

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on February 13, 2002 in Room 245-N of the Capitol.

All members were present except: Senator Clark - excused

Committee staff present: Ken Wilke, Revisor of Statutes
Mike Heim, Legislative Research
Dennis Hodgins, Legislative Research
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee: Brad Bryant, Deputy Assistant, Secretary of State
Doug Anstaett, Publisher, *Newton Kansan*; President of Kansas Press Assn. Board of Directors
Dane Hicks, Publisher, *The Anderson County Review*, Garnett
John Lewis, Past President, Sunshine Coalition for Open Government
Harriett Lange, Director, Kansas Association of Broadcasters
Randy Allen, Executive Director, Kansas Association of Counties
Mark Tallman, Asst. Executive Director, Kansas Association School Boards
Don Moler, League of Kansas Municipalities
Mahlon Tuttle, President, Kansas Legislative Policy Group; Chair, Gove County Commission
Jim Minnix, County Commissioner, Scott County, Kansas - representing Kansas County Commissioners Association
Don Denny, representing Unified Government, Wyandotte County
Diane Gjerstad, Wichita Public Schools

Others attending: See attached list.

Hearing on SB 502 - Election administration procedures; nomination petitions and voter responsibility list

Chairperson Allen recognized Brad Bryant, Deputy Assistant, Secretary of State. Brad presented testimony in support of **SB 502** (Attachment 1).

There were no opponents to the bill.

Hearing on SB 529 - Open meetings; requiring executive sessions to be tape recorded

Doug Anstaett, President, Kansas Press Association Board of Directors, supporting the bill stated the taping of executive sessions is the check and balance that is needed to ensure that public officials do not abuse their power (Attachment 2).

Dane Hicks, publisher, *The Anderson County Review*, testified in favor of **SB 529**. He stated the bill would protect our monumental precept of open government, and would act as assurance to the public that officials using the law to discuss certain business outside the public venue were doing so according to law (Attachment 3).

John Lewis, representing Kansas Sunshine Coalition for Open Government, testified in support of **SB 529** (Attachment 4).

Harriet Lange, President and Executive Director of Kansas Association of Broadcasters, provided testimony in support of **SB 529** (Attachment 5).

CONTINUATION SHEET

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE on February 13, 2002 in Room 245-N of the Capitol.

Chairperson Allen called attention to written testimony in support of **SB 529** submitted by the following:

Murrell Bland, Publisher, Wyandotte West (Attachment 6)
Amy Jay, Publisher, *Ark Valley News*, Valley Center, Kansas (Attachment 7).
Steve Haynes, *Oberlin Herald* (Attachment 8).

Randy Allen, Executive Director, Kansas Association of Counties, presented testimony in opposition on **SB 529**. He stated that some of the main purposes of closed or executive sessions are to guard against inappropriate release of private information about individuals, and to protect the safety and security of the public; public employees (Attachment 9).

Mark Tallman, Assitant Executive Director, Kansas Association of School Boards, testified in opposition to the bill. He believes the purpose of the executive session is not to protect the privacy or confidentiality of school board members, but of those individuals who are the subject of discussion and of those matters where the public interest is served by confidentiality (Attachment 10).

Don Moler, Executive Director, League of Kansas Municipalities, spoke in opposition to **SB 529**. He stated the bill represents an initiative which would substantially change the fine balance that is now found in the Kansas Open Meetings Act (Attachment 11).

Mahlon Tuttle, President, Kansas Legislative Policy Group, presented testimony in opposition to the bill (Attachment 12).

Jim Minnix, representing the Kansas County Commissioners Association, spoke in opposition to **SB 529** (Attachment 13).

Don Denny presented testimony in opposition to **SB 529**. Mr. Denny appeared before the Committee representing The Unified Government of Wyandotte County/ Kansas City, Kansas (Attachment 14).

Diane Gjerstad, Wichita Public Schools, spoke orally in support of the opposition on **SB 529**.

Adjournment

The meeting adjourned at 2:30 p.m.

SENATE
ELECTIONS AND LOCAL GOVERNMENT
GUEST LIST

Date Feb 13

Jim Minnif	KeCA
Mahlon Tuttle	KLP6
Steve Walt	Gove County
Brad Bryant	Sec. of state
Camille Nohr	AR Office
MARY FEIGHUY	11
John D. Piregan	Kansas Legislative Policy Group
Jim Gardner	Doj A
Diane Gjerstad	Wichita Public Schools
Harriet Lantz	Kr Assn of B Castles
Bill Schef	Division of the Budget
Erik Sartorius	City of Overland Park
Ron Appletoft	WATERONE
TOM DAY	KCC

RON THORNBURGH
Secretary of State



First Floor, Memorial Hall
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Topeka, KS 66612-1594
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STATE OF KANSAS

Senate Committee on Elections and Local Government

Testimony on Senate Bill 502

Brad Bryant, Deputy Assistant Secretary of State
Elections and Legislative Matters

February 13, 2002

Madam Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of Senate Bill 502. This bill was proposed by the Secretary of State as an election administration bill. It has two provisions.

1. The bill would grant authority to county election officers to determine the validity of candidate nominations in city and local school board elections. In current law, election officers have this specific authority only in national/state/county/township elections held in even-numbered years; the Secretary of State determines the validity of candidate nominations for national and state offices, and the respective county election officers determine the validity of nominations for county and township offices.

The authority to determine whether candidates are eligible to run in the primary for city and local school board elections has not been written into the law, and it is these offices where questions about residency or voter registration of candidates often arise. This bill would clearly grant the county election officers the authority to make such determinations. As always, any candidate who believes a finding of invalidity was made in error may file an objection pursuant to K.S.A. 25-308.

Sections 1 through 3 of the bill deal with this provision:

Section 1 amends K.S.A. 25-2020, which governs candidate filings for local school boards.

Section 2 amends K.S.A. 25-2110, which governs candidate filings for city at-large positions.

Section 3 amends K.S.A. 25-2110a, which governs candidate filings for city positions elected from member districts.

Senate Elec + Loc Gov
02-13-02
Attachment 1

2. Section 4 of the bill would amend K.S.A. 25-2706 to require the posting of Voter's Rights and Responsibilities at each polling place on election day. The Secretary of State would adopt regulations prescribing the contents of the document. Our office will consult with election officers in Kansas and other states to develop the necessary requirements. Also, it is possible that federal election reform legislation currently being considered in Congress will affect the contents of the document.

The 2000 presidential election raised national consciousness of many issues, including voter education. The perception is that mismarked ballots where the voters' intent is unclear are caused in part by voters' lack of knowledge about the voting process in general and, specifically, how to mark a ballot. One way to improve voters' knowledge of the process is to provide a clear statement of their rights and responsibilities when the votes are being cast.

We urge the committee to report SB 502 favorably for passage.
Thank you for your consideration.

Douglas J. Anstaett

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Newton, Kansas 67114*

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E-mail danstaet@tbekansan.com*

Feb. 13, 2002

To: The Honorable Barbara Allen, chair, Senate Elections and Local Government Committee
From: Doug Anstaett, president, Kansas Press Association; publisher, The Newton Kansan
Re: Bill to require taping of executive sessions

Open government is a hallmark of American democracy. It is what distinguishes us from most every other form of government around the world.

Another concept that drives our open government is its system of checks and balances, which guarantees that no one branch can become so powerful that it can impose its will on the others.

If we truly believe in open government, then we must provide a check to the right of boards and commissions to go into executive session to discuss a variety of issues.

We recognize in the media that there are times when issues and information should be discussed behind closed doors. But the right to close the door to the public also can be abused. You've heard of a few examples of that today. The taping of executive sessions is the check and balance that is needed to ensure that public officials do not abuse their power. Written notes aren't enough.

Colorado, Iowa and Nebraska have laws similar to what we are proposing. They have seen the logic in providing legal recourse should a private citizen or a member of the media believe a violation has been committed.

There is also a check written into this legislation against frivolity on the part of the public and the media. A judge would have to determine, in camera, whether a tape recording should be unsealed. None would be without a finding of cause.

I believe this law is neither punitive, nor burdensome, for our public boards and commissions. To the contrary, it also gives them the incontrovertible evidence they might need to defend the contents of a discussion behind closed doors.

On behalf of the Kansas Press Association Board of Directors, I respectfully ask that you support this change in Kansas law regarding executive sessions of public meetings.

Thank you.

Senate Elec & Loc Gov
02-13-02
Attachment 2

February 13, 2002

To: Kansas Senate Committee on Elections and Local Government
From: Garold Dane Hicks, editor/publisher, *The Anderson County Review*
Re: Senate Bill 529- Audio taping of executive sessions

Madam chair and members of the committee,

I'm pleased today to testify in favor of SB 529, which would require governmental bodies to tape record the proceedings of executive sessions, and would seal those tapes from public inspection unless opened by the determination of a judge's private review. Clearly this bill would protect our monumental precept of open government, and would act as assurance to the public that officials using the law to discuss certain business outside the public venue were doing so according to law.

Unfortunately, this is not always the case. While most of the time public officials' hearts are in the right place and they act in good faith regarding open meetings issues, there are failures – sometimes expensive and damaging. Sometimes, either due to ignorance of the law, oversight, poor counsel or no counsel, and sometimes deliberately, elected officials abuse the executive session clause, violating the law and the public trust.

Such an instance occurred in Anderson County in May 1999. Anderson County Commissioners had been embroiled in a dispute with the developer of a rural subdivision, to the point that zoning stipulations had not been met by a county deadline, and the developer had retained an attorney. The issue had been well-documented in previous open sessions of the county planning commission, and a meeting arranged between the sides during a Monday county commission meeting.

At the last minute the county attorney could not be present, and the opposing attorney was asked if he'd prefer to adjourn to executive session to discuss the matter. He replied in the affirmative, stating he thought the open session could be closed under "personnel matters affecting non-elected personnel." The meeting was closed for 30 minutes, the session including the developer, his attorney, the county engineer, the county planning director, and all three county commissioners.

At the end of that meeting, the county planning director was directed to retain outside counsel to handle the matter between the developer and the county. No personnel issue was ever noted, either after the executive session, or in prior meetings of the commission or planning board.

Had commissioners and the attorney present known this session would be tape recorded for possible future review by a judge, the officials present would have been more careful to stick to the topic claimed for the session. As the law currently stands, there is absolutely no way to assure that the content of executive sessions matches the reason given for closing the session.

Failure to maintain strict adherence to proscribed topics while exercising the executive session clause is a violation of the trust we place in our public officials, and of citizens' rights under existing Kansas law.

SB 529 amounts to a very inexpensive insurance policy which helps to remind public officials of the letter of the law and their own responsibilities regarding governmental openness. I would urge your support of this bill to make it law.

-End-

Senate Elec & Loc Gov
02-13-02
Attachment 3



Testimony of John Lewis
Kansas Sunshine Coalition for Open Government

By way of introduction, I am one of the founders and the immediate past president of the Kansas Sunshine Coalition for Open Government. That should leave no mystery as to my position on this bill.

Open government is not a mere tradition in American history; it was at the core of the American Revolution and a fundamental pillar – and precept – of our founding fathers. It is not a provincial construct of journalists who would use it as just another clever device to dig out scandal and corruption – although I dare say where open government is practiced there is, by definition, less of both.

No, open government is the overarching principle for our checks-and-balances system. But where the business of government is conducted in secret, there is simply no check. Accountability is completely absent. The peoples' business can be transacted by whimsy, serendipity and arrogance.

This is certainly not to say that corruption necessarily occurs in so-called “executive sessions.” (That’s a euphemism if ever I heard one. At the very least, these meetings are “closed sessions,” and at their very worst they are “secret sessions.” But to call them “executive sessions” is to grant them a highfalutin character that is misleading.) Most government business is conducted properly and honestly. But our founding fathers knew full well that the government of a free society must be conducted in full view, lest our duly elected representatives forget that they are representatives of a people who have, in fact, duly elected them.

The taping of closed sessions is neither a repugnant nor alien concept. It is merely a check, which everyone should want, on government activity. How can anyone argue against that, except those who want to retain the latitude that they currently enjoy, to violate the existing law that restricts what they can do or discuss in closed session? Oh yes, those folks probably would oppose the creation of any evidence that reveals that they might have violated the law. And, of course, that’s the whole point. That’s why we need to tape these sessions.

For the vast majority of law-abiding public servants, this should be no threat at all. In fact, it would presumably offer proof that that they are law-abiding public servants, wouldn’t it?

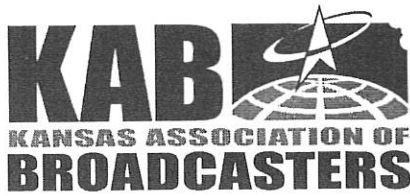
Besides, the tape only has to be preserved for one solitary year, so it’s not as if the city council or school board is going to be spending much on audiotapes – after a year they can start taping over last year’s recordings. Heck, they probably could go five years before they’d have to re-stock their supply of cassettes!

And for Heaven’s sake, the tapes are not even public record, so even those public servants who prefer to conduct clandestine and corrupt secret meetings could probably go ahead and do so, and still get away with it. After all, some member of the public would have to somehow suspect that something was awry, which would be a shot in the dark anyway, and he’d have to be willing to take the matter all the way to a district court, which is not an inexpensive proposition. So the corrupt public servants can also step up today and support this bill, because they’re protected practically as much as the virtuous ones.

Except, of course, the virtuous ones would always be vindicated...and the corrupt ones would, if only rarely, be properly caught.

KANSAS SUNSHINE COALITION FOR OPEN GOVERNMENT
P.O. Box 4341 • Topeka, KS 66604
www.sunshinecoalition.com

Senate Elec & Loc Gov
02-13-02
Attachment 4



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February 13, 2002
Testimony before Senate Committee on Elections and Local Government
SB 529
By Harriet Lange

Madam Chair and Members of the Committee, I am Harriet Lange, president and executive director of Kansas Association of Broadcasters (KAB). KAB is a trade association serving a membership of free, over-the-air radio and television stations in Kansas. We appreciate the opportunity to appear before you today in support of SB 529.

We believe the majority of public bodies subject to the Kansas Open Meetings Act do adhere to the law and policy of the state - "that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public."

We also believe that the exceptions to the open meetings act can inadvertently lead to secret discussions of topics that should be discussed in the open.

By requiring the taping of executive sessions, SB 529 provides an incentive for public bodies to discuss only those subjects in closed session which are allowed by law.

When the public's business is done in secret executive sessions, it increases the chances for misdeeds, mistrust and misinformation. Taping of these sessions will lead to greater public trust of public bodies while providing an important enforcement tool.

We urge you to support passage of SB 529.

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Attachment 5

Written testimony before the Kansas Senate Local Government and Elections Committee

prepared for Feb. 13, 2002

I am Murrel Bland, the publisher of The Wyandotte West and The Piper Press newspapers. These weekly publications serve the Northwestern part of Kansas City, Kansas, a suburban and semi-rural area. I have been in the newspaper business for more than 38 years, including more than 34 years as an owner.

I am very aware of the need for a stronger open meetings law. Although the current law is substantially better when compared to what it was several years ago, there is always room for improvement.

If closed sessions were taped, then I believe that public officials would be much more apt to discuss only those things allowed by the law. Simply stated, it would keep closed sessions to a minimum.

Attached is an advanced copy of an editorial, which will appear in the Feb. 14 issue of The Wyandotte West and The Piper Press. It speaks about the need for this law.

Thank you for your consideration.

Murrel Bland
Publisher
The Wyandotte West and The Piper Press

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Senate Elec + Loc Gov
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Attachment 6

Editorial

Proposed legislation to bolster open government

There is a bill in the Kansas Legislature which would require political subdivisions - such as cities, counties and school districts - to tape record closed meetings of elected officials. This is something that is needed and would be a step toward more open government.

Senate Bill 529, which was also introduced last year, proposes that all such sessions would be taped and then sealed. The tapes could only be played if there is a court order. And the tape would be played in a judge's chambers.

Last year, this newspaper talked to two Wyandotte County school board members about the proposed law - Meredith Roberts Schraeder of Kansas City, Kansas, and Kelly Kultala of Piper. (Mrs. Kultala has since resigned as a school board member and is now the Unified Commissioner from the Fifth District.)

Mrs. Schraeder said she had no problem with the bill. She said she never has said anything improper in the closed session. Mrs. Kultala said she opposed the bill. She said she would be afraid that the tape could get out and confidentiality could be breached.

Board members can go into closed session to discuss legal and personnel matters and the acquisition of real estate. Of course, the public is never sure just what is discussed behind closed doors. What we do know is excessive closed sessions raise public suspicion.

It certainly would have been much more convenient for Nick Tomasic, the District Attorney, had he been able to listen to a tape recording of a closed session when the Piper School Board met behind closed doors recently to discuss the plagiarism issue. Tomasic is investigating to determine whether or not the Kansas Open Meetings Law was violated in Piper.

We also believe that if board members know that closed sessions are being taped, they would be more apt to stick to the letter of the law and not talk about matters which are not allowed.

A hearing on this bill was scheduled earlier this week in a Kansas Senate Local Government and Elections Committee meeting in Topeka. Sen. Mark Gilstrap (Fifth Dist.) is a minority party member of this committee. Expected opponents of this bill include lobbyists for various associations including those representing school boards, cities and counties. It is disappointing that such organizations, financed primarily with public money, push for closed government.

The public trust is something that elected officials need to treat seriously, particularly in closed-door meetings. This proposed law would help assure that this trust is not violated.

-Wyandotte West Comm., Inc.

The Ark Valley News

126 E. Main Valley Center, KS 67147 (316) 755-0821

Feb. 12, 2002

Chairwoman Allen and members of the Senate Elections and Local Government Committee,

I am writing to support SB 529, the proposal to audiotape executive sessions. I have covered city government for nearly seven years, and I think the proposed law would be beneficial for Kansas residents.

Although I understand that executive sessions sometimes are necessary, I believe they are overused and often abused. In 2001, our newspaper wrote editorials pertaining to four instances of illegal executive sessions by two city councils in cities that we cover. I am confident the proposed law would help deter government bodies' misuse of the executive session privilege.

Confidentiality would not be compromised because tapes of executive sessions would remain sealed unless a challenge necessitated a judge's review. If that occurred, an examination by the court would determine whether to reveal any part of the tape's content.

Some government officials or organizations may bristle at the proposed change, but it should not threaten those who follow the law. In addition, the proposal requires tapes of executive sessions to be kept only one year, which should not pose a storage problem for government bodies.

Two examples that stemmed from last year's Valley Center City Council meetings should be pointed out. The council met in executive session June 20 with its city administrator and city attorney for "attorney-client privilege and to discuss land acquisition." However, the newspaper learned that council members were discussing the sale of land the old water tower occupied. The attorney general has issued an opinion stating that discussion of land "acquisition only (is permitted), not sale of property, which must be discussed in an open meeting."

A few months later, Oct. 3, the council entered closed session to discuss personnel with its city administrator and city attorney. Council members gave the administrator a directive to re-acquire the space occupied by the Chamber of Commerce at City Hall, but the decision (and the directive) did not occur in open session. The Chamber of Commerce had no contract with the city and the organization's director was not a city employee; therefore, the issue could not be classified as a personnel matter.

In both instances, the council clearly violated the Kansas Open Meetings Act. Perhaps council members would have been more likely to adhere to the law if they knew their conversations were being taped and could be reviewed later.

It's important to strengthen our state's open meetings and open records laws, which are vital to the people's access to government and the free exchange of ideas. However, abusing executive session privileges are not just violations of the law. They rob the public of the chance to understand their representatives' reasoning for decisions, and they undermine citizens' rights to take part in the government process that affects their lives.

Thank you for your consideration.

Sincerely,

Amy Jay
Editor and publisher
The Ark Valley News

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02-13-02
Attachment 7

Editorial

A bill now in the Kansas Senate could help curb abuses of closed meetings by government agencies, councils and boards.

The bill simply would require all closed sessions to be recorded so that if someone questions what went on behind closed doors, there will be a record of the session.

That in itself might go a long way toward preventing violations of the state's Open Meetings Act, which requires most public meetings to actually be open to the public.

Abuse of the act cropped up most recently in the Piper School District, in Wyandotte County, where the school board decided in a closed meeting to order a teacher to raise grades and reinstate students who had been caught cheating.

The teacher had failed the students on a term paper after she found that many had copied whole sections of their papers off the Internet. Parents protested. The board went into closed session and ordered the teacher to reverse herself.

The teacher quit rather than compromise, but the grades were changed.

When word of the incident got out, there was a howl from teachers and right-minded people around the state, but the damage was done.

And, it turns out, apparently, done behind closed doors. The Wyandotte County district attorney has begun an investigation of the meeting. It seems that the board made its decision without a public vote, which is illegal in Kansas.

Under current law, however, there probably is no record of the session. Closed meetings are not recorded, and since no official action is supposed to be taken, often there are no minutes.

That means that when public officials go behind closed doors, they know no one is listening. Discussion of topics other than those approved for closed sessions by state law isn't uncommon. Neither are behind-closed-doors agreements, though these are illegal.

Just having the recorder should serve to keep most officials on the straight and narrow. The meetings law includes \$500 fines for officials who knowingly violate it, and who wants to break the law while a tape recorder is running?

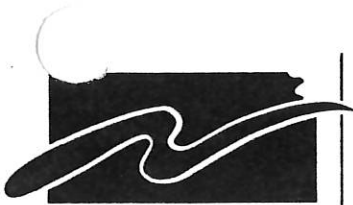
While public officials often might want to avoid controversy, the purpose of open meetings law is basic to democracy: Unless voters know what their government is up to, they can't make intelligent decisions.

A lot of bad policy has been made behind closed doors. A lot of mistakes have been made. Much unfairness formulated. Open meetings is a good and fair law, and this amendment is needed to make it stronger.

We hope the Senate sees things that way, too.

– Steve Haynes, Nor'West Newspapers

Senate Elec + Loc Gov
02-13-02
Attachment 8



KANSAS
ASSOCIATION OF
COUNTIES

WRITTEN TESTIMONY
concerning SB 529 - Kansas Open Meetings Act
Senate Elections and Local Government Committee

Randy Allen, Executive Director
Kansas Association of Counties
February 13, 2002

Chairperson Allen and members of the committee, I am Randy Allen, Executive Director of the Kansas Association of Counties. I am here today to express our opposition to SB 529, amending the Kansas Open Meetings Act by requiring all closed or executive meetings to be tape recorded for purposes of possible later inspection by a court in camera, or by members of the public as determined by a court.

As you know, the Kansas Open Meetings Act balances privacy rights of individuals as well as some extraordinary public responsibilities (e.g. the security of a public body or agency, public building, facility, or the information system of a public body or agency), against the public's right to know. Clearly, some of the main purposes of closed or executive sessions are to guard against inappropriate release of private information about individuals, and to protect the safety and security of the public, public employees, and the information needed by public officials to do their jobs. At the same time, closed sessions cannot be called for just any purpose; as such, the statutes prescribe authorized purposes for holding such sessions and require the public body to clearly identify those reasons prior to recessing into closed session.

We are concerned that SB 529 and the requirement for taping a closed session would infringe upon or waive the attorney/client privilege between the board of county commissioners and the county counselor or county attorney if the tape recording subsequently becomes a part of a trial or court action against the county. How is attorney/client privilege maintained if a court can both inspect or use the tape recording of a closed session, and can also permit an outside party to inspect or use the same tape recording?

We are also concerned about tape recordings falling into the wrong hands, with the specter of security breaches which could endanger the health and safety of the public. County facilities throughout Kansas are arguably the most heavily trafficked public facilities. By reason of what they contain (e.g. jails holding accused persons and convicted felons; courtrooms housing the district court system; probation and parole offices; sheriff's offices - just to name the most common purposes), closed sessions can be called under existing law to discuss security matters relating to such public buildings and or information systems. Suppose for a moment that a tape recording in which security system to protect a detention facility or holding cell or evidence were compromised through a misplacement, theft, or accidental loss of a tape. The public interest would surely not be well served in that instance. Some may say my example is far-fetched; I do not.

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Senate Elec & Loc Gov
02-13-02
Attachment 9

Ultimately, I offer another reason for the committee to table this bill. My final reason has to do with our political system which, when it is allowed to work, has the ability to reign in temporary excesses and potential abuses in public authority. The ballot box is the single best way for citizens to express their displeasure to a public body if citizens believe that the spirit of the Kansas Open Meetings Act is being corroded through inappropriate or unlawful executive sessions. If there is reasonable suspicion that the public's right to know is being seriously eroded, the public has a remedy -- it can elect new leaders. The media serve a valuable purpose, but they should never be considered a replacement for a wise and discerning public. The public is wise as to the actions of its public officials, and voters are perfectly capable of curbing any abuses of elected officials.

Given our serious concerns about the impact of this proposed legislation, we urge the committee to table the bill. Thank you for the opportunity to present our position.

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.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on
SB 529 (Tape recording of executive sessions)

Before the
Senate Committee on Local Government

By
Mark Tallman, Assistant Executive Director/Advocacy
Kansas Association of School Boards

February 13, 2002

Madam Chair, Members of the Committee:

We appreciate the opportunity to testify on SB 529, which would require the tape recording of executive sessions.

The KASB Delegate Assembly has adopted a specific policy position opposing the requirement that executive sessions be tape-recorded. We believe the purpose of the executive session is not to protect the privacy or confidentiality of school board members, but of those individuals (students, teachers, etc.) who are the subject of executive session discussion, and of those matters where the public interest is served by confidentiality (land purchases, consultations with attorneys, etc.).

The existence of a tape recording, no matter how well intentioned the efforts to keep it secure, inevitably compromises the privacy of these discussions. As such, it will have a chilling effect on both individuals wishing to bring matters before the board and on discussions by board members themselves. It would undercut the reason the executive session is authorized in the first place.

We are not aware of any evidence there is a significant problem with abuse of executive session by local governments. Our Association supports the Kansas Open Meetings Act and makes education about the act a major part of our board member training programs. We believe the integrity of elected officials is the best way to enforce its provisions.

Thank you for your consideration.

Senate Elec + Loc Gov
02-13-02
Attachment 10



League of Kansas Municipalities

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

To: Senate Elections and Local Government Committee
From: Don Moler, Executive Director
Date: February 13, 2002
Re: Opposition to SB 529

First I would like to thank the Committee for allowing the League to testify today in opposition to SB 529. Senate Bill 529 represents an initiative which would substantially change the fine balance that is now found in the Kansas Open Meetings Act. As we are all aware, this is and has always been a highly politicized and challenging area.

It is our position that the tape recording of executive sessions would effectively eliminate this as a viable alternative within the Open Meetings Act and this tool would be lost. It has been a well established foundation of the Open Meetings Act since its inception in 1972 that there are some subject areas that require governing bodies to go into executive session to discuss issues outside of the public view. Included within these areas are the following: personnel matters of non-elected personnel; consultation with an attorney which would be deemed privileged in an attorney-client relationship; matters relating to employer-employee negotiations; data relating to financial affairs or trade secrets of a corporation; matters involving students, patients, or residents of public institutions; preliminary discussions relating to the acquisition of real property. All of these areas are sensitive and a governing body must feel that they will not they be disclosed at some future date. The making of a tape recording of these sessions will by its nature make them unsuitable for the purposes which have been enumerated. This would be as a result of the fact that governing body members may well feel that they could not be candid and open because they would never know how the tape recording of this meeting might be used in the future or into whose hands the tape recording might fall.

Simple logistical issues arise with this legislation as well. Specifically, who would be the custodian of these secret, and only subject to court order, tapes? Typically records of this type would be maintained by the city clerk, but if the executive session happened to be about the city clerk, clearly that would not work. So the question arises, wouldn't you have the possibly of numerous individuals being custodians of these executive session tapes which are by statute supposed to remain privileged?

Quite frankly, this type of legislation is disturbing in that it presupposes that local officials cannot be trusted to carry out their statutory duties as provided by the Kansas Open Meetings Act. The League has much more faith in local government officials and believes that the current law is working well. We do not believe that there has been any showing which would support such a drastic, unnecessary change in the Open Meetings Act and would urge this Committee to completely reject such a wholesale change in an act which has worked well over the past 30 years.

**Testimony to the
Senate Committee on
Elections and Local Government
Regarding Senate Bill No. 529
By
Mahlon Tuttle, President
Kansas Legislative Policy Group
February 13, 2002**

Madam Chairman, Members of the Committee:

I appear before you today in opposition of Senate Bill No. 529. Kansas Legislative Policy Group is an organization consisting of 36 Counties located in western Kansas. I am appearing today in their behalf.

In addition to serving as president of Kansas Legislative Policy Group, I serve on the Gove County Commission. Personally, I strongly believe in open government at all levels including local, state and federal. I have always been extremely careful in agreeing to an executive session. Newly elected county commissioners are provided instruction on the Kansas Open Meetings Act and what business is and is not allowed to be discussed in a closed or executive session.

Kansas law is very specific about what matters are permitted to be discussed in executive session. Typically, counties would discuss areas such as non-elected personnel; matters relating to employer-employee negotiations; consultation with legal counsel; and, preliminary discussions relating to the purchase of real estate.

It is crucial that elected officials have an opportunity to discuss business matters in executive session. It is important to protect the privacy of an individual involved in a personnel matter; to confidentially address employer-employee negotiations; have an opportunity to seek and receive advice from our legal counsel; discuss possible real estate acquisitions in order to protect the taxpayers from those who may choose to speculate on property and increase the cost of the land being sought. Simply put, these are real examples of the need for county commissioners to have the option of entering into an executive session.

The amendments offered to Senate Bill 529 would require counties to record and store closed or executive sessions for a period of one year. The recording would be sealed unless otherwise directed by a Court of law.

*Senate Elec & Loc Gov
02-13-02
Attachment 12*

This is an unnecessary amendment to existing law. The authors of the Kansas Open Records Act gave long and serious consideration to the provisions established and recognized the need of elected bodies to judiciously authorize a closed or executive session. They acknowledged the need public officials have to protect the privacy of employer-employee personnel matters, to consult freely with legal counsel and all other limited areas specifically addressed in existing law.

I urge the Senate Committee on Elections and Local Government to reject Senate Bill No. 529.

I appreciate being given the opportunity to address the Committee and am pleased to address any questions.

Thank you.

**Testimony to the
Senate Committee on
Elections and Local Government
Regarding Senate Bill No. 529
By
Jim Minnix
February 13, 2002**

Madam Chairman, Members of the Committee:

It is my pleasure to appear before you today. My name is Jim Minnix. I am a County Commissioner from Scott County and speak today representing the Kansas County Commissioners Association in opposition to Senate Bill 529.

Our association that consists of 336 county commissioners is dedicated to the ethical representation of our constituents. These are our friends, neighbors and business associates. They are also your constituents. We take our responsibility as county commissioners very seriously.

The Kansas County Commissioners Association provides training and education on the open meeting law including what is and is not authorized to be discussed in closed or executive session. This education is offered to newly elect county officials and continuing education for incumbent county commissioners.

County Commissioners work hard to ensure ethical and legal compliance with existing state statutes.

Please remember, Kansas law is very specific about what matters are permitted to be discussed in executive session. Counties are permitted to discuss areas such as non-elected personnel; matters relating to employer-employee negotiations; consultation with legal counsel; and, preliminary discussions relating to the purchase of real estate. In closed or executive sessions, topics addressed are best maintained confidential. This is for the betterment of our communities.

The amendments offered to Senate Bill 529 would require that our counties record and store closed or executive sessions for a period of one year. The recording would be sealed unless otherwise directed by a Court of law.

I urge the Senate Committee on Elections and Local Government to reject Senate Bill No. 529.

I appreciate being given the opportunity to address the Committee and am pleased to address any questions.

Thank you.

Senate Elec & Loc Gov
02-13-02
Attachment 13



Legislative Liaison/Public Relations

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February 13, 2002

Senator Barbara Allen, Chair
Elections and Local Government
and Committee Members

Re: Opposition to Senate Bill 529

The Unified Government of Wyandotte County/Kansas City, Kansas strongly opposes SB 529, which requires the recording of executive sessions.

1. The Unified Government strongly supports current State policy that meetings for the conduct of governmental affairs and the transaction of governmental business should be open to the public.
2. The subjects listed in K.S.A 75-4319 which may be discussed in a closed or executive session are restricted in number and limited in scope, but are critical to the protection of constitutional privacy rights or the protection of the public safety or welfare.
3. On these limited subjects, closed sessions allow full disclosure of confidential information to decision-makers without fear of endangerment of individual privacy rights and/or public safety.
4. The tape recording of a closed or executive session would destroy the critical public purpose for the legislative exception to the policy of open public meetings by creating the possibility of infringement of privacy rights or the release of confidential information harmful to the public interest.

The Unified Government asks for your consideration in opposing Senate Bill 529.

Sincerely,

Don Denney

Senate Elec & Loc Gov
02-13-02
Attachment 14