

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 p.m. on February 5, 2004 in Room 519-S of the Capitol.

All members were present except:

Representative Larry Campbell- excused

Committee staff present:

Martha Dorsey, Legislative Research Department

Mike Heim Legislative Research Department

Theresa Kiernan, Office of the Revisor of Statutes

Maureen Stinson, Committee Secretary

Conferees appearing before the committee:

Rep. Loyd, Kansas House

Doug Anstaett, Kansas Press Association

Rich Gannon, Kansas Press Association

Don Moler, League of Kansas Municipalities

Others attending:

See Attached List.

Chairman Vickrey opened the hearing on:

HB 2601 **open records act; allowance of costs and attorney fees**

Rep. Loyd appeared in support of the bill (Attachment 1). He said the bill provides that KORA will govern the award of costs and attorneys' fees in legal actions filed to enforce the right to inspect records, where there is a determination that an agency's denial of access to the records was not in good faith or without reasonable basis in fact or law. He explained that he introduced the measure in an attempt to preserve the concept of "open" in the Kansas Open Records Act and to facilitate and foster the right of the Kansas public to access public records.

Doug Anstaett, Kansas Press Association, presented testimony on behalf of Steve Delaney, editor-publisher, *The Garden City Telegram*. (Attachment 2). Mr. Anstaett said the measure Rep. Loyd is offering will close a loophole created last spring by the Kansas Supreme Court.

Rich Gannon, Kansas Press Association, presented testimony on behalf of John Montgomery, President, Kansas Press Association (Attachment 3). Mr. Gannon stated that the bill is about rectifying a classic flaw in a law that lacks teeth. He explained that *The Garden City Telegram* pursued rail crossing safety records from the Kansas Department of Transportation. He said that *The Garden City Telegram* won access to the records but that the newspaper had to bear most of the legal costs in doing so.

Written testimony in support of the bill was submitted by:

- Michael Merriam, Kansas Press Association (Attachment 4)
- Harriet Lange, Kansas Association of Broadcasters (Attachment 5)
- Tom Throne, *Leavenworth Times* (Attachment 6)

Don Moler, League of Kansas Municipalities, appeared as a neutral conferee on the bill (Attachment 7). He stated that they have a concern about one portion of the amendments being offered in the bill. He said the amendment changing the word "and" to an "or" significantly changes the threshold standard for the awarding of attorneys' fees. Mr. Moler suggested that the Committee retain the current policy position and the threshold standard which must be met before attorneys' fees, and costs, can be awarded.

The Chairman closed the hearing on: **HB 2601**

CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on February 5, 2004 in Room 519-S of the Capitol.

Rep. Yonally made the motion to approve the minutes of the February 4, 2004 meeting. Rep. Lane seconded the motion. The motion carried.

The meeting was adjourned at 4:10 p.m.

The next meeting is scheduled for February 10, 2004.

HOUSE LOCAL GOVERNMENT

DATE 2-5-04

NAME	REPRESENTING
Jim Edwards	KASB
Doug Anstett	KPA
Richard Gannon	KPA
Neil Carter	TIAK
Dainlee Hoge	Johnson County
Don Moler	LRM
Ward Loyd	House 123
Harmit Lange	KAB

WARD LOYD
123RD DISTRICT
"THE HEART OF GARDEN CITY"
E-MAIL: loyd@gcnet.com



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEES
CHAIR: CORRECTIONS & JUVENILE JUSTICE
MEMBER: JUDICIARY
RULES AND JOURNAL

TESTIMONY IN SUPPORT OF HOUSE BILL 2601

BY REPRESENTATIVE WARD LOYD

BEFORE THE HOUSE LOCAL GOVERNMENT COMMITTEE

February 4, 2004

Honorable Chairman Vickery and Committee Members,

I am grateful for the opportunity to appear before you in support of House Bill 2601. I introduced this measure in an attempt to preserve the concept of "open" in the Kansas Open Records Act, K.S.A. 45-215 et seq., and to facilitate and foster the right of the Kansas public to access public records. This I do in keeping with declared Kansas public policy:

It is . . . the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be *liberally* construed and applied to promote such policy. K.S.A. 45-216(a). (Emphasis added.)

HB 2601 provides that KORA will govern the award of costs and attorney's fees in legal actions filed to enforce the right to inspect records, where there is a determination that an agency's denial of access to the records was not in good faith or without a reasonable basis in fact or law.

That construction of KORA does not presently exist, in light of a May 30, 2003 decision of the Kansas Supreme Court in *Telegram Publishing Co. v. Kansas Dept. of Transportation*, 275 Kan. 779.

There is no criticism to be directed at the Supreme Court; the judicial reasoning is sound. What here occurred was a failure on the part of the Legislature, in enacting the Kansas Open Records Act in 1984, to consider and make provision regarding the impact of other statutory provisions. Given the ever greater complexity of our system of statutory law, that too often and too easily occurs. As legislators, we are presumed to know the law, including case law.

House Local Government
Date: 2-05-04
Attachment # 1

RESIDENCE
1304 CLOUD CIRCLE
GARDEN CITY, KS 67846
(316) 276-7280

DISTRICT
118 W. PINE ST., BOX 834
GARDEN CITY, KS 67846
(620) 275-1415

CAPITOL (JAN-APR)
ROOM 427-S STATEHOUSE
TOPEKA, KANSAS 66612-1504
(785) 296-7655

In *Telegram Publishing Co. v. Kansas Dept. of Transportation*, the Kansas Supreme Court had to consider and reconcile two statutory schemes, KORA and the Kansas Code of Civil Procedure, which is in Chapter 60 of our Kansas Statutes. The phrase "denial of access to the public record" as used in K.S.A. 45-222(c) refers to the denial of information set forth in K.S.A. 45-218(d). In determining whether sanctions are appropriate for a bad faith denial of access to records under the Kansas Open Records Act, only prelitigation conduct is considered. Sanctions for misconduct of a party during litigation based on a bad faith argument are governed by K.S.A. 2002 Supp. 60-211.

Conduct of a party during litigation is governed by K.S.A. 2002 Supp. 60-211, not K.S.A. 45-222. See *McShares Inc. v. Barry*, 266 Kan. 479, 491, 970 P.2d 1005 (1998) ("Federal Rule of Civil Procedure 11 grants a court discretion to discipline parties and counsel for conducting litigation in bad faith or in a frivolous and abusive fashion.").

The Supreme Court clearly recognized its duty in regard to KORA, as in the opinion it noted

'The Kansas Open Meetings Act, K.S.A. 75-4317 et seq., and KORA were passed by the legislature to insure public confidence in government by increasing the access of the public to government and its decision-making processes. This increases the accountability of governmental bodies and deters official misconduct. The public policy stated in KORA is that all records are "open for inspection by any person unless otherwise provided by this act" K.S.A. 45-216(a).'

Kansas' strong promotion of the policy of openness by its governmental bodies to insure public confidence in them is reiterated in K.S.A. 45-218(a), which provides: "All public records shall be open for inspection by any person, except as otherwise provided by this act."

Here's what happened. On June 30, 1998, following a fatality when a train hit a vehicle crossing a rail line, a Telegram reporter contacted KDOT for records regarding railroad crossings in Finney County and the hazard rating system for the county. Over time KDOT variously ignored the (repeated) requests, delayed response, or refused release of the records on the basis the information was confidential by virtue of federal law. On October 16, the Telegram filed an action in the District Court of Shawnee County, seeking disclosure of the information. That's four months, in the face of KORA's requirement of a response within three days.

The district court granted summary judgment in favor of Telegram on February 10, 2000, and on January 17, 2001, the district court awarded attorney fees and costs to Telegram under K.S.A. 45-222(c), holding that KDOT's denial of access to the records was not in good faith and the agency's position was without a reasonable basis in fact or law, awarding \$13,000 in attorney fees

and costs.

KDOT appealed, and the case was considered and decided by both the Kansas Court of Appeals and the Supreme Court, the last decision coming, as noted, on May 30, 2003. That is one month short of five years after the original records request!

As a result of the appellate decision the case was remanded to the district court to reconsider the award of costs and attorney fees for just the efforts to secure the records prior to the filing of the lawsuit. The Telegram was given a final award in the amount of \$1,435.19 in attorneys fees and costs. The total of such expenses incurred by The Telegram, through the appeals court process, was \$15,000.

It is bad enough that anyone would be required to file a lawsuit to gain access to public records from someone who in bad faith denies such access. That requires hiring an attorney and committing to the payment of legal fees that cannot be recovered as a matter of course.

To apply the provisions of KORA in a manner so as to allow only attorneys fees and costs incurred prior to pursuing the remedy in court compounds the difficulty of realizing our adopted public policy, and has a chilling effect on pursuing access to records which should be open to all.

It promotes the interest of obfuscating, deep-pocketed bureaucrats, who win by delay and denial. That is not to be permitted. It is the antithesis of openness.

HB 2601 does not guarantee the right to recovery of attorneys fees of costs to anyone, or as to every record request. That occurs only where a court determines the denial of access to the records was not in good faith or without a reasonable basis in fact or law. Such was the situation in *Telegram Publishing Co. v. Kansas Dept. of Transportation*. Noted the Supreme Court

KDOT's denial of access to the information was not only without a reasonable basis in fact or law but it was also in bad faith. The district court therefore was correct to award attorney fees under K.S.A. 45-222(c).

HB 2601 returns public policy and access to public records to a higher ground. It levels the playing field for those whose request for access are improperly denied.

HB 2601 does not discriminate against government, or agencies. It also amends the subsection (d) of K.S.A. 45-222 to provide that if the defendant is the prevailing party, the court shall award to the defendant attorney fees incurred as the result of litigation if the court finds that the plaintiff maintained the action not in good faith and without a reasonable basis in fact or law.

Thank you for your favorable consideration and action on House Bill 2601.

1-3



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

Feb. 5, 2004

To: House Local Government Committee

From: Steve Delaney, editor-publisher, The Garden City Telegram

Re: HB2601

Honorable members of the committee:

I'm writing in support of HB2601, introduced by Rep. Ward Loyd, R-Garden City. The measure Rep. Loyd is offering will close a loophole created last spring by the Kansas Supreme Court. Its net effect will be to encourage, rather than discourage, citizens of this state to compel governments at all levels to keep access to government an open process.

The Supreme Court, in a case involving this newspaper and the Kansas Department of Transportation, ruled that a Kansas Open Records Act clause regarding awarding attorneys' fees and costs applies only until the time a suit is filed. As we all know, attorneys dig their heels in after suits are filed, not before. I believe the Legislature's intent, when it created the penalty phase of KORA, was to send a meaningful warning to records custodians that they'd better abide by the statute or they'll face significant penalty. The court's decision in our case all but eliminates that fear.

In July 1998, a car-train accident claimed the life of a local woman. We set out to detail for our readers the potential dangers they may encounter at railroad crossings in Finney County. We interviewed engineers at KDOT and learned that the level of safety devices at any given intersection is dictated by a ranking. We asked to see the rankings for Finney County. KDOT said no. On July 3, 1998, we made a written request under KORA for the rankings. KDOT didn't respond. Repeated phone calls were not returned. It became clear we were being stonewalled in our effort. KDOT was dismissing our request and ignoring Kansas law in the process. On Aug. 3, 1998, we issued another formal request and reminded KDOT that under KORA they were compelled to provide the rankings or cite under what KORA exclusion they were denying our request. And under KORA, they have three business days in which to respond. On Aug. 12, more than a month after our first request, KDOT said a federal statute allowed them to keep the safety information secret and they faxed us a response.

We disagreed. And in early October, our counsel sent another letter to KDOT demanding the records or a specific exemption in Kansas law that prevented disclosure. The letter also stated that we were prepared to initiate legal action should KDOT not respond. Two days later, a KDOT assistant called our counsel and set a date for a conference call later

House Local Government
Date: 2-05-04
Attachment # 2

in the month to discuss the issue. KDOT subsequently canceled that meeting. Frustrated and fed up with KDOT's action, we sued.

In depositions, KDOT routinely lobbed new, and what the district court and Supreme Court would later rule, frivolous arguments for non-disclosure. KDOT tabled the federal law they first cited and said the rankings should remain secret because their disclosure would be disruptive to KDOT engineers and KDOT didn't want their decision-making over safety enhancements questioned. They said to forget the federal law, a KORA provision allows secrecy because these rankings are always in the process of analysis. Finally, KDOT provided us with year-old rankings, those that were in place when we made our first request and argued that the judge should dismiss the case because KDOT has complied. KDOT still rejected our request for current data.

Each time KDOT tossed a curve ball our counsel was required to address it, racking up additional fees. The district court ultimately ruled that these safety rankings were indeed public records and ordered their release. We sued for attorneys' fees and costs because the record clearly reflected KDOT's action was frivolous and without reasonable basis in fact or law. District Court Judge Charles Andrews agreed and ordered KDOT to reimburse us approximately \$13,000. The appeals court reversed that decision and we appealed to the Supreme Court. That court agreed that KDOT's actions were illegal, but said the KORA clause on attorneys' fees covers only pre-litigation activity.

Citizens shouldn't have to foot the bill to enforce access to public records when a public agency is clearly violating the statute established by the Legislature. Moreover, citizens aren't likely to take on that financial burden. Likewise, recordkeepers needn't worry about violating the law because of the unlikelihood that someone will accept that financial burden to enforce compliance.

It shouldn't be this hard. Society is best served by a populace actively engaged in the process with its government. And public servants should welcome that. Sadly, as in our case, some agencies believe they need not be accountable or accommodating to the people they serve. They believe, as demonstrated in our case, that they can ignore the law. With virtually no fear of facing a meaningful penalty, there's no motivation to stop them from doing just that. HB 2601 fixes that. It's a small measure that will have a big impact on keeping government open and accessible.



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

To: Members of the House Committee on Local Government
From: John D. Montgomery, Kansas Press Association president
Date: February 5, 2004
Re: Testimony in support of HB 2601

Thank you for hearing support by the Kansas Press Association for HB 2601. I am John D. Montgomery, editor and publisher of The Hays Daily News, currently serving as KPA president.

This bill is about rectifying a classic flaw in a law that lacks teeth. I think this was unintentional and not realized until the Garden City Telegram's pursuit of railroad crossing safety records from the Kansas Department of Transportation. The Telegram rightly prevailed and won access to these records, clearly in the public's interest and safety. But the newspaper had to bear most of the legal costs of doing so.

If the Legislature allows this precedent to stand, I cannot imagine the chill it will put on efforts to open government records to the public. The Telegram will have won the battle, but the public may have lost the war. I hesitate to use such strong language as to characterize it as a "war," but often open records requests are a fight against custodians, who might even be well-meaning but ill-advised of the principles of the state's public access laws.

If the Legislature allows this precedent to stand, public citizens and even many media organizations will be discouraged, even outright prevented, from legal pursuit of open records actions. And, without the punitive value of having to assume the plaintiff's legal fees, government agencies will be empowered to be more restrictive with records.

We are not talking here about records that are protected from public view by law. We are talking about records that the Legislature has said belong to the public and should be open for public inspection.

I have followed The Garden City Telegram's pursuit to open these records with personal interest. As a young night-side reporter in Hutchinson, I covered my share of car accidents at railroad crossings. I remember the looks of despair on paramedics after one such accident sheared the roof off the top of a car that collided with a train. They could do nothing for the driver who died that night.

House Local Government

Date: 2-05-04

Attachment # 3

Better safety equipment and upgraded warning devices were something we could do at dangerous railroad crossings, I thought. These decisions are made based on safety ratings that KDOT maintains for some 7,200 railroad crossings in Kansas. After a fatal accident with a train in Garden City, The Telegram decided to try to open up data on crossings for public consumption.

The Telegram's victory in court was a victory for the citizenry of Kansas. But it came at a substantial cost to The Telegram. And if the current provisions in state law for reimbursement of successful plaintiffs' attorney fees are allowed to stand, this victory will come at a cost to all Kansas citizens.

We respectfully plead that you put teeth into the Kansas Open Records Act so that it may work as intended, and to provide real recourse for plaintiffs who rightfully deserve access to open

Thank you.

3-2

MICHAEL W. MERRIAM

LAWYER

700 SW Jackson, Roof Garden Suite
Topeka, Kansas 66603
Telephone (785) 233-3700
Facsimile (785) 234-8997
Cellular (785) 640-5485
E-mail merriam@cjnetworks.com

February 5, 2004

House Committee on Local Government

Statement in support of HB 2601

Chairperson Vickrey
Ladies and Gentlemen:

I am Mike Merriam, a lawyer in Topeka. My clients include many newspapers, broadcasters, wire services, media associations, and other newsgathering interests. I have been practicing media law for over 27 years, and answering open records questions from reporters and citizens around the State on three legal telephone hotlines as well. I have represented the press in litigation under the Kansas Open Records Act at least ten times, and in innumerable KORA requests for access. Today I submit written testimony on behalf of the Kansas Press Association.

Straightforwardly, this bill will reverse the Kansas Supreme Court decision in *Telegram Publishing Co. v. Kansas Department of Transportation*, No. 86,767 (May 30, 2003). In that open records action, the court found that KDOT had indeed acted in bad faith and without a reasonable basis in fact or law in denying access to the records requested, but then found that the KORA provision for award of attorney fees under K.S.A. 45-222(c) only applied to the denial itself, not to the subsequent litigation filed under 45-222(a). It therefore reversed the trial court's award of over \$13,000 in fees and expenses the *Garden City Telegram* incurred to obtain the records.

The court narrowly interpreted the phrase "denial of access" in K.S.A. 45-222(c) to refer to only that single event at which a Kansas Open Records Act (KORA) request is rejected at the record custodian's counter top. The Court failed to foresee the impossibility of applying this rule in such a manner, and the illogic of such an application in daily KORA transactions.

The interpretation is illogical in daily KORA transactions. Attorneys are *not involved* when a denial of access occurs. KORA requests are made on a daily basis by ordinary citizens, reporters and others who are not lawyers. Indeed, the *Telegram* did not obtain the assistance of an attorney until after the custodian failed to act, and the attorney involvement was negligible until the petition was prepared and filed. No purpose is served in sanctioning a wrong-doing agency with a requestor's attorneys fees when there aren't any attorney fees. The same question is posed when the attorney does little else but write a demand letter. It's not a fair fight between the requestor and the

House Local Government
Date: 2-05-04
Attachment # 4

February 5, 2004

Page 2

agency to start with; state agencies have enormous resources available, usually including staff counsel, to buttress a wrongful denial of access, as was amply shown in *Telegram*. The court disarmed the public in the access battle.

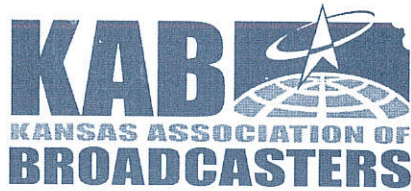
The Legislative intent was plainly to sanction agencies which deny access not in good faith and without any reasonable basis in fact or law. See, Fredrickson, "Letting the Sunshine In: An Analysis of the 1984 KORA" 33 KLR 205 (1985). The court agreed with this statement of intent, but its decision did not reinforce it. By removing the threat of having to pay attorney fees, or at least all but a demand letter's worth of attorney fees, the court eliminated the effect of the sanction and denied the requestor his right to recover his fees when, after all, he must go to extraordinary evidentiary lengths to meet the extremely high burden of showing lack of good faith *and* lack of reasonable basis in fact or law. No requestor would conduct the extensive discovery and expensive litigation necessary to meet this enormous burden of proof, only to recover the cost of his demand letter, which wouldn't even pay the expense of meeting the burden of proof.

The arbitrary nature of terminating a right to attorney fees at the point litigation commences is illustrated by comparison to various other provisions for such awards, all of which include attorney fees in litigation to enforce rights under the law. C.f.: K.S.A. 50-108, unfair trade; K.S.A. 60-2006, motor vehicle accident; K.S.A. 50-634, consumer protection; K.S.A. 17-1268, securities; K.S.A. 44-512a, workers compensation.

HB 2601 is not a lawyer's welfare act. I have personally represented the press in KORA access litigation many times, and my fees have always been paid by my client. But civil litigation against huge state agencies and public bodies is expensive, far beyond the reach of ordinary citizens, and indeed some of the press. In the nearly dozen litigated cases in my experience, my clients incurred fees and costs ranging from about \$6,000 to almost \$15,000. It is time to correct the misinformed view of the Supreme Court.



Michael W. Merriam



1916 SW Sieben Ct, Topeka KS 66611-1656
(785) 235-1307 * FAX (785) 233-3052
Web site: www.kab.net * E-mail: harriet@kab.net

Written Testimony
To House Committee on Local Government
Regarding HB 2601
February 5, 2004
By
Harriet Lange
President/Executive Director
Kansas Association of Broadcasters

HB 2601 merely clarifies legislative intent. If you check the record, you will find that it was the legislature's intent when KSA 45-222 was amended in 2000, that a public agency be sanctioned by paying attorney fees of plaintiffs in litigation, when the agency's withholding of public records is found not to be in good faith and without a reasonable basis in fact or law. HB 2601 also provides for the same sanctions to apply to plaintiffs in an action if their actions were found to be not in good faith or without a reasonable basis in fact or law.

The Kansas Supreme Court decision in *Telegram Publishing Co. v Kansas Department of Transportation* rendered the legislature's action in 2000, meaningless. Obviously the law needs to be clarified. We urge your support of HB 2601.

Thank you for your consideration.

House Local Government
Date: 2-05-04
Attachment # 5



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

Feb. 5, 2004

To: Members, House Local Government Committee

From: Tom A. Throne, publisher, Leavenworth Times

Mr. Chairman and Committee members, thank you for this opportunity to address the House Local Government Committee on HB 2610.

The records of all tax-supported government agencies in Kansas should be open for all Kansans and should not be fettered by those agencies that wish to keep those records from becoming public, in many cases for no other apparent reason than they can.

One of the best ways to keep records closed to the public is by agency attorneys stalling to keep them private. Often, those attorneys don't have to worry about additional costs to the agency since they're on salary and the courts have said those individuals and groups who sue to gain access have to pick up the court costs.

This is particularly true after a recent Supreme Court ruling involving the Kansas Department of Transportation and the Garden City Telegram, in which the Telegram attempted to gain access to records on railroad crossing safety.

While the court ruled that KDOT acted in bad faith in providing the records, it also ruled that the Telegram could only be compensated by the state for attorney fees only on those actions prior to the discovery phase of court action. We all know the attorneys collect most of the fees at trial, not discovery. In the Telegram's case, it amounted to approximately \$1,000 at discovery. The additional \$12,000 that the Telegram incurred in the trial phase is not recoverable under current Kansas law.

Without the change in the law, Kansas governmental agencies can use any stall tactic they wish to keep records closed, which is exactly what KDOT did. The members of the public, who wish to gain access to the records, are incurring the costs. In essence, you have to have deep pockets to gain access, if the state wants to fight you for them.

A common sense approach is being taken in this legislation. It is not an economic issue per se because the plaintiff's attorney is going to get paid one way or the other. However, it is largely a bill that will facilitate access to public records without having to go through the hassle of stalling by governmental agencies.

If agencies understand they will have to pick up court costs if plaintiffs win through a lawsuit, then we believe that agencies will speed up access to records that should be open to the public. Yet, currently, agencies that act in back faith have no incentive to comply

House Local Government
Date: 02-05-04
Attachment # 6

with requests. They can deny them until the "cows come home" with no punishment if they later are found to have acted in bad faith.

We are asking the committee to level the playing field by allowing citizens, businesses and organizations to recoup legal costs when agencies deny access to public records by not acting in good faith or without reasonable basis in fact or law.

Thank you for your kind attention.



League of Kansas Municipalities

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

TO: House Local Government Committee
FROM: Don Moler, Executive Director
RE: Comments on an Amendment to HB 2601
DATE: February 5, 2004

First I would like to thank the Committee for allowing the League to testify today and offer comments on HB 2601. While the League does not have a position for or against this piece of legislation, we do have a concern about one portion of the amendments being offered in this bill.

Specifically on line 27 the underlying standard for what constitutes an action which results in attorney's fees and costs is substantively changed. Current law requires that the public record denial was not in good faith **and** without a reasonable basis in fact or law. The amendment changing the **and** to an **or** significantly changes the threshold standard for the awarding of attorney's fees and we believe this change is not warranted at this time. We would suggest that the Committee retain the current policy position and the threshold standard which must be met before attorneys fees, and costs, can be awarded.

I will be happy to answer any questions the Committee may have about the League's position on this matter and would once again would like to thank the Committee for allowing us to testify today.

House Local Government
Date: 02-05-04
Attachment # 7