Approved: January 20, 2005
Date

MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATIONS AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 P.M. on January 11, 2005 in Room 519-S of the Capitol.

Committee members absent: Representative Dale Swenson- excused
Representative Melody Miller- excused

Committee staff present: Mike Heim, Legislative Research Department
Martha Dorsey, Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Maureen Stinson, Committee Secretary

Conferees appearing before the committee: none

Others attending:
See Attached List

Bill Introductions

Doug Anstett, Executive Director, Kansas Press Association, requested committee bills. The subjects of the bills are as follows:

- An amendment to the Kansas Constitution guaranteeing the right of public access to governmental activities.
- The formation of a public integrity office in the Office of the Kansas Attorney General to investigate alleged violations of the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA), to initiate action if necessary and to compile statistical information.
- Changes to two exemptions in the Kansas Open Records Act. The first change expands the language in exemption 4 to include "actual compensation in employment contracts or employment related contracts or agreements. The second change is in exemption 30 and related to the personal privacy exemption, to include a statement that the exemption be strictly construed even though such disclosure may cause inconvenience or embarrassment to public officials or others. Concerning statutes in another part of the KORA, we'd like define what a clearly unwarranted invasion of personal privacy would mean.
- Under KSA 45-217, we are requesting language to re- define any public agency to include those companies that derive at least 50 percent of their annual expenditures from taxes or fees collected by cities, counties, school districts, of the State of Kansas unless they already provide an accounting of those expenditures to the granting agency.
- Change to the penalty section of the KORA, to subject agency record custodians who knowingly and illegally deny individuals or the press access to public records.

Without objection, these will be considered introduced as committee bills and one resolution.

Rep. Frank Miller requested a committee bill dealing with the registration of voters stipulating that if a voter who misses a third general election (six years), his/her name could then be dropped from the voter registration list. The proposed legislation is a resolution to the federal government and makes changes to the 1992 Voter Act.

No action was taken concerning the request. Rep. F. Miller will consider whether or not the bill is to be introduced.

Committee Introductions

Members of the committee introduced themselves.

MINUTES OF THE House Governmental Organizations and Elections Committee at 3:30 P.M. on January 11, 2005 in Room 519-S of the Capitol.

Interim Committee Reports

Mike Heim briefed the committee on the meetings held during the Interim by the Special Committee on Local Government. He distributed a summary (Attachment 1) of the work of the committee including conclusions and recommendations on the two topics of study:

- City Annexation Laws
- Kansas Open Records Act

Chairman Vickrey asked Mr. Heim to clarify the intent of **HB 2013,** a bill by the Special Committee on Local Government. Mr. Heim explained that the bill would re-enact all the KORA exceptions.

Chairman Vickrey asked whether there was a bill by the Special Committee concerning 12 exceptions noted in the summary (Attachment 1). Mr. Heim said that there was not currently a bill on that topic and that there would need to be a bill requested.

There was discussion concerning the need for possible legislation concerning KORA and disclosure of daycare addresses. There is currently not a bill relating to the matter.

The meeting was adjourned.

Next meeting is scheduled for January 13, 2005.

House Governmental Organization and Elections Committee

Date 1-11-05

Name	Representing
Richard Gannon	KPA
Doug Anstaett	KPA
Rebecca Bailey	KMS
Steve Golden	Intern Rep. Merrick/Rep. Miller
KYAN THORNBURG	Intern Rep. Tom HOLLAND
Jon Edwards	KASB
Danielle Noe	Johnson County
SCOTT SCHNEIDER	CITY OF WICHITA
[illegible]	HEIN LAW FIRM
Jeff Rottenberg	KS Sheriff's Ass'n
Erik Sartorius	City of Overland Park
TERRY HOLDREN	KANSAS FARM BUREAU
Mike Pepoon	Sedgwick County
Kim Gulley	LKM

Reports of the Special Committee on Local Government to the 2005 Kansas Legislature

CHAIRPERSON: Senator Barbara Allen

VICE-CHAIRPERSON: Representative Jene Vickrey

OTHER MEMBERS: Senators Mark Buhler, Mark Gilstrap, and Kay O'Connor; and Representatives Oletha Faust-Goodeau, Joe Humerickhouse, Lance Kinzer, Harold Lane, Todd Novascone, and Jerry Williams

STUDY TOPICS

City Annexation Laws

Kansas Open Records Act

December 2004

Special Committee on Local Government

City Annexation Laws

Conclusions and Recommendations

The Committee recommends the 2005 Legislature continue to study the city annexation laws. Specifically, the following issues should be addressed:

- The potential loss of customers and the financial impact of this loss on rural water districts as a result of annexation;
- The feasibility of eliminating city unilateral annexation powers;
- The possibility of city annexation decisions being made by local boundary commissions; and
- The issue of how to address diminished services, such as snow removal, to an area as a result of city annexation.

Proposed Legislation: None.

Background

The Committee was charged to conduct a complete review of the city annexation laws, including: the need for cities to have unilateral annexation powers; the level of participation of residents in an area to be annexed in the unilateral annexation process; the effectiveness of the annexation procedure before the board of county commissioners and its frequency of use; the feasibility of local boundary commissions to decide annexation issues; and a review of city plans for extension of services to newly annexed areas.

Annexation bills enacted in both 2003 (HB 2212) and in 2004 (HB 2774) were vetoed by the Governor. In 2003, HB 2212 would have limited the unilateral annexation powers of cities located in any county in which there was located an improvement district incorporated in 1962. Apparently, only cities located in Shawnee County would have been affected by this bill. The bill would have prohibited unilateral annexation except for the situations when property owners petitioned the city for the annexation or when the property was owned by the city.

In 2004, HB 2774 would have eliminated the ability of certain cities located in Shawnee and Sedgwick counties to annex land unilaterally and would have established instead a procedure for the appointment of local boundary commissions to decide city annexation issues.

Committee Activities

The Committee held a hearing on the annexation issue. Seven conferees appeared requesting that city unilateral annexation powers be eliminated or restricted. Conferees included a representative of the Kansas Alliance for Rural Development, a representative of Shawnee County Rural Water District No. 8, residents of the city of Haysville, Sedgwick County, and Shawnee County, and Senator Dave Jackson.

Two conferees appeared who opposed limiting or restricting city unilateral annexation powers. They included a

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representative of the League of Kansas Municipalities and a representative of the City of Andover.

Proponents of restricting city unilateral annexation powers said that citizens in the areas to be annexed had no voice; that annexation could have an adverse affect on other local units of governments such as townships and rural water districts; that areas annexed to cities often suffer a loss in the quality of services provided; and that plans for extension of services prepared by cities often require citizens in an area to assume an inordinate financial burden in order to obtain services.

Those who testified in favor of cities retaining their unilateral annexation power said the law was the result of a major compromise reached 17 years ago between cities and those parties who wanted city annexation laws amended and has worked very well. They noted that calls for further changes in the law were being made by persons representing only a handful of areas around the state.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the 2005 Legislature continue to study the city annexation laws. Specifically, the following issues should be addressed:

- The potential loss of customers and the financial impact on rural water districts as a result of annexation;
- The feasibility of eliminating city unilateral annexation powers;
- The possibility of city annexation decisions being made by local boundary commissions; and
- The issue of how to address diminished services to an area, such as snow removal services, which sometimes occurs as a result of city annexation.

Special Committee on Local Government

KANSAS OPEN RECORDS ACT

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends legislation that would continue the 205 open records exceptions scheduled to expire on July 1, 2005. The Committee also recommends legislation that would clarify statutes that provide for open records exemptions dealing with trade secrets, to conform the definition of "trade secret" to that contained in the Uniform Trade Secrets Act.

Proposed Legislation: The Special Committee on Local Government recommends the introduction of two bills on this topic.

BACKGROUND

The Legislative Coordinating Council directed the Special Committee on Local Government to study all current exceptions to disclosure under the Kansas Open Records Act (KORA) and recommend which exceptions should be continued and if any new exceptions should be added. A 2000 law provided that all exceptions to disclosure in existence on July 1, 2000 shall expire on July 1, 2005, and any new exceptions to disclosure or substantial amendment of an existing exception shall expire on July 1 of the fifth year after enactment unless the Legislature reenacts the exception.

Open Records Exemptions Sunset

Under KSA 45-229, all exemptions to disclosure in existence on July 1, 2000, expire on July 1, 2005, unless the Legislature acts to reenact the exceptions.

In the year before the expiration of an exception, the Revisor of Statutes is required to certify to the President of the Senate and the Speaker of the House by June, the statutory language and statutory citation of each exception which will expire the following year. The first such certification of the Revisor of Statutes was done on June 1, 2004, in excess of 250 exceptions were deemed to expire on July 1, 2005, unless reenacted by the Legislature.

Exceptions not subject to review are exceptions required by federal law and those that apply solely to the Legislature or to the state court system.

COMMITTEE ACTIVITIES

The Committee spent four and one-half days reviewing each of the over 250 separate sections of the law with the Revisor of Statutes and several of his staff and staff from the Legislative Research Department. The review complied with the requirements of KSA 45-229(h) as follows:

- Specific records covered by each exemption were identified;
- Whom the exception uniquely affects was reviewed;
- The public purpose or goal of each exception was noted; and
- Whether information contained in the records covered by the exception could be obtained by alternative means was reported.

The Committee was presented with the following as part of its review:

- A list of the statutory citations for more than the over 250 certified exceptions scheduled to expire on July 1, 2005.

- A 212-page printout containing the entire language of each of the statutes containing the exceptions.

- Two spreadsheets noting each statutory exception, whom the exception covers, the government program affected, the type of information exempted, and a column for notes and comments for each statutory cite. (A separate spreadsheet was prepared for the 43 exceptions contained in KSA 45-221 of the Kansas Open Records Act.)

In addition, the following items were prepared and presented by staff in response to the Committee's requests for further information following the exception review:

- A proposed bill draft providing uniform language for 12 sections of the law dealing with trade secrets exceptions;

- A spreadsheet listing the 35 separate statutes that provide exceptions of information from subpoena or discovery.

- A memorandum discussing the case law and Attorney General Opinion interpreting the current 44 exceptions contained in KSA 45-221(a).

As part of the Committee review of exceptions, the Committee invited testimony from a number of state agencies and other groups to help explain the purpose of certain exceptions. Those who testified before the Committee or supplied written testimony in response to Committee inquiries included representatives of the following:

- Kansas Society of CPAs;
- State Bank Commissioner's Office;
- Secretary of State's Office;
- Kansas Department of Corrections;
- Kansas Insurance Department;
- Kansas Public Employees Retirement System;
- Kansas Board of Healing Arts;
- Kansas Medical Society;
- Kansas Association of Osteopathic Medicine;
- Kansas Hospital Association;
- Kansas State Board of Education;
- Kansas Association of School Boards;
- Office of Judicial Administration;
- Kansas Department of Health and Environment;
- Kansas Department of Labor;
- Kansas Bankers Association;
- Kansas State Board of Nursing;
- Child Death Review Board;
- Kansas Civil Rights Commission;
- Kansas Department on Aging; and
- Kansas State School of Veterinary Medicine.

In addition, representatives of the League of Kansas Municipalities and the Kansas Press Association appeared. The League representative suggested that each of the more than 250 statutory exceptions must be reenacted in order to comply with KSA 45-229. Further, even if KSA 45-229 is amended to delete the reenactment language, the mere listing of the 250-plus statutes in a bill would open all provisions of the law for debate and amendment. As an alternative, he suggested that most of KSA 45-229 could be repealed with new statutory language added requiring the appointment of a special committee every five years to review the open records exceptions.

The representative of the Kansas Press Association said further amendments were needed to KSA 45-221(a), dealing with the personnel records exception; the notes, drafts, and data exceptions, and the personal privacy exception. He said specific language would be prepared at a later date for consideration by the 2005 Legislature.

One Committee member expressed

reservations about continuing the following 12 exceptions for the reasons noted.

KSA 17-1312(e)—language stating that the Secretary of State "may disclose" information about cemetery merchandise trust funds should be changed to "shall disclose."

KSA 22-3711—the "victim" should be added to the list of those who can have access to the presentence report, preparole report, post-release supervision report, and supervision history.

KSA 38-1508—the House Corrections and Juvenile Justice Committee should be added to those legislative committees that have access to child abuse or neglect reports.

KSA 40-222—require rather than permit the Commissioner of Insurance to disclose the examination of the condition of an insurance company report.

KSA 47-844—require disclosure that a fine was paid by a veterinarian who was the subject of an administrative proceeding.

KSA 65-1135—permit disclosure of complaints against nurses to prospective employers.

KSA 65-1467—permit disclosure of complaints against dentists to prospective employers.

KSA 65-1627—permit the disclosure of improper drug use by a pharmacist to a prospective employer.

KSA 74-7405(a)—the statute should be repealed since the Corrections Ombudsman position no longer exists.

KSA 75-104—the papers of former governors should be treated in the same manner as papers of former presidents.

KSA 75-712—KBI investigations of gubernatorial appointees should be made available to members of the Kansas Senate.

KSA 75-5266—should be clarified who is considered an inmate's friend and thus able to receive copies of psychiatric evaluation reports.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends that legislation be introduced to amend KSA 45-229 dealing with the Kansas Open Records Act exceptions sunset provision to do the following:

- Delete the requirement that KORA exceptions be "reenacted" to provide instead the exceptions "be continued."
- Change the date the Revisor of Statutes is required to certify the list of KORA exceptions scheduled to expire from June 1 to July 15 of the year prior to the actual expiration the following July 1.
- Add a new subsection (h) listing the 260 KORA exception statutes and providing these exceptions shall be continued.

The Committee also recommends legislation be introduced to amend 12 separate laws dealing with the confidentiality of trade secrets to provide a uniform definition of "trade secret" as the term is defined now in the Uniform Trade Secrets Act, KSA 60-3320 *et seq.*

The Committee also requested that a bill be drafted which would amend eight separate laws relating to confidential information not subject to subpoena, discovery, or introduction into evidence to delete these exemptions. The Committee did not recommend this bill to the 2005 Legislature but urges the 2005 Legislature to further review the merits of the bill.