers and the results of any analysis filed with the Commissioner of Insurance in accordance with KSA 40-2c20.

This exception was part of 1994 SB 569. The supplemental note for the bill, as it passed the Senate Committee, in part, stated:

SB 569, as amended, concerns life insurance companies. The bill would require domestic life insurance companies, and foreign companies upon request, to submit with their annual statement to the Insurance Commissioner a report of its risk-based capital levels as of the end of the calendar year and to make the submission in a form prescribed by the Commissioner. The same risk-based capital report also would have to be submitted to the National Association of Insurance Commissioners and to the state insurance commissioner in any state in which the insurer is authorized to do business and the commissioner has requested the report. The risk-based capital must be determined using the instructions promulgated by the National Association of Insurance Commissioners (NAIC) and adopted as rules and regulations in Kansas by the Commissioner.

Based upon the risk-based capital level report, the bill would authorize increasingly serious regulatory action against a deficient company ranging from the company filing a plan of action to identifying the factors contributing to the deficient level and to propose actions to eliminate the deficiency to the Commissioner taking action under the Kansas Insurers Supervision, Rehabilitations, and Liquidation Act.

All risk-based capital reports, plans, and corrective orders, including working papers, would be confidential and not available to the public or subject to subpoena (New Section 20). New Section 28 would amend the Kansas Open Records Act to add an exception to the act at paragraph (39) for the items specified in New Section 20.

40. Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of KSA 40-409.

This exception was part of 1994 SB 563. The supplemental note for the bill as it passed the Senate Committee, in part, stated:

SB 563 relates to life and accident and sickness insurance companies. The bill would require, for the year ending December 31, 1995, and each subsequent year, life insurance companies and accident and sickness companies to file with their annual statement the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of Kansas. The Insurance Commissioner would be authorized to define the specific application, scope, and content of the opinion.

The bill would provide further that any memorandum submitted in support of the actuarial opinion and any other material provided to the Commissioner in connection with the opinion shall be confidential and not be made public and not subject to subpoena. In this regard, the bill would amend KSA 45-221, the Kansas Open Records Act, to specifically exempt the materials noted as confidential.

SB 563 was recommended by the Insurance Commissioner whose representative explained that the bill incorporates a model NAIC's provision to require an annual actuarial opinion that is more comprehensive than the current requirement.

Also, the bill is one of four measures necessary for the continued accreditation of the Kansas Insurance Department.

42. All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the National Association of Insurance Commissioners' Insurance Regulatory Information System.

This exception was part of 1995 HB 2203. The supplemental note for the bill, as it passed the House Committee, in part, stated:

HB 2203, as amended, would amend KORA to provide explicitly for the confidentiality of financial analysis ratios and examination synopses obtained by the Insurance Commissioner from the NAIC Insurance Regulatory Information System.

HB 2203 was requested by the Insurance Commissioner whose representative explained that passage of the bill will allow the Department to receive information from the NAIC previously unavailable since its confidential nature was not protected under Kansas law. The bill also was supported by a representative of American Investor Life Insurance Company.

43. Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

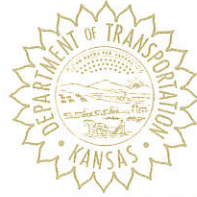
This exception was enacted in 1996 as part of Sub. for SB 410. The supplemental note, as it passed the House Committee of the Whole, stated:

Sub. for SB 410 would enact new statutes and amend the Kansas Racing Act to change the name of the Kansas Racing Commission to the Kansas Racing and Gaming Commission and attach the State Gaming Agency created by Executive Order during the 1995 Interim to the Commission for specified administrative purposes. The Commission would only have authority to approve the budget, number, and qualifications of employees and expenditures of the Agency for dispute resolution. All other management functions would be the responsibility of the Executive Director of the Agency who would be appointed by the Governor subject to confirmation by the Senate. The Executive Director of the State Gaming Agency would be a full-time unclassified position in the civil service. The Director would have to be a citizen of the United

States and a resident of Kansas while serving in that position

.....

An open record statute would be amended to exclude any records the disclosure of which is restricted or prohibited by a tribal/state gaming compact from the mandatory disclosure requirement. An exception to the open meetings law would be created for those matters required to be discussed in a closed or executive meeting in accordance with a tribal/state gaming compact.



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Bill Graves
GOVERNOR

**TESTIMONY BEFORE
HOUSE LOCAL GOVERNMENT COMMITTEE
REGARDING THE OPEN RECORDS ACT
MARCH 14, 2000**

Mr. Chairman and Committee Members:

I am Dean Carlson, Secretary of the Kansas Department of Transportation. On behalf of the Department, I am here today in support of the concept of open records but do have some concerns with eliminating current exemptions contained in K.S.A. 1999 Supp. 45-221. We are particularly concerned that items (13) and (33) should not be eliminated.

Item (13) exempts the contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor. Item (33) exempts engineering and architectural estimates made by or for any public agency relative to public improvements.

If project-wide appraisals were to be available before acquisition, a landowner's counsel would have access to all. This would provide the opportunity to mix and match, thus clouding the target appraisal. This practice also risks making other property owners subject to being witnesses as to matters pertaining to their individual appraisals.

In a twenty-tract acquisition, twenty appraisals will be performed. These will all be different to the extent that no two properties are equal. Thus, valuation will represent a range from high to low. It is essentially a given that all landowners will be inclined to view the high appraisal as the base. There is a marked tendency for all landowners to feel that they should receive the same as everyone else, which translates to a belief in an entitlement to the value of the high appraisal.

The process of appraisal and acquisition involves a measure of trust and assumed confidentiality. A landowner who is aware of the possible release of information is not

going to have the necessary trust. In the process of appraisal landowners often share information with the appraiser that they would not want disclosed. If the landowner understands that public disclosure is to be made, it is doubtful he will be willing to cooperate. If public disclosure is made without knowledge, the possibility of extreme negative effects on the acquisition processes exists, plus there is a significant increased risk of litigation.

The release of project-wide appraisals is damaging both to the landowners involved and to the Department. Both the time involved in acquisition and the cost are at risk of increase. We see no public interest involved that would outweigh these negative factors.

If agency engineering estimates and speculative judgement become available to potential bidders, the bids can become tainted and the public required to pay more than necessary for construction projects. That potential is not good public policy.

There is a difference between openness and alerting a potential bidder to what you believe the project could cost. Contractor bidding involves the elements of size, efficiency, expertise, and work commitment of the firm at the time of bidding. True competition could be diminished if these elements are eliminated. If estimates are made public knowledge, variances between bids will approach zero and collusion could become a real danger.

In summary I support the concept of open records. However, I oppose the removal of items (13) and (33) from the list of exemptions to Open Records.



State of Kansas

Office of the Attorney General

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CARLA J. STOVALL
ATTORNEY GENERAL

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My name is Steve Phillips. I'm an assistant attorney general, appearing on behalf of Attorney General Carla Stovall.

My purpose today is to provide some information on a few of the exceptions to the Kansas Open Records Act that the committee is thinking of deleting.

Generally, exceptions to the Open Records Act are to be narrowly construed in favor of openness. The exceptions listed in K.S.A. 45-221 are all discretionary; they do not require a governmental entity to close the documents.

My primary interest is with K.S.A. 45-221(a)(30), which allows closure of:

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

As Representative Mayans correctly notes, this exception is sometimes abused, and is often cited as authority for closure when there is no other exception allowing closure and there is no real good reason to close the records.

Language similar to this is found in several provisions on the Federal Freedom of Information Act. Courts interpreting these provisions in FOIA have interpreted them narrowly, and given them limited application. While there are no Kansas cases on point, the Attorney General's office has consistently interpreted subsection (a)(30) very narrowly.

Let me give you an example of what we see as a proper application of (a)(30). All licensed professionals in Kansas-- doctors, nurses, lawyers, accountants, etc-- are required to provide their home address to the board that licenses that profession. Those licensing records are not generally closed by any provision in KORA.

In the last several years there have been two instances in which two different women who had professional licenses were victims of domestic abuse and had moved to hide from their abuser. In one instance the abuser actually made a KORA request of the licensing board and tried to obtain her new address. In the other instance the woman was concerned this might happen. In both instances the A.G.'s office suggested that the records of the women's home addresses could be closed as a

clearly unwarranted invasion of personal privacy, under those specific facts.

My point is that there may be very specific instances in which this exception properly allows closure of records.

There are a couple of other exceptions of I'd like to briefly mention because the application of them may not be clear from the wording.

Subsection (a)(14), allows closure of "correspondence between a public agency and a private individual." To some degree I do believe that this exception encourages citizens to communicate with government. For instance, a citizen might be more willing to file a complaint under the Kansas Open Meetings Act if the citizen knows the complaint may be kept closed (unless it goes to court.)

Also I'd like to mention subsection (a)(20), on "notes, preliminary drafts, etc." This exception is similar to the exceptions found in the Federal Freedom of Information Act and the open records acts of most states and has become known as the "deliberative process privilege." It is often used to protect staff advisory opinions, recommendations and deliberations used by the government in formulating policy. It applies only to predecisional communications that are not discussed in an open meeting. Basically this exception allows closure of some communications between employees and their supervisors.



League of Kansas Municipalities

TO: House Local Government Committee
FROM: Sandra Jacquot
DATE: March 14, 2000
RE: Open Records Act Exemptions

Thank you for letting me appear to address the matter of certain open records act exemptions on behalf of the League of Kansas Municipalities. In 1979, an interim committee on Federal and State Affairs began the task of crafting an open records act that would both meet the needs of providing citizen access to public records, while protecting the privacy rights of individuals. The committee met for six months and listened to input from dozens of people including state agency representatives, local governments, private industry and the media. Finally, a bill was crafted and introduced in 1983 to accolades from all sectors praising the efforts of those who had input. It was hailed as quality legislation that balanced the right of access with legitimate privacy interests. As Ernie Mosher, then Executive Director of the League, pointed out, the act was going to apply to approximately 5,000 to 6,000 governmental entities. That first bill, finally adopted in 1984, contained 25 exemptions, four of which are the subject of today's discussion (6, 13, 14, 20).

All of the exemptions currently in the law have been the result of legitimate concerns raised about the effect of releasing certain types of records. All of the exemptions have been subjected to the scrutiny of the legislature and found to be necessary to balance competing interests. While the League could argue that all of the exemptions being discussed are necessary for good local government, focusing on K.S.A. 45-221(a)(30) points out the danger of eliminating these exemptions. This exemption addresses public information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. At a briefing this weekend by the National League of Cities, it was stated that the federal government is looking at more, rather than less, restrictions on the release of personal information because of the proliferation of electronic databases.

The effect of the repeal of the above-cited exemption would put records custodians in the position of having to release your Discover Card account number, because you paid your personal property taxes by credit card. Remember the credit history form you filled out for the city, so you could get water service at your home? That information would now be open to public access. Any information that an agency keeps about individuals, with no specific exemption to close the information, becomes subject to release to anyone requesting such information. You have heard comments that this exemption is too broad and can be misused.

By the same token, there is no way to imagine all of the permutations and possibilities for personal information that is gathered by agencies to address each one with an individual exemption.

In short, careful thought and deliberation went into establishing exemptions to the open records act. The same careful thought and deliberation needs to go into any efforts to eliminate the exemptions. The danger here is that the agency or group that recognized a problem for which a solution was needed may not be present today to address the issues. The League is opposed to the targeting and elimination of the exemptions cited for the purposes of this hearing.



KANSAS
ASSOCIATION OF
COUNTIES

Testimony concerning Kansas Open Records Act
House Local Government Committee
March 14, 2000
Presented by Randy Allen, Executive Director
Kansas Association of Counties

Mr. Chairman and members of the committee, my name is Randy Allen, Executive Director of the Kansas Association of Counties. I want to thank you for the opportunity to provide comments about a few of the public records which are not required to be disclosed pursuant to K.S.A. 45-221. Specifically, I want to urge the committee to exercise caution in repealing sections (6), (13) and (30).

Section (6) authorizes a public agency to not disclose "letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual." In the case of a letter written by an outside person offering comment on the character and ability of a person who is applying for employment in a public agency, I would think that the candor of the writer is potentially jeopardized if he or she has reason to believe that his or her letter is subject to release by the agency's personnel department. In this case, the public record does not originate from the public agency but merely becomes a public record because of where it is sent and the purpose for which it is used. Is the public interest served by diminishing the candor of an outside person commenting on the fitness of a prospective employee? I don't think so. Employers benefit from different assessment tools (including letters of reference or recommendation) in making employment decisions. Removing this exception may have a chilling effect on the willingness of job references to offer objective assessments to prospective employers.

Section (13) authorizes "the contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor" to be withheld from disclosure. Counties are routinely involved in the purchase of property for some public purpose. It may involve right-of-way for a road project or a parcel of land for a fire station. As part of the process for acquiring land for public purposes, counties routinely seek appraisals to provide data on which to base offers to purchase. Such information is used to purchase property at the lowest possible cost, to ensure that taxpayers are well served. The release of such information would jeopardize the county's negotiating strategy and would inevitably lead to higher costs to taxpayers. This exception to public disclosure is especially important to counties.

Section (30) -- allowing an agency to withhold release of "public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy" -- is potentially more open-ended and subject to interpretation, but nevertheless important to the protection of individual privacy. As an example, the Attorney General has said that a law enforcement agency may decline to reveal the name,

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HOUSE LOCAL GOVERNMENT
3-14-00
Attachment 6

address and telephone number of a victim of a sex crime referenced on the first page of the standard offense report, which is otherwise a public record subject to disclosure. (A.G. Opinion No. 92-149). There is a powerful reason to keep such private information out of public circulation. This is just one example of the extent to which section (30) protects individual privacy.

We understand that your discussion and decisions concerning the Kansas Open Records Act must necessarily balance competing interests, including for example, the public's right to know and an individual's right to privacy. It is one of the great tensions of living in a democratic society. We appreciate the committee's sensitivity to this tedious balance and your consideration of our comments. If you have questions, I would be happy to respond.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.



POLSINELLI
WHITE
VARDEMAN &
SHALTON

Memorandum

TO: The Honorable Carlos Mayans, Chairman
House Local Government Committee

FROM: William W. Sneed, Legislative Counsel
The State Farm Insurance Companies

RE: Kansas Open Records Act

DATE: March 14, 2000

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I appear before you today on behalf of the State Farm Insurance Companies. State Farm is the largest auto insurer in Kansas, and also sells life insurance products. We appreciate the opportunity to discuss our position on the Committee's review of K.S.A. 45-221(a)(39), (40) and (42). From the outset, let me state that my client strongly urges the Committee to take no action on eliminating these exceptions to the Kansas Open Records law. It is our contention that once the Committee reviews the history of the insertion of these exemptions, you will agree that they are appropriate and should be retained in Kansas law.

During the late 1980's and early 1990's, there were several major insurance company insolvencies in the United States (not in Kansas) that led the National Association of Insurance Commissioners (NAIC) to institute new uniform laws relating to the regulation of the solvency of an insurance company. As these uniform laws were drafted, it became evident to the NAIC that some information that might provide a valuable tool in analyzing the financial solvency of an insurance company might be protected under federal and state trade secret and proprietary information laws. In order to address this concern, the NAIC included in its proposed uniform laws language that would make this type of information available to the regulator, but would require that the information be kept confidential. These proposed uniform laws were then approved by the NAIC, and thereafter various insurance commissioners throughout the United States set about having them implemented in their respective states. It should be noted that a state's certification of compliance by the NAIC included the requirement that these financial solvency laws had to be enacted.

A good example of this is found in the exception at K.S.A. 45-221(a)(40). K.S.A. 40-409 requires an insurance company to file with its annual statement from a qualified actuary an opinion relative to the reserves noted on the annual statement that said reserves are in compliance with standard actuarial practices. The statute further allows the Commissioner to

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HOUSE LOCAL GOVERNMENT
3-14-00

Attachment 7

obtain from the company, if the Commissioner deems it necessary, the actuarial memoranda constituting the underlying work product of the actuary with respect to his or her opinion. This memoranda could be used to assist the Commissioner in furthering the analysis of the financial solvency of a company, but it does include proprietary information such as pricing of a product that is generally protected from disclosure by virtue of various trade secret and proprietary information laws.

Thus, if such information were not exempted from the Open Records Act, various competitors might be able to procure this information, allowing them to unfairly develop a plan to sell insurance utilizing its competitors' rates and methodologies.

By 1994 the various financial solvency laws were put in place, and during this time, and in coordination with the Open Records Act, the Act was amended to include these various exceptions.

Therefore, we would submit to the Committee that these exceptions were inserted to implement the public policy of allowing the regulator as much information as necessary while still preserving an individual company's right to retain proprietary information. Thus, we would urge the Committee to take no action on eliminating these exceptions.

We appreciate the opportunity to present this information to the Committee. If you have any additional questions or comments, please feel free to contact me.

Respectfully submitted,



William W. Sneed

WWS:kjb



TO: House Committee on Local Government
FROM: Cynthia Lutz Kelly, Attorney
DATE: March 14, 2000

RE: Testimony on Exemptions under the Kansas Open Records Act

Mister Chairman, members of the committee, thank you for the opportunity to testify, on behalf of our members, in response to your request for comments on several of the exemptions to the Kansas Open Records Act. The Kansas Open Records Act promotes openness in government, but also recognizes the public interest may be better served by allowing certain information to remain closed from public scrutiny. The exemptions in K.S.A. 45-221(a) are all discretionary. They allow a unit of government to not release a record in circumstances where a competing interest, usually the privacy interest of a specific individual or a competing public interest, outweighs the public interest in open government.

While we believe all of the exemptions to KORA have been enacted for legitimate reasons, we have particular concerns about four of the exemptions on today's list.

K.S.A. 45-221(a)(6) exempts letters of reference or recommendation. This exemption is designed to promote truthfulness in letters of reference which should enhance the quality of governmental employees. Without such protection, we believe it is unlikely the authors of such letters would speak candidly to prospective employers in letters of reference.

K.S.A. 45-221(a)(14) exempts most correspondence between a public agency and a private individual. This exemption protects privacy interests of individuals, and, depending on the nature of the correspondence may protect public interests as well. Requiring that all correspondence be open would not only discourage patrons from writing to the district, it could also create major administrative burdens for public schools.

K.S.A. 45-221(a)(20) exempts written materials that are basically records in the process of being created. The exemption does not apply if the record is publicly cited or identified in an open meeting or in the agenda of an open meeting. We agree the final product which is discussed or considered by the board should be open. However, requiring every note or bit of research gathered along the way to be open would be both unwieldy and administratively burdensome.

K.S.A. 45-221(a)(30) exempts public records containing information of a personal nature where the disclosure of the information would constitute a clearly unwarranted invasion of personal privacy. In this instance individual privacy interests clearly should prevail. Requiring a public agency to disclose such information would undoubtedly result in a lawsuit—one in which the plaintiff would likely prevail. Further, requiring such information to be open would discourage individuals from seeking public employment.

We believe each of these exemptions serves an important purpose and should be maintained in the Kansas Open Records Act.

THE KANSAS CONTRACTORS ASSOCIATION, INC.

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Testimony

By the Kansas Contractors Association before the House
Local Government Committee regarding Open Records

March 14, 2000

Chairman and members of the House Local Government Committee,

I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization represents over 400 companies who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest.

Today, I want to voice our opposition to opening one of the segments of the open records law. Specifically, our association is against removing exemption (34), the one which keeps financial statements closed to the public regarding the qualifications of a contractor.

Presently, that information is submitted to the Kansas Department of Transportation and our group believes it is information that the public does not need to see. KDOT oversees whether a contractor is qualified both in a financial way and with the right personnel and machinery to do a job.

There has never been a need in the most recent past or in the distant past for this information to be made public. KDOT is the regulatory body in this case and does an adequate job in insuring that qualified contractors are able to do the work they bid on.

I am not aware of any need by the public to know the financial condition of one of our construction companies. As long as they have the materials, the machinery and financial basis to do the work, we do not want this information published.

In most cases, the people who would like to see the financial information would be competitors and not so much the public and we believe this would be detrimental to all concerned.

Therefore, I urge you not to open this part of the open records act to public scrutiny... scrutiny that is unnecessary in conducting business in the state of Kansas.



Johnson County, Kansas

Office of the County Administrator

**TESTIMONY REGARDING OPEN RECORDS
HOUSE LOCAL GOVERNMENT COMMITTEE
MARCH 14, 2000**

DANA FENTON, INTERGOVERNMENTAL RELATIONS COORDINATOR

A handwritten signature in black ink that reads "Dana Fenton".

Chairman Mayans and members of the committee, my name is Dana Fenton, Intergovernmental Relations Coordinator for Johnson County, Kansas. Thank you for this opportunity to appear before the committee. I am here to share some thoughts on the contemplated removal of several of the open records' exemptions. The exemptions I would like to comment on are #6, #13, #30, #31, #32, and #34.

The first exemption, #6, addresses the contents of letters of reference or recommendation. This exemption is closely related to #4 which ensures privacy of most public employee personnel records. If such letters were to be made public, the number of persons willing to write these would undoubtedly diminish. The letters actually written would primarily consist of glowing attributes with little discussion of weaknesses. These types of letters would probably not improve the quality of employees hired by public agencies.

The second exemption, #13, addresses the contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor. When a public agency is considering purchasing property, it will contract with professional appraisers and engineers to value and evaluate the property. This information is used during negotiations. Its release would provide invaluable information to other parties interested in acquiring the same property, and could negatively impact a public agency's negotiating strategy.

The third exemption, #30, is clearly a catchall exemption. It appears to set forth a policy that the State of Kansas will not tolerate the release of private information even if an exemption is not present in the act.

The fourth exemption, #31, addresses the prospective location of or the expansion of a business or industry. In talks with Mr. Lee Metcalfe, Executive Director of the Johnson County Airports Commission, he indicated that about 50% of all businesses demand confidentiality when inquiring about locations at the County's business park. Oftentimes, these businesses do not want competitors to know of their interest in a particular piece of property as it could provide hints as to their business strategy. Such disclosure could lead these businesses to look in other states that would honor current confidentiality requirements. Repeal of this exemption could have an adverse impact on our ability to attract and retain businesses.

The fifth and sixth exemptions, #32 and #34, address the release of bidder lists and of financial information contained in a price bid. We already release bidder lists prior to award or rejection of bids. As to the financial information of a contractor, we understand federal law prohibits the release of this information if a bidder requests confidentiality.

Thank you Chairman Mayans and I will be glad to stand for questions.

March 14, 2000



TO: Chairman Mayans and Members of the Local Government Committee

FROM: Trudy Aron, Executive Director

RE: Open Records for Architects and Engineers
Specifically Items 13, 31, 33, 34

Good Afternoon, Mr. Chairman and members of the Committee, I am Trudy Aron, Executive Director, of the American Institute of Architects in Kansas (AIA Kansas.) Thank you for the opportunity to discuss the open records restrictions that may apply to architects and engineers.

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 100 private practice architectural firms designing a variety of project types for both public and private clients including justice facilities, schools, hospitals and other health facilities, industrial buildings, offices, recreational facilities, housing, and much more. The rest of our members work in industry, government and education where many manage the facilities of their employers and hire private practice firms to design new buildings and to renovate or remodel existing buildings.

We have the following concerns:

Items 13 and 31 – While these two items are not necessarily ones that concern us as architects, we believe that disclosure of information prior to the acquisition of property could result in an escalation in the cost of the property

Item 33 – Architectural or engineering estimates are just that – estimates based on a set of criteria at a given time and for a determined scope of services. The estimates are often prepared long before the project parameters are finalized and are subject to material and labor availability. The design professional and the agency work closely together to design the project to meet both the needs and budget.

Item 34 – The financial information submitted by contractors in qualification statements must remain confidential. Disclosure of this information could have a detrimental affect on the firms providing it and could limit the number of contractors interested in public contracts.

Thank you for allowing me to discuss our concerns. We believe it is in the best interest of the public that these items remain exempt from the open record laws.

President
Neal J. Angrisano, AIA
Overland Park
President Elect
Wendy Ornelas, AIA
Manhattan
Secretary
Nancy L. Steele, AIA
Wichita
Treasurer
David H. Livingood, AIA
Lawrence

Directors
Richard A. Bartholmew, AIA
Overland Park
Alison Beck
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Jan Burgess, AIA
Wichita
Ken Conrad, P.E.
Overland Park
Russ Crader
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Mark Franzen, AIA
Overland Park
John Gaunt, FAIA
Lawrence
John E. Heckman, AIA
Independence
Ken Helmer, AIA
Wichita
Eugene Kremer, FAIA
Manhattan
William E. Mankin, AIA
Salina
Barbara Pearson, Assoc. AIA
Emporia
Martin Rangel, AIA
Wichita
David Sachs, AIA
Manhattan
Gregory E. Schwerdt, AIA
Topeka
Matthew D. Werner, AIA
Topeka
Michael T. Wilson, AIA
Topeka

Executive Director
Trudy Aron, Hon. AIA, CAE



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

March 14, 2000

TO: House Committee on Governmental Organization and Elections
FROM: Patrick J. Mulvihill, Assistant Chief Examiner
RE: House Bill No. 2920 – Open Records Act

Mr. Chairman and members of the Committee:

Thank you for the opportunity to discuss with you portions of House Bill No. 2920 that would affect the Kansas Insurance Department.

K.S.A. 1999 Supp. 45-221 presently provides that a public agency shall not be required to disclose various types of documentation and information that is described in several provisions therein. House Bill No. 2920 includes a proposal that the provisions of K.S.A. 1999 Supp. 45-221 shall expire on July 1, 2005. Please be advised that the Kansas Insurance Department is opposed to House Bill No. 2920, primarily due to the fact that our Department could lose its “accreditation” by the National Association of Insurance Commissioners (NAIC) if we are not allowed to keep certain information confidential which is presently referred to in K.S.A. 1999 Supp. 45-221. In addition, House Bill No. 2920 would have a negative impact on our Department’s ability to regulate insurance companies and related entities, which impacts the citizens of Kansas if we cannot provide the regulatory standards for company solvency, and consumer protection.

In 1988, the NAIC performed an extensive review of various aspects of state regulation. One of the primary reasons for conducting this review was due to the fact that several insurance company insolvencies occurred throughout the United States in the 1980’s. The NAIC subsequently adopted a formal certification program in June of 1990, whereby state insurance departments are required to adhere

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3-14-00
Attachment 12

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to certain minimum regulatory standards in order to be deemed “accredited” by the NAIC. Included as part of the minimum standards are requirements that states have certain laws and regulations in force pertaining to financial solvency. The Kansas Insurance Department was accredited by the NAIC in 1991 and was one of the first state insurance departments to receive this designation. After an insurance department is initially accredited, it is subject to an extensive on-site review every five (5) years by an independent review team. In addition, an insurance department is subject to interim annual reviews so that the NAIC can make sure that an insurance department continues to comply with NAIC Accreditation Standards. The Kansas Insurance Department was “reaccredited” by the NAIC after its last on-site review in 1996 and continues to be “accredited” at this time.

K.S.A. 1999 Supp. 45-221(a)(39) and (40)

One of the NAIC Accreditation Standards is that a state insurance department must be able to keep the following information confidential, which is set forth in K.S.A. 1999 Supp. 45-221(a)(39) and (40), because of the critical and sensitive nature of this information:

(39) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 1999 Supp. 40-2c20, and amendments thereto.

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

K.S.A. 1999 Supp. 45-221(a)(41)

The NAIC also had an Accreditation Standard that state statutes require insurance companies to report certain material transactions (e.g., material acquisitions/dispositions of assets or material

nonrenewals, cancellations or revisions of ceded reinsurance agreements) to the home state insurance department and to the NAIC. In addition, all such disclosure reports were to be kept confidential. The Kansas Insurance Department believes it is important to retain the statutes that are presently in force regarding this matter, including K.S.A. 1999 Supp. 45-221(a)(41) which appears as follows:

(41) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 1999 Supp. 40-2,156, and amendments thereto.

K.S.A. 1999 Supp. 45-221(a)(42)

The Kansas Insurance Department obtains various types of financial information from the NAIC which enables the staff to review and monitor the financial condition of companies in an effective and efficient manner. However, the NAIC will not provide a state insurance department with access to such information unless the state insurance department can certify to the NAIC that it has the statutory authority to keep such information confidential. The Kansas Insurance Department recently had to provide the NAIC with such a certification. K.S.A. 1999 Supp. 45-221(a)(42), which appears as follows, was one of the statutes referred to in that certification:

(42) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

K.S.A. 1999 Supp. 45-221(a)(20)

K.S.A. 1999 Supp. 45-221(a)(20) does not specifically pertain to the Kansas Insurance Department. However, there are occasions in which the Kansas Insurance Department cites that statute in order to keep certain information confidential if the release of such information could be detrimental to one or more parties, such as during the review and analysis of a company's financial condition. K.S.A. 1999 Supp. 45-221(a)(20) appears as follows:

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

Summary

The Kansas Insurance Department believes that the passage of House Bill No. 2920 would cause the Kansas Insurance Department to lose its accreditation designation, would negatively impact its ability to regulate insurance companies and related entities, and would not provide consumer protection for Kansas policyholders.

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ELECTIONS COMMITTEE
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JOINT COMMITTEE ON SPECIAL CLAIMS
AGAINST THE STATE

March 14, 2000

Carlos Mayans, Chairman
House Local Government Committee
Members of the Committee

Mr. Chairman:

I would like to offer the following suggestions or changes to House Bill 2864. First of all, I feel it is important to separate access of public information from enforcement of public information. Therefore, I suggest changing the term public access officer to public information officer.

As proposed in House Bill 2864, the Kansas Attorney General's office will create the position of public information officer.

On page 1 of the bill, line 34, section (b), delete, an assistant or deputy attorney general who is under a separate line of direct supervision from, and insert, the public information officer or any county or district attorney shall bring proceedings before the public information officer for fines, penalties or binding action.

On page 1, line 38, section (c), delete the words, but not on line 39 and delete from line 40, voiding of.

On page 1, line 43, change the word of to or.

I feel with these simple changes to the bill that this will work to establish enforcement to the current open records act.

I also propose that the forty-four exemptions be referred to interim study so that we can look deeper into reasons they were placed into law and why they should not sunset.

I feel the public should also be further educated on the Information Network of Kansas that provides both free service and subscription service in a packaged program to assist the people of Kansas.

PAGE TWO

As a member of the House Appropriations Committee, I will continue to look for ways for the state agencies to image documents making them easier to access. I would propose that the budget committees should look further into this problem and find ways to discontinue the long term storage of documents in warehouses that make access to public information cumbersome and expensive. We could look to the State Printer to image materials for bi-annual budget agencies to start this process to move to the electronic storage of documents.

I am ready to work with the committee to move this bill further and will continue in my other committee to make public information easier to obtain.

In any action hereunder in which the defendant is the prevailing party, the court officer may award to the defendant attorney fees if the court officer finds that the plaintiff maintained the action not in good faith and without a reasonable basis in fact or law.

~~(c) Except as otherwise provided by law, proceedings arising under this section shall be assigned for hearing and trial at the earliest practicable date.~~

Sec. 7. K.S.A. 75-4320 is hereby amended to read as follows: 75-4320. (a) Any member of a body or agency subject to this act who knowingly violates any of the provisions of this act or who intentionally fails to furnish information as required by subsection (b) of K.S.A. 75-4318 and amendments thereto shall be liable for the payment of a civil penalty in an action brought before the public access officer by the attorney general or county or district attorney, in a sum set by the court of not to exceed ~~five hundred dollars (\$500)~~ \$500 for each violation. In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of this act shall be voidable in any action brought by the attorney general or county or district attorney ~~in the district court of the county in which the meeting was held before the public access officer if such action is commenced within ten (10) days one month of the meeting; and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act.~~

(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were investigated.

Sec. 8. K.S.A. 45-215, 45-222 and 75-4320 and K.S.A. 1999 Supp. 75-4317 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL No. 2864

By Committee on Local Government

2-4

13-3

9 AN ACT concerning public meetings and public records; amending
10 K.S.A. 45-215, 45-222 and 75-4320 and K.S.A. 1999 Supp. 75-4317
11 and repealing the existing sections.

12
13 *Information*
14 Be it enacted by the Legislature of the State of Kansas:

15 New Section 1. (a) There is hereby established in the office of the
16 attorney general the position of public access officer who shall be ap-
17 pointed by the attorney general with compensation fixed by the attorney
18 general.

19 The public access officer shall hear complaints of alleged violations of
20 the Kansas open meetings act, K.S.A. 75-4317 et seq., and amendments
21 thereto, and the Kansas open records act, K.S.A. 45-215 et seq., and
22 amendments thereto, and issue orders pertaining to the same. The public
23 access officer shall have authority to promulgate rules and regulations to
24 carry out the provisions of this act, the Kansas open records act and the
25 Kansas open meetings act, including authority to determine what consti-
26 tutes reasonable fees for copies of open public records pursuant to K.S.A.
27 45-219, and amendments thereto. At the request of any person, the public
28 access officer may issue advisory opinions relating to the open meetings
29 act and the open records act and the enforcement thereof. A govern-
30 mental agency's or body's compliance with an advisory opinion shall pre-
31 clude fines, penalties or attorney's fees in any proceeding before the of-
32 ficer or in any subsequent appeal. The public access officer shall cause
33 to be published on the internet and otherwise the officer's opinions, de-
34 cisions, orders and related materials.

35 ~~(b) An assistant or deputy attorney general who is under a separate~~
36 ~~line of direct supervision from the public access officer or any county or~~
37 ~~district attorney shall bring proceedings before the public access officer~~
38 ~~for fines, penalties or voiding of binding action.~~

39 (c) Any person may bring proceedings before the public access officer
40 seeking a determination that records must be disclosed ~~but not~~ seeking
41 fines or voiding of binding action.

42 (d) In investigating alleged violations of the Kansas open meetings
43 act or Kansas open records act, the assistant or deputy attorney general
44 or any county or district attorney may:

OR

- (1) subpoena witnesses, evidence, documents or other matter;
 - (2) take testimony under oath;
 - (3) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violations;
 - (4) require attendance during such examination of documentary material and take testimony under oath or acknowledgment in respect of any such documentary material; and
 - (5) serve interrogatories.
- (e) Hearings before the public ~~access~~ officer shall be conducted in accordance with the provisions of the Kansas administrative procedure act and shall be subject to review and enforcement in accordance with the act for judicial review and civil enforcement of agency actions. A decision by the public ~~access~~ officer shall be considered the final agency action. Appeals of such decisions shall be made to the district court in accordance with the act for judicial review and civil enforcement of agency actions and not to the attorney general.

(f) The public ~~access~~ officer may review the records *in camera* in any action concerning records, and the records shall not be subject to disclosure or open to public inspection unless the officer finds them to be open and the time for appeal has run.

Sec. 2. K.S.A. 45-215 is hereby amended to read as follows: 45-215. K.S.A. 45-215 through 45-223 *and section 3, and amendments thereto*, shall be known and may be cited as the open records act.

New Sec. 3. (a) An official custodian for public information shall prominently display a sign in the form prescribed by the public access officer that contains basic information about the rights of a requestor, the responsibilities of a governmental body and the procedures for inspecting or obtaining a copy of public information under this act. The official custodian shall display the sign at one or more places in the administrative offices of the governmental body where it is plainly visible to: (1) Members of the public who request public information in person under this act; and (2) employees of the governmental body whose duties include receiving or responding to requests under this act.

(b) The public ~~access~~ officer shall by rule and regulation prescribe the content of the sign and the size, shape and other physical characteristics of the sign. In prescribing the content of the sign the officer shall include plainly written basic information about the rights of a requestor, the responsibilities of a governmental body and the procedures for inspecting or obtaining a copy of public information under this act that is most useful for requesters to know and for employees of governmental bodies to receive or respond to requests for public information to know.

Sec. 3. K.S.A. 1999 Supp. 75-4317 is hereby amended to read as follows: 75-4317. (a) In recognition of the fact that a representative gov-

1 ernment is dependent upon an informed electorate, it is declared to be
2 the policy of this state that meetings for the conduct of governmental
3 affairs and the transaction of governmental business be open to the public.

4 (b) It is declared hereby to be against the public policy of this state
5 for any such meeting to be adjourned to another time or place in order
6 to subvert the policy of open public meetings as pronounced in subsection
7 (a).

8 (c) K.S.A. 75-4317 through 75-4320a *and section 5, and amendments*
9 *thereto*, shall be known and may be cited as the open meetings act.

10 New Sec. 5. (a) All bodies and agencies subject to this act shall
11 prominently display at all meetings a sign in the form prescribed by the
12 public access officer that contains basic information about the rights of
13 the public under the act, the responsibilities of the body or agency and
14 the procedures for requesting notice of public meetings.

15 (b) The public ~~access~~ officer shall, by rule and regulation, prescribe
16 the content of the sign and the size, shape and other physical character-
17 istics of the sign. In prescribing the content of the sign the officer shall
18 include plainly written basic information about the rights of the public
19 under the act and the responsibility of the body or agency that is most
20 useful for requesters to know and for members of bodies or agencies who
21 are subject to the act to know.

22 Sec. 6. K.S.A. 45-222 is hereby amended to read as follows: 45-222.

23 (a) ~~The district court of any county in which public records are located~~
24 ~~shall have jurisdiction to enforce the purposes of this act with respect to~~
25 ~~such records, by injunction, mandamus or other appropriate order, in an~~
26 ~~action brought by any person, the attorney general or a county or district~~
27 ~~attorney.~~

28 ~~(b) In any action hereunder, the court shall determine the matter de~~
29 ~~mero. The court on its own motion, or on motion of either party, may~~
30 ~~view the records in controversy in camera before reaching a decision.~~

31 ~~(c) Complaints alleging violations of the open records act shall be filed~~
32 ~~with the public access officer. Upon the filing of a complaint, the public~~
33 ~~access officer shall conduct a hearing on such complaint. In any action~~
34 ~~hereunder, the court public access officer may award attorney fees to the~~
35 ~~plaintiff, including the office of the attorney general or any county or~~
36 ~~district attorney, if the court officer finds that the agency's denial of access~~
37 ~~to the public record was not in good faith and without a reasonable basis~~
38 ~~in fact or law. The award shall be assessed against the public agency that~~
39 ~~the court officer determines to be responsible for the violation. Addition-~~
40 ~~ally, the public access officer may award a civil penalty not to exceed \$500~~
41 ~~against the official custodian, personally, or any public employee or officer~~
42 ~~over the custodian who with malice failed to disclose or ordered the cu-~~
43 ~~stodian to fail to disclose records knowing that they are open~~

13-4



KANSAS PUBLIC HEALTH ASSOCIATION, INC.

AFFILIATED WITH THE AMERICAN PUBLIC HEALTH ASSOCIATION

215 S.E. 8TH AVENUE

TOPEKA, KANSAS 66603-3906

PHONE: 785-233-3103 FAX: 785-233-3439

E-MAIL: kpha@networksplus.net

Testimony submitted to
House Committee on Local Government
by Sally Finney, Executive Director

I am submitting this testimony to the Committee on behalf of the members of the Kansas Public Health Association to ask that you **leave the current exemption for public health records as part of the Kansas Open Records Act.**

The ability of the public health system to effectively prevent the spread of infectious disease rests in part on the fact that public health patient records are not subject to public review. Removing the current KORA exemption for public health records would increase reluctance of persons infected with certain diseases about seeking diagnosis and treatment, thereby placing others at risk. Our capacity to quickly deal with outbreaks of such conditions as sexually transmitted diseases (i.e. syphilis, gonorrhea, HIV), tuberculosis, and other preventable conditions would be impaired.

We ask that you maintain the current KORA exemption safeguarding public health records from public review.

KANSAS INSURANCE ASSOCIATIONS

David A. Hanson, Legislative Counsel
900 Mercantile Bank Tower
800 S.W. Jackson
Topeka, Kansas 66612-1259

PHONE 785-232-0545
FAX 785-232-0005

Kansas Association of Property & Casualty Insurance Cos.

Member Companies:

Armed Forces Insurance Exchange
Ft. Leavenworth

Bremen Farmers Mutual Ins. Co.
Bremen

Columbia Insurance Group
Salina

Farm Bureau Mutual Ins. Co.
Manhattan

Farmers Alliance Mutual Ins. Co.
McPherson

Farmers Mutual Ins. Co.
Ellinwood

Kansas Mutual Ins. Co.
Topeka

Marysville Mutual Ins. Co.
Marysville

Mutual Aid Assn. of the
Church of the Brethren
Abilene

Upland Mutual Ins., Inc.
Chapman

House Local Government Committee Testimony on Open Records Act K.S.A. 45-221 (a)(39-42) Presented by David A. Hanson on behalf of Kansas Insurance Associations March 14, 2000

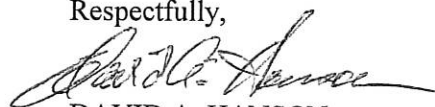
Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present information on behalf of the Kansas Association of Property and Casualty Insurance Companies and the Kansas Life Insurance Association, whose members are domestic insurance companies in Kansas.

The risk based capital provisions referenced in subsection (39) of K.S.A. 45-221 were developed by the NAIC for adoption and use by the states as a standardized method of monitoring the solvency of insurers and the need for corrective action. We have supported the Commissioner's implementation of these provisions and annual updates with the understanding this information would remain strictly confidential and not released to the public under K.S.A. 45-221 and in K.S.A. 40-2c20 and 40-2c21. We agree with the Insurance Department's position that this exception to the Open Records Act remain in tact to protect the confidentiality of this proprietary information and the exclusive use thereof for regulatory monitoring. Without such protection, the ability to gather and monitor this critical information would be jeopardized as Kansas could not assure the confidentiality required for NAIC accreditation and access to information from other states.

Likewise, we believe the confidentiality of actuarial opinions, disclosure reports and NAIC financial analysis ratios and examination synopses must also be maintained in subsections (40-42). Thank you for your consideration.

Respectfully,



DAVID A. HANSON

Kansas Life Insurance Association

Member Companies:

The American Home Life Ins. Co.
Topeka

American Investors Life Ins. Co.
Topeka

Blue Cross & Blue Shield of
Kansas
Topeka

Employers Reinsurance Corp.
Overland Park

First Life America Corporation
Topeka

Kansas Farm Bureau Life Ins. Co.
Manhattan

The Pyramid Life Insurance Co.
Shawnee Mission

Security Benefit Life Ins. Co.
Topeka