

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 17, 2005 in Room 519-S of the Capitol.

All members were present except:

Representative Bonnie Huy- excused
Representative Tom Sawyer- excused

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:

Rep. Kenny Wilk
Patricia Michaelis, Kansas State Historical Society
Terri Roberts, Kansas State Nurses Association
Chuck Simmons, Kansas Department of Corrections

Others attending:

See attached list.

Chairman Vickrey opened the hearing on:

HB 2243 Lan-Del joint water districts; transfer of assets, liability and territory

Rep. Kenny Wilk testified in support of the bill (Attachment 1). He explained that passage of this piece of legislation will only clarify whether the Lan-Del water district, formed by the City of Lansing and the Delaware Township, can provide water service within the boundary of the City of Lansing given the city expands beyond the borders of Delaware Township.

Written testimony was submitted by David Van Parys, Lan-Del Water District (Attachment 2).

Chairman Vickrey closed the hearing on **HB 2243**.

HB 2243 Lan-Del joint water districts; transfer of assets, liability and territory

Rep. Yonally made a motion for the favorable passage of HB 2243 and asked that it be placed on the Consent Calendar. Rep. Lane seconded the motion. The motion carried.

Chairman Vickrey opened the hearing on:

HB 2281 Disposition of gubernatorial records

Patricia Michaelis, Kansas State Historical Society, provided agency information concerning the bill (Attachment 3). She said the bill gives clarity to much of the ambiguity in the existing statute regarding disposition of and access to governor's records.

Chairman Vickrey closed the hearing on **HB 2281**.

Chairman Vickrey opened the hearing on:

HB 2149 Disclosure of certain information to prospective employers of nurses, dentists and pharmacists

Terri Roberts, Kansas State Nurses Association, testified as an opponent of the bill (Attachment 4). She explained the bill would make investigative files available to employers, and that they cannot support that partially investigated and incomplete files be made public by giving them to a prospective employer, or anyone else.

John Bottenberg, Bottenberg & Associates, submitted written testimony by Linda Bratner and A. Edward Hall, Delta Dental Plan of Kansas, in opposition to the bill. (Attachment 5)

Written testimony in opposition to the bill was submitted by Kevin Robertson, Kansas Dental Association (Attachment 6).

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

Chairman Vickrey opened the hearing on:

HB 2121 Criminal records; release to victims of crimes

Chuck Simmons, Kansas Department of Corrections, presented testimony providing agency information on the bill. The testimony was written by Roger Werholtz, Kansas Department of Corrections (Attachment 7). He said that the bill would have a chilling effect on persons providing information to the Department.

Chairman Vickrey closed the hearing on **HB 2121**.

HB 2139 Fence viewers; designees of board of county commissioners

Rep. Goico made a motion to adopt a balloon amendment (Attachment 8) to require a third commissioner or designee be used when the two chairpersons of the boards of county commissioners cannot agree in a fence viewing situation involving a fence located either on a boundary line between counties or partly in both counties, and to pass the bill as amended favorably out of Committee. Rep. F. Miller seconded the motion. The motion carried.

Chairman Vickrey adjourned the meeting.

The next meeting is scheduled for Tuesday, February 22, 2005.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

KENNY A. WILK
715 Cottonwood Drive
Lansing, Kansas 66043
(913) 727-2453

State Representative
42nd District
State Capitol, Room 426-S
Topeka, Kansas 66612-1504
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CHAIRMAN
Taxation Committee

COMMITTEE ASSIGNMENTS
Federal and State Affairs

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February 17, 2005

The Honorable Jene Vickrey, Chairperson
House Governmental Organizations/elections Committee
State Capitol, Rm. 115-S

RE: HB 2243

Dear Chairman Vickrey and Members of the Committee:

I submit the following as written testimony in support of HB 2243- Lan-Del joint water districts; transfer of assets, liability and territory. The passage of this piece of legislation will only clarify whether the Lan-Del water district, formed by the City of Lansing and the Delaware Township, can provide water service within the boundary of the City of Lansing given the city expands beyond the borders of Delaware Township.

Legislation was passed in 1987 which formed a joint water district between the City of Lansing and Delaware Township. The district has been successful since that time and has grown sizeably due to the connection of land underutilized by adjoining water districts.

The City of Lansing continues to grow at a swift rate and the directors of the water district desire to legally give water service to the city should the city outgrow the boundaries of Delaware township. The current legislation does not give clear jurisdiction in this matter. HB 2243 gives specific guidelines about acquiring service territory. The district could only accept service territory voluntarily or through transfer by the city should the city acquire water services through it's powers of annexation.

This legislation is local and according to the district, has no fiscal impact. I ask you to report favorably on HB 2243 to allow clarity in regards to potential future growth of the district and alleviate the chance of future litigation on this issue.

Respectfully Submitted,


Representative Kenny Wilk
District 42

House Gov. Org. & Elections
Date: 2-17-05
Attachment # 1

David Van Parys

LAN-DEL WATER DISTRICT
601 Holiday Plaza
Lansing, Kansas 66043
913-727-3350

February 16, 2005

Hon. Jene Vickrey, Chairperson
House Governmental Organizations/ Elections Comm.
State Capitol Bldg., Rm-115-S
Members of the Committee

Re: HB No. 2243

Dear Chairperson Vickrey and Members of the Committee,

Please accept the following as testimony in support of the approval of House Bill No. 2243. It is the belief of the Lan-Del Water District that passage of this legislation will clarify the issue of whether the district, formed by the City of Lansing and Delaware Township of Leavenworth County, can provide service within the boundaries of the City of Lansing in the event that the city expands beyond the boundaries of the township.

HISTORY

The Lan-Del Water District was formed through passage of legislation in 1987 which amended earlier legislation to mandate the formation of a joint water district between the City of Lansing and Delaware Township. At the time of the passage of the legislation the city and township were in multi-year litigation over whether such a joint district could be formed. The district has functioned since that date and has grown incrementally through the attachment of lands underserved by adjoining rural water districts. The City of Lansing is a growing community and the directors of the district wish to be in a position to legally provide water service to the city should the city expand past the boundaries of the township. Under the existing legislation it is unclear as to whether this could occur.

EFFECT OF THE BILL

The effect of the proposed legislation is to specify that the joint water district of the city and township (Lan-Del) could provide service outside of the boundaries of the township. The legislation does not create any powers on the part of the district to detach lands from existing water service providers, but rather specifies that the district could accept such services voluntarily or through transfer by the city in the event that the city were to acquire water services through the use of its powers of annexation. This legislation does not allow the district to "grab" service territory. The legislation specifies and clarifies the issue of whether the district can grow with the city outside of the township boundaries.

FISCAL IMPACT

It is the position of the district that this legislation has no fiscal impact

House Gov. Org. & Elections

Date: 2-17-05

Attachment # 2

In closing I would ask, on behalf of the district, that this committee favorably consider this legislation as a means of clarifying the potential future growth of the district and significantly reducing the chances of future litigation. I apologize for being unable to appear before you on this matter but wish to express the thanks of the district for your time and consideration.

Sincerely,

David C. Van Parys

300 Walnut

Leavenworth, KS 66048

913-684-0415

Fax 680-2748

Attorney for the Lan-Del Water Distr.

**Testimony Before the House Committee on Governmental Organization and Elections
Regarding HB 2281, An Act Concerning governor's records
Patricia A. Michaelis, State Archivist, Kansas State Historical Society
February 17, 2005**

General Remarks

We are very pleased to see this bill being considered. We feel it clarifies much of the ambiguity in the existing statute regarding disposition of and access to governor's records. The records of the governor possess great historical significance and the Kansas State Historical Society is committed to devoting the necessary resources to preserve and provide access to these records for future generations. We support the passage of this bill if the following questions and suggestions can be addressed.

Questions/Suggestions

1. Sec. 2 (1) (Beginning page 2, line 32)
 - a. Suggest using same language as in Government Records Preservation Act K.S.A. 45-402(d) to be inclusive of all formats.
 - b. "Documentary material" means all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures *regardless of physical form or characteristics or storage media.*
2. Sec. 2(5)(e) (Beginning page 4, line 2)
 - a. Suggest authorizing the governor to dispose of records during the governor's term of office in accordance with a records retention and disposition schedule developed by the state archivist in cooperation with the governor and approved by the legislative coordinating council.
 - b. The schedule would be limited to records that have no enduring administrative, historical, informational, or evidentiary value.
 - c. Suggest that the schedule be reviewed and revised, if necessary, at the beginning of each four year term of office. Any revisions would be approved by the legislative coordinating council.
3. Sec. 2(5)(h)(2) (Beginning page 4, line 26)
 - a. What is the intent of this clause?
 - b. Governor's records currently are housed in the state archives at the Kansas State Historical Society.
 - c. The KSHS has sufficient space to house and staff to process and organize governor's records for the foreseeable future.
 - d. It is an advantage to researchers to have access to the records of all Kansas governors in a single physical location.
4. Sec. 2(5)(i)(2)(B) (Beginning page 5, line 28)
 - a. Need clarification on whether this clause means that the governor's records are not subject to KORA requests until the earlier of 5 years from taking custody or when processing and organization is complete in less than 5 years from taking custody.
5. Sec. 2(5)(j)(2)(B) (Page 6, line 33) – Typo – 5th word should be "if" not "is"
6. Sec. 2(5)(j)(3) (Beginning page 6, line 40)
 - a. Suggest that the former governor send a letter to the state archivist designating a representative that is authorized to have access to his/her records.
7. Sec. 2(5)(k)(3) (Beginning page 7, line 8)
 - a. The state archivist does not have the expertise to make this determination



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H.B. 2149--Access by Employers to Investigative Files of Board of Nursing, Dentistry Board, Pharmacy Board

February 17, 2005

Representative Vickrey and members of the House Governmental Organization and Elections Committee, my name is Terri Roberts, J.D., R.N., and I am here representing the KANSAS STATE NURSES ASSOCIATION (KSNA). KSNA is the professional organization for Registered Nurses, representing the more than 27,000 RN's licensed in the state of Kansas.

KSNA cannot support the new provisions to the Kansas Nurse Practice Act, proposed in H.B. 2149, that would permit the release of investigative file information to prospective employers.

For many years, information contained in the investigative files has been confidential and not public until certain circumstances are met.

Before I discuss the policy issues, I am going to share some history about the Kansas Mandatory Reporting Law for licensed health professionals. In 1986 the first mandatory reporting law was passed by the legislature. It required the reporting of those providers covered by the Kansas Health Care Stabilization Fund (hospitals, doctors, CRNA's, dentists, etc.), by all healthcare providers (those previously named plus all others, RN's, LPN's, PT's, RT's, etc.).

The statutes were amended two years later, in 1988, requiring all health care providers to report other health care providers when their conduct or performance "falls below the acceptable standard of care" or "for another reason for which the licensee may be disciplined."

The three limitations currently in statute provide the public access to sufficient information to protect the public from harm. Licensees practicing their respective professions have been afforded confidentiality during what is commonly referred to as the investigative phase. Any individual can file a claim against an R.N. at the Board of Nursing. The Board of Nursing is then responsible for gathering more information and conducting an independent investigation. Following data gathering, there is a decision on whether there is sufficient evidence to justify a violation of the Nurse Practice Act. 25-35% of cases are inactivated at this point for insufficient evidence, no violation, or no evidence. Some complaints are also filed without substantiation, and in retaliation for employee actions by a disgruntled employer. In yet other cases, ex-spouses engage in these types of unfounded complaints.

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and to advocate for the health and well-being of all people.

House Gov. Org. & Elections
Date: 02-17-05
Attachment # 4

Terri Roberts
Page 2
Testimony
HB 2149

When an R.N. is formally disciplined, having been afforded the opportunity to defend himself, all information, including evidence, is available for public review. The Board of Nursing, if they believe a licensee is an imminent threat to the public, may seek an emergency order to limit or suspend the nurse's license, based on the evidence. This process provides protection to the public and, again, this evidence is available as a matter of public record.

The proposed amendment would make investigative files available to employers, and we cannot support that partially investigated and incomplete files are made public by giving this information to a prospective employer, or anyone else. There seems to be no compelling state interest to pursue this change in policy.

Thank you.



Submitted by:
John Bottenberg,
Bottenberg Assoc.
Written Testimony Only

February 16, 2005

Representative Jene Vickrey
Chair, Governmental Organization and Elections Committee
House of Representatives
Room 115-S
State Capitol
Topeka, KS 66612

Dear Representative Vickrey:

We would like to share with you our concerns about HB 2149. If passed, this legislation would eliminate the ability to access necessary information about Kansas' dentists from the State Dental Board.

Presently, disciplinary action taken against dentists is published in board newsletters to identify offenders. If the names aren't posted, the offenders aren't identified, and in some cases, these are serious offenses of which the public needs to be made aware. From a consumer's perspective, passage of this legislation could have harmful effects on Kansans' health and safety.

Should you have any questions, or would like additional information, please don't hesitate to contact us.

Sincerely,

Linda L. Brantner
Interim CEO

A. Edward Hall, DDS
Interim President

House Gov. Org. & Elections
Date: 2-17-05
Attachment # 5



KANSAS DENTAL ASSOCIATION

Date: February 17, 2005

To: House Committee on Governmental Organization

From: Kevin J. Robertson, CAE
Executive Director

A handwritten signature in black ink, appearing to read 'Kevin', is written over the printed name and title.

RE: **Testimony on HB 2149**

Chairman Vickrey and members of the committee I am Kevin Robertson, executive director of the Kansas Dental Association (KDA) representing 1,168, or some 80% of the state's licensed dentists. I am sorry I cannot be with you in person today, but I am currently in Salina preparing for our fourth Kansas Mission of Mercy (KMOM) project this weekend.

The **KDA opposes HB 2149**. The KDA believes it is appropriate that complaints filed with the Kansas Dental Board against a licensed dentist or dental hygienist are only open to the public after the Board's Investigatory Committee has fully investigated the complaint and the Board has rendered a Final Order regarding the complaint. The Board receives approximately 100 complaints against licensees each year from a variety of sources – patients, employees, other licensees and anonymous sources. Of these, only about 10% of all Board complaints against a person licensed by the Kansas Dental Board reach a Final Order specifying the licensee had a specific disciplinary action imposed on them.

Complaints are closed for a variety of reasons: 1) they did not involve a violation of the standard of care, 2) the complaint involved "personality" issues, 3) the matter was referred to the Kansas Dental Association (KDA) and went through our Peer Review process, or 4) the complaint was satisfied without adjudication and discipline.

Once the Board approves a Final Agency Order which concludes a complaint with adjudication and discipline it becomes a public record and is available to anyone who requests it from the Board office. The Kansas Dental Board website (www.accesskansas.org/kdb) then shows that an "ACTION" has been taken against that dentist or dental hygienist in their permanent file.

Again, the KDA believes it appropriate that complaints filed against licensees remain confidential and not be made available to anyone, including prospective employers.

Thank you for your time today, **I urge you to oppose HB 2149**.

5200 Huntoon
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Fax: 785-272-2301

House Gov. Org. & Elections
Date: 2-17-05
Attachment # 6

Submitted by:
Chuck Simmons

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2121
to
The House Committee on Governmental Organization and Elections

By Roger Werholtz
Secretary
Kansas Department of Corrections

February 17, 2005

Presented
by:
Chuck
Simmons

HB 2121 amends K.S.A. 22-3711 to provide access to the presentence report, prerelease supervision reports and the supervision history of the offender by the crime victim of the offender. The Department is concerned that the criteria employed by HB 2121 relative to the disclosure of information to crime victims is based upon the type of document generated rather than the substance of the information contained in the document. In contrast to HB 2121, the provisions of the Open Records Act regarding correctional information is governed by the nature of the information and not the name or purpose of the document which happens to contain the information. This characteristic of HB 2121 causes the Department to be concerned that HB 2121 would violate the confidentiality provisions of federal and state law, and intrude upon the privacy of various individuals.

The records proposed to be open to crime victims pursuant to HB 2121, particularly the prerelease and supervision history reports, may contain information regarding the offender's medical and mental health, the offender's family, persons providing information regarding the offender, employers, and the victim of the crime.

K.S.A. 22-3711 recognizes the confidential information contained in those reports. Federal law, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), also prohibits the disclosure of medical and mental health information. Additionally, state law, K.S.A. 65-5601 et seq., provides for the confidentiality of mental health and substance abuse treatment information. Violation of the confidentiality of that information is a crime. K.S.A. 65-5605.

In formulating the release plan and supervising the offender in the community, the Department gathers information from family members of the offender and others. This information includes the dynamics of the family, living arrangements, and other social aspects impacting the

offender's release and supervision in the community. Family members and others may also provide information regarding the offender's behavior while on supervision. This information can be acted upon without disclosure of its source. HB 2121 would have a chilling effect on persons providing information to the Department.

The Department also utilizes information regarding the specific aspects of the crime in order to evaluate and provide appropriate treatment to the offender. This information may involve personal information pertaining to the crime victim. Address information regarding victims is also maintained by the Department so that victims can be notified of various events and to formulate any travel or residential restrictions upon the offender. As proposed, HB 2121 would require the dissemination of victim information concerning one victim to other victims if the offender has victimized multiple persons.

The Department strives to provide information to crime victims while at the same time addressing the issues outlined above. To this end, the Department has established the Kansas Adult Supervision Population Electronic Repository (KASPER). This internet site lists by name and location every person under the Department's supervision. Additionally, the Open Records Act requires the dissemination of information to the public, including crime victims. K.S.A. 45-221(a) (29) provides for the release of offenders' names, photographs, sentence information, disciplinary record, supervision violations, and conditions of supervision (excluding requirements pertaining to mental health or substance abuse counseling). Recently, at the initiative of the Department, the Open Records Act was amended to provide for the disclosure of the location of offenders under supervision in the community and their financial asset information to aid in the collection of restitution.

The Department urges the Committee to evaluate issues concerning information available to the public and crime victims based upon the nature of the information itself and not by the type of record or document that contains diverse types of information. The Department believes that the approach taken in section (a) (29) of K.S.A. 45-221, whereby the nature of information governs disclosure, is the best approach, rather than referring to the name or purpose of documents as the controlling criteria as provided for by HB 2121.

The Committee on Governmental Organization and Elections recommends HB 2139 be amended on page 1, preceding line 22, by inserting new material to read as follows:

"Sec. 2. K.S.A. 29-314 is hereby amended to read as follows: 29-314. ~~In all cases where~~ If the line upon which a partition fence is to be made or to be divided is the boundary line between counties ~~and in all cases where~~ or if such line is partly in one county and partly in another, two of the fence viewers shall be the ~~chairmen~~ chairpersons of the board of county commissioners of the respective counties ~~and in case of their disagreement a third shall be chosen by them.~~ If such commissioners cannot agree, they shall select a third commissioner from the county fence viewers in the two counties, and their assignment, in order to be binding and effectual, must be recorded, as hereinbefore provided, in each of such counties. A county commissioner may appoint a designee to serve as a fence viewer in place of such commissioner.";

And by renumbering the remaining sections accordingly;

Also on page 1, in line 22, by striking "is" and inserting "and 29-314 are";

In the title, in line 10, preceding "repealing" by inserting "29-314 and"; also in line 10, by striking "section" and inserting "sections"; and the bill be passed as amended.

_____ Chairperson

HB 2139 Balloon