

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 p.m. on February 24, 2004 in Room 519-S of the Capitol.

All members were present.

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:

Barry Martin, Johnson County Fire District No. 2
Ed Peck, Tecumseh Township
Jim Kilmartin, Monmouth Township
Bob Haselwood, Topeka Township
Kim Gulley, League of Kansas Municipalities
Doug Anstaett, Kansas Press Association
Phill Kline, Kansas Attorney General
Judy Moler, Kansas Association of Counties
Jim Edwards, Kansas Association of School Boards
Harriet Lange, Kansas Association of Broadcasters
Jerry Slaughter, Kansas Medical Society
Tom Bell, Kansas Hospital Association
Chip Wheelen, Kansas Association of Osteopathic Medicine
Larry Buening, Kansas State Board of Healing Arts
Chris Collins, KaMMCO

Others attending:

See Attached List.

Chairman Vickrey opened the hearing on:

HB 2712 **fire district property tax levies**

Barry Martin, Attorney for Johnson County Fire District No. 2, testified in support of the bill (Attachment 1). He said the bill amends K.S.A. 19-3610. He explained that the statute needed "cleaned up," as the 1992 amendment included language that made reading difficult. He said the bill expands the language of "has contracted with a city" to include contracts for fire protection with "any other fire district, city or township or private entity within the vicinity of the district." Mr. Martin said that Fire Protection District should be allowed to contract with other fire districts, townships or private entities with the same parameters as contracts with cities.

There were no opponents to the bill.

Chairman Vickrey closed the hearing on: **HB 2712**

HB 2712 **fire district property tax levies**

Rep. Kassebaum made the motion for favorable passage of HB 2712. Rep. Siegfried seconded the motion. The motion carried.

Chairman Vickrey opened the hearing on:

HB 2774 **township fire districts; procedure to create**

CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on February 24, 2004 in Room 519-S of the Capitol.

Ed Peck, Tecumseh Township Treasurer and Topeka-Tecumseh Fire District Board member, testified in support of the bill (Attachment 2). He said that current statute calls for a lengthy, tedious process calling for 51 percent of the landowners in the proposed new district to sign and file a petition with the township boards requesting creation of a new district. He explained that because of the number of housing areas that are involved, we are looking at contacting several thousand landowners to assist them in filing a petition. He stated that they are trying to simplify the process by allowing patrons to vote by ballot after proper notification of the proposition at the next general election. Mr. Peck explained that the bill also provides for the newly formed fire district board to be comprised of all three members of each township board. He said that current statute calls for allowing only one member from each board to serve.

Jim Kilmartin, Monmouth Township Clerk, testified that the bill allows for a more constructive way for our boards to reorganize the fire district (Attachment 3). He said that the public's best interest is served with the expansion of the current fire district rather than the creation of a new entity.

Bob Haselwood, Topeka Township Clerk and Topeka-Tecumseh Fire District Clerk, testified that after many meetings and much discussion with the boards of the Monmouth, Tecumseh, and Topeka townships, it was decided that it would be beneficial to the residents of the area if the three townships join to form one new fire district (Attachment 4). He explained that the bill allows for a simpler way for the townships to form a new fire district without taking away from the residents of the proposed district their ability to voice their opinion.

There were no opponents to the bill

The Chairman closed the hearing on: **HB 2774**.

HB 2774 **township fire districts; procedure to create**

Rep. Campbell made the motion for favorable passage of HB 2774. Rep. Reitz seconded the motion. The motion carried.

Chairman Vickrey opened the hearing on:

HB 2889 **KORA; records not required to be open**

Kim Gulley, Director of Policy Development and Communications, League of Kansas Municipalities, appeared in support of the bill (Attachment 5). She explained that in 2000, the Kansas Legislature adopted a number of new provisions to the Kansas Open Records Act (KORA), including a requirement that all of the exemptions to the Act would expire on July 1, 2005 (K.S.A. 45-229). Ms. Gulley said that review of the statutory exemptions to KORA began during the 2003 interim, with hearings held on a number of specific exemptions. She informed that at the conclusion of the interim committee's work on this issue, the various stakeholders involved were asked to get together and to determine whether they could find any common ground on the very important public policy issues. Ms. Gulley stated that the League of Kansas Municipalities, the Kansas Association of Counties, the Kansas Association of School Boards, the Kansas Press Association, and a variety of other entities at various times, met on numerous occasions to review the exemptions. She explained that **HB 2889** reflects a great deal of work and compromise regarding the KORA exemptions. She said that the bill repeals a number of exemptions which are considered to be redundant with other statutes. Ms. Gulley testified that the bill makes substantive changes to a number of exemptions in an attempt to address concerns raised by the Kansas Press Association without compromising the need to protect certain privacy interests.

Doug Anstaett, Executive Director, Kansas Press Association, appeared in support of **HB 2889** (Attachment 6). He said the bill reflects changes that representatives of the opposing groups could agree upon. He said that if they didn't agree on a change the exception was left unchanged and that later in the process, both sides may offer new language for consideration. He explained that changes were proposed to the following:

- exceptions 4, 6, 8, 10, and 45.

CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on February 24, 2004 in Room 519-S of the Capitol.

- elimination of redundant exceptions 35, 38, 39, 40, and 46, reducing the total number of exceptions in the law to 41.

Mr. Anstaett said that they have asked for exceptions to be eliminated because they are addressed in other Kansas statutes and that their inclusion in KORA is redundant. He reminded the Committee that another 350 exceptions to disclosure have been identified elsewhere in the statute books. He said that if we redundantly mentioned each of them in KORA, we would then be dealing with 400 exceptions rather than fewer than 50. He explained that is why their group decided to review KORA this year and leave the other 350 exceptions for an interim committee or next year's legislative session.

Attorney General Phill Kline, testified in support of **HB 2889** (Attachment 7). He said that he and individuals from his office have had meetings with members of the Kansas Sunshine Coalition over the last several weeks. He explained that meetings were held with the purpose of finding areas of common interest in addressing the exceptions in the Kansas Open Records Act (KORA). Attorney General Kline said that it became apparent that he shared a common desire with the Sunshine Coalition: a desire to ensure transparency in government, while at the same time acknowledging the need to protect records of a secure nature. He said **HB 2889** represents a responsible effort to broaden public access to records. Attorney General Kline said additional discussions are taking place involving other components of the Open Records Act. He anticipates that these discussions will result in the introduction of another piece of legislation.

Judy Moler, Legislative Services Director, Kansas Association of Counties, testified in support of the bill (Attachment 8). She said that the Kansas Association of Counties supports the compromise language contained in the bill. She stated that they would, however, reserve the right to oppose any amendments offered to the bill.

Jim Edwards, Governmental Relations Specialist, Kansas Association of School Boards, testified in support of the bill (Attachment 9). He said that at the conclusion of the hearings held by the Interim Committee on Local Government, the Chair and Co-Chair instructed the representatives of the parties that had appeared before the committee to attempt to sit down before the 2004 Session started and see if there were items that could be agree upon. He stated that the bill today is the outcome of several meetings between the parties. He explained that after a couple of meetings, it was found that there was middle ground and definite areas on which they could work together. Mr. Edwards said that they believe the changes made will make available the information that should be made public while still protecting the personal privacy of individuals.

Harriet Lange, President/Executive Director, Kansas Association of Broadcasters, appeared in support of **HB 2889** (Attachment 10). She said that the bill represents a very positive step in reaching agreement on revisions to KORA. She explained that there are other changes to KORA forthcoming in another bill.

Jerry Slaughter, Executive Director, Kansas Medical Society, appeared before the Committee (Attachment 11). He said they oppose the removal of the exception found in subsection (35) and urged the Committee to amend the bill to re-insert subsection (35). He explained that the exception prevents state agencies from disclosing health care peer review and risk management reports. He attached a proposed balloon amendment to his testimony

Tom Bell, Executive Vice President, Kansas Hospital Association, testified in opposition to **HB 2889** (Attachment 12). He said the bill as drafted will discourage medical facilities and health care providers from coming forward with vital information that will improve patient care, save patients' lives and assist those providers who are impaired and need treatment.

Charles (Chip) Wheelen, Kansas Association of Osteopathic Medicine, testified in opposition to the bill in its' current form because it would repeal important exemptions from the Open Records Act that pertain to confidential reports made to peer review committees of state and county professional organizations (Attachment 13). He attached a draft amendment to his testimony.

CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on February 24, 2004 in Room 519-S of the Capitol.

Larry Buening, Executive Director, Kansas Board of Healing Arts, appeared before the Committee (Attachment 14). He stated that the Kansas Board of Healing Arts is opposed to deletion of K.S.A. 45-221 (a)(35) from the exceptions to public disclosure. He said that they recommend that this paragraph be retained to serve as a reaffirmation of legislative intent to maintain the confidentiality of peer review and risk management records.

Christina Collins, KaMMCO, testified in opposition to **HB 2889** (Attachment 15). She said that KaMMCO stands in opposition to the bill as written and urged the committee to reinsert the deleted exceptions (38) - (40). She testified that many of the parties most significantly impacted by this bill were not involved in those discussions nor in the authorship of the bill. She said that a process of open discussion might perhaps have resulted in a stronger, less controversial bill.

Reginald Robinson, President and CEO, Kansas Board of Regents, submitted written neutral testimony (Attachment 16). He attached a letter written jointly from each of the General Counsels to the University of Kansas, Kansas State University and Wichita State University.

The Chairman closed the hearing on: **HB 2889**

HB 2889 **KORA; records not required to be open**

Rep. Yonally made a motion for the favorable passage of HB 2889. Rep. Storm seconded the motion.

Rep. Siegfried made a substitute motion to amend HB 2889 by reinstating Section 35 which relates to medical peer review and risk management records. Rep. Huy seconded the motion. The motion carried.

Rep. Storm made a motion for the favorable passage of HB 2889 as amended. Rep. Johnson seconded the motion. The motion carried.

HB 2585 **convention and visitor's committees or bureaus; open meetings and open records laws**

Rep. Lane made a motion to remove HB 2585 from the table. Rep. Toelkes seconded the motion. The motion carried.

Rep. Lane made a motion to amend the bill to localize to the Topeka bureau. Rep. Thull seconded the motion. The motion carried.

Rep. Lane made a motion for the favorable passage of HB 2585 as amended. Rep. Toelkes seconded the motion. The motion carried.

HB 2615 **abatement of nuisances, owner has not exceeding 40 days to abate nuisance; current law 10 days**

Rep. Kassebaum made a motion to amend HB 2615 by deleting the time frame extension of 40 days and adding an extension for due diligence. Rep. Yonally seconded the motion. The motion carried.

Rep. Sigfried made a motion for the favorable passage of HB 2615 as amended. Rep. Huy seconded the motion. The motion carried.

HB 2758 **open records act; exemptions; military discharge forms**

Rep. Yonally made a motion for the favorable passage of HB 2758 as amended. Rep. Lane seconded the motion. The motion carried.

HB 2805 **law enforcement consolidation; Lincoln and Cloud counties**

Rep. Horst made the motion to amend the bill as per the balloon amendment (Attachment 17). Rep. Reitz

CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on February 24, 2004 in Room 519-S of the Capitol.

seconded the motion. The motion carried.

Rep. Yonally made the motion for the favorable passage of HB 2805. Rep. Horst seconded the motion. The motion carried.

HB 2519 **county fire districts; detachment of territory**

Rep. Toelkes made the motion to strike the language in HB 2519 and to insert the language of the balloon amendment (Attachment 18). Rep. Lane seconded the motion. The motion carried. Division was called: Yeas 5, Nays 7. The motion failed.

Minutes

Rep. Storm made the motion to approve the minutes of the January 29, 2004 and February 19, 2004 meetings. Rep. Siegfried seconded the motion. The motion carried.

The meeting was adjourned at 5:30 p.m.

Next scheduled meeting will be Thursday, March 5, 2004.

HOUSE LOCAL GOVERNMENT

DATE 2-24-04

NAME	REPRESENTING
Sarah Tidwell	KSWA
Bob Haselwood	Tapeke Twp
Ed Peck	Tecumseh Twp
Laura Wood	Intern
Branden Hall	Intern
Dennis Highberger	KDHE
Beth Lange	SRS
DICK CARTER	TIAK
Richard Gannon	KPA
Doug Anstatt	KPA
Jim Edwards	KASB
FRED MOSTELLER	
Jeff Cowser	JIA
Neil Mosteller	
Melissa Wanyemann	Sec of State
Bon Smith	Dept of Commerce
DEBORAH STERN	KMA
Jeremy Slaughter	KMS
Chris Collins	"
Ronnie Ann Lower	KAAP
Don Moler	LKM



Johnson County Fire District No.2



Administrative Office 19495 Metcalf, P.O. Box 127 Stilwell, KS 66085

Phone # 913-681-2764 Fax # 913-681-2786

Barry D. Martin
Attorney for Johnson County Fire District No. 2

PROFFERED TESTIMONY

House Bill No. 2712, amending K.S.A. 19-3610 relating to fire districts.

History of Statute

K.S.A. 19-3610 was adopted in **1953** to authorize the Board of County Commissioners to levy for the cost of fire protection and/or payment to a **city** for providing fire protection to a fire protection district. (Limited to contracts with Cities for fire protection)

1961 law was amended to allow Board of County Commissioners to levy amount sufficient to pay **city** contracted for fire protection, without limit on levy.

1974 law was amended by adding subsection (b), allowing Board of County Commissioners, with approval of electors, to levy up to 7 mills for fire protection. (Previously limited to 5 mills)

1992 law deleted reference to specific use of levy, and replaced it with "All proceeds of such levy shall be used for the to carry out the powers, duties and functions of the governing body..." (Technical change)

Proposed Amendments

1. Statute needed "cleaned up," as the 1992 amendment included language that made reading difficult.
2. Expand the language of "**has contracted with a city**" to include contracts for fire protection with "**any other fire district, city or township or private entity within the vicinity of the district.**"

Reason for Amendments

1. 1992 amendment contained language which needs to be deleted to make K.S.A. 19-3610(a) read correctly.
2. Fire Protection Districts should be allowed to contract with other fire districts, townships or private entities with same parameters as contracts with cities.

Historically, many rural fire districts contracted with cities to provide fire protection to rural areas.

In recent years several rural fire districts have elected to establish their own fire protection services for safety of residences and property protection. (This is particularly true for areas such as Shawnee, Sedgwick and Johnson County, etc.). This has resulted in rural fire districts contracting with adjoining rural fire districts to provide fire protection.

This amendment allows a fire protection district to contract with "**other fire districts, townships or private entities**" on the same basis as they historically contracted with adjoining cities. (The proposed language is identical to that found in K.S.A. 19-3621)

House Local Government

Date: 2-24-04

Attachment # 1

Proponent for House Bill 2774
Before the House Committee for Local Government

Mr. Chairman and Committee Members:

My name is Edgar Peck. I am the treasure of Tecumseh Township and a member of the Topeka-Tecumseh Fire district board. Our district is located just east of Topeka. and serves not only Topeka and Tecumseh townships but we also serve two adjoining townships, Monmouth and Williamsport, by contract. Our current fire district board consists of the three board members from Topeka Township and the three board members from Tecumseh Township.

To help the committee understand the reasoning behind the proposed changes in KS 80-1540, KS 80-1541 and KS 80-1542, I would like to give you a very brief overview of Monmouth Township and the Topeka-Tecumseh Fire District.

Monmouth Township has been served, under contract, for several years by the Topeka-Tecumseh Fire District as previously stated. Over this period of time Monmouth Township has shown substantial growth through the building of many very nice homes. Because of this growth and the increase in their valuation, the Monmouth Township board has requested the Topeka-Tecumseh fire board to allow them to become a part of the Topeka-Tecumseh fire district, thus creating a new consolidated three township fire district. After long and careful deliberation and considering the advantages for all concerned, the Topeka-Tecumseh board would like to move forward with this proposal.

This brings me to the reason for the changes we are proposing. Currently KS80-1540 calls for a lengthy, tedious process calling for 51% of the landowners in the proposed new district to sign and file a petition with the township boards requesting creation of a new district. This method may work in a single township with a few hundred landowners that want to create a new district. Because of the number of housing areas that are involved we are looking at contacting several thousand landowners to assist them in filing a petition. We are not trying to circumvent our patron's rights from having a say, on the contrary, we are trying to simplify the process by allowing them to vote by ballot after proper notification of the proposition at the next general election.

The change in KS80-1541 would simply remove the provision, which allows for a landowner in the newly proposed district to be able to petition the county commissioners to hold a hearing and decide if a new district could be formed. This issue is addressed by allowing the voters to decide by ballot with a majority vote.

The change in KS 80-1542 would then allow for the newly formed fire district board to be comprised of all three members on each township board. As currently written, the statue calls for allowing only one member from each board to serve.

We encourage your adoption of the proposed changes that have been suggested by passing House Bill 2774.

House Local Government
Date: 2-24-04
Attachment # 2

February 24, 2004

Testimony: HB 2774

Mr. Chairman and Members of the Committee:

My name is James Kilmartin. I am the Clerk of Monmouth Township, which is in Southeast Shawnee County. I rise to speak for this bill.

Monmouth Township has doubled in size over the past five years. Our community has grown to the point where fire protection and response times are of concern. Monmouth Township has been contracting for fire protection from the Topeka-Tecumseh Fire District for many years.

The Monmouth Township board has requested several times over the past five years, that the fire district welcome Monmouth as a member of the district. This request appears to be in the best interest of southeast Shawnee County. House Bill 2774 allows for a more constructive way for our boards to reorganize the fire district. I would refer you to the testimony of Mr. Ed Peck, Tecumseh Township, for a more detail description.

Monmouth Township has passed a resolution to form its own fire department. About 45% of the current fire district firefighters reside in Monmouth Township.

However, the Monmouth Township board continues to believe, that the public's best interest is served with the expansion of the current fire district, rather than the creation of a new entity.

I encourage you to support HB 2774.

Thank you for your consideration,

Jim Kilmartin,

Clerk, Monmouth Township

4140 SE 53rd Street

Berryton, Kansas 66409

785 862 3700

ttfd251@yahoo.com or jkilmart@stormontvail.org

(sent via e-mail)

House Local Government
Date: 2-24-04
Attachment # 3

HOUSE BILL No. 2774

Bob Haselwood

Chairman Vickrey, members of the committee, I would like to thank you for the opportunity to speak before you today in favor of HB 2774.

My name is Bob Haselwood and I am clerk of Topeka Township and clerk of the Topeka-Tecumseh Fire District here in Shawnee County.

The fire district provides fire and first responder services to Topeka and Tecumseh townships. We also provide these same services to Monmouth and Williamsport townships on a contractual basis.

A few years back we were asked by the Monmouth Township board if they could join with us to form a new fire district that would be composed of Monmouth, Tecumseh, and Topeka townships. After many meetings and much discussion with the boards of these three townships, we decided that it would be beneficial to the residents of area if the three townships join to form one new fire district. But when we look into the procedure to form the new district, we discovered that it was going to be a lengthy and costly process.

We feel that HB 2774 allows for a simpler way for the townships to form a new fire district without taking away from the residents of the proposed district their ability to voice their opinion. We feel that the election process is a much simpler and quicker way to get the true feelings of the residents of the area as opposed to the petition process.

We also believe that the provisions of HB 2774 will be beneficial to other townships that might in the future want to form fire districts and will allow them to determine the size of the governing board that best fits their needs.

I would like once again to thank the committee for their time and ask you to vote favorably for this bill.

House Local Government
Date: 2-24-04
Attachment # 4



League of Kansas Municipalities

To: House Local Government Committee
From: Kim Gulley, Director of Policy Development & Communications
Date: February 24, 2004
Re: HB 2889

Thank you for the opportunity to appear today on behalf of the League of Kansas Municipalities and our 556 member cities. We appear today in support of HB 2889.

In 2000, the Kansas Legislature adopted a number of new provisions to the Kansas Open Records Act (KORA), including a requirement that all of the exemptions to the Act would expire on July 1, 2005 (K.S.A. 45-229). Review of the statutory exemptions to KORA began during the 2003 interim, with hearings held on a number of specific exemptions. It became quite clear during these hearings that the challenge of balancing the general public's right-to-know with the privacy rights of individuals can be a daunting task. At the conclusion of the interim committee's work on this issue, the various stakeholders involved were asked to get together and to determine whether we could find any common ground on these very important public policy issues.

The League of Kansas Municipalities, the Kansas Association of Counties, the Kansas Association of School Boards, the Kansas Press Association, and a variety of other entities at various times, met on numerous occasions to review the exemptions. Our goal was simple: to reach a greater understanding of each others' concerns and to draft a piece of legislation on which all of us could agree.

I am pleased to report that HB 2889 reflects a great deal of work and compromise regarding the KORA exemptions. The parties involved in these discussions believe that this legislation represents solid public policy in this area. The bill repeals a number of exemptions which are considered to be redundant with other statutes. It also makes substantive changes to a number of exemptions in an attempt to address concerns raised by the Kansas Press Association without compromising the need to protect certain privacy interests.

As you can well imagine, it was not easy to reach the compromise reflected in HB 2889. For that reason, we respectfully request that HB 2889 be considered without substantive amendment. Adding new provisions or repealing other exemptions would tip the balance away from the compromise and put in jeopardy the support of the various associations who appear before you today in complete agreement.

In conclusion, the League of Kansas Municipalities asks your favorable consideration of HB 2889. I would be happy to stand for questions at the appropriate time.

House Local Government
Date: 2-24-04
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. 24, 2002

To: House Local Government Committee, Jene Vickrey, chairman

From: Doug Anstaett, executive director, Kansas Press Association

Re: HB 2889

Mr. Chairman and members of the committee:

In 1999, newspapers joined together to test the effectiveness of the Kansas Open Records Act by making simultaneous and identical requests for records in a number of Kansas communities.

What those reporters discovered was disappointing, if not alarming, both for the public officials involved and for the press. The project helped to illustrate a number of serious weaknesses in the way public records are created, stored and accessed. Reporters encountered enormous inconsistencies in the way they were treated from jurisdiction to jurisdiction.

Partly because of the public embarrassment caused by that project, you and your colleagues ordered during the 2000 legislative session a complete review, one by one, of each of the exceptions in KORA. Unless otherwise dealt with, any exception in existence on July 1, 2000 will expire on July 1, 2005.

But the Legislature also put some stipulations on that review: *"An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception."*

The bill we offer today is the result of a number of meetings — some quite spirited, I might add — between representatives of the Kansas Press Association, Kansas Association of Broadcasters, the League of Kansas Association of Counties, Kansas Association of School Boards, Kansas National NEA, the Kansas Attorney General's Office, the KBI and others.

What we did was to identify the common ground we share on the issue of access to records. Where we disagreed and couldn't come to an appropriate compromise, we

House Local Government
Date: 2-24-04
Attachment # 6

decided to agree or disagree. Today's bill includes changes we could agree upon; if we couldn't, we left the former exception unchanged. Later in this process, both sides may offer new language for your consideration.

Before I go any further, I want to compliment the other parties for their willingness to discuss frankly any and all proposed changes. I think we all believe it was a fruitful exchange.

Today, we propose the following:

- Changes to exceptions 4, 6, 8, 10 and 45.
- Elimination of redundant exceptions 35, 38, 39, 40 and 46, reducing the total number of exceptions in the law to 41.

Some may rise in opposition to our elimination of some exceptions, implying that we are asking that these records be made public. That is not the case. They will not become public records should you pass this bill. We have asked for exceptions to be eliminated because they are addressed in other Kansas statutes. In other words, inclusion in KORA is redundant.

We must not forget that another 350 exceptions to disclosure have been identified elsewhere in the statute books. If we redundantly mentioned each of them in KORA, we would then be dealing with 400 exceptions rather than fewer than 50. That's why we decided to review KORA this year and leave the other 350 exceptions for an interim committee or next year's legislative session.

We Kansans pride ourselves on our belief in open government. We know a process that takes place in the light of day is more trusted than one that isn't. We know our participation in the process is essential to good government.

But we also agree there is some instances, information is of such a personal or sensitive nature that it should not be disclosed.

The Kansas Press Association urges the passage of House Bill 2889.

Thank you.



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

February 24, 2004

To: House Local Government Committee
From: Attorney General Phill Kline

Re: HB 2889 concerning the open records act

Chairman Vickrey and Members of the Committee:

Thank you for the opportunity to testify on this important piece of legislation. I appear before you today in full support of HB 2889. I would like to provide some background information as to the nature in which this piece of legislation came to be.

Over the last several weeks, I have met, along with individuals from my office with members of the Kansas Sunshine Coalition. The meetings were held with the purpose of finding areas of common interest in addressing the exceptions in the Kansas Open Records Act (KORA). It quickly became apparent, that I shared a common desire with the Sunshine Coalition. A desire to ensure transparency in government, while at the same time acknowledging the need to protect records of a secure nature.

HB 2889 represents a responsible effort to broaden public access to records. Additional discussions are taking place involving other components of the Open Records Act. It is my anticipation that these discussions will result in the introduction of another piece of legislation.

House Local Government
Date: 2-24-04
Attachment # 7



KANSAS
ASSOCIATION OF
COUNTIES

Testimony on HB 2889
Before the House Local Government Committee
By Judy A. Moler
General Counsel/Legislative Services Director
February 24, 2004

The Kansas Association of Counties thanks the Committee for the opportunity to speak on HB 2889. This bill is the result of several meetings with the Kansas Press Association and other interested parties. The parties included in working on the compromise were those that presented testimony during the interim hearing on the Kansas Open Records Act exemptions. The Kansas Association of Counties supports the compromise language contained in this bill. We would, however, reserve the right to oppose any amendments offered to the bill.

The Kansas Association of Counties urges you to act favorably on HB 2889.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

House Local Government
Date: 2-24-04
Attachment # 8

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

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

Testimony on **HB 2889**
before the
House Local Government Committee

by

Jim Edwards, Governmental Relations Specialist
Kansas Association of School Boards

February 24, 2004

Chairman Vickrey and members of the Committee:

I appreciate the opportunity to appear in front of you today to support **HB 2889**, a measure that amends and extends exceptions included in the Kansas Open Records Act (KORA). When the Interim Committee on Local Government met this past summer, it heard from many of the individuals that you will hear from today. Upon hearing the testimony, the chair and co-chair both instructed all of the parties that appeared to attempt to sit down before the session started and see if there were items that could be agreed to. What you have in front of you today is the outcome of several meetings between the groups.

What the parties found, after a couple of meetings, was that there was middle ground and there were definite areas that we could work together on. We believe that the changes made will make available the information that should be made public while still protecting the personal privacy of individuals.

I thank you for the opportunity to appear before you today and would be happy to answer any questions you might have.

House Local Government
Date: 2-24-04
Attachment # 9



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

Testimony
Before House Committee on Local Government
Regarding HB 2889
February 24, 2004
By
Harriet Lange
President/Executive Director
Kansas Association of Broadcasters

Mr. Chairman, Members of the Committee, I am Harriet Lange with the Kansas Association of Broadcasters. KAB serves a membership of radio and television broadcast stations in Kansas. We appreciate the opportunity to appear before you today in support of HB 2889.

The language in the bill is very close to the "agreed to" version of proposed changes to Kansas Open Records Act, worked out by representatives of Kansas Association of Counties, League of Kansas Municipalities, Kansas Association of School Boards, Kansas National Education Association, Attorney General Phill Kline, Kansas Bureau of Investigation, Kansas Press Association, Kansas Sunshine Coalition for Open Government, and KAB. HB 2889 represents a very positive step in reaching agreement on revisions to KORA. For that reason we support passage of HB 2889.


There are other changes to KORA we feel should be made and those proposals are forthcoming in another bill. We look forward to discussing those at a later date.

Thank you for your consideration.

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Date: 2-24-04
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kmsonline.org

To: House Local Government Committee
From: Jerry Slaughter
Executive Director 
Date: February 24, 2004
Subject: HB 2889; concerning the Kansas Open Records Act

The Kansas Medical Society appreciates the opportunity to appear today as you consider HB 2889, which amends the Kansas Open Records Act. Among the proposed amendments in the bill is one would remove the exception which prevents state agencies from disclosing health care peer review and risk managements reports. The proposed change in the bill appears in section 1, subsection (35), found on page 5, lines 24-26. We oppose that change and would urge you to reinsert that subsection in the bill.

Well established Kansas law and practice encourages health care providers to participate in organized peer review and hospital risk management programs. Peer review encompasses a wide range of activities in which physicians and other health care providers conduct detailed review and discussions about the care that is rendered across the spectrum of the health care delivery system. The goal of peer review is to improve patient care through education, based on the findings of a careful and thorough review of the clinical care that is rendered. For the peer review process to work it must have the open and candid involvement of members of the health care team. If physicians participating in the process did not have the clear assurance that the process was protected and confidential, they would not be comfortable evaluating and criticizing the care that was rendered by colleagues. Peer review as a tool for improved patient safety and quality would cease to be effective.

The peer review statutes which are cited in the bill clearly protect the process from unauthorized discovery and release. The existing exception in the open records act is a clear, unambiguous restatement of the public policy that such records are protected. The exception puts state agencies and other interested individuals on notice that these records are protected, consistent with state law. While HB 2889 does not amend the peer review statutes, we believe it sends a mixed message. By striking the exception, it appears the legislature is signaling that peer review records are no longer protected. That would likely have a chilling effect on the willingness of health care providers to participate in peer review.

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KMS Testimony on HB 2889
House Local Government Committee
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Passage of this bill, with the peer review exception eliminated, will probably result in expensive litigation over this point. You can be assured that some attorney will interpret the legislature's action to mean that peer review records are now not protected, and sue a state agency for release of the records. The agency will then have to resist, incurring significant legal expense in an attempt to prove that by passing this bill the legislature did not intend to change the public policy which protects peer review records. If the intent of this bill is to have a debate on the broader issue of peer review records, then we should debate that issue in the context of the underlying statute, not the open records act.

It does no harm to confirm the public policy, and the applicable law, by specifically maintaining the exception for peer review records in the open records law. However, it sends a confusing signal, and is completely unnecessary, to eliminate the exception. We urge the committee to reinsert the language found in subsection (35) on page 5. We have attached that amendment to this testimony. Thank you for considering our comments.

1 assets of an offender in the custody of the secretary of corrections shall
 2 be subject to disclosure to the victim, or such victim's family, of the crime
 3 for which the inmate is in custody as set forth in an order of restitution
 4 by the sentencing court.

5 (30) Public records containing information of a personal nature
 6 where the public disclosure thereof would constitute a clearly unwar-
 7 ranted invasion of personal privacy.

8 (31) Public records pertaining to prospective location of a business
 9 or industry where no previous public disclosure has been made of the
 10 business' or industry's interest in locating in, relocating within or expand-
 11 ing within the state. This exception shall not include those records per-
 12 taining to application of agencies for permits or licenses necessary to do
 13 business or to expand business operations within this state, except as
 14 otherwise provided by law.

15 (32) Engineering and architectural estimates made by or for any pub-
 16 lic agency relative to public improvements.

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

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

24 ~~(35) Any report or record which is made pursuant to K.S.A. 65-4922,~~
 25 ~~65-4923 or 65-4924, and amendments thereto, and which is privileged~~
 26 ~~pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.~~

(re-insert subsection)

27 ~~(36) Information which would reveal the precise location of an ar-~~
 28 ~~cheological site.~~

29 ~~(37)~~ (36) Any financial data or traffic information from a railroad com-
 30 pany, to a public agency, concerning the sale, lease or rehabilitation of
 31 the railroad's property in Kansas.

32 ~~(38) Risk-based capital reports, risk-based capital plans and corrective~~
 33 ~~orders including the working papers and the results of any analysis filed~~
 34 ~~with the commissioner of insurance in accordance with K.S.A. 40-2e20~~
 35 ~~and 40-2d20 and amendments thereto.~~

36 ~~(39) Memoranda and related materials required to be used to support~~
 37 ~~the annual actuarial opinions submitted pursuant to subsection (b) of~~
 38 ~~K.S.A. 40-409, and amendments thereto.~~

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

41 ~~(41)~~ (37) All financial analysis ratios and examination synopses con-
 42 cerning insurance companies that are submitted to the commissioner by
 43 the national association of insurance commissioners' insurance regulatory



Donald A. Wilson
President

TO: COMMITTEE ON LOCAL GOVERNMENT
FROM: TOM BELL
EXECUTIVE VICE PRESIDENT
KANSAS HOSPITAL ASSOCIATION
DATE: FEBRUARY 24, 2004
RE: HOUSE BILL 2889

Good afternoon. My name is Tom Bell and I am here on behalf of the Kansas Hospital Association to oppose the passage of House Bill 2889.

This bill concerns the Kansas opens record act and focuses on those records not required to be open to the public. Information such as personnel records, the identify of undercover agents, library patron records and approximately forty other examples of documentation are listed in House Bill 2889 as protected, confidential or privileged.

Under this proposed legislation, as stated in Section 1, subsection 35, lines 24 through 26, any report which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924 and which is privileged pursuant to K.S.A. 65-4915 or 65-4925 would become an open record. These statutes are a very significant part of Kansas law.

K.S.A. 65-4922 and 65-4923 outline the risk management program required of medical care facilities including the need for a risk management plan, the ability of the Department of Health & Environment to inspect medical care facilities, the necessity of the medical care facility to maintain an internal risk management program and the requirement to report actions by a health care provider that may be below the standard of care.

The purpose of a risk management program is to identify and investigate clinical events which occur in the normal day-to-day operations of a medical care facility such as a medical hospital, an ambulatory surgical center, or a psychiatric hospital. For example, if an elderly patient gets confused at night, climbs over his bed side rails to get to the bathroom and breaks his hip, a clinical incident report would be completed by the nurse who finds this patient on the floor. If another patient received 8 units of insulin instead of 9 units that were ordered by the physician, the health care provider catching the error would fill out an incident report.

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Kansas Hospital Association

These clinical incident reports are used in several ways. First, the report documents any clinical situation which occurs unexpectedly in the course of providing health care to a patient. Second, this report gives the hospital a tool which can be used to evaluate and analyze the care that is given to patients and reduce the reoccurrence of such incidents. The facts contained in the report often provide the basis for changes that may need to be implemented to improve patient care. Third, by having such documentation, the hospital or medical facility can take a proactive position and if legal action was to be taken in the future against a health care provider or the facility, documentation would exist that could be used to prepare for possible litigation. For example, a patient fall that occurs in February 2004 may not be filed as a plaintiff's cause of action until February 2006. Attempting to piece together the facts related to this fall two years after it happened would be difficult and perhaps inaccurate if an incident report had not been completed at the time it occurred. And finally, if the facility reviews the incident report and finds that the standard of care for that patient was not met, the facility would report the licensed health care provider to the appropriate regulatory agency, such as the Board of Healing Arts, or the Board of Nursing.

House Bill 2889 also references K.S.A. 65-4924 which concerns reports filed to a state licensing agency relating to a health care provider's inability to practice the provider's profession due to physical or mental disabilities, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol. Upon the receipt of such information, the licensing agency can refer the matter to an impaired provider committee of the appropriate state professional society or organization. The impaired provider can then get the treatment and rehabilitation needed to combat the impairment that is negatively affecting his or her ability to provide quality health care to patients.

The risk management statutes were created to provide an environment for candid discussion of potential errors, accidents and acts which were or were not taken related to patient care. These statutes also assist health care providers in getting the treatment they need if they should become impaired. In addition, these statutes provide for the confidentiality of records created under them.

House Bill 2889 will discourage medical facilities and health care providers from coming forward with vital information that will improve patient care, save patients' lives and assist those providers who are impaired and need treatment. Errors will be less likely to be reported and corrected and the full, frank, open, honest and critical evaluation of health care services will be hampered by the passage of this bill. Impaired physicians, nurses and pharmacists will not dare ask for rehabilitation if their personal struggles become open records. In short, it conflicts with both current law and previously enacted legislative policy.

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Testimony To
House Local Government Committee
Regarding House Bill 2889
By Charles L. (Chip) Wheelen
February 24, 2004

Thank you for the opportunity to express our concerns about HB2889. We must oppose the bill in its current form because it would repeal important exemptions from the Open Records Act that pertain to confidential reports made to peer review committees of state and county professional organizations.

Current law encourages physicians and other health care providers to make reports to associations like ours whenever they believe one of their colleagues may not be maintaining appropriate standards of care, or may be suffering from a mental or physical disability. This does not necessarily mean that a patient has been harmed or even exposed to potential harm. Such reports are normally an expression of genuine concern about the health of a colleague. When we receive such reports, we conduct a thorough inquiry and sometimes discover that the physician who is the subject of the report needs medical care or some other intervention in order to prevent deterioration of his or her clinical skills. In other words, we get involved before it's too late.

If reports to professional medical associations become subject to the Open Records Act, our ability to encourage voluntary reporting and to solicit information would be severely jeopardized. The original legislative intent of K.S.A.s 65-4915, 4922, 4923, 4924, and 4925 is explained in K.S.A. 65-4914 which says it is the "declared public policy of the state of Kansas that the provision of health care is essential to the well-being of its citizens as is the achievement of an acceptable quality of health care." That's why peer review reports and records are confidential and exempt from the Kansas Open Records Act. And that's why we respectfully request that you amend HB2889 to retain the exemption. A draft amendment is attached to this statement.

Thank you for considering our testimony and our request for an amendment.

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1 assets of an offender in the custody of the secretary of corrections shall
2 be subject to disclosure to the victim, or such victim's family, of the crime
3 for which the inmate is in custody as set forth in an order of restitution
4 by the sentencing court.

5 (30) Public records containing information of a personal nature
6 where the public disclosure thereof would constitute a clearly unwar-
7 ranted invasion of personal privacy.

8 (31) Public records pertaining to prospective location of a business
9 or industry where no previous public disclosure has been made of the
10 business' or industry's interest in locating in, relocating within or expand-
11 ing within the state. This exception shall not include those records per-
12 taining to application of agencies for permits or licenses necessary to do
13 business or to expand business operations within this state, except as
14 otherwise provided by law.

15 (32) Engineering and architectural estimates made by or for any pub-
16 lic agency relative to public improvements.

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

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

24 ~~(35) Any report or record which is made pursuant to K.S.A. 65-4922,~~
25 ~~65-4923 or 65-4924, and amendments thereto, and which is privileged~~
26 ~~pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.~~

27 ~~(36) Information which would reveal the precise location of an ar-~~
28 ~~cheological site.~~

29 ~~(37)~~ (36) Any financial data or traffic information from a railroad com-
30 pany, to a public agency, concerning the sale, lease or rehabilitation of
31 the railroad's property in Kansas.

32 ~~(38) Risk-based capital reports, risk-based capital plans and corrective~~
33 ~~orders including the working papers and the results of any analysis filed~~
34 ~~with the commissioner of insurance in accordance with K.S.A. 40-2c20~~
35 ~~and 40-2d20 and amendments thereto.~~

36 ~~(39) Memoranda and related materials required to be used to support~~
37 ~~the annual actuarial opinions submitted pursuant to subsection (b) of~~
38 ~~K.S.A. 40-400, and amendments thereto.~~

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

41 ~~(41)~~ (37) All financial analysis ratios and examination synopses con-
42 cerning insurance companies that are submitted to the commissioner by
43 the national association of insurance commissioners' insurance regulatory

Submitted by:
Charles
Wheelen

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

(36)
[and renumber ensuing]

KANSAS BOARD OF HEALING ARTS


LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS, GOVERNOR

MEMO

TO: House Committee on Local Government

FROM: Lawrence T. Buening, Jr. 
Executive Director

DATE: February 23, 2004

RE: Testimony on H.B. No. 2889

Thank you for the opportunity to appear before you and seek information from this Committee on a specific provision of H.B. No. 2889. The Kansas State Board of Healing Arts is concerned about the intent of the bill in deleting the exception to the Kansas Open Records Act contained in paragraph (35) of K.S.A. 45-221(a). If the bill's intent in deleting this paragraph is merely because records and reports made pursuant to the risk management statutes are already prohibited or restricted from disclosure by other state statutes, the Board recommends that this paragraph be retained to serve as a reaffirmation of legislative intent that it is sound public policy to maintain the confidentiality of peer review and risk management records. If, however, it is the intent of this bill to be the first step toward making peer review and risk management records in the possession of a public agency a matter of public record, the Board is adamantly opposed to deletion of K.S.A. 45-221(a)(35) from the exceptions to public disclosure.

The Kansas State Board of Healing Arts is a state agency in the executive branch of government. The Board currently regulates approximately 17,500 individuals in 13 health care professions. The investigation of matters relating to unprofessional conduct by health care professionals is an integral part of the Board's regulatory function. Numerous statutes provide that records and information obtained by the Board during its investigative and disciplinary process be kept confidential and are privileged. K.S.A. 65-2898a prohibits the Board or any of its employees from disclosing information relating to a complaint or information obtained during the course of an investigation of a complaint. 42 CFR Part II prohibits the release of records pertaining to alcohol and drug treatment records. In addition to paragraph (35), K.S.A. 45-221 (a)(2), (3), (11), (14), (25), (30) all provide exceptions to information obtained by the Board during the investigation of complaints.

MEMBERS OF THE BOARD

JOHN P. GRAVINO, D.O., PRESIDENT
Lawrence

RAY N. CONLEY, D.C., VICE-PRESIDENT
Overland Park

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GARY L. COUNSELMAN, D.C., Topeka
FRANK K. GALBRAITH, D.P.M., Wichita
MERLE J. "BOO" HODGES, M.D., Salina
SUE ICE, PUBLIC MEMBER, Newton
JANA JONES, M.D., Leavenworth

BETTY McBRIDE, PUBLIC MEMBER, Columbus
MARK A. McCUNE, M.D., Overland Park
CAROL H. SADER, PUBLIC MEMBER, Shawnee Mission
CHARLOTTE L. SEAGO, M.D., Liberal
CAROLINA M. SORIA, D.O., Wichita
ROGER D. WARREN, M.D., Pittsburg
JOHN P. WHITE, D.O., Pittsburg

K.S.A. 65-4915(a)(2)(D) defines the Board's review committees as being a peer review committee. K.S.A. 65-4915(b) makes the reports and records submitted to or generated by peer review committees confidential and privileged. K.S.A. 65-4925 makes records pertaining to risk management and impaired providers confidential and privileged. These and other statutes provide a detailed, specific and intricate legislative design and system to protect the privilege and confidentiality of peer review and risk management records. Deletion of this exception in the Kansas Open Records Act should not occur without a thoughtful and comprehensive review of the public policy surrounding all of the statutes relating to peer review and risk management confidentiality.

K.S.A. 45-221(a)(35) was included in the exceptions to public disclosure by the 1987 Legislature. This was included to insure that records obtained by public agencies as authorized by the risk management statutes adopted in 1986 as part of tort reform would remain confidential and privileged. Peer review and risk management has long been performed by hospitals and other health care entities as part of private critical self analysis. In 1986, the Legislature, by enacting statutes regarding mandatory risk management and reporting to state agencies, acknowledged the importance of the confidentiality and privileged nature of peer review and risk management activities.

There has been a long-standing legislative and judicial intent to maintain the confidentiality of peer review and risk management records. In *Adams v. St. Francis Regional Med. Center*, 264 Kan. 144 (1998), the Kansas Supreme Court acknowledged that the information generated by a peer review committee, detailing the committee's decision-making process, the officers' or committee's conclusions, or final decisions, is not subject to discovery in a civil action.

In conclusion, the Board would urge that K.S.A. 45-221(a)(35) not be deleted from the exceptions to disclosure of records required by the Kansas Open Records Act. If the bill's intent by deleting this paragraph is because it is a duplication of the prohibition from disclosure of peer review and risk management records contained in other state and federal statutes, the Board submits that retaining this provision will serve to reaffirmation of the Legislature's intent to keep these records confidential and privileged. However, if deletion of this paragraph is intended to be the first step toward making peer review and risk management records open to public disclosure, the Board firmly believes this would result in a destruction of a system that provides for a reasonable means to monitor the quality of health care provided to the citizens of the state of Kansas and have far-reaching and deleterious affects on the public health, safety, and welfare.

Thank you again for the opportunity to appear before you and I would be happy to respond to any questions.

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

TO: House Committee on Local Government
FROM: Christina Collins
Director of Government Affairs
DATE: February 24, 2004
RE: HB 2889: Open Records Act

Thank you for the opportunity to testify today in opposition to HB 2889. I am Christina Collins and represent KaMMCO, the Kansas Medical Mutual Insurance Company, a Kansas-based and physician-owned professional liability insurance company established by the Kansas Medical Society in 1989. KaMMCO stands in opposition to HB 2889 as written and respectfully urges the committee to reinsert the deleted exceptions (38) – (40).

HB 2889 has been presented to the committee as the product of a negotiated compromise between the Kansas Press Association and several organizations such as the Kansas Association of Counties. It is important to note from the outset that, regrettably, many of the parties most significantly impacted by this bill were not involved in those discussions nor in the authorship of the bill before you today. We believe the bill represents a significant policy change regarding the Open Records Act that merited full and frank debate by those affected. A process of open discussion might perhaps have resulted in a stronger, less controversial bill.

I would like to direct the committee's attention to page 5, lines 32 through 40. This bill would eliminate protections from the Kansas Open Records Act for records identified in current sections (38) through (40), which consist of the following:

- (38) Risk-based capital reports, risk based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20 and amendments thereto.
- (39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.
- (40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.

These documents represent highly sensitive, proprietary information about an insurance company's financial health and business strategies. The existence of protections such as

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Endorsed by the Kansas Medical Society

Christina Collins
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those currently found in the Open Records Act encourage full and frank disclosure of a company's highly sensitive business information to state regulatory entities. While it is appropriate for the Kansas Insurance Department to be privy to these documents and reports in order to fulfill its duty to monitor companies' financial health and business practices, the consequences could be significant if a competitor were able to access these business secrets through an open records request. The highly technical nature of these reports makes such information extremely difficult to interpret. Selective disclosure or misinterpretation of this technical information in the public domain could pose a rather significant threat for a company, without any corresponding guarantee the public will gain access to meaningful information.

Proponents of the bill may argue that the elimination of these exemptions under the Open Records Act is merely technical in nature because it removes redundant statutory protections. They may argue that the statutes governing such records and reports contain privileges that already protect them from disclosure. We respectfully disagree with this analysis. To retain the Open Records Act protection as it exists as well as the statutory privilege sends a clear and unambiguous statement of legislative intent – that such records are not subject to disclosure. This unanimity in the statutes makes it difficult to formulate an expensive and time-consuming legal challenge to the legislature's clear intentions on the subject. However, repealing these protections might allow for such legal arguments.

If the intention of revising the Open Records Act is to make government more transparent and easily accessible by its citizens, this proposed change is counterproductive. By eliminating the list of exemptions from a single statute, it becomes that much more difficult for an average member of the public, without benefit of legal counsel who knows how to navigate his way through multiple statutes and who is sensitive to the legal distinction between protected and privileged records, to know which records he or she may legitimately access. These proposed changes will obfuscate the law regarding open records. For these reasons we respectfully oppose the passage of this bill as written and urge the reinsertion of exceptions (38)-(40). Thank you for the opportunity to comment on these issues. I would be pleased to stand for questions.



KANSAS BOARD OF REGENTS

1000 SW JACKSON • SUITE 520 • TOPEKA, KS 66612-1368

TELEPHONE – 785-296-3421
FAX – 785-296-0983
www.kansasregents.org

February 24, 2004

Representative Jene Vickrey
Chairman
House Local Government Committee
State Capitol – Room 115-S
Topeka, KS 66612

Dear Chairman Vickrey:

Today your Committee will hear testimony on HB 2889. As you know, this legislation addresses the Kansas Open Records Act.

I have attached a letter from each of the General Counsels to the University of Kansas, Kansas State University and Wichita State University that presents you with a reasoned reflection of the impact that a change in these exceptions would have not only on the operations of the institutions, but, more importantly and more particularly, on the state employees who conduct those operations. The General Counsels, on the basis of their extensive experience in these matters, composed the letter jointly.

Thank you for the opportunity to comment on this legislation. Please let me know if I can be of further assistance.

Sincerely,

Reginald L. Robinson
President and CEO

House Local Government
Date: 2-24-04
Attachment # 16

FROM : KU GENERAL COUNSEL

FAX NO. : 785 864 4617

Nov. 14 2003 03:41PM P2

VIA FACSIMILE

November 14, 2003

Ms. Mary D. Prewitt
General Counsel
Board of Regents
Curtis State Office Building
1000 SW Jackson Street, Suite 520
Topeka, KS 66612-1368

Dear Mary:

We are writing to provide our recommendations regarding the upcoming legislative review of exceptions to disclosure under the Open Records Act, as required by K.S.A. 45-229. We understand that four of these exceptions will be reviewed by a legislative committee this coming Monday. These exceptions are subsections (a)(4) personnel records, performance ratings or individually identifiable records; (a)(10) criminal investigation records; (a)(30) records affecting personal privacy; and (a)(32) architectural engineering estimates for public improvement projects. Each of these exceptions was put into the law for a specific beneficial purpose and only after careful consideration by the Legislature. They have passed the test of time, and while we understand the Legislature's responsibility to revisit and review the Act, it is important to recognize that each exception was written, considered, debated and enacted for sound reasons.

Our clients have asked us to provide specific comments and recommendations regarding each of these subsections. With respect to the personnel records exception, subsection (a)(4), it has, at its core, an implicit recognition that employees in state service should be afforded some privacy regarding their personnel records. The exception makes available for public inspection matters that are of clear public interest, including names, positions, salaries, and length of service. This is understandable given that many, although not all, of our employees receive state general funds as the source of their salary.

At the same time, however, these employees should be accorded privacy in their actual personnel records and their performance ratings. This recognition that records of performance as well as discipline, sick leave, and other matters of a personal nature should be respected as private enhances the efficiency and fairness of our state employment system. Disclosure of these records in response to routine inquiries under the Open Records Act would be contrary to our employees' reasonable expectation of privacy and inimical to efficient and fair operation of our personnel management system, including progressive discipline. Open and fair discussion and evaluation of employees is essential to growth and development in a job. This includes honest

FROM : KU GENERAL COUNSEL

FAX NO. : 785 254 4617

Nov. 14 2003 03:41PM P3

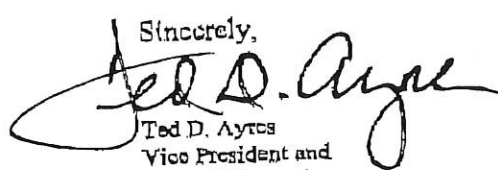
Ms. Mary Prewitt
November 14, 2003
Page 2


critiques and corrective action plans found both in performance appraisals and disciplinary matters. Were these matters open to public scrutiny, even after the fact, the result is likely to discourage candid and effective feedback and counseling. These activities, as well as contractual matters involved in terminations and settlements, require mutual trust and commitment from the beginning of an employment relationship through its end. Making these documents public would impede our ability to achieve fair and efficient resolution of employment disputes and could result in more, rather than less, litigation and at a higher corresponding cost.


Similarly, we urge that the exception found in subsection (a)(10) for investigation records be retained, either in its current form or a slightly modified form. While some narrowing of the exception may be appropriate, at a minimum it must be recognized that effective law enforcement investigations cannot be conducted in a fishbowl. Public disclosure of incomplete investigations can impede the ability of investigators to effectively conduct and complete their investigations. Additionally, protecting the identity of confidential sources and undercover agents is imperative for informants' safety as well as law enforcement's ability to acquire these sources in the first place. This protection from disclosure should be maintained, as should confidential investigative techniques and procedures. Further, any law enforcement information whose release would endanger the life or physical safety of a person should never be open to public inspection. Finally, as a matter of good public policy, reflecting our obligation to respect and protect the victims of sexual offenses, we believe their names, addresses, and other identifying information should be excluded from public release.

While our institutions do not assert subsections (a)(30) (records affecting personal privacy) and (a)(32) (architectural engineering estimates) as commonly as the other two under consideration, these exceptions deserve careful review. State agencies benefit from having a practical means to prevent an invasion of privacy from occurring, and subsection (a)(30) provides that means. Having such a provision is a tool that can be used to limit and avoid litigation against the institutions we advise and represent. Similarly, the elimination of subsection (a)(32) could have a substantial negative impact on state agencies' ability to obtain the best engineering and architectural estimates possible. In our view, knowledge that all bids and estimates would be open to the general public, as well as to competing firms, would serve to have an immediate chilling effect on the interest and willingness of such professionals to participate.

We hope you share our concerns, and we ask that you provide this letter and any endorsement or comments you wish to make to the appropriate committee officials.

Sincerely,

Ted D. Ayres
Vice President and
General Counsel
Wichita State University


James P. Potinoff, Jr.
University General Counsel
University of Kansas


Richard H. Seaton
University Attorney
Kansas State University

TAD:JPP:RHS:hkm

Ballosu
2/24/04

House Local Government
Date: 2-24-04
Attachment # 17

1 vehicles, property and records belonging to the sheriff's department. If
2 the provisions of this act are adopted in Cloud county, all property of the
3 city of Concordia police department shall be transferred to the agency.
4 A record of all property so transferred shall be prepared and copies
5 thereof filed in the office of the county clerk and with the secretary of
6 the agency. On the date fixed for the transfer of law enforcement au-
7 thority, all staff of any city police department and all staff in the office of
8 the county sheriff on such date, holding a law enforcement training cer-
9 tificate and meeting the qualifications established by the county law en-
10 forcement agency, may become members of the law enforcement agency,
11 and upon application shall become members of the law enforcement
12 agency.

13 Sec. 12. It shall be the duty of the director and officers to keep and
14 preserve the peace, and, for such purpose such director and officers are
15 hereby vested with the power and authority of peace and police officers
16 in the execution of the duties imposed upon them under the provisions
17 of this act. All powers and duties now or hereafter conferred and imposed
18 upon the sheriff and deputies and constables of any county adopting the
19 provisions of this act are hereby conferred and imposed upon the director
20 and officers appointed under the provisions of this act. All the powers
21 and duties now or hereafter conferred and imposed upon the city marshal
22 or chief of police and police officers of cities located within such county
23 relating to the enforcement of the laws of the state and ordinances of
24 such cities, the authority for the enforcement of which has been trans-
25 ferred to and vested in the county department, are hereby conferred and
26 imposed upon the director and officers appointed under the provisions
27 of this act.

28 Sec. 13. The board of county commissioners of any county adopting
29 the provisions of this act shall provide the agency and department with
30 such quarters and facilities as the agency deems necessary. County law
31 enforcement agencies may utilize quarters and facilities previously used
32 by the sheriff of the county and may enter into contracts with cities lo-
33 cated within the county for the use by such agency of city jail facilities.
34 The board of county commissioners may construct or may acquire by
35 purchase, condemnation or lease, buildings and facilities for the use of
36 the agency and department in like manner as that provided by law for
37 the construction or acquisition of public buildings for the use of the
38 county.

39 Sec. 14. The sheriff of any county adopting the provisions of this act
40 shall be and is hereby relieved of all power, authority and responsibility
41 now or hereafter prescribed by law from and after the date fixed for the
42 transfer of such authority and responsibility to the law enforcement de-
43 partment under the provisions of this act, including the power, authority

On the date fixed for the transfer of law enforcement authority, all other staff of any city police department and all other staff in the office of the county sheriff on such date, meeting the qualifications established by the county law enforcement agency, may become staff of the law enforcement agency, and upon application shall become staff of the law enforcement agency.

Submitted by:
Theresa Kiernan
Revisor's Office

Ballou

HOUSE BILL No. 2654

By Representatives Toelkes, DeCastro, Huy, Rehorn and Thimesch

1-29

9 AN ACT concerning cities; relating to annexation; amending K.S.A. 12-
10 520, 12-531 and 12-532 and repealing the existing sections.
11

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

12 ~~New Section 1. No land shall be annexed pursuant to K.S.A. 12-520,~~
13 ~~and amendments thereto, unless the question of such annexation has been~~
14 ~~submitted to and approved by at least 60% of the qualified electors of~~
15 ~~the area proposed to be annexed voting at an election called and held~~
16 ~~thereon. Such election shall be called and held in the manner provided~~
17 ~~for question submitted elections.~~

See Attached

18 Sec. 2. K.S.A. 12-520 is hereby amended to read as follows: 12-520.
19 (a) ~~Subject to the provisions of section 1, and amendments thereto, and~~
20 ~~except as hereinafter provided, the governing body of any city, by ordi-~~
21 ~~nance, may annex land to such city if any one or more of the following~~
22 ~~conditions exist:~~

The

Subject to the provisions of section 1, and amendments thereto,

- 23 (1) ~~The land is platted, and some part of the land adjoins the city.~~
- 24 (2) The land is owned by or held in trust for the city or any agency
- 25 thereof.
- 26 (3) The land adjoins the city and is owned by or held in trust for any
- 27 governmental unit other than another city, except that no city may annex
- 28 land owned by a county which has primary use as a county-owned and
- 29 operated airport, or other aviation related activity or which has primary
- 30 use as a county owned and operated zoological facility, recreation park or
- 31 exhibition and sports facility without the express permission of the board
- 32 of county commissioners of the county.
- 33 (4) The land lies within or mainly within the city and has a common
- 34 perimeter with the city boundary line of more than 50%.
- 35 (5) The land if annexed will make the city boundary line straight or
- 36 harmonious and some part thereof adjoins the city, except no land in
- 37 excess of 21 acres shall be annexed for this purpose.
- 38 (6) The tract is so situated that 2/3 of any boundary line adjoins the
- 39 city, except no tract in excess of 21 acres shall be annexed under this
- 40 condition.
- 41 (7) The land adjoins the city and a written petition for or consent to
- 42 annexation is filed with the city by the owner.

House Local Government
Date: 2-24-04
Attachment # 18

Submitted by:
Rep. Toelkes

18-2

(b) No portion of any unplatted tract of land devoted to agricultural use of 21 acres or more shall be annexed by any city under the authority of this section without the written consent of the owner thereof.

(c) No city may annex, pursuant to this section, any improvement district incorporated and organized pursuant to K.S.A. 19-2753 *et seq.*, and amendments thereto, or any land within such improvement district. The provisions of this subsection shall apply to such improvement districts for which the petition for incorporation and organization was presented on or before January 1, 1987.

(d) Subject to the provisions of this section and subsection (e) of K.S.A. 12-520a, and amendments thereto, a city may annex, pursuant to this section, any fire district or any land within such fire district.

(e) Whenever any city annexes any land under the authority of paragraph 2 of subsection (a) which does not adjoin the city, tracts of land adjoining the land so annexed shall not be deemed to be adjoining the city for the purpose of annexation under the authority of this section until the adjoining land or the land so annexed adjoins the remainder of the city by reason of the annexation of the intervening territory.

(f) No city may annex the right-of-way of any highway under the authority of this section unless at the time of the annexation the abutting property upon one or both sides thereof is already within the city or is annexed to the city in the same proceeding.

(g) The governing body of any city by one ordinance may annex one or more separate tracts or lands each of which conforms to any one or more of the foregoing conditions. The invalidity of the annexation of any tract or land in one ordinance shall not affect the validity of the remaining tracts or lands which are annexed by the ordinance and which conform to any one or more of the foregoing conditions.

(h) Any owner of land annexed by a city under the authority of this section, within 30 days next following the publication of the ordinance annexing the land, may maintain an action in the district court of the county in which the land is located challenging the authority of the city to annex the land and the regularity of the proceedings had in connection therewith.

, the reasonableness of the annexation

Sec. 3. K.S.A. 12-531 is hereby amended to read as follows: 12-531.

(a) ~~Five years~~ One year following the annexation of any land pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, or, where there has been litigation relating to the annexation, ~~five years~~ one year following the conclusion of such litigation, the board of county commissioners shall call a hearing to consider whether the city has provided the municipal services as provided in the timetable set forth in the plan in accordance with K.S.A. 12-520b or 12-521, and amendments thereto. The board of county commissioners shall schedule the matter for public hearing and

18-3

1 register of deeds also shall record the order of exclusion on the margin
2 of the recorded plat of such land, giving reference thereon to the page
3 and book of records where the order is recorded in the register's office.

4 (d) Except as provided by this subsection, after the effective date of
5 the order to exclude the land from the city, such land shall not be liable
6 for any general taxes imposed by the city. Such land shall remain liable,
7 however, for any taxes or special assessments levied by the city as are
8 necessary to pay its proportionate share of the interest on and principal
9 of such bonds or other indebtedness incurred by the city for improve-
10 ments to the land which were approved by the city before the date on
11 which the owner or owners filed a petition for the exclusion of the land
12 from the city.

13 (e) The board shall not order exclusion of any land if:

14 (1) The service extension plan conditions the extension of certain im-
15 provements or services on the filing of a legally sufficient petition by the
16 owners of the land for the creation of an improvement district and to levy
17 special assessments therein to pay a portion of the costs of such improve-
18 ments, and a sufficient petition has not been filed;

19 (2) since the annexation, the governing body of the city initiated the
20 creation of an improvement or benefit district affecting such land to levy
21 special assessments thereon to pay a portion of the costs of certain mu-
22 nicipal improvements, and the formation of the district was blocked by
23 the filing of a sufficient protest petition by some or all of the owners of
24 any land in the proposed district;

25 (3) the exclusion would result in the land being completely sur-
26 rounded by other tracts of land located within the city's boundaries; or

27 (4) the board finds the exclusion of the land would have an adverse
28 impact on the health, safety and welfare of the residents of the city or
29 such land.

30 (f) Any owner or the city aggrieved by the decision of the board may
31 appeal the decision to the district court in the manner provided in K.S.A.
32 19-223, and amendments thereto. Any city so appealing shall not be re-
33 quired to execute the bond prescribed therein.

34 Sec. 5. K.S.A. 12-520, 12-531 and 12-532 are hereby repealed.

35 Sec. 6. This act shall take effect and be in force from and after its
36 publication in the statute book.

New Section 1. (a) No land shall be annexed pursuant to subsection (a) (1) of K.S.A. 12-520, and amendments thereto, unless the city adopts a resolution stating its intent to annex such land. Such resolution shall be published at least once in a newspaper of general circulation within the city and in the area sought to be annexed. If within 30 days after the publication of such resolution, a petition requesting the appointment of an annexation review board signed by at least 40% of the landowners in the area sought to be annexed is filed with the city clerk, no land shall be annexed unless such annexation, or portion thereof, is approved by an annexation review board as provided by this section.

(b) Within the mayor shall convene a review board composed of the following persons:

(1) The mayor of the city desiring to annex such land or the mayor's designee.

(2) A landowner in the area sought to be annexed.

(3) A hearing officer from the office of administrative hearings within the department of administration.

(c) The review board shall determine whether the proposed annexation is in the public interest and in the best interest of the city, county and other political subdivisions in the area sought to be annexed. The governing bodies of the city, county and other political subdivisions in the area sought to be annexed shall assist the board in making its decision. Such governing bodies shall provide all relevant information and records requested by the review board. In making its determination the review board shall be guided, but not be limited to, by its findings with respect to the following factors:

(1) The immediate and prospective populations of the area to be annexed.

(2) The assessed valuation of the area to be annexed, and its relationship to population.

(3) The history of and prospects for construction of improvements in the area to be annexed.

(4) The needs and possibilities for geographical expansion of the city.

(5) The present and anticipated need for governmental services in the area proposed to be annexed, including but not limited to, water supply, sewage and garbage disposal, zoning, streets and alleys, curbs, sidewalks, police and fire protection, playgrounds, parks and other municipal services, and transportation and drainage.

(6) The relative capabilities of the city, county, and other political subdivisions in the area sought to be annexed to provide or obtain governmental services when needed.

(7) The existence of benefit districts within the area proposed to be annexed, and the impact of annexation upon such districts.

(8) The elimination of isolated unincorporated areas existing without adequate economical governmental services.

(9) The immediate and potential revenues that would be derived by the city as a result of annexation, and their relation to the cost of providing service to the area.

(d) The board shall make its determination either approving or disapproving the annexation, or a portion thereof, within 90 days of the appointment of the first member of the annexation review board. The board specifically shall state its reasons and findings for its determination. Such findings need not include specific data on every finding made, but shall indicate that all factors listed in subsection (c) were considered. A copy of the board's determination shall be filed with the mayor of the city seeking to make such annexation and with the board of county commissioners.

(e) The city may annex the land sought to be annexed to the extent approved by the annexation review board under subsection (d).