

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE.

The meeting was called to order by Chairperson Representative Don Myers at 3:30 p.m. on February 12, 2003 in Room 521-S of the Capitol.

All members were present.

Committee staff present: Ken Wilke, Revisor
Dennis Hodgins, Research
Kathie Sparks, Research
Shirley Weideman, Secretary

Conferees appearing before the committee:

HB 2149 Proponents:

Harriet Lange, Kansas Association of Broadcasters
Rick Thames, Editor, The Wichita Eagle
Senator Jean Schodorf (written testimony only)
Representative Jo Ann Pottorff (written testimony only)
Dan Dillon, News Director, KFDI Radio, Wichita (written testimony only)
Will Kennedy, Exec. Editor, Topeka Capital-Journal (written testimony only)
Richard Brack, Lawrence Journal-World (written testimony only)

Opponent:

Don Moler, Exec. Director, League of Kansas Municipalities

Others attending: See attached list.

Chairman Myers ask Revisor Ken Wilke to give the committee an overview of **HB 2149**. Ken said that this bill deals with task forces, advisory committees or sub-committees of advisory committees for elected officials. Once they have been elected and certified by the board of canvassers and the secretary of state's office, from that date until the date of swearing in, all advisory committees and task forces created by the elected official will be subject to this act. Ken responded to questions asked by committee members.

Committee Chair Myers opened the hearing on **HB 2149 - Open meetings; inclusion of advisory committees of newly elected officials.**

Harriet Lange, Kansas Association of Broadcasters appeared before the committee as a proponent of **HB 2149**. Ms. Lange said that as a plaintiff in "*The Associated Press, et al v. Kathleen Sebelius and The Governor Elect Transition Office*", she and the KAB appreciate the opportunity to clarify the Kansas Open Meetings Act. Ms. Lange said that **HB 2149** will: 1) stipulate in statute that all governmental task forces, advisory committees and subcommittees are subject to KOMA; and 2) extend KOMA to all newly elected public officials and task forces and advisory committees they may appoint. Ms. Lange quoted from Judge Rosen's decision ".....KOMA's purpose and design rests on the premise that the foundation of our government is dependent upon an informed electorate. When meetings that directly impact public policy of our state occur out of the public eye or ear, our democracy is put in jeopardy." (Attachment 1) Ms. Lange responded to questions asked by committee members.

Ms. Lange brought written testimony from Dan Dillon, News Director of KFDI, Wichita as a proponent for **HB 2149**. His view is that it is the news media's job to let viewers, listeners and readers know that budget-review sessions are not policy and no hard evidence of future budget cuts. Mr. Dillon said that the news media would have emphasized that in their reporting, so the people in the group meeting shouldn't feel that they can't be frank when the meeting is open to the public. (Attachment 2)

Chairman Myers brought the committee's attention to the written testimony from Senator Jean Schodorf. She is a proponent for **HB 2149**. She states in her testimony that Statute K.S.A.75-4317 declares open meetings as the policy of the state and this proposed legislation brings any meetings of task forces, advisory committees or subcommittees of an incoming governor under the open meetings law. Also in her testimony, she has an example of the governor's BEST team recommendation to cut money and eliminate positions from a particular department, when the department affected didn't know why there was this recommendation or the background of it. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE at on February 12, 2003 in Room 521-S of the Capitol.

The committee's attention was also brought by Chairman Myers to the written testimony of Representative JoAnn Pottorff in support of **HB 2149**. In her testimony, she indicated that she supports the Kansas Open Meetings Act which contains a body of minimum standards for conducting open government meetings. Representative Pottorff also wrote that closed meetings should only be held in very limited circumstances. (Attachment 4)

James Bloom, editor and publisher of The Hutchinson News appeared before the committee as a proponent of **HB 2149**. He is in favor of clarifying the law so that all elected officials conduct the public's business in the open. In his testimony, he said that then Governor-elect Sebelius claimed that she had not taken the oath of office, and was not yet a public official, but she still had the Kansas Attorney General's office argue the case on her behalf in court. Mr. Bloom also indicated that Governor-elect Sebelius also tapped a state budget of \$150,000 to pay for expenses incurred by the transition team, moved the gubernatorial transition employees into offices on the East wing of the 2nd floor of the State House, and borrowed state employees from other government offices and agencies to work on her transition team while they were still on the state payroll. (Attachment 5) Mr. Bloom answered questions from the committee regarding newspapers affecting public opinion, members of the transition team fearing retaliation, and protection for whistle blowers.

The next proponent for **HB 2149** was Rick Thames, editor of The Wichita Eagle. He said he is speaking on behalf of the 230 daily and weekly newspapers that make up the Kansas Press Association. Mr. Thames also said that the intention behind this bill is that task forces or committees that meet and consider government matters on behalf of an elected official or government agency should conduct their meetings in public. He indicated that the act allows certain exceptions for sensitive matters. (Attachment 6) Mr. Thames responded to questions asked by committee members.

Two other proponents of **HB 2149** sent their written testimony. Richard Brack, Lawrence Journal World as a proponent of **HB 2149** questions how an office holder-elect can maintain a level of trust from the electorate if any meetings regarding public business are held in secret. (Attachment 7) Will Kennedy, executive editor of The Topeka Capital-Journal, sent written testimony in favor of **HB 2149**. He indicated that while some think that closed meetings encourage participants to speak more openly, open meetings bring in more people and , consequently more ideas and more discussion of those ideas. He wrote that he believes that **HB 2149** will close a loophole in the Kansas Open Meetings Act. (Attachment 8)

Don Moler, League of Kansas Municipalities, appeared before the committee as an opponent to **HB 2149**. He said he and his organization support the Kansas Open Meetings Act, but object to a subsection of **HB 2145**, (1)(2) of K.S.A. 75-4318, as it applies to city officials. He said that this legislation is directed at the power of an incoming Governor to create task forces, advisory committees or subcommittees of advisory committees, which would be subject to the KOMA. Mr. Moler also said the legislation should be limited to that specific issue. (Attachment 9) Mr. Moler answered questions asked by committee members.

Chairman Myers closed the hearing on **HB 2149**.

Chair Myers brought the committee's attention to the 5 sets of minutes for January 22, 27, 29 and February 3, 5 that they received at the last meeting. Representative Huebert moved that the minutes for these meetings be approved. Representative Huff seconded the motion. Motion passed..

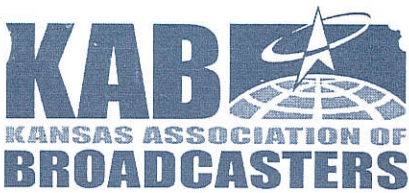
The meeting was adjourned at 4:55 p.m. The next scheduled meeting is February 17.

HOUSE ETHICS AND ELECTIONS COMMITTEE

GUEST LIST

DATE: Feb. 12, 2003

Your Name	Representing
John Altevogt	citizen
SEWE KEAGNEY	KPA
Jim Blom	Hutchinson News
Rick Thames	Wichita Eagle
Jeff Burkhead	Kansas Press Assoc.
Janet Lary	Ks Assn of Broadcasters
Don Molar	LKM
Brad Bryant	Sec. of State
Brian Oliveras	Intern Rep. Sawyer
Miss Meyer	the little people
Danielle Noe	Johnson County



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Testimony Before House Committee on Ethics and Elections
February 12, 2003
HB 2149

Mr. Chairman and Members of the Committee, I am Harriet Lange with the Kansas Association of Broadcasters. KAB's membership is comprised of radio and television stations serving Kansas. We appreciate the opportunity to appear before you today in support of HB 2149.

As one of the plaintiffs in *The Associated Press, et al v. Kathleen Sebelius and The Governor Elect Transition Office*, KAB appreciates your consideration in clarifying Kansas Open Meetings Act. Clarification made necessary by Judge Eric Rosen's decision.

Unfortunately Judge Rosen's opinion was that the transition office is not an agency of the state and therefore it and its advisory committees are not subject to KOMA. However, in his decision, Judge Rosen stated ". . . The time has long passed that critical public policy decisions can be formulated and based on privately held discussions and secret meetings that hold no one accountable. KOMA's purpose and design rests on the premise that the foundation of our government is dependent upon an informed electorate. When meetings that directly impact public policy of our state occur out of the public eye or ear, our democracy is put in jeopardy."

HB 2149 will: 1) stipulate in statute that all governmental task forces, advisory committees and subcommittees are subject to KOMA; and 2) extend KOMA to all newly elected public officials and task forces and advisory committees they may appoint.

If this Committee truly believes that "a representative government is dependent upon an informed electorate", as the preamble to KOMA states, then you will pass this bill out favorably. Its passage will make it clear to all future elected officials and their advisory committees that their discussions of the public's business will be done in view of the public.

Thank you for your consideration.

House Ethics and Elections
2-12-03
Attachment 1

February 12, 2003

TO: Chairman Don Myers and Members of the House Ethics & Elections Committee
From: Dan Dillon, News Director, KFDI-KFTI, Wichita
RE: HB 2149

I am sorry I can't be with you in person today. In just a couple of hours here at KFDI, the National Weather Service will conduct a Tornado Spotter Meeting, and I haven't missed one since 1979. But I want to convey to you my support of HB 2149.

I remember my surprise when I first read on the Associated Press wire that Governor-Elect Sebelius was planning to have her budget-review teams meet in secret. The argument was that people at the meeting would be able to speak freely without the lights and the glare of television and still cameras and the "whirr" of audio recorders. I disagreed then, and still do.

The people who felt they couldn't be frank at the meetings should have realized it's the news media's job to let viewers, listeners and readers know budget-review sessions are not policy, and no hard evidence of future budget cuts. We would have emphasized that in our reporting. The need for these sessions was apparent. But the secrecy was not.

It's been my 24-year experience in reporting on Kansas elections the voting public is lenient with a newly-elected officials. I read several letters to the editor about how the news media should not be so critical of the Governor-Elect's efforts. I believe many of the letter-writers didn't realize the news media must oppose attempts to diminish the public's access to government. News organizations are the eyes and ears of the public who need to be informed about government's actions and the decision-making process - because "a representative government is dependent upon an informed electorate."

I strongly encourage you to support HB 2149 and bring all newly-elected public officials and their advisory committees and task forces under the Kansas Open Meetings Act.

Thank you for your consideration.

House Ethics and Elections
2-12-03
Attachment 2

JEAN SCHODORF

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Thank you Madame chair and members of the committee.

I have been a strong proponent of the Open Meetings Law for many years and believe that the public has the right as an informed electorate to be able to attend and hear the business of our government at the state and local level.

I also want to stress that my interest and concern for the Open Meetings Law goes back many years--long before the BEST meetings, but they helped illustrate again the need for open meetings and they helped to illustrate an area where the law is silent.

The proposed legislation is in no way a criticism of our new governor. I want to compliment her for her first two weeks in office.

However the proposed legislation does bring any meetings of task forces, advisory committees or subcommittees of an incoming governor under the Open Meetings Law. Statute 75-4317 declares open meetings as the policy of the state. It states, "in recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public".

While there will not be an incoming governor for at least 4 to 8 years, this legislation will guarantee that when there is a new governor again, any transition task forces or advisory boards will be open to the people.

Let me give you a recent example.

In a Ways and Means Subcommittee, we reviewed a recommendation made by a BEST team to cut some money, move positions and eliminate positions. However, the particular department affected didn't know the background or why there was this recommendation. Nor had they heard any of the reasons given by the other agency. We had difficulty getting all the necessary information because the discussion had been held in a closed meeting and the information wasn't available to us. If the meeting had been open, both agencies could have testified and more information would be known to all parties.

The BEST teams were well intended but the subject matter was of such importance and magnitude that its recommendations affected money, people, policy and should have been public.

The second part of the bill is similar and pertains to city, county and school boards. After the election is certified, there is a transition time. This is a time for new officials to be oriented and trained to take office and learn as much as possible to be ready to take office. For the counties, the transition time is two months, one week for cities and three months for the school board.

During that time, the incoming official is exposed to much more detail than the public is in terms of issues, procedures, policies and upcoming business. In some instances they attend executive sessions and yet during that time, they are not bound by the Open Meetings Law. And thus, could meet in secret with incoming or present members in a majority of a quorum without having to have a public meeting. While no votes can be taken at that transition phase, plans for the future can be implemented when they finally take office. Ninety-nine percent of newly elected officials would not do that, but some times, emotions run high, issues are controversial and there is this possibility and currently it is legal.

In closing, I believe this legislation will fill the void and better serve the public for open government. I bring this bill forward to be able to discuss the issue and look forward to the discussion.

Thank you Madame Chair and Committee.

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

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TOURISM

CHAIRMAN: ARTS & CULTURAL RESOURCES

CHAIRMAN: EDUCATION COMMITTEE
NCSL ASSEMBLY ON STATE ISSUES
NCSL-EXECUTIVE COMMITTEE

I want to offer my support for HB 2149- Open Meetings. Across our nation Kansas has a reputation for good government and it is due in part to the belief that Kansas has an open, accessible government. Having discussions in public is not always easy but most Kansans would not have it any other way. The Kansas Open Meetings Act has contained a body of minimum standards for conducting open government meetings. I feel closed meetings should be held in very limited circumstances. This is probably due to my days on the Wichita School Board when closed meetings (executive sessions) could be held for a limited number of reasons. In fact, one time I did not attend an executive session of the Wichita School Board because I did not feel it was a justified reason to have the meeting. I sponsored HB 2299 several years ago because I heard that the K-12 Education Financing for Results Task Force appointed by Governor Graves had a meeting behind closed doors. I believe HB 2149 is also a good government bill.

Jo Ann Pottorff
83rd District

THE HUTCHINSON NEWS

James E. Bloom
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February 12, 2003

House Elections and Ethics Committee:

My name is Jim Bloom. I am editor-publisher of The Hutchinson News. Thank you for the opportunity to testify today in favor of House Bill 2149, which I view as a measure needed to strengthen the Kansas Open Meetings Act.

I favor clarifying the law so that elected officials conduct the public's business in the open. The proposed language fully addresses the issues brought to the surface by the Sebelius gubernatorial transition team's decision to conduct its budget review team meetings behind closed doors. I support the bill's passage.

Kansans have a right to know about their government. Last fall, then Gov.-elect Sebelius claimed that she had not taken the oath of office and was not yet a public official in regards to anything related to the gubernatorial transition. Interestingly, however, Citizen Sebelius had the Kansas Attorney General's office argue the case on her behalf in court.

In addition, Citizen Sebelius:

- Borrowed state employees from other government offices and agencies to work on her gubernatorial transition team. The employees remained on the state payroll.
- Moved gubernatorial transition employees into offices on the east wing of the second floor of the Kansas Statehouse.
- Tapped a state budget of \$150,000 to pay for expenses incurred by the transition team, including office supplies, phone service and postage.

More to the point, Citizen Sebelius established six Budget Efficiency Savings Teams to "advise her in anticipation of her duties as governor." She assigned the teams to review government spending on the economy, agriculture and natural resources, human services, public infrastructure, public safety and education. She stated that she intended to rely upon the teams for advice on important matters of public policy.

No other Kansan could exercise such unique authority and marshal public resources to carry it out. Everything about the budget review process revolved around government business – business that as a matter of public policy should be done in the open in Kansas.

House Ethics and Elections
2-12-03
Attachment 5

To: House Ethics and Elections Committee
From: Rick Thames, editor, The Wichita Eagle
Subj: HB 2149 (open meetings)
Date: Feb. 12, 2003

Good afternoon. My name is Rick Thames. I am the editor of The Wichita Eagle and I come to you today on behalf of The Eagle and the 230 daily and weekly newspapers that make up the Kansas Press Association.

I appreciate the opportunity to speak to you about House Bill 2149. I believe it is the most logical solution to the problems posed recently when task forces appointed by then Gov.-elect Kathleen Sebelius chose to meet in secret.

You'll recall the reaction of Shawnee County District Judge Eric Rosen, who reluctantly concluded last month that the BEST team task forces were within existing law.

That belief, Rosen said, misses the point.

"The time has long passed that critical public policy decisions can be formulated and based on privately held discussions and secret meetings that hold no one accountable," Judge Rosen wrote. "Thus, had the court been provided with a legal option to do so, it would have most certainly ordered the BEST team meetings open."

It was heartening to see many of you in the Legislature quickly suggest changes in the law to prevent this from happening again.

Initially, legislators focused solely on the advisory groups appointed by a governor who had been elected, but not yet taken office.

Then, Sen. Jean Schodorf recognized that the scope should be broadened to include other offices in which someone elected had not yet taken office. Senator Schodorf, who was a Wichita school board member for 12 years, warned that she had seen firsthand how newly elected school board members can meet in secret and decide vital policy issues before taking office.

All of these developments are good news. But it is HB 2149 that best addresses the heart of the matter, which is this:

Any task force or committee that is instructed to meet and consider matters on behalf of an elected official or a government agency ought to hold its meetings in public.

What is good for Gov. Sebelius is good at all levels of government. HB 2149 assures that all meetings about public business, regardless of who arranges them, will come under the provisions of the Open Meetings Act.

I might add that Missouri, Kentucky, Indiana, California and Minnesota are among other states that have already passed legislation similarly extending their open meetings requirements.

If the past is any guide, you will hear from opponents of this bill who will say that government can't get its business done under the Open Meetings Act. These opponents would have you believe that the act is too confining, too inconvenient.

Before you accept that, I urge you to re-read the act for yourself. You will see that it is actually quite flexible and accommodating in instances where it would be in the public interest to restrict access to meetings.

For even more assurance, consider this: Hundreds of school boards and city councils across this state meet every day under the provisions of the Open Meetings Act. Obviously, they are getting their jobs done.

Meeting in public is no more inconvenient than democracy, itself. If there are some who want to meet in secret, please tell them — by voting for this bill — that they need to either change their style of getting things done behind closed doors or excuse themselves from the public's business.

Thank you. And I would be happy now to take any questions you may have.

Respectfully submitted,



House Ethics and Elections
2-12-03
Attachment 6

Before the House Committee on Ethics and Elections
Testimony of Richard Brack, Lawrence Journal-World
Feb. 12, 2003

Chairman and members of the committee, my name is Richard Brack from Lawrence. I'm in favor of this bill because, as a newspaper editor, I strongly believe in the public's right to know what business their elected officials are conducting. As a Kansan, I know our state can do better than it has recently done in this regard.

Our nation and our state are founded on the premise of an open, accountable government of the people, by the people and for the people. Unfortunately, a loophole in our state law encourages some officeholders to forget that fact. This loophole must be closed, and House Bill 2149 can help do that.

When candidates are elected, the nature of their responsibility to society changes. It doesn't matter whether they have been officially sworn in. After being declared the winner of an election, that person is the voters' elected representative, both in the mind of the electorate and in reality. The electorate has invested in that officeholder-elect a level of trust that policy decisions he or she makes — regardless whether such decisions are before or after officially taking office — will be in their best interest. How, if our state law allows such officeholders-elect to conduct hearings, discussions — even votes — in private, can Kansans know whose interests are being served?

As you know, open meetings are the declared policy of our state. Here is what our law says: "In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public."

I don't believe — and I don't think you believe — the intent of our state open meetings law is to allow the sort of closed-door meetings we saw recently with the governor's Budget Efficiency Savings Teams. By clarifying the law with this amendment, such public deliberation and decision-making will be done where it should be: In public. This amendment only clarifies existing law.

Am I interested in closing this loophole because of my profession? Certainly. Is that the only reason? No. As a proud Kansan, I know our state can do better. My newspaper's readers and your constituents deserve better. Your approval of this bill can help make that happen.

Please consider passage of this important piece of legislation. Thank you for your consideration.

My name is Will Kennedy and I am the executive editor of The Topeka Capital-Journal. I appreciate the opportunity to write the committee regarding House Bill 2149.

If approved and enacted, House Bill 2149 will fill a critical need: It will close a gaping loophole in the Kansas Open Meetings Act. The bill broadens the language of KOMA, which some think is necessary following recent events. Exceptions to KOMA should, indeed, be rare.

The laws and principles of open government go back to the founders of our nation. These laws are part of what has made our country great.

While some think that closed meetings encourage participants to speak more openly, we believe open meetings bring in more people, consequently more ideas and more discussion of those ideas. The ideas immediately are in the public domain where they can be scrutinized and maybe improved.

One of America's great newspaper chains has a motto it prints on the editorial page of its newspapers. That motto is: "Give light, and the people will find their own way."

Closed meetings of commissions, task forces and boards appointed by an incoming elected official do not provide light. These meetings are dark. The decision-making process is shielded by the closed door; the light is shuttered.

Residents of this city, county and state have a clear right to be informed about plans and proposals that could affect them. An informed electorate is an engaged electorate. There is nothing more basic and valued in our democracy.

I have been in the newspaper business for 28 years, working as an editor in Ohio, New York, Georgia and now, Kansas. During those years of experience, I have witnessed numerous attempts by different governmental bodies to diminish the intent of open meetings laws. What recently unfolded here in Kansas with the governor's Budget Efficiency Savings Teams clearly violates the spirit of KOMA. Judge Rosen, who actually ruled on the side of the governor, said as much. Citizens were not given the opportunity to participate or to be informed about what these task forces were discussing or deciding.

While many in the news industry are dismayed that an amendment is necessary to KOMA, we indeed feel privileged today to live in a society, in a state, where open debate is allowed. Debating this bill is exercising that privilege. Opening meetings set up by newly elected officials is exercising that privilege also.

House Bill 2149 defines and adds to which meetings should be open.

Please consider passage of this important piece of legislation.

Thank you,

Will Kennedy

Executive editor,
The Topeka Capital-Journal

House Ethics and Elections
2-12-03
Attachment 8



League of Kansas Municipalities

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To: House Ethics and Elections Committee
From: Don Moler, Executive Director
Re: Opposition to Portions of HB 2149
Date: February 12, 2003

First of all, thank you for allowing the League to appear today in opposition to a subsection of HB 2149. The subsection we are opposing is subsection (a)(2) of K.S.A. 75-4318, as it applies to city officials. We believe it to be unnecessary and unwarranted. It is clear that this legislation is directed at the power of an incoming Governor to create task forces, advisory committees or subcommittees of advisory committees, which would be subject to the KOMA. We are not commenting on those provisions and would urge the committee to limit the legislation to that specific issue.

Since we are unaware of any real or perceived problems at the local level with this issue, we believe the abovementioned subsection, as it applies to local government officials, to be unnecessary, unwarranted, and without merit. Despite the urging by some to include all elected officials in this issue, we would contend it is a state issue which should remain a state issue. Essentially the application to "all elected officials" is a "solution" in search of a "problem".

As a functional problem, this legislation would change the entire focus of the KOMA. Currently we are concerned with meetings involving a "majority of a quorum" of a body subject to act. This would put the focus on individuals and create a very untenable situation which would apply to every elected official in the State of Kansas. It distorts the purpose of the act, fails to solve any real problems, and we suspect will cause numerous problems down the road.

Finally we would suggest that these provisions, as they would apply to individually elected officials in Kansas, violates the 1st Amendment to the United States Constitution. Would this mean that an elected public official could not meet in their living room with friends and neighbors to discuss the issues of the day? Would this limit or inhibit citizen groups from discussing city issues with their elected city officials. We think it would and that it is a bad idea all the way around. The scattergun approach to legislation is often a bad approach, and we would offer it is unnecessary, unwarranted, and potentially unconstitutional in this instance.

Ultimately there is no need to include local government officials in this legislation.

House Ethics and Elections
2-12-03
Attachment 9