

MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS
COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 P.M. on February 8, 2005 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Legislative Research Department
Martha Dorsey, Legislative Research Department
Norm Furse, Revisor of Statutes Office
Theresa Kiernan, Revisor of Statutes Office
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:

Doug Anstett, Kansas Press Association
Theresa Bush, Office of the Attorney General
Harriet Lange, Kansas Association of Broadcasters
Judy Moler, Kansas Association of Counties
Don Moler, League of Kansas Municipalities

Others attending:

See attached list.

HB 2095 **Office of public integrity; established**

Martha Dorsey, Legislative Research, provided a briefing to the committee on **HB 2095**.

Chairman Vickrey opened the hearing on:

HB 2095 **Office of public integrity; established**

Doug Anstett, Kansas Press Association, testified in support of the bill (Attachment 1). He said that the Kansas Press Association's Legislative Committee believes that an Office of Public Integrity in the Attorney General's Office will become a welcome advocate for those who believe they have been illegally denied access to what their government is doing.

Theresa Bush, Office of the Attorney General, testified in support of the bill (Attachment 2). She explains that the bill codifies current practices, including the policy of the attorney general's office to refer complaints against local units of government to the county or district attorney in the locale where the alleged violation took place. She said the only substantive addition to current practices is the requirement for annual reporting.

Kevin Graham, Office of the Attorney General, in response to questions from the committee, clarified the fiscal impact of the bill on the attorney general's office.

Harriet Lange, Kansas Association of Broadcasters, testified in support of the bill (Attachment 3). She said the bill provides for the collection of information relating to complaints of alleged violations of the Kansas Open Records Act (KORA) and the Kansas Open Meetings Act (KOMA).

CONTINUATION SHEET

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on February 8, 2005 in Room 519-S of the Capitol.

Don Moler, League of Kansas Municipalities, testified in opposition to the bill (Attachment 4). He said that the League of Kansas Municipalities and the Kansas Association of Counties train more public officials in the Open Meetings and Open Records Acts than anyone else in Kansas.

Judy Moler, Kansas Association of Counties, testified in opposition to the bill (Attachment 5). She said that they can find no reason that the office is needed nor the expense to the state warranted.

Chairman Vickrey closed the hearing on **HB 2095**.

HB 2005 **Elections; disclosure of felony conviction**

Rep. Lane, chair of the subcommittee, reported to the committee that the subcommittee was recommending that a balloon amendment be adopted (Attachment 6).

Rep. Yonally made a motion to adopt the balloon amendment (Attachment 6). Rep. Lane seconded the motion. The motion carried. HB 2005 was amended.

Rep. Sawyer made a motion to for the favorable passage of HB 2005 as amended and to include any necessary technical amendments. Rep. Lane seconded the motion. The motion carried. HB 2005 is Passed As Amended.

HB 2058 **Requiring continuing education for certain contractors licensed by cities and counties**

Rep. Sawyer made a motion to amend the bill to remove (a) the option that the required training could be approved by a nationally recognized trade association, and (b) the limitation that no more than four hours of the education may be certified training specific for the industry. Rep. Yonally seconded the motion. The motion carried. HB 2058 is amended. Rep. Holland made a motion for the favorable passage of HB 2058 as amended. Motion carried. HB 2058 is Passed As Amended. Rep. Otto and Rep. Oharah asked to be recorded as "no" votes.

Approval of Minutes

Rep. Yonally made a motion to approve the minutes of the January 13, 2005 and January 18, 2005 meetings. Rep. Lane seconded the motion. The motion carried. The minutes of the January 13, 2005 and January 18, 2005 meetings are approved.

Chairman Vickrey adjourned the meeting.

The next meeting is scheduled for Thursday, February 10, 2005.



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

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Feb. 8, 2005

To: Rep. Jene Vickrey, chairman, House Governmental Operations and Elections Committee, and committee members

From: Doug Anstaett, executive director, Kansas Press Association

Thank you for the opportunity to discuss House Bill 2095, an act that would establish an Office of Public Integrity under the auspices of the Kansas Attorney General's Office.

While we are proud of our open records and open meetings laws, we often find a lack of uniformity across the state in their application. Some jurisdictions strictly interpret when and where records and meetings can be closed to the public; others are much more inconsistent in their application. This inconsistency has led to a wide variety of different rulings on public records requests.

The Kansas Press Association's Legislative Committee believes an Office of Public Integrity in the attorney general's office will become a welcome advocate for those who believe they have been illegally denied access to what their government is doing. And it will also provide a one-stop shop for public officials who want to do the right thing but who may be confused by some of the details in KORA and KOMA.

First, it will become a repository for all complaints about alleged violations of KORA and KOMA. This data will be helpful in determining whether complaints follow a particular pattern that could be corrected legislatively. Public officials from all reaches of Kansas will be able to gain access to such data, which will reinforce the consistency of decisions in the future.

Second, it will give local governments an alternative when a KORA or KOMA complaint involves officers of government who have conflicts of interest with the local county or district attorney or who might be fearful of reprisal should they act on a complaint.

Third, it eventually will help bring more uniformity to the application of the law. The support of the state's top law enforcement agency will raise the awareness of the importance of public access to records and meetings.

We believe the vast majority of our records custodians in Kansas want to do the right thing. But they are required to make their decisions in a vacuum. The addition of an office at the state level will level out the playing field statewide and provide records custodians the kind of support they need when they must make tough decisions at the local level. And on those borderline questions, it will bring a degree of consistency to the process.

The Kansas Press Association wholeheartedly supports this legislation and we ask for your favorable consideration as you debate its merits.

Thank you. I will be glad to answer any questions from the committee.

House Gov. Org. & Elections
Date: 2-8-05
Attachment # 1



Submitted by:
Theresa Bush
Office of the
Attorney General

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

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HOUSE GOVERNMENT ORGANIZATION AND ELECTIONS COMMITTEE
TUESDAY, FEBRUARY 8, 2005
PRESENTATION BY
PHILL KLINE
ATTORNEY GENERAL OF KANSAS

TESTIMONY FOR HOUSE BILL NO. 2095

I support the passage of House Bill No. 2095.

This bill creates the "office of public integrity" and sets forth the process by which complaints about alleged violations of the Kansas Open Meetings or Records Act may be handled by prosecutors. This Act does not expand nor limit the current authority of the Kansas Attorney General or County/District Attorneys. Rather, it codifies current practices, including the policy of my office to refer complaints against local units of government to the county or district attorney in the locale where the alleged violation took place. The only substantive addition to current practices is the requirement for annual reporting.

The Bill would require every county and district attorney to make a yearly summary report to the Attorney General's office, stating what open meetings or records complaints were received, the identity of the entity complained of, and whether or not action was taken against the particular public entity in question. Likewise, my office would prepare an annual summary on this information for the complaints handled by that office. These reports would be open records and would permit the general public to obtain a summary of the number and types of open government complaints received by prosecutors on a

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Attachment # 2

yearly basis. Such reporting allows the public to be informed about the efforts of prosecutors, as well as the number and nature of open government concerns raised by complainants.

The Bill is not intended to impact in any way prosecutorial discretion. Nor does it require the prosecutor to justify prosecutorial decisions. It does not require that all complaints be acted upon nor that decisions not to prosecute be explained in great detail. The burden of reporting is the only additional duty imposed upon public prosecutors.

My office believes that this bill provides an over-view of the process to those concerned about a potential violation and represents a means of insuring that open government remains a high priority.





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Testimony – HB 2095
Before House Committee on Governmental Organization and Elections
February 8, 2005
By Harriet Lange, President
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 free-over-the-air radio and television stations in Kansas. We appreciate the opportunity to appear before you today on HB 2095.

We support passage of HB 2095 and the creation of an Office of Public Integrity. The bill formalizes the process of filing of complaints and the investigation of alleged violations to Kansas open government laws. And it provides for the collection of information related to complaints of alleged violations. The collection and distribution of this information will have a positive impact on compliance with our open records and open meetings laws and it will help to provide consistency in the interpretation and application of these laws.

Kansas Open Records Act states that it is the “public policy of the state that public records shall be open...” and Kansas Open Meetings Act states that “meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public”. “Openness” in government at all levels is the policy of this state. Establishing this office in the Attorney General’s office, the state’s top law enforcement agency, sends the clear message that the State is serious about its stated policy of “openness”.

Thank you for your consideration.

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Date: 2-8-05
Attachment # 3



League of Kansas Municipalities

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To: House Governmental Organization and Elections Committee
From: Don Moler, Executive Director
Re: Opposition to HB 2095
Date: February 8, 2005

First, I would like to thank the Committee for allowing the League to testify today in opposition to HB 2095. I am going to set out, as briefly as I possibly can, the reasons why we believe HB 2095 is not necessary nor should it be enacted.

- **Kansas Doesn't Need an Open Meetings/Records Czar.** It is the opinion of the League, and the thousands of city officials that we represent, that there is not a systemic problem which would necessitate the actions contemplated by HB 2095. In effect, we believe this is a solution in search of a problem. There are literally thousands and thousands of meetings of locally elected governing bodies and other local groups covered by the Open Meetings Act every year. Only a infinitesimally small percentage are ever even alleged to violate the Open Meetings Act. Of that number, we believe most are the result of ignorance of the law as opposed to a direct intent to violate the law. To this end, we do not believe that there is a problem which necessitates the creation of a State Open Meetings/Records Czar.
- **HB 2095 is Redundant and Unnecessary.** Investigation and enforcement of the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA) already rests within the authority of the Kansas Attorney General. K.S.A. 45-222 specifically authorizes the AG to enforce KORA, and K.S.A. 45-228, enacted as part of an agreement in 2000, specifically grants subpoena and other powers to the Attorney General. With respect to KOMA, K.S.A. 75-4320 specifically authorizes the Attorney General to enforce KOMA, and K.S.A. 75-4320b specifically grants subpoena and other powers to the AG. In short, the Attorney General has the full statutory authority to investigate and bring suit for violations of both KOMA and KORA. This bill is absolutely redundant and unnecessary.
- **The Fiscal Note is Misleading.** Well, you can't have it both ways. Either there is a significant problem which needs to be addressed by the Attorney General's office or there isn't. If there is a significant problem, which cannot now be handled by the current staffing of the Attorney General's office, we would suggest that you are not going to solve the problem, if in fact it does exist, merely by the addition of one FTE. The League would suggest that this is simply the proverbial camel's nose under the tent. Essentially what is being suggested here is the hiring of one FTE with a salary of \$62,260, miscellaneous expenses of \$35,600, for a grand total of \$97,860. Expending additional taxpayer dollars for an office which is unnecessary and redundant is unwise.

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Attachment # 4

- **Why not use Local Freedom of Information Officers?** As the members of this Committee know, K.S.A. 45-226, which was passed during the 2000 legislative session, created the position of Local Freedom of Information Officer in every public agency in Kansas which maintains public records. This was part of an overall review and amendment of the Kansas Open Records Act and was agreed to by all parties at that time, including the Kansas Press Association. We believe to centralize this function at the state level merely serves to create an expensive state bureaucracy which will do nothing to address any possible concerns. The local Freedom of Information Officer system has worked well, and continues to work well. We would suggest that if the Legislature feels it important to extend the duties of the Local Freedom of Information Officer, we would be more than willing to engage in that discussion.
- **The League of Kansas Municipalities and the Kansas Association of Counties train more public officials in the Open Meetings and Open Records Acts than anyone else in Kansas.** As mentioned above, the League and the KAC are the foremost trainers of local public officials in the State of Kansas. No other group or organization comes close to the amount of training and resource materials which are provided to the people actually out there trying to interpret and work within the provisions of the Kansas Open Meetings Act and the Kansas Open Records Act. We would suggest that is the way to go rather than creating the State position of Open Meetings/Records Czar.

I will be happy to answer any questions the Committee may have concerning our opposition to HB 2095.



TESTIMONY

House Committee on Governmental Organization and Elections
HB 2095

February 8, 2005

By Judy A. Moler, General Counsel/Legislative Services Director

Thank you, Chairman Vickery and Members of the House Committee for allowing the Kansas Association of Counties to provide testimony on HB 2095.

The Kansas Association of Counties opposes the passage of HB 2095 which provides for an office of public integrity to be established within the office of the Attorney General. Certainly the Kansas Association of Counties is in support of public integrity and open government; however, we can find no reason that the office is needed nor the expense to the state warranted.

This idea was first posited with the other legislation proposed by the Kansas Press Association (KPA) several years ago. As compromise and agreement was reached among the interested parties and the KPA, the idea of this office was discarded. The current law which allows for investigation of complaints by the county or district attorney, and in some instances the Attorney General has stood in good stead for open government. I am not aware that this statute has been found wanting in the interest of open government. The addition of this extra hoop for locals to jump through just adds to the financial burden of beleaguered local governments and taxpayers.

The Kansas Association of Counties respectfully requests the Committee reject this bill.

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.

HOUSE BILL No. 2005

By Representative Lane

12-8

Balloon Amendment
Submitted by: Rep. Lane

9 AN ACT concerning elections; relating to disclosure of felony convictions
10 by certain candidates; amending K.S.A. 2004 Supp. 12-4516 and 21-
11 4619 and repealing the existing sections; also repealing K.S.A. 2003
12 Supp. 21-4619, as amended by section 59 of chapter 154 of the 2004
13 Session Laws of Kansas.
14

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

16 Section 1. (a) Each candidate for public office shall disclose whether
17 or not such person has been convicted of a felony offense. If a candidate
18 for public office has been convicted of a felony offense, such candidate
19 shall disclose, on a form provided by the secretary of state, ~~(1) Each such~~
20 ~~felony offense even if the record of such guilty plea or conviction has~~
21 ~~been expunged; (2) the date of the offense; (3) the date of the conviction;~~
22 ~~and (4) the state or other jurisdiction in which the conviction occurred.~~

23 ~~(b) Failure to disclose conviction of a felony offense is a class A~~
24 ~~misdemeanor.~~

25 ~~(c) Whenever a person is elected to public office and such person is~~
26 ~~convicted for violating this section, such candidate shall immediately for-~~
27 ~~feit such public office and such public office shall be deemed to be vacant.~~
28 ~~Any resultant vacancy in such public office shall be filled as provided by~~
29 ~~law.~~

30 (d) For the purposes of this section: (1) "Felony offense" shall include
31 any offense classified as a felony under the laws of this state, the laws of
32 another state or federal law.

33 (2) "Local office" shall have the meaning ascribed to it in K.S.A. 25-
34 4143 and amendments thereto.

35 (3) "Public office" shall include any state office or local office.

36 (4) "State office" shall have the meaning ascribed to it in K.S.A. 25-
37 4143 and amendments thereto.

38 ~~Sec. 2. K.S.A. 2004 Supp. 12-4516 is hereby amended to read as~~
39 ~~follows: 12-4516. (a) (1) Except as provided in subsection (b), any person~~
40 ~~who has been convicted of a violation of a city ordinance of this state may~~
41 ~~petition the convicting court for the expungement of such conviction and~~
42 ~~related arrest records if three or more years have elapsed since the~~
43 ~~person.~~

Delete Section 2. Municipal courts do not have jurisdiction to hear felony cases.