

Approved: April 5, 2002  
Date

*Carl Dean Holmes*

## MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Vice Chairman Tom Sloan at 9:10 a.m. on February 22, 2002 in Room 526-S of the Capitol.

All members were present.

Committee staff present: Robert Chapman, Legislative Research  
Dennis Hodgins, Legislative Research  
Mary Torrence, Revisor of Statutes  
Jo Cook, Administrative Assistant

Conferees appearing before the committee: Representative Carl Holmes  
Kim Gulley, League of Kansas Municipalities  
Brad Mears, Kansas Municipal Utilities  
Jeff Burkhead, Kansas Press Association

Others attending: See Attached List

### **HB 2959 - Open Records Act exception for records related to security of utilities**

Vice Chairman Sloan opened the hearing on **HB 2959**.

Representative Carl Holmes testified in support of **HB 2959 (Attachment 1)**. Representative Holmes provided details on the history behind his sponsorship of the bill. He indicated that the Attorney General's office was consulted during the drafting of the bill and they were in agreement with this language.

Kim Gulley, Director of Policy Development & Communications for the League of Kansas Municipalities, appeared in support of **HB 2959 (Attachment 2)**. Ms. Gulley stated that the bill provides an exemption from disclosure for records which may jeopardize the security for certain utility systems. She requested that water, sewer and gas services be added to the list of protected utilities.

Brad Mears, Secretary-Treasurer for the Kansas Municipal Utilities, appeared as a proponent to **HB 2959 (Attachment 3)**. Mr. Mears stated that now, more than ever, the security of utility facilities has become paramount. The bill would allow restraint of access to critical utility information in areas where the public safety and security may be at risk.

Written testimony in support of **HB 2959** was submitted by Cynthia Smith, Kansas City Power and Light (**Attachment 4**) and by Randy Allen, Kansas Association of Counties (**Attachment 5**).

Jeff Burkhead, Executive Director of the Kansas Press Association, testified in opposition to **HB 2959 (Attachment 6)**. Mr. Burkhead explained they were concerned that the bill could be applied too broadly. He suggested alternative language that would narrow the scope while sufficiently addressing security concerns.

The conferees responded to questions from the committee.

Vice Chairman Sloan closed the hearing on **HB 2959**.

### **HB 2631 - Organization of cooperative to generate electricity from renewable resources and technologies and to wholesale such electricity**

Chairman Holmes opened the debate on **HB 2631**. Representative Sloan distributed a proposed balloon (Attachment 7) and moved to adopt the balloon. Representative Kuether seconded the motion. The motion passed. Representative Sloan moved to delete Section 4(a)(9) dealing with eminent domain and correct the typographical errors on page 12. Representative McClure seconded the motion. Motion carried. Representative Sloan moved to adopt conceptional language that would clarify that a member of the co-op may not rely on the provider of last resort to meet its contract power sale needs. Representative Dillmore seconded the motion. Motion carried. Representative Krehbiel move to conceptually amend page 12, section

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:10 a.m. on February 22, 2002.

29 to read ....cooperative organized under this act shall pay the cost and shall negotiate such costs or such payment to the owners of the distribution and transmission systems. Representative Sloan seconded the motion. Motion carried. Representative Sloan moved to report **HB 2631**, as amended, favorable for passage. Representative Dillmore seconded the motion. The motion failed.

Chairman Holmes announced the committee would be working **HB 2959** and **HB 2644** on Monday.

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 22, 2002

NAME	REPRESENTING
Joe Dick	KCBPU
BRAD MEARS	KMU/CITY OF HOLTON
Anne Tymeson	KCC
Tom Day	KCC
Ron Appleford	Water Dist. No 1 of Jo. Co
DARCI MEESE	WDS #1
Janet Barkhurst	S+A Telephone
MARK SCHREIBER	Westar Energy
Cynthia Smith	KCPL
Steve Holthaus	KEC
Steve Johnson	Kansas Gas Service
WALKER HENDRIX	CARB
Bruce Graham	ICEPC
Charles Benjamin	Sierra Club -KS

CARL D. HOLMES  
REPRESENTATIVE, 125<sup>TH</sup> DISTRICT

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TOPEKA

HOUSE OF  
REPRESENTATIVES

## COMMITTEE ASSIGNMENTS

CHAIRMAN: UTILITIES COMMITTEE  
CHAIRMAN: FISCAL OVERSIGHT COMMITTEE  
MEMBER: AGRICULTURE & NATURAL RESOURCES  
BUDGET COMMITTEE  
MEMBER: SELECT COMMITTEE ON  
INFORMATION MANAGEMENT  
MEMBER: JOINT COMMITTEE ON ADMINISTRATIVE  
RULES AND REGULATIONS  
MEMBER: NATIONAL CONFERENCE OF STATE  
LEGISLATURES—ASSEMBLY OF  
STATE ISSUES  
MIDWESTERN CONFERENCE OF  
STATE GOVERNMENTS  
LEGISLATIVE HOTLINE  
1-800-432-3924

Vice-chairman Sloan and Utilities committee members, I appreciate the opportunity to testify on HB 2959. The request for this bill is the result of the need for non disclosure of security information designed to protect energy and communications assets in Kansas.

As many of you are aware, as a member of the NCSL Advisory Committee on Energy, I had the opportunity to attend a closed national security briefing and discussion on utility related security issues in January. The main presenter on the subject was Jim McDonnell, Director of the Energy Assurance Section, United States Department of Energy. His role is to protect the utility assets in the United States. The presentation and discussion was "the State and Federal role in assessing and mitigating critical infrastructure vulnerabilities." Jim made the statement that the Federal Government was not willing to share intelligence and security information with state governments because of the possibility of the information becoming public information. Jim indicated the need to examine the problems caused by security classification of information that states need. States often don't receive pertinent information from industry and the federal government because of the fear the information will go public (Freedom of Information Acts).

In the process of drafting this bill, I had a meeting with John Campbell of the attorney general's office. We discussed the need to make an addition to the open records act for security purposes concerning energy. Mary and John worked together on the language on page 6 of the

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ATTACHMENT 1

bill, lines 6-8. **“Records the disclosure of which may jeopardize the security of systems, facilities or equipment used in the production, transmission or distribution of energy or communications services.”**

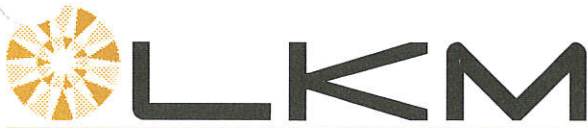
I discussed changing of the word “may” to “will” in line 6 with the attorney generals office yesterday afternoon. They said not to change the word as the change would make it too narrow for the needed application.

This language is the only language approved by the attorney generals office. I ask the committee not to amend this bill. Their agreement is only for this language. There may be other areas that need to be addressed, but they need to be considered in separate bills.

I view this bill as a companion bill to the security section of HB 2644 in making our electric, gas and telecommunications services less vulnerable.

As you may be aware, many utility maps are not available now because of security reasons after September 11th. As we look at the potential for terrorist attack, we cannot protect all utility assets because of the costs. When we take steps to protect the energy and communications assets in Kansas, let us not make the security information available to those who desire to harm us.

I appreciate the opportunity to present the reasons behind this bill. Are there any questions?



League of Kansas Municipalities

300 SW 8th Avenue  
Topeka, Kansas 66603-3912  
Phone: (785) 354-9565  
Fax: (785) 354-4186

To: House Utilities Committee  
From: Kim Gulley, Director of Policy Development & Communications  
Date: February 22, 2002  
Re: Support for HB 2959

Thank you for allowing me to appear on behalf of the League of Kansas Municipalities and our member cities. We appear today in support of HB 2959.

The events of last September 11<sup>th</sup> have put security issues at the top of the agenda for public officials at all levels of government and city officials are certainly no exception. In addition to a number of public buildings and facilities, public water supplies and other utility facilities were identified by the federal government as potential terrorist targets. Police, fire, and public works personnel have been working together to evaluate and increase security procedures as necessary.

The Kansas Open Records Act was recently amended to exempt records of "emergency information or procedures of a public agency..." K.S.A. 45-221(a)(12). This exemption was a very important first step in protecting information concerning the security plans and procedures of public agencies. However, this section does not address records which are not specifically related to security procedures, but which may pose a security risk if disclosed.

The risk involved is real. Last summer, another state league reported that an individual walked into a county courthouse and requested aerial photos of the ammunition plants in the area. A similar situation could arise in the context of public utilities. For example, an individual could walk into the county courthouse in Reno County and ask for aerial photos displaying the metes and bounds of all of the water wells for the City of Hutchinson. There is nothing in the Kansas Open Records Act which would prohibit the disclosure of this information.

HB 2959 provides an exemption from disclosure for records which may jeopardize the security of certain utility systems. We respectfully request that water, sewer, and gas services be added to the list of protected utilities. I have attached a bill balloon that includes this proposed amendment.

In addition to the security of the facilities themselves, the Kansas Open Records Act poses another security risk. Exemption number 26 provides protection for "[r]ecords of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act." In my six years at the League, I have personally received innumerable

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ATTACHMENT 2

requests from city officials attempting to interpret this language. It is unclear from the current language what information must be given to a requester. For example, if the requester has the name of an individual, does the city have to provide all billing information, including the person's address and phone number to the requester? If so, this would mean that an estranged spouse could walk into city hall with the name of an individual and the city would be forced to provide private information which could put one of their citizens in serious jeopardy. We believe that it was the intent of this exemption to protect personal information, but to allow for utility billing and usage information to be given. For example, it is completely appropriate for an individual to seek information regarding the water usage and electrical costs associated with a property they are considering for purchase.

In order to protect the personal security of our citizens, we are also offering an amendment to this portion of the Kansas Open Records Act. This amendment is offered solely to clarify the type of information that is required to be disclosed involving customers of public utilities.

The League appreciates your consideration of this very important and timely issue. For the policy reasons that I have outlined, we urge your favorable action on the amendments that we have offered as well as the bill itself.

Thank you and I will be happy to stand for questions at the appropriate time.

# HOUSE BILL No. 2959

By Committee on Utilities

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AN ACT amending the open records act; amending K.S.A. 2001 Supp. 45-221 and repealing the existing section.

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

Section 1. K.S.A. 2001 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

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

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

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

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

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.

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

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(10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action;

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

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

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(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.

(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.

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

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

(A) The information which the agency maintains on computer facilities; and

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

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

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

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

(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.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

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

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

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

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

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

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

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

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(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

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

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or releasee, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 *et seq.* and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

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

(31) Public records pertaining to 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 expand-

*Records of a utility or other public service pertaining to customers of the utility or service, except that the public agency shall disclose usage and billing information for a particular location when the address is provided by the requester.*

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

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) 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. 40-2c20 and ~~45-2d20~~ 40-2d20 and amendments thereto.

(39) 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.

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

(41) 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.

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

(43) Market research, market plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(44) The amount of franchise tax paid to the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) *Records the disclosure of which may jeopardize the security of systems, facilities or equipment used in the production, transmission or distribution of energy, ~~or~~ communications services, \_\_\_\_\_ water, sewer or gas services.*

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

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

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas

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supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

3 Sec. 2. K.S.A. 2001 Supp. 45-221 is hereby repealed.

4 Sec. 3. This act shall take effect and be in force from and after its  
5 publication in the statute book.

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# kansas municipal utilities

*Testimony Before the*

## **House Utilities Committee**

February 22, 2002

*Brad Mears*

*Secretary-Treasurer, Kansas Municipal Utilities*

*City Manager, City of Holton, Kansas*

## **House Bill 2959 – Utility Security**

Thank you for the opportunity to testify before you this morning regarding the critical issue of utility security. My name is Brad Mears, City Manager of Holton. I also serve on the Board of Directors and as the Secretary-Treasurer of Kansas Municipal Utilities (KMU).

KMU is a statewide association composed of 154 municipal electric, natural gas, and water utilities. In addition, all of our member cities are involved in the operation of municipal wastewater systems. These publicly owned utilities are subject to the provisions of the Kansas Open Records Act (KORA). The act generally mandates that all records of these publicly-owned utilities shall be open for public inspection, with few exceptions. Records subject to inspection include all documents, papers, maps, plans and other materials developed or received by the public entity.

In most cases, public record laws provide an effective mechanism for interested citizens to investigate and review the operation and maintenance of their municipally owned utility. In matters of security, however, the public records laws can be used to actually harm the very people that public records laws were intended to protect. Unscrupulous competitors, criminals and even terrorists can use public records laws to the detriment of the consumer owners of municipal utilities.

The Kansas open records law creates a significant and unnecessary security risk to the nation's public utility infrastructure, public utility employees, and the consumers of municipal utilities. Individuals could use the public records laws to access public utility information, such as plans, specifications and documents on the infrastructure of the utility as well as the name and address of any customer. Those individuals could then use that information to target utility facilities or individual customers for acts of violence or terrorism.

Since the tragedies of September 11<sup>th</sup>, the security of our utility facilities has become paramount. In many cases, a simple attack on a strategic element of utility infrastructure could cause lengthy disruption of service and, in the case of public water systems, perhaps even cost lives. KMU members over the past several months have reported receiving

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curious phone calls asking for sensitive power plant information, municipal utility web sites in the region have seen numerous “hits” from Internet users in the Middle east, and notices of potential threats continue to come down from the Department of Energy, the National Infrastructure Protection Center (NIPC) and the National Threat Warning System (NTWS). In fact, one such warning from the Department of Energy on January 16, 2002 illustrates the seriousness of the utility security obligation:

“WE HAVE RECEIVED INDICATIONS THAT MEMBERS OF AL-QAIDA MAY BE USING U.S. MUNICIPAL AND STATE WEB SITES TO OBTAIN INFORMATION ON LOCAL ENERGY INFRASTRUCTURES, WATER RESERVOIRS, DAMS, HIGHLY-ENRICHED URANIUM STORAGE SITES, NUCLEAR AND GAS FACILITIES, AND EMERGENCY FIRE AND RESCUE RESPONSE PROCEDURES. WE HAVE ALSO RECEIVED INDICATIONS FROM AROUND THE COUNTRY OF MULTIPLE CASINGS OF SITES SUCH AS THESE. YOU SHOULD REMAIN ALERT TO ANY UNUSUAL ACTIVITY AROUND SUCH FACILITIES, OR QUESTIONS ABOUT THEM. WE REQUEST YOU ALSO BE ALERT AND REPORT ANY SUSPICIOUS ACCESSES TO MUNICIPAL, UTILITY AND OTHER PUBLIC WEB SITES, AND REVIEW THE SECURITY IMPLICATIONS OF INFRASTRUCTURE CONTENT POSTED TO SUCH WEB SITES.”

*Department of Energy Security Notice  
January 16, 2002*

I might also note that KMU has been actively supporting member communities in their efforts to increase utility security. In fact, the association has recently been awarded a national grant through the American Public Power Association to develop utility security guidelines for all public power systems.

**KMU strongly supports HB 2959.** The bill would allow the prudent use of restraint with critical utility information in areas where the public safety and security may be at risk.

**In addition, KMU would request that data security provisions for municipal natural gas, water and wastewater utilities be added to the bill language, so that they might receive the same protection as electric and telecommunications systems.** In fact, public water systems may be at an even greater risk in the current environment, given the potential for bioterrorism in municipal water plants.



Testimony in Support of Kansas House Bill No. 2959  
Presented by Kansas City Power & Light Company  
February 22, 2002

Mr. Chairman and Membership of the Kansas House Utilities Committee  
Kansas City Power & Light Company, KCPL, supports the passage of  
House Bill No. 2959, particularly the sections noted below that prohibit the  
disclosure of certain information that could be used to target utility facilities  
for sabotage or other attack. The sections of particular relevance to KCPL  
that would limit disclosure of utility information are quoted below.

Paragraph 12; page two of the bill reads as follows:

Records of emergency or security information or procedures of a  
public agency, or plans, drawings, specifications or related  
information for any building or facility which is used for purposes  
requiring security measures in or around the building or facility or  
which is used for the generation or transmission of power, water, fuels  
or communications if disclosure would jeopardize security of the  
public agency, building or facility.

Paragraph 45; page six of the bill reads as follows:

Records the disclosure of which may jeopardize the security of  
systems, facilities or equipment used in the production, transmission  
or distribution of energy or communications services.

Utilities in the United States have been concerned for sometime about the  
ready availability of records describing their operations and facilities in great  
detail. Much of this information is available from government agencies at  
the local, state and federal level. Among the information that could be found  
were detailed site plans, photos and maps, lists of hazardous substances on  
the utility properties and the consequences of the release of those substances  
on surrounding populations. Also available were locations by latitude and  
longitude of the critical facilities of the electrical grid and which facilities  
were the most congested when power was being moved from one location to  
another.

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After the events of September 11, 2001, a number of local, state and federal agencies used their administrative powers to remove this information from public access. For example on October 11, 2001, the Federal Energy Regulatory Commission issued the following order stating in part:

The September 11, 2001 terrorist attacks on America have prompted the Commission to reconsider its treatment of certain documents that have previously been made available to the public through the Commission's Internet site...

Among the items removed were maps of electric utility facilities and related documents. These moves have been followed by legislative proposals at the local, state and federal level to make the administrative actions permanent. House Bill No. 2959 is consistent with this effort to limit the availability of data that could be used to target utility facilities.

Passage of HB No. 2959 will not in itself ensure the security of Kansas utilities, however, it will make those who seek to harm utilities work harder to gather targeting information. Therefore, KCPL supports this bill and urges its passage.



**TESTIMONY**  
concerning House Bill No. 2959  
**re: Exemptions to Records Not Required to be Disclosed**  
**House Utilities Committee**  
Presented by Randy Allen, Executive Director  
Kansas Association of Counties  
February 21, 2002

Chairman Holmes and members of the committee, my name is Randy Allen, Executive Director of the Kansas Association of Counties. Thank you for the opportunity to submit written testimony in support of HB 2959, which provides an additional exception in the list of exceptions to documents which must be disclosed under the Kansas Open Records Act (KORA).

Unquestionably, we live in a time when some persons do not subscribe to the same definition of civility and community and common purpose. As such, there are unfortunately persons in the general population who would, if given an opportunity, use public information for purposes not consistent with the common good, and the continued health and safety of the general public.

Counties, like cities, are on the front line of planning for emergencies and in responding to them when they occur. Nothing could stop an emergency response faster than a suspension or continued loss of energy or basic communications. As such, we recognize the need for this legislation and support the proposed change in law, which would allow public agencies to not disclose "records the disclosure of which may jeopardize the security of systems, facilities or equipment used in the production, transmission or distribution of energy or communications services." We urge the committee to report HB 2959 favorably for passage. Thank you.

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.

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*HOUSE UTILITIES*  
DATE: 2-22-02  
ATTACHMENT 5



## **Kansas Press Association, Inc.**

*Dedicated to serving and advancing the interests of Kansas newspapers*

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Friday, Feb. 22, 2002

To: House Committee on Utilities

From: Jeff Burkhead, executive director of the Kansas Press Association

Re: HB 2959

Mr. chairman and members of the committee,

Thank you for this opportunity to make comments concerning House bill 2959.

I understand the sensitive nature surrounding this bill, and I believe the bill's author is well-intended; however, my organization, which represents more than 230 Kansas newspapers is concerned that this bill, in its current form, could be applied too broadly.

Any responsible person, as well as any Kansas newspaper, would not want to do anything to jeopardize our state's security. However, the question must be asked: How much freedom, or, in this case, how much freedom of information, are we willing to give up to be secure? Security doesn't necessarily mean secret.

As one of my past presidents told me, he would hate to see any more exemptions to the open records act made in the rush of the moment or because it is politically convenient, particularly when these exemptions are scheduled to sunset.

Again, our concern is that this proposed amendment is too vague and nonspecific. That it could be used to extend a far-reaching veil of secrecy, covering up information that is in the public's interest and should be held up to public scrutiny.

As an alternative, I have attached language from an amendment in Michigan dealing with a bill to protect "critical infrastructure." I hope it will receive your consideration.

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We are also concerned about who would make the determination to not disclose this information. It is our view that the Kansas Corporation Commission, not a utility company, should be the gatekeeper to determine whether a record dealing with security measures should be disclosed.

I hope you will give serious consideration to alternative language that would narrow the scope of this amendment while sufficiently addressing security concerns.

Thank you.

Michigan language

"Sec. 13. (1) A public body may exempt from disclosure as a public record under this act any of the following:

(Y) Records or information of measures designed for the protection of the security or safety of persons or property, whether public or private, including, but not limited to, building and public works designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to acts of terrorism ... emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance."

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# HOUSE BILL No. 2631

By Committee on Utilities

1-15

9 AN ACT enacting the renewable energy electricity generation cooperative  
10 act; providing for the organization of cooperative corporations to  
11 generate electricity from renewable resources and technologies and to  
12 transmit and sell such electricity at wholesale.

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

15 Section 1. This act may be cited as the renewable energy electric  
16 generation cooperative act.

17 Sec. 2. As used in this act:

18 (a) "Cooperative" means any corporation organized under this act or  
19 which becomes subject to this act in the manner hereinafter provided.

20 (b) "Person" means any natural person, firm, association, corporation,  
21 limited liability company, business trust or partnership.

22 (c) "Renewable resources or technologies" means wind, solar, thermal,  
23 photovoltaic, biomass, hydropower, geothermal, waste incineration  
24 and landfill gas resources or technologies.

25 Sec. 3. Five or more persons may organize a cooperative, nonprofit,  
26 membership corporation under the provisions of this act for the purposes  
27 of conducting or promoting any lawful business under the general corporation  
28 laws of the state, generating electricity from renewable resources  
29 and technologies and transmitting and selling such electricity at  
30 wholesale.

31 Sec. 4. / In addition to the powers conferred on all corporations under  
32 article 61 of chapter 17 of the Kansas Statutes Annotated, a cooperative  
33 organized under this act shall have power to:

- 34 ~~(a)~~ Sue and be sued in its corporate name; (a)
- 35 ~~(b)~~ have perpetual existence; (2)
- 36 ~~(c)~~ adopt a corporate seal and alter the same; (3)
- 37 ~~(d)~~ generate, either as the cooperative or as individual members of (4)
- 38 the cooperative, electricity from renewable resources or technologies and (4)
- 39 transmit and sell such electricity at wholesale;
- 40 ~~(e)~~ construct, purchase, lease, equip, maintain and operate, and to (5)
- 41 sell, assign, convey, lease, mortgage, pledge or encumber electric trans- (5)
- 42 mission lines or systems, electric generating plants, and lands, buildings,
- 43 structures, easements and rights-of-way and equipment, and any other

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1 real or personal property, tangible or intangible, necessary to accomplish  
2 the purpose for which the cooperative may be organized hereunder; (6)

3 ~~(6)~~ purchase, lease as lessee or otherwise acquire, and use, and ex-  
4 ercise and to sell, assign, convey, mortgage, pledge or otherwise dispose  
5 of or encumber, franchises, rights, privileges, licenses and easements; (7)

6 ~~(6)~~ borrow money and otherwise contract indebtedness, and to issue  
7 notes, bonds and other evidences of indebtedness, and to secure the pay-  
8 ment thereof by mortgage, pledge, or deed of trust of, or any other en-  
9 cumbrance upon, any or all of its then-owned or after-acquired real or  
10 personal property, assets, franchises, revenues or income; (8)

11 ~~(4)~~ construct, maintain and operate electric transmission lines along,  
12 upon, under and across publicly owned lands and public thoroughfares,  
13 roads, highways, streets, alleys, bridges and causeways in conformity with  
14 the laws of the state of Kansas; (9)

15 ~~(4)~~ exercise the power of eminent domain in the manner provided by  
16 the laws of this state for the exercise of such power by other corporations  
17 constructing or operating electric transmission lines or systems; (10)

18 ~~(4)~~ become an incorporator, promoter, manager, member, stock-  
19 holder or owner of other corporations or cooperatives, and conduct its  
20 business and exercise its powers within this state and to participate with  
21 other persons in any corporation, limited liability company, cooperative,  
22 partnership, limited partnership, joint venture or other association of any  
23 kind, or in any transaction, undertaking or arrangement which the partic-  
24 ipating person would have power to conduct by itself, whether or not  
25 such participation involves sharing or delegation of control with or to  
26 others; (11)

27 ~~(k)~~ adopt, amend and repeal bylaws; and (12)

28 ~~(l)~~ do and perform any other acts and things, and to have and exercise  
29 any other powers which may be necessary, to accomplish the purpose for  
30 which the cooperative is organized.

(b) No cooperative organized under this act nor any member of such cooperative shall:  
(1) Enter into any contract for parallel generation services pursuant to K.S.A. 66-1,184, and amendments thereto, with regard to power generated by such cooperative or member from renewable resources;  
(2) sell electricity at retail or have a certificated territory in this state; or  
(3) transfer or distribute electricity to any other member of the cooperative.

31 Sec. 5. The name of an electric generation cooperative organized  
32 under this act shall include the words "renewable," "generation" and  
33 "cooperative" and the abbreviation "Inc.". The name of an electric gen-  
34 eration cooperative shall be distinct from the name of any other coop-  
35 erative or corporation organized under the laws of, or authorized to do  
36 business in, this state. Only a cooperative doing business in this state  
37 pursuant to this act shall use both the words "renewable," "generation"  
38 and "cooperative" in its name.

39 Sec. 6. (a) The articles of incorporation of a cooperative organized  
40 under this act shall recite that they are executed pursuant to this act and  
41 shall state:

- 42 (1) The name of the cooperative;
- 43 (2) the address of its principal office;

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- (3) the names and addresses of the incorporators;
- (4) the names and addresses of its directors; and
- (5) the purposes for which it is organized.

(b) The articles of incorporation of a cooperative organized under this act may contain any provisions, not inconsistent with this act, which are deemed necessary or advisable for the conduct of the business of the cooperative.

(c) The articles of incorporation shall be signed by each incorporator.

Sec. 7. The board of directors shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion, merger or consolidation. Thereafter the members shall adopt, amend or repeal the bylaws by the affirmative vote of a majority of those members voting thereon at a meeting of the members. The bylaws shall set forth the rights and duties of members and directors and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this act or with the cooperative's articles of incorporation.

Sec. 8. Each incorporator of a cooperative shall be a member thereof. No other person shall become a member of the cooperative unless such other person ~~agrees to generate electricity from renewable resources and transmit and sell at wholesale through the cooperative any such electricity in excess of that used by the person. Any member of a cooperative who agrees to generate electricity from renewable resources and transmit and sell such excess electricity at wholesale through the cooperative~~ shall cease to be a member of the cooperative if such member does not ~~generate electricity from renewable resources and transmit and sell such excess electricity at wholesale through the cooperative~~ within two years after such person becomes a member, or such lesser period as the bylaws of the cooperative may provide. A husband and wife may hold a joint membership in a cooperative. Membership in a cooperative shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership.

operates a generator which uses renewable resources and has a capacity of more than 100 kilowatts and agrees to generate electricity using such generator

so agrees

comply with the terms of the agreement

Sec. 9. (a) An annual meeting of the members of a cooperative shall be held at such time and place as shall be provided in the bylaws of the cooperative.

(b) Special meetings of the members may be called by the president, by the board of directors, by any three directors or by not less than 10% of the members.

(c) Except as otherwise provided in this act, written or printed notice stating the time and place of each meeting of the members and, in the case of a special meeting, the purpose or purposes for which the meeting called, shall be given to each member, either personally or by mail, not



Handwritten initials or mark in the top right corner.

2 Sec. 27. The provisions of the Kansas securities act shall not apply  
3 to any note, bond or other evidence of indebtedness issued by any co-  
4 operative doing business in this state pursuant to this act to the United  
5 States of America or any agency or instrumentality thereof, or to any  
6 mortgage, deed of trust or other instrument executed to secure the same.  
7 The provisions of such securities act shall not apply to the issuance of  
8 membership certificates by any cooperative.

9 Sec. 28. (a) Every cooperative organized under this act shall make  
10 an annual report in writing to the secretary of state, showing the financial  
11 condition of the cooperative at the close of business on the last day of its  
12 tax period next preceding the date of filing, but if any such cooperative's  
13 tax period is other than the calendar year, it shall give notice thereof to  
14 the secretary of state prior to December 31 of the year it commences  
15 such tax period. The report shall be filed on or before the 15th day of  
16 the fourth month following the close of the tax year of the electric co-  
17 operative. An extension for filing the annual report may be granted upon  
18 the filing of a written application with the secretary of state prior to the  
19 due date of the report, except that no such extension may be granted for  
20 a period of more than 90 days. The report shall be made on a form  
21 provided by the secretary of state, containing the following information:

- 22 (1) The name of the cooperative;
- 23 (2) the location of the principal office of the cooperative;
- 24 (3) the names and addresses of the president, secretary, treasurer and  
25 directors of the cooperative;
- 26 (4) the number of members of the cooperative;
- 27 (5) a balance sheet showing the financial condition of the cooperative  
28 at the close of business on the last day of its tax period next preceding  
29 the date of filing; and
- 30 (6) the change or changes, if any, in the particulars made since the  
31 last annual report.

32 (b) The annual report shall be signed by the president, vice-president  
33 or secretary of the cooperative, sworn to before an officer duly authorized  
34 to administer oaths, and forwarded to the secretary of state. At the time  
35 of filing such annual report, the cooperative shall pay an annual franchise  
36 tax of \$20.

37 Sec. 29. If any provisions of this act or its application to any person  
38 or circumstances is held invalid, the invalidity does not affect other pro-  
39 visions or applications of the act that can be given effect without the  
40 invalid provisions or application. To this end the provisions of this act are  
41 severable.

42 Sec. 30. This act shall take effect and be in force from and after its  
43 publication in the statute book.

Sec. 29. A cooperative organized under this act shall negotiate with owners of  
distribution and transmission systems to pay the costs of use of such systems by the  
cooperative to transmit electricity and the costs of transmission system  
improvements, other upgrades and metering necessary for system operation.

Sec. 30. If a member of a cooperative organized under this act is located within  
the certificated territory of a retail electric supplier, such supplier may charge such  
member of the cooperative a monthly fee which reflects the cost of providing stand-  
by electric service, distribution system repair and maintenance and other reasonable  
costs of being the provider of last resort.

Sec. 31. Any agreement between a cooperative organized under this act and the  
owner of distribution or transmission lines directly interconnecting with generation  
facilities of members of such cooperative for use of such lines by the cooperative  
shall require that all safety, system reliability and other appropriate issues shall have  
been satisfactorily resolved by the parties prior to the cooperative's first delivery of  
electricity.

[renumber remaining sections accordingly]