

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE.

The meeting was called to order by Chairperson Senator Nancey Harrington at 10:30 a.m. on March 21, 2002 in Room 245-N of the Capitol.

All members were present.

Committee staff present: Russell Mills, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:
Ben Burgess, Kansas Parole Board
Chuck Simmons, Secretary of the Department of Corrections
Trudy Aron, Exec. Dir., American Institute of Architects, Kansas

Others attending: Please see attached

Chairperson Harrington opened the public hearing on:

SB 634—Kansas Parole Board; parole hearings and parole violation hearings; not subject to open meetings act

Chairperson Harrington stated that this bill had been assigned to the Judiciary committee, but it was re-assigned to Federal and State Affairs through the request of Ben Burgess.

Ben Burgess, Kansas Parole Board, presented testimony in favor of the bill. (Attachment 1)

Senator Vratil stated that if the Kansas Supreme Court had said that the Kansas administrative regulation had the full force and effect of the law, then this bill is unnecessary.

Mr. Burgess stated that when he had become a member of the Board two years ago, it was in the process of updating its regulations. He stated that during that process, the regulations went through the Attorney General's Office for consideration, and at the time that occurred, the Assistant Attorney General was the guru for the Open Meetings Act; he felt that it applied to these meetings despite our reservations.

In response to another question from Senator Vratil, Mr. Burgess stated that this bill was in response to more than one person in the Attorney General's office. Senator Vratil asked why the bill is amending K.S.A. 22-37-17 instead of adding this exception to the Open Meetings law. He stated that his concern was that if people wanted to know about exceptions to the law, they would go to the law itself, not check another area. Theresa Kiernan, Office of the Revisor, stated that she had placed the bill in this location because under the exceptions in Open Meetings law, it is okay to be closed under special circumstances, dependent on the subject matter and the time of convening. In response to Senator Vratil's concern, Ms. Kiernan stated that they might be able to cite the location of the bill under the Open Meetings section.

Following further discussion, Senator Gooch asked if the Board was going to be in executive session.

Mr. Burgess stated that the bill was designed to apply to parole hearings within the facility.

Senator O'Connor asked if the parole hearings were always in the facility, and Mr. Burgess agreed. Mr. Burgess stated that they were not subject to the Open Meetings law if a quorum of the Board was not present.

Mr. Burgess stated that the meetings were summarized, but that there were no minutes recorded, in response to a question from Senator Barnett.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at on March 21, 2002 in Room 245-N of the Capitol.

Chuck Simmons, Secretary of the Department of Corrections, presented testimony in favor of the bill. (Attachment 2)

A copy of a potential revision of the bill was also provided. (Attachment 3)

Mr. Burgess stated that parole hearings last approximately 15-20 minutes and that the Board was considered a quasi-judicial body, in response to committee questions.

Senator Gooch expressed concern regarding the need for meetings to be recorded.

Mr. Burgess stated that, despite a smaller number of Board members, the members were selected and confirmed.

Senator Vratil stated that he would advise the committee and speak with the Revisor regarding a substitute bill to put an exemption into the Open Meetings Act for the Board.

Mr. Burgess stated that would be acceptable.

Senator Vratil made a motion to offer a substitute bill for SB 634, striking all current provisions in SB 634, and substituting a change to KSA 75-4318 and add to the section exempting administrative bodies performing quasi-judicial functions, and add to that an additional exemption to apply to parole hearings and parole violation hearings conducted by the Kansas Parole Board in a Kansas correctional institution. Senator Barnett seconded the motion. The motion passed.

Senator Vratil made a motion to recommended the Substitute for SB 634 favorable for passage. Senator O'Connor seconded the motion. The motion passed.

Chairperson Harrington stated that Senator Lyon would carry the bill on the floor, with assistance from Senator Vratil.

Chairperson Harrington stated that the committee would consider:

SB 622-School building construction standards; fire safety

Ms. Kiernan provided an overview of the balloon amendment to the committee.

Diane Gjerstad, Wichita School District, stated that her organization was comfortable with the changes.

Trudy Aron, Exec. Dir., American Institute of Architects, Kansas, provided written testimony to the committee in favor of the bill. (Attachment 4)

Senator Vratil requested that the minutes reflect the legislative intent of the bill, which is to exempt school buildings from all construction requirements that are inconsistent with the codes specified in the bill. He then withdrew his request following further discussion. Senator Vratil stated that he was concerned with conflicting code requirements.

Senator Gooch stated that he would not want to pass this out of committee without adequate discussion.

Senator O'Connor stated that it seemed the bill was simply updating references to building codes, not changing the law significantly.

Senator Teichman stated that she concurred with Senator O'Connor's statement.

Senator Teichman made a motion to amend the bill and recommend it favorable for passage. Senator Vratil seconded the motions with an explanation that he did not have enough knowledge to crack the language, but that was something which may need to be done later. The motions passed.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at on March 21, 2002 in Room 245-N of the Capitol.

Senator Teichman was assigned to carry the bill on the floor.

The committee considered:

HB 2741--Inflicting harm, disability, death to search and rescue dogs

Senator O'Connor made a motion to recommend the bill favorable for passage. Senator Brungardt seconded the motion. The motion passed.

Senator O'Connor was assigned to carry the bill on the floor.

The meeting adjourned at 11:40 a.m. The next meeting will be on March 21, 2002 upon 1st Adjournment at the Rail.



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MEMORANDUM

TO: Hon. Nancey Harrington
Chair, Senate Federal and State Affairs Committee

FROM: Ben Burgess
Member, Kansas Parole Board

DATE: March 21, 2002

RE: Senate Bill 634 – Testimony

The Kansas Parole Board, a quasi-judicial body that conducts both parole hearings and parole violation hearings inside secure prison facilities, has proposed specific legislation, Senate Bill 634, to exempt these hearings from the operation of the Kansas Open Meetings Act.

Special Nature of Parole Hearings

To begin, all parole and parole violation hearings are conducted inside the secure perimeter of each Kansas correctional facility each month. In that regard, the law in Kansas is clear that correctional facilities are not open to the general public. See *Arney v. Director, Kansas State Penitentiary*, 234 Kan. 257, 671 P.2d 559 (1983).

In recognition of these factors, K.A.R. 45-4-4, which has been in effect for twenty-three (23) years, provides that attendance at parole hearings is at the discretion of the board and shall be limited to board members, staff, the inmate, the person responsible for coordination of parole plans and a representative of the unit team or other designated institution staff member. Any additional employee of the department of corrections who wishes to attend the hearing shall receive prior approval of the board. In addition, a limited number of persons, who have a professional interest in parole procedures, may be present providing they receive advance permission from the board and the parole

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applicant offers no objection. These restrictions take into account the unique nature of correctional facilities and the limitations on divulging privileged and confidential information at parole hearings. This regulation was initially adopted in 1979 and most recently amended May 1, 1987.

At parole hearings, the Kansas parole board makes a discretionary judgment about an offender's suitability for parole, taking into account several factors mandated by K.S.A. 22-3717(h). This statute provides:

At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; and capacity of state correctional institutions.

Discussion of Confidential Information

State and federal statutes restrict disclosure of many of these factors, or discussing them openly. Thus, there are several key factors to consider when assessing the provisions of K.A.R. 45-4-4:

First, K.A.R. 45-4-4 is consistent with the privilege provisions of K.S.A. 22-3711, which states: "The presentence report, the preparole report, the pre-postrelease supervision report and the supervision history, obtained in the discharge of official duty by any member or employee of the Kansas parole board or any employee of the department of corrections, shall be privileged and shall not be disclosed directly or indirectly to anyone other than the parole board . . ."

Second, K.A.R. 45-4-4 is consistent also with the confidentiality provisions of state and federal statutes that restrict access to medical and mental health records, and substance abuse treatment records.

Third, during the past 23 years, K.A.R. 45-4-4 has never been challenged nor have parole hearings conducted inside the security perimeter of correctional facilities been considered subject to the Kansas Open Meetings Act.

Finally, even more important is the fact this regulation has the full force and effect of law as provided for by K.S.A. 77-425. This is especially notable, given its 23-year history without challenge. See also, *Harder v. Kansas Comm'n on Civil Rights*, 225 Kansas 556 (1956), which upheld K.S.A. 77-425.

Statutory Alternative for Public Participation

Due to the unique aspects of parole hearings relative to their location and the information discussed with the offender, K.S.A. 22-3717(h) requires that notice be given to crime victims, or to families of deceased victims, regarding the time and location of "public comment sessions." Thus, the legislature specifically requires that "public comment sessions" be held, which serves as the reasonable alternative to attendance of the public at parole hearings conducted in correctional facilities. It is significant to note that, in light of the historic restriction on who may attend parole hearings within correctional facilities, the legislature has not moved to negate that regulation but rather has distinguished parole hearings from "public comment sessions". While K.S.A. 22-3717(h) specifically provides that parole hearings are to be held at least one month prior to the offender's eligibility for release, it does not require that notification of the time or location of such parole hearings be given. In contrast, that same statute does require that notification relative to "public comment sessions" be given. This statutory difference of course leads to the conclusion that the legislature did not intend to alter the restrictions provided by K.A.R. 45-4-4 relative to parole hearings conducted at correctional facilities.

Conclusion

In conclusion, the Kansas Parole Board believes that exempting parole and parole violation hearing from the operation of the Kansas Open Meetings Act is consistent with and serves the special nature of, and the distinctive location of such hearings; the confidential information discussed at the hearings; and the statutorily created alternative for public participation through public comment sessions.



DEPARTMENT OF CORRECTIONS
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Bill Graves
Governor

Charles E. Simmons
Secretary

Memorandum

DATE: March 21, 2002

TO: Senate Federal and State Affairs Committee

FROM: Charles E. Simmons
Secretary of Corrections *Ch Simmons*

RE: SB 634

SB 634 amends K.S.A. 22-3717 to specifically exclude parole hearings and parole revocation hearings conducted by the Kansas Parole Board from the provisions of the Open Meetings Act. SB 634 codifies the current practice and understanding of the Department of Corrections regarding the status of those hearings, which are held inside of correctional facilities. The provisions of SB 634 regarding the inapplicability of the Open Meetings Act to parole hearings are consistent with a long standing administrative regulation, the confidentiality requirements imposed by other statutory provisions of both federal and state law, security concerns arising from holding such hearings in a correctional facility not open to the public, and the statutorily mandated public comment hearings conducted by the Parole Board at various locations throughout the state.

Hearings conducted by the Parole Board regarding parole and the revocation of release supervision are conducted in correctional facilities that are not accessible to the public. The Department imposes restrictions on visitors to correctional facilities in terms of age, criminal history, and the areas within the facility where access is authorized. The provisions of the Open Meetings Act are ill suited to correctional facilities that have been found to be not open to the public. Arney v. Director, Kansas State Penitentiary, 234 Kan. 257, 671 P.2d 559 (1983).

The legislature has recognized the value of public comment regarding parole decisions while at the same time being cognizant of the non-public venue of Parole Board hearings. K.S.A. 22-3717(h) provides that notice to victims or the families of deceased victims of the time and location of the "public comment sessions" shall be given. Thus, the legislature has specifically required conducting "public comment sessions" which serves as the reasonable alternative to attendance of the public at parole hearings conducted in correctional facilities.

The unique nature of parole hearings conducted at correctional facilities is the rationale for the long established administrative regulation found at K.A.R. 45-4-4. K.A.R. 45-4-4 provides that attendance at parole hearings is at the discretion of the board and shall be limited to board members, staff, the inmate, the person responsible for coordination of parole plans, and a representative of the unit team or other designated institution staff member. This regulation was initially adopted in 1979 and most recently amended May 1, 1987. During the past 22 years, this regulation has never been challenged nor have parole hearings conducted inside the security perimeter of correctional facilities been considered subject to the Kansas Open Meetings Act. K.A.R. 45-4-4 is consistent with and recognizes the fact that correctional facilities are not open to the public.

K.A.R. 45-4-4 is also consistent with the confidentiality provisions of inter alia K.S.A. 22-3711, medical and mental health records, and substance abuse treatment records. The confidentiality provisions of K.S.A. 22-3711 are particularly significant in the context of parole hearings, since that statute provides, "the presentence report, the preparole report, the pre-postrelease supervision report and the supervision history, obtained in the discharge of official duty by any member or employee of the Kansas parole board or any employee of the department of corrections, shall be privileged and shall not be disclosed directly or indirectly to anyone..."

The provisions of K.A.R. 45-4-4 have enjoyed the full force and effect of state law for over 22 years while addressing the unique circumstances of parole hearings in terms of both the location and substance of those hearings. In contrast, application of the Open Meetings Act to these unique hearings would entail that anyone could enter a correctional facility for the purpose of attending a hearing irrespective of their age or criminal history. This, of course, would greatly compromise the security of correctional facilities by permitting access by persons who may have otherwise been barred from the facility due to the introduction of contraband, other inappropriate behavior, or legitimate correctional restrictions. All in order to attend a hearing in which the only information typically that they would be privy to would be limited to the offender's name and crime of conviction due to the confidentiality applicable to virtually all other aspects of the offender's medical, psychological and social history.

The Department urges favorable consideration of SB 634.

SENATE BILL No. 622

By Committee on Federal and State Affairs

2-18

9 AN ACT concerning fire safety and prevention; relating to construction
10 standards of school buildings; amending K.S.A. 2001 Supp. 31-150 and
11 repealing the existing section.

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

13 Section 1. K.S.A. 2001 Supp. 31-150 is hereby amended to read as
14 follows: 31-150. (a) Except as otherwise provided in subsection (b), the
15 construction of school buildings shall comply with the requirements of
16 the 1985 edition of the uniform building code, volume I, and the 1985
17 edition of the uniform mechanical code, of the international conference
18 of building officials 2000 edition of the international building code, of the
19 international code council and the 2000 edition of the uniform mechanical
20 code as published by the international association of plumbing and me-
21 chanical officials or the 2000 edition of the international mechanical code
22 as published by the international codes council. All electric wiring shall
23 conform to requirements of the 1984 1999 issue of the national electric
24 code of the national fire protection association. Minimum plumbing
25 requirements shall meet the 1985 2000 edition of the uniform plumbing
26 code issued by the international association of plumbing and mechanical
27 officials or the 2000 edition of the international plumbing code as pub-
28 lished by the international codes council. [The construction of school build-
29 ings shall comply with any special or more restrictive provisions of a
30 municipality.]

31 (b) The construction of mobile, modular, portable or relocatable
32 school buildings shall conform to the requirements of the 1985 2000
33 edition of the life safety code as adopted [and the 1999 edition of manu-
34 factured housing] as published by the national fire protection association.
35 Minimum plumbing requirements shall meet the 1985 2000 edition of
36 the uniform plumbing code issued by the international association of
37 plumbing and mechanical officials or the 2000 edition of the international
38 plumbing code as published by the international codes council.

39 (c) The construction of all school buildings shall conform to the pro-
40 visions for making buildings and facilities accessible to, and usable by,
41 persons with a disability, as required by K.S.A. 58-1301 through 58-1311,
42 and amendments thereto.

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(d) No contract shall be let for the construction of any school building, and it shall be illegal to pay out any public funds for the construction of a school building until the plans for such building shall: (1) Bear the seal of an architect or a professional engineer licensed by the state board of technical professions of the state of Kansas certifying that the plans meet the applicable requirements of this act; and (2) be submitted to the state board of education for approval as to compliance with such requirements.

(e) The provisions of subsections (c) and (d) of this section shall not apply to any building or structure operated or used for any purpose by, or located upon the land of any community college, area vocational school, area vocational-technical school, technical college, ~~or municipal university~~, institution under the governance of the state board of regents or other institutions of post secondary education as defined by K.S.A. 74-3249, and amendments thereto. Prior to construction of any new building or remodeling of any existing building, all community colleges, area vocational schools, area vocational-technical schools, technical colleges ~~and, any municipal university~~, institutions under the governance of the state board of regents or other institutions of post secondary education as defined by K.S.A. 74-3249, and amendments thereto, shall submit to the state fire marshal a code footprint for evaluation and approval of the fire/life safety features of such buildings.

(f) The relocation of school buildings to which the provisions of subsection (b) apply shall not be construed to be construction or reconstruction under the provisions, or for the purposes, of this section.

(g) The construction or reconstruction of any school building to which the provisions of this section were applicable prior to ~~January 26, 1992~~, shall be governed by the provisions of this section which were in effect on the date the contract for such construction or reconstruction was entered into.

(h) The state fire marshal shall adopt rules and regulations specifying those subsequent editions of the codes enumerated in subsections (a) and (b) which the state fire marshal has determined provide protection equivalent to those editions specified herein. Compliance with any subsequent edition specified by such rules and regulations shall be considered compliance with the edition of the code specified by this section.

Sec. 2. K.S.A. 2001 Supp. 31-150 is hereby repealed.

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

July 1, 2003

3-2

March 19, 2002



TO: Senator Harrington and Members of the Senate Federal and State Committee

FROM: Trudy Aron, Executive Director

RE: **SUPPORT FOR SB 622 with an amendment.**

President
Nancy L. Steele, AIA
Wichita
President Elect
Robert D. Fincham, AIA
Topeka
Secretary
Matthew D. Werner, AIA
Topeka
Treasurer
Richard Bartholomew, AIA
Overland Park

Thank you for the opportunity to address your committee today regarding questions the committee had on February 26 on SB 622.

SB 622 changes the building code that is used to design and construct K-12 schools in Kansas. Currently the state uses the 1991 edition of the Uniform Building Code (UBC.) The bill adopts the 2000 edition of the International Building Code (IBC.)

Directors
Ron Brown, Allied Member
Wichita
Ken Conrad, P.E.
Leawood
John Gaunt, FAIA
Lawrence
Georgia Gavito, AIA
Lawrence
Dale Glenn, AIA
Meriden
James Jones, Assoc. AIA
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Wendy Ornelas, AIA
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Michael M. Seiwert, AIA
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Richard K. Tilghman, AIA
Topeka
Bruce Wrightsman, AIA
Manhattan
E. Eugene Young, AIA
Shawnee Mission

Background: The need for setting standards for building construction dates back almost 3,600 years with the earliest known code adopted in 1700 B.C. There are three major building code development organizations in the United States. These are the International Council of Building Officials (ICBO); Building Officials and Code Administrators International (BOCA); and the Southern Building Code Congress International (SBCCI.) Until 1997, each of these organizations developed separate codes, updated every three years that were adopted by states, cities and/or local jurisdictions. Since 1997, the three organizations have worked together to develop one code that would replace the three different codes; thus making the standards for building design and construction uniform throughout the US and in many other countries that use the US codes. This new code is called the International Building Code (IBC.) This is now the only code that will be periodically updated to reflect changes in construction materials and methods.

SB 622 requires that the International Building Code be used to design and construction K-12 schools in Kansas after its effective date. (We understand that the Kansas State Fire Marshal's Office will ask that the bill be amended to take effect January 1, 2003.) The change to the updated code is needed to ensure that our school buildings are built using the latest standards for building safety.

We do, however, request that the following language be struck from the bill: page 1, line 29, "The construction of school build-" and strike lines 30-31. This language requires compliance with special or more restrictive amendments passed by local municipalities. This provision would overly complicate the process and is not necessary. In addition, the International Building Code allows flexibility on reaching the standards and, where necessary, the design team can incorporate local changes if the Kansas State Fire Marshal's office feels it is appropriate.

Thank you for allowing us to address your committee on SB 622. We hope that the Committee will pass the bill with the amendment above.

Executive Director
Trudy Aron, Hon. AIA, CAE
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