

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 March 3, 2005 in Room 519-S of the Capitol.

All members were present except:

Representative Barbie Craft- excused  
Representative Bill Otto- excused  
Representative Harold Lane- 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:

Ben Quinton, Rooks County Health Center  
Chad Austin, Kansas Hospital Association

Others attending:

See attached list.

Chairman Vickrey opened the hearing on:

**HB 2469**      **Financing for Plainville rural hospital district no. 1**

Ben Quinton, Rooks County Health Center, testified in favor of the bill (Attachment 1). He said the bill would authorize the Board of Rooks County Health Center to obtain financing for the construction of a replacement hospital facility secured by a mortgaged insured by the United States Department of Housing and Urban Development's (HUD) mortgage insurance program, section 242 of the National Housing Act.

Chad Austin, Kansas Hospital Association, testified in support of the bill (Attachment 2). He said the Kansas Hospital Association is requesting that the Committee considers expanding the bill to allow the approximately 15 Kansas district hospitals the same opportunity (to obtain financing by securing a mortgage on hospital property).

Chairman Vickrey closed the hearing on HB 2469.

**HB 2469**      **Financing for Plainville rural hospital district no. 1**

Rep. Yonally made a for motion for the favorable passage of HB 2469 and asked that it be placed on the Consent Calendar. Rep. Swenson seconded the motion. The motion carried.

**HCR 5006**      **Constitutional amendment providing access to public records and public meetings**

Mike Heim, Legislative Research, provided a briefing on the provisions of the house concurrent resolution (Attachment 3).

**Approval of Minutes**

Rep. Swenson made a motion to approve the minutes of the January 20, 2005, January 25, 2005, and January 27, 2005 meetings. Rep. Huy seconded the motion. Motion carried.

Chairman Vickrey adjourned the meeting.

The next meeting is scheduled for Tuesday, March 8, 2005.



ROOKS COUNTY  
**RCH**  
HEALTH CENTER

P.O. Box 389 Plainville, KS 67663

Date: March 3, 2005

To: House Committee on Governmental Organization and Elections  
From: J. Ben Quinton, MHA  
Administrator/CEO  
Plainville Rural Hospital District No. 1 d/b/a Rooks County Health Center  
RE: **House Bill 2469**

Mr. Chairman and members of the Committee:

Good afternoon. My name is Ben Quinton and I am the Administrator/CEO of the Plainville Rural Hospital District No. 1 d/b/a/ Rooks County Health Center. I am here to testify in favor of **House Bill 2469**, which would authorize the Board of Rooks County Health Center to obtain financing for the construction of a replacement hospital facility secured by a mortgage insured by the United States Department of Housing and Urban Development's (HUD) mortgage insurance program, section 242 of the National Housing Act.

Rooks County Health Center was established in 1953 as the Plainville Rural Hospital District No. 1. Construction of the hospital began that year with the support of Hill Burton funds, and was completed in 1954 when the hospital opened its doors for operation. Just last year, we celebrated our 50<sup>th</sup> anniversary of providing needed healthcare services to the residents of Rooks County and surrounding areas.

Rooks County Health Center is an essential part of Rooks County. We employ over one hundred people. Our 25-bed Critical Access Hospital (CAH) provides a 24-hour emergency room service, and 'round-the-clock inpatient care. We also provide much needed outpatient services, which comprise 65 percent of our business. These services include radiology, laboratory, pharmacy, physical therapy, dietary, labor and delivery, an urgent care clinic, and a variety of other services that are essential to the communities in Rooks County.

Due to the age of our physical plant, we are in dire need of a replacement facility. Our building does not meet current fire and safety codes. Our mechanical systems are obsolete. Although we have experienced substantial increases in patient volume over the last four years, the hospital has no room for expansion. The building is land-locked on two acres in a residential area. The space is not even adequate for current operations and needed parking. Finally, the hospital's current location is difficult to find, and is in an inefficient location for making emergency transfers. Building a replacement facility is really our only alternative.

House Gov. Org. & Elections  
Date: 3-03-05  
Attachment # 1

While we have explored other funding options, including the traditional route of issuing bonds, the funding mechanism that makes the most economic sense for this essential project is through the issuance of Government National Mortgage Association (GNMA) mortgage securities. The transaction costs associated with issuing such securities have been estimated by the hospital's lender to be as high as one million dollars less than the costs associated with issuing bonds. These differences are primarily due to the differences in current interest rates, bond issuance costs, bond counsel fees, and bond underwriter's fees.

Another barrier to pursuing this cost-effective route of funding is that a Public Hospital District, under Kansas law, does not have the authority to issue a mortgage. Without mortgage authority, this more cost-effective funding would be unavailable, as HUD requires that the mortgagor entity be able to grant a mortgage. This is true for either the traditional mortgage or the bond scenario, under HUD's requirements.

For these reasons, Rooks County Health Center is requesting the proposed legislation. We need a new hospital. We are a growing, thriving operation. We provide essential healthcare services to Rooks and surrounding counties. Because we are a small rural hospital, however, we must take full advantage of the most cost-effective funding available.

By supporting **House Bill 2469**, you would enable a small, rural hospital to save approximately one million dollars. More importantly, you would authorize this essential healthcare facility to invest needed capital into its patients and the betterment of its communities, rather than in expensive transaction costs. Please support us in this important undertaking. Thank you.



Thomas L. Bell  
President

**To:** House Governmental Organization and Elections Committee Members

**From:** Kansas Hospital Association  
Chad Austin, Senior Director of Health Policy and Data

**RE:** House Bill 2469

**Date:** March 3, 2005

The Kansas Hospital Association appreciates the opportunity to provide testimony in support of House Bill 2469. This bill would allow Rooks County Health Center the opportunity to obtain financing by securing a mortgage on hospital property.

Small, rural hospitals face many challenges in today's health care environment. These obstacles are amplified when a facility lacks modern standards and technology. Currently there are a limited number of options available when securing capital for these improvements. A new opportunity has emerged that is being made available through the United States Department of Housing and Urban Development (HUD). The HUD 242 mortgage insurance program allows HUD to underwrite qualified commercial mortgages. Unfortunately, current Kansas law does not allow Rooks County Health Center or other district hospitals the chance to participate in the program since they do not have the authority to obtain a mortgage. Therefore, by passing House Bill 2469 the Legislature would be making this program available to Rooks County Health Center.

In addition, KHA would also request that the committee considers expanding House Bill 2469 to allow the approximately 15 Kansas district hospitals the same opportunity.

Thank you for your consideration of our comments.

House Gov. Org. & Elections  
Date: 03 - 03 - 05  
Attachment # 2

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## Kansas Hospital Association

215 SE 8<sup>th</sup> Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 785/233-6955 • [www.kha-net.org](http://www.kha-net.org)

March 3, 2005

**To:** House Governmental Organization and Elections Committee  
**From:** Mike Heim, Principal Analyst  
**Re:** HCR 5006 Comments and Other States' Constitutional Open Government Provisions

The following are comments about the provisions of HCR 5006 and other states' constitutional open government provisions:

- A Westlaw search and assistance from Theresa Bush, Assistant Attorney General, revealed five states with open government constitutional provisions. These include:
  - California
  - Florida
  - Louisiana
  - Montana
  - North Dakota

A copy of those items plus a copy of HCR 5006 is attached.

- HCR 5006, line 21-22, limits payment to public agencies for copying records to "the actual cost of duplication." This may be more restrictive than current law. KSA 45-219 (c) (1) and (2) provide fees can include actual cost of furnishing copies, staff time, and costs of computer services.
- HCR 5006, lines 25-26, establish a new constitutional test for determining whether there can be exceptions such as executive sessions in the open meetings law and exceptions to disclosure in the open records law. The new test is whether "the demand for privacy clearly exceeds the merits of public disclosure."
- HCR 5006, lines 34-40, place three significant limitations on the power of the state legislature as follows:
  - Laws dealing with exceptions to open meetings or open records exceptions must be made by "general law."
  - A two-thirds extraordinary vote requirement is imposed on the passage of any legislation creating exceptions to open meetings or open records. The same limit now applies only to legislative action to change the state constitution or to override a Governor's veto. Only the State of Florida has a two-thirds vote limitation relating to open records exceptions in its constitution.
  - Laws dealing with exceptions to open meetings and open records must "state with specificity the public necessity justifying the exception and shall be no broader than necessary to accomplish the stated purpose of the law."

## House Concurrent Resolution No. 5006

By Committee on Governmental Organization and Elections

1-26

9 A PROPOSITION to amend article 15 of the constitution of the state of  
10 Kansas by adding a new section thereto, concerning open government.

11  
12 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*  
13 *members elected (or appointed) and qualified to the House of Repre-*  
14 *sentatives and two-thirds of the members elected (or appointed) and*  
15 *qualified to the Senate concurring therein:*

16 Section 1. The following proposition to amend the constitution of the  
17 state of Kansas shall be submitted to the qualified electors of the state  
18 for their approval or rejection: Article 15 of the constitution of the state  
19 of Kansas is amended by adding a new section thereto to read as follows:

20 "§ 16. **Open government.** (a) Every person has the right to inspect  
21 and to receive, upon payment of an amount not to exceed the actual  
22 cost of duplication, a copy of any public record and to observe,  
23 following a reasonable attempt to provide adequate meeting accom-  
24 modations, the deliberation of any public body or agency of state  
25 government or its subdivision, except in cases in which the demand  
26 of privacy clearly exceeds the merits of public disclosure.

27 (b) A statute, court rule or other authority, including those in effect  
28 on the effective date of this act, shall be broadly construed if it  
29 furthers the people's right of access and narrowly construed if it  
30 limits the right of access.

31 (c) All current state laws and court rules that are in effect on the  
32 enacting date of this measure wherein public access to records or  
33 meetings is limited shall remain in force until they are repealed.

34 (d) The legislature may provide by general law, passed by an affir-  
35 mative vote of two-thirds of all the members elected (or appointed)  
36 and qualified in each house, exception of meetings and of records  
37 from the requirements set forth herein provided that such law shall  
38 state with specificity the public necessity justifying the exemption  
39 and shall be no broader than necessary to accomplish the stated  
40 purpose of the law."

41 Sec. 2. The following statement shall be printed on the ballot with  
42 the amendment as a whole:

43 "Explanatory statement. This amendment (1) would provide that peo-

1 ple have a constitutional right of access to information concerning  
2 the conduct of the people's business through access to public doc-  
3 uments and access to deliberations of any public body, political sub-  
4 division or agency of the state government except in cases in which  
5 the demand for privacy or public necessity exceeds the need for  
6 public disclosure, (2) would provide for broad construction of stat-  
7 utes, court rules and other authority to further the people's right of  
8 access and (3) would provide that general laws providing new ex-  
9 ceptions to public access be passed by a two-thirds vote of each  
10 house of the legislature.

11 "A vote for this proposition would establish a constitutional right of  
12 access to public documents and deliberations of public bodies, po-  
13 litical subdivisions or agencies of the state government with limited  
14 exceptions provided.

15 "A vote against this proposition would not establish such constitutional  
16 right of access."

17 Sec. 3. This resolution, if approved by two-thirds of the members  
18 elected (or appointed) and qualified to the House of Representatives, and  
19 two-thirds of the members elected (or appointed) and qualified to the  
20 Senate shall be entered on the journals, together with the yeas and nays.  
21 The secretary of state shall cause this resolution to be published as pro-  
22 vided by law and shall cause the proposed amendment to be submitted  
23 to the electors of the state at the general election in November of the  
24 year 2006 unless a special election is called at a sooner date by concurrent  
25 resolution of the legislature, in which case it shall be submitted to the  
26 electors of the state at the special election.



mentmen... d bringing a claim under Const. t. I, § 2 in court. R.J. Reynolds Tobacco Co. Bonta (2003, ED Cal) 2003 US Dist LEXIS 12570. Because CCP § 425.17(c), which removed unfair business practices claims from the operation of CCP § 425.16, was a procedural statute, it was applicable to false advertising and misbranding claims in an action pending at the time of its enactment, and its withdrawal of the benefits conferred by § 425.16 from commercial speakers did not deny constitutional protection for commercial speech. Brenton v Metabolife International, Inc. (2004, Cal App 4th Dist) 2004 Cal App LEXIS 274.

1. Internet Restrictions

Employees who posted libelous messages about their former employers on Internet bulletin boards could not be enjoined from making future statements similar to the defamatory statements; such a prohibition was an unconstitutional prior restraint, and to the extent that the injunction granted relief to persons who were not joined as parties to the lawsuit, it also violated due process. Varian Medical Systems, Inc. v Lflino (2003, 6th Dist) 113 Cal App 4th 273.

City ordinance requiring cybercafes to obtain conditional use permits was unconstitutional on First Amendment grounds, but other aspects of the ordinance requiring a daytime curfew and regulating seating requirements at the cafes, as well as requiring video surveillance cameras, were not unconstitutional. City of Garden Grove (2004, Cal App 4th Dist) 14 Cal App LEXIS 116, 2004 CDOS 861.

Free speech guarantees were not violated by requiring a web publisher from posting a program that encrypted movies stored on DVDs. The injunction was content neutral and burdened no more speech than was necessary to serve government interests. Digital Copy Control Assn., Inc. v Bunner (2003, Cal) 3 Cal LEXIS 6295.

Appellate court erred in not granting defendants' motion to strike in a defamation cause of action arising from statements about plaintiffs in an Internet web page where the web site contained constitutionally protected free speech; moreover, the single-plaintiff rule applied, and the cause of action was not barred. Traditional Cat Assn., Inc. v Gilbreath (2004, Cal App 4th Dist) 2004 Cal App LEXIS 694.

2. General

California Professional Conduct R. 2-101(A), a content-based regulation prohibiting misleading advertising by lawyers, was facially constitutional under Cal. Const. art. 1, § 2(a) and as applied to two lawyers; lawyers' particularized mass mailings to targeted persons who had been named as defendants in pending lawsuits were misleading because they suggested that an action was imminent and the letters were likely to cause panic and fear in the lay recipients, the letters failed to state that the attorneys would charge attorney fees to represent them, and the lawyers failed to identify the message as a communication for employment. Leoni v State Bar (1985) 39 Cal 3d 609, 144 Cal Rptr 423, 704 P2d 183.

Appellate court abused its discretion in permitting plaintiff in an action for libel to conduct discovery on the issue of actual malice prior to the hearing on defendant's

plaintiffs' motion to strike plaintiffs' libel claim as a SLAPP. The court reasoned in part that this was the very kind of case the anti-SLAPP statute was designed to address: an action for defamation by a large, well-financed retailer acting in its corporate interest against a small, non-profit organization advocating for social justice on behalf of a disadvantaged class, low-income immigrant workers. The Garment Workers Center v Superior Court (2004, Cal App 2nd Dist) 2004 Cal App LEXIS 576.

11. Rallies and Parades

In denying a protestor's motion to strike, the superior court was required to conduct a balancing test of a mall owner's property interests against the protestor's right of free speech; along these lines, the California Constitution was more inclusive than the federal constitution. The superior court did not err in denying the protestor's motion to strike the mall owner's complaint in light of the fact that the mall was similar to a stand-alone store, and the protests were less than peaceable. Slauson Partnership v Ochoa (2003, 2nd Dist) 112 Cal App 4th 1005.

§ 3. Assembly, petition, open meetings

(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) *The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.*

(2) *A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.*

(3) *Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.*

(4) *Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.*

(5) *This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.*

(6) *Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.*

Amendment approved by voters, Prop. 59, effective November 3, 2004.

Amendments:

2004 Amendment: (1) Added subdivision designators; and (2) added subds (b)(1)-(6).

2. \*\* indicate omissions.

[1 Const]

[1 Const]

Beginning in 1992, italics indicate changes or additions. \*\*\* indicate omissions.

and to ongoing criminal act that state had other in- ce was not proper basis to and issuance of investigative Rivers, App. 2 Dist., 787 Criminal Law ⇨ 627.5(6) ht to privacy that protects records may be overcome by ng state interest; such inter- ere is reasonable founded ds contain information rel- ninal investigation. State v. t., 787 So.2d 952 (2001). 7.5(6) hat prosecution seeks his or is and, if patient objects, records are relevant to crimi- e two procedural gateways : must pass in order to ob- ital records under privacy stence of separate statute tate attorney to use process : to summon and examine of criminal investigation. App. 4 Dist., 707 So.2d ing denied, review denied rds ⇨ 31 of blood alcohol test results fendant's hospital records, o defendant in violation of of statute addressing priva- ls, required suppression of order to encourage prose- with privacy statute's pro- nvenience and expediency ivity interests that statute tate were allowed to make entary relevance. State v. Dist., 707 So.2d 1129 enied, review denied 718 Law ⇨ 394.1(2) nt physician to retrieve for cal records for all of physi- e obstetric patients during uld not violate those pa- right of privacy; their right dentiality of their medical ed by trial judge's require- ing information be redact- rds; disapproving *Leiken-* 30; *Argonaut*, 358 So.2d *General Hosp.*, 397 So.2d l So.2d 703. *Amente v.* l 1030, 66 A.L.R.5th 793 al Law ⇨ 82(7); Pretrial

forth in State Constitution nance prohibiting erection l area in order to protect

endangered species of deer, as decision to use land in manner contrary to lawful public envi- ronmental policy is not "private" act. Depart- ment of Community Affairs v. Moorman, 664 So.2d 930 (1995), rehearing denied, certiorari denied 117 S.Ct. 79, 519 U.S. 822, 136 L.Ed.2d 37. Constitutional Law ⇨ 82(7); Environmen- tal Law ⇨ 516

Under provision of State Constitution setting forth right of privacy, landowners do not have untrammled right to use their property regard- less of legitimate environmental interests of state. Department of Community Affairs v. Moorman, 664 So.2d 930 (1995), rehearing denied, certiorari denied 117 S.Ct. 79, 519 U.S. 822, 136 L.Ed.2d 37. Constitutional Law ⇨ 82(7)

48. Nursing homes

Trial court's discovery order allowing entry and inspection of nursing home room where patient resided at time she fell and broke her hip violated privacy rights of other nursing home residents, who were innocent non-parties, in negligence action by patient against nursing home operator. *Beverly Enterprises-Florida, Inc. v. Deutsch*, App. 5 Dist., 765 So.2d 778 (2000), rehearing denied. Constitutional Law ⇨ 82(7); Pretrial Procedure ⇨ 390

49. Perpetual relationships

Rule deeming psychologist-client relationship to continue in perpetuity, in context of prohibi- tion against sexual relationships between psy- chologist and client, was not least intrusive means of defending state's compelling interest in protecting mental health of its citizens, and was thus facially unconstitutional infringement on right of privacy, because rule calling for decision based on individual facts of case would be less intrusive than rule that created irrebutta- ble presumption of guilt. *Caddy v. State, Dept. of Health, Bd. of Psychology*, App. 1 Dist., 764 So.2d 625 (2000), rehearing denied. Constitu- tional Law ⇨ 82(10); Health ⇨ 192

50. Review

The state constitutional right of privacy is a fundamental right warranting strict scrutiny. *North Florida Women's Health and Counseling Services, Inc. v. State*, 2003 WL 21546546 (2003). Constitutional Law ⇨ 82(7)

Strict scrutiny, rather than undue burden, standard applied to constitutionality of Parental Notice of Abortion Act under state constitution- al right of privacy. *North Florida Women's Health and Counseling Services, Inc. v. State*, 2003 WL 21546546 (2003). Constitutional Law ⇨ 82(10)

§ 24. Access to public records and meetings

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The

legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

Added, general election, Nov. 3, 1992. Amended, general election, Nov. 5, 2002.

Commentary to 1992 Addition

By William A. Buzzett and Deborah K. Kearney

(1992 Committee Substitute for Committee Substitute for House Joint Resolutions 1727, 863, and 2035)

Florida's public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

The amendment makes clear that all branches of state government and all local governments, and all officers, agencies, boards, and employees, are made subject to the open meetings and public records requirements of Article I, Section 24.

Subsection (a) ensures the right of public access to any public record not exempted in the manner set out in the amendment, made or received in connection with the official business of any public body, officer or employee of the state, or persons acting on their behalf.

Subsection (b) requires that all meetings of any collegial public body of the executive branch or collegial bodies of local governments, at which official acts

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are to be taken or at which business of the entity is to be transacted or discussed, must be open and noticed to the public. On the contrary, legislative meetings are open and noticed as provided in Article III, Section 4(e), which operates quite differently. As to the executive branch and local government collegial bodies, any gathering of two or more members to discuss a matter that may foreseeably come before that body, is considered a public meeting and must be noticed and open. *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973). On the other hand, Article III, Section 4(e) requires that only legislative committees, subcommittees, and conference committees must be open and noticed. *Prearranged* meetings between *more than two* members of the Legislature (or between the governor, the president of the senate or the speaker of the house), "the purpose of which is to agree upon formal legislative action" must be *reasonably* open to the public. Notice is not required.

Subsection (c) grants the Legislature the power to enact general laws governing the enforcement of this section and to enact exemptions to the requirements for public access. Any law creating an exemption: (1) must state with specificity the public necessity justifying the exemption; (2) may be no broader than necessary to accomplish the stated purpose of the exemption; and (3) may contain no other subject except exemptions and provisions governing the enforcement of this section and must relate to a single subject. Laws governing the enforcement of this section include those relating to maintenance, control, destruction, disposal and disposition of public records. The Legislature is authorized to enforce the section as it applies to the Legislature, through adoption of its own rules. This is an important distinction, as the courts will not become involved in interpreting and enforcing the internal activities of the Legislature. See e.g., *Moffit v. Willis*, 459 So. 2d 1018 (Fla. 1984).

Subsection (d) represents a savings clause so that all exemptions to the public records and open meetings laws in force on July 1, 1993, the effective date of the amendment, remain in effect until they are repealed. Likewise, court rules in effect on that date remain in effect until repealed.

**Historical Notes**

**Amendment Notes:**

The addition of this section was proposed by the committee substitute for the committee substitute for H.J.R. Nos. 1727, 863 and 2035, and

was adopted at the general election held November 3, 1992.

For effective date of Const.Art. 1, § 24, see Const.Art. 12, § 20.

**Cross References**

Agency for Health Care Administration,

Complaints exempt from this section, see § 395.1046.

Data exempt from this section, see § 395.1046.

Meetings for public licensure examination, public records and meetings exempt from open meetings and records requirements, see § 456.017.

Bank account numbers and debit, charge, and credit card numbers held by an agency, exemption from public disclosure under this section, see § 119.07.

Board of Funeral and Cemetery Services, disciplinary proceedings, records exempt from this section, see § 497.131.

Commission on Tourism, marketing, exemption from Constitutional open records provisions of this section, see § 288.1224.

Deepwater ports, confidentiality of certain records relating to sale, use, or lease of land, see § 315.18.

Const. Art. 12, § 3

CONSTITUTION OF 1974

§ 3. Right to Direct Participation

Section 3. No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

Law Review and Journal Commentaries

Developments in the law, 1982-1983: Louisiana constitutional law. Lee Hargrave, 44 La. L.Rev. 423 (1983).

Entering the door opened: An evolution of rights of public access to governmental deliberations in Louisiana and a plea for realistic remedies. 41 La.L.Rev. 192 (1980).

Louisiana constitutional law. John Devlin and David Hilburn, 52 La.L.Rev. 575 (1992).

Pretrial suppression hearings: In camera or on camera? 29 Loy.L.Rev. 515 (1983).

"Statutory" and "hortatory" provisions of the Louisiana Constitution of 1974. Lee Hargrave, 43 La.L.Rev. 647 (1983).

Library References

Counties ⇨52.  
Municipal Corporations ⇨92.  
States ⇨32.  
WESTLAW Topic Nos. 104, 268, 360.

C.J.S. Counties §§ 79 to 81.  
C.J.S. Municipal Corporations § 400.  
C.J.S. States §§ 48 to 50.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Notes of Decisions

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1. Construction and application  
Constitutional right of access to public records is liberally construed to provide free and unrestricted access. Nungesser v. Brown, App. 1 Cir.1995, 951039 (La.App. 1 Cir. 10/6/95), 664 So.2d 132, rehearing denied, reversed 95-3005 (La. 2/16/96), 667 So.2d 1036, rehearing denied 95-3005 (La. 4/19/96), 671 So.2d 929.  
Constitutional provision guaranteeing access to public records must be interpreted liberally.

**Constitutional Convention Transcript Cross-References**

- Adoption, Trans. 2933, 2934.
- Committee report, Vol. II 621, 629, 630, 958, 963, 970, 1038.
- Cross references, 1889 and 1972 Constitutions, Vol. II 646.
- Debate — committee report, Trans. 1649 through 1651, 1675, 2491, 2493.
- Debate — style and drafting report, Trans. 2481, 2921.
- Delegate proposal, Vol. I 127.
- Final consideration, Trans. 2633, 2634.
- Text as adopted, Vol. II 1087.

**Section 8. Right of participation.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

**Cross-References**

- Right to petition for redress, Art. II, sec. 6, Mont. Const.
- Public participation in governmental operations, Title 2, ch. 3.
- Montana Administrative Procedure Act, Title 2, ch. 4.
- Municipal governments to develop procedures to permit and encourage participation, 7-1-4142.
- School district trustee meetings, 20-3-322.
- School district trustees' review of architectural services, 20-6-634.
- School district trustees' emergency budget meeting, 20-9-165.
- Violation of open meeting law, 45-7-401.
- Disturbing or disrupting public meetings, 45-8-101.

**Constitutional Convention Transcript Cross-References**

- Adoption, Trans. 2933, 2934.
- Committee report, Vol. II 621, 630, 631, 958, 963, 967, 970, 1038, 1039.
- Debate — committee report, Trans. 1651 through 1669, 1733, 2560, 2875.
- Debate — style and drafting report, Trans. 2481, 2482, 2921.
- Delegate proposal, Vol. I 133.
- Final consideration, Trans. 2634 through 2636.
- Text as adopted, Vol. II 1088.

**Section 9. Right to know.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

**Cross-References**

- Right of participation, Art. II, sec. 8, Mont. Const.
- Legislative sessions, committee meetings, and hearings open to public, Art. V, sec. 10, Mont. Const.
- Confidentiality in proceedings of Judicial Standards Commission, Art. VII, sec. 11, Mont. Const.; 3-1-1105.
- Public participation in governmental operations, Title 2, ch. 3.
- Montana Administrative Procedure Act, Title 2, ch. 4.
- Public records, Title 2, ch. 6.
- Filing and review of audits of political subdivisions — publication, 2-7-514, 2-7-515, 2-7-521.
- Case register of Attorney General, 2-15-501.
- State Records Committee, 2-15-1013.
- Sittings of courts to be public, 3-1-312.
- Confidentiality of proceedings in actions for dissolution, criminal conversation, or seduction, 3-1-313.
- Proceedings of Judicial Nominating Commission, 3-1-1007.
- Form and reporting of Supreme Court decisions, Title 3, ch. 2, part 6.
- Election records open to public, 13-1-109.
- Cigarette hearings, 16-11-103.
- Ownership of public obligations — no inspection, 17-5-1106.
- Notice of claim on performance, labor, or material bond, 18-2-204.
- Control of state printing, Title 18, ch. 7, part 3.
- Proceedings of Teachers' Retirement Board, 19-20-201.
- Records of university student, 20-25-515, 20-25-516.
- Deposit of state publications in state library, 22-1-213.
- Montana Library Records Confidentiality Act, Title 22, ch. 1, part 11.
- Preservation of records, Title 22, ch. 3, part 2.
- Board of Horseracing records, 23-4-103.
- Register of securities, 30-10-107.
- Confidentiality of unfair trade practice investigation records, 30-14-114.
- Confidentiality of reports and examinations of financial institutions to Department of Administration, 32-1-234, 32-2-307.
- Confidentiality of premarital test certificate, 40-1-208.
- Confidentiality of proceedings of conciliation court, 40-3-116.
- Confidentiality of parenting proceedings, 40-4-216.

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Confidentiality of artificial insemination information, 40-6-106.  
 Confidentiality in paternity proceedings, 40-6-111, 40-6-114, 40-6-120.  
 Confidentiality of birth certificate under certain circumstances, 40-6-123.  
 Confidentiality and disclosure of child abuse and neglect records, 41-3-205.  
 Access to Youth Court records, 41-5-215.  
 Attendance at Youth Court adjudicatory hearing, 41-5-1502.  
 Criminal justice information, Title 44, ch. 5.  
 Confidentiality of records of the state, employers, labor organizations, and employment agencies with regard to age, sex, and race, 49-2-102.  
 Interpreters for the deaf in official proceedings, Title 49, ch. 4, part 5.  
 Vital statistics information, Title 50, ch. 15.  
 Confidentiality of inhospital medical staff committee information, Title 50, ch. 16, part 2.  
 Uniform Health Care Information Act, Title 50, ch. 16, part 5.  
 Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.  
 Confidentiality of vehicle accident reports, 61-7-114.  
 Natural areas preservation information, 76-12-116.  
 Confidentiality of data relating to agricultural chemical ground water protection, 80-15-108.  
 Strip- or underground-mining permit application, 82-4-222.  
 Opencut mining reclamation contract, plan, and amendments, 82-4-434.  
 Records of Board of Oil and Gas Conservation, 82-11-117.  
 Weather modification records, 85-3-303.

#### Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.  
 Committee report, Vol. II 621, 631, 632, 958, 963, 970, 1039.  
 Debate — committee report, Trans. 1658, 1669 through 1680, 1733, 2176, 2201, 2560, 2578, 2582.  
 Debate — style and drafting report, Trans. 2482 through 2501, 2921.  
 Delegate proposals, Vol. I 111, 133, 157, 164, 276.  
 Final consideration, Trans. 2636, 2637.  
 Text as adopted, Vol. II 1088.

**Section 10. Right of privacy.** The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

#### Cross-References

Right to know, Art. II, sec. 9, Mont. Const.  
 Searches and seizures, Art. II, sec. 11, Mont. Const.  
 Personal papers of Executive Branch officers, 2-6-304.  
 Confidentiality of court proceedings in actions for dissolution, criminal conversation, or seduction, 3-1-313.  
 Confidentiality of proceedings of Judicial Nominating Commission, 3-1-1007.  
 Confidentiality of Judicial Standards Commission, 3-1-1105.  
 Residences and records of university students protected, 20-25-511 through 20-25-516.  
 Montana Library Records Confidentiality Act, Title 22, ch. 1, part 11.  
 Privileged communications, Title 26, ch. 1, part 8; Art. V, M.R.Ev. (see Title 26, ch. 10).  
 Media Confidentiality Act, Title 26, ch. 1, part 9.  
 Confidentiality of unfair trade practices investigation, 30-14-114.  
 Consumer reporting agencies, Title 31, ch. 3, part 1.  
 Confidentiality of reports and examinations of financial institutions to Department of Administration, 32-1-234, 32-2-307.  
 Confidentiality of hearing on unsafe operation or removal of officer of bank or trust, 32-1-910.  
 Confidentiality in electronic funds transfer systems, 32-6-105, 32-6-106.  
 Social workers — confidentiality of communications, 37-22-401.  
 Confidentiality of premarital test certificate, 40-1-208.  
 Confidentiality of conciliation court proceedings, 40-3-116.  
 Confidentiality of parenting proceedings, 40-4-216.  
 Confidentiality of artificial insemination information, 40-6-106.  
 Privilege of physician-patient communications suspended in certain circumstances, 40-6-106, 41-3-201, 41-3-204, 41-3-437.  
 Confidentiality in paternity proceedings, 40-6-111, 40-6-114, 40-6-120.  
 Confidentiality of birth certificate under certain circumstances, 40-6-123.  
 Confidentiality and disclosure of child abuse and neglect proceedings, 41-3-205.  
 Privilege of husband-wife communications suspended in certain actions, 41-3-437, 45-5-604.  
 Confidentiality of youth placement committee meetings and records, 41-5-125.  
 Access to Youth Court records, 41-5-215.  
 Attendance at Youth Court adjudicatory hearing, 41-5-1502.  
 Criminal justice information, Title 44, ch. 5.  
 Criminal intelligence information section, Title 44, ch. 5, part 5.  
 Criminal intelligence information — protection of individual privacy, 44-5-515.  
 Criminal offense of violating privacy in communications, 45-8-213.

if an affirmation, and no other oath, declaration, or test shall be required as a qualification for any office or public trust.

Source: Const. 1889, Art. XVII, § 211.

statute. State v. First State Bank, 52 N.D. 231, 202 N.W. 391 (1924).

**Cross-References.**

Civil officers required to take this oath, see § 44-01-05.

**Oath to Support Primary Choice.**

Chapter 109, S.L. 1907, which required the candidates for the state legislature to file a pledge to support the candidate for congressional office chosen by their party at the primary election violated this section. State ex rel. Miller v. Blaisdell, 34 N.D. 321, 159 N.W. 401 (1916).

**Attorney and Counselor at Law.**

A person upon being admitted to the bar of North Dakota is required to take the oath prescribed by this section and section 27-11-20. Menz v. Coyle, 117 N.W.2d 290 (N.D. 1962).

**Collateral References.**

Oaths ⇌ 1-6; Officers and Public Employees ⇌ 36.

**Failure to File Oath.**

The failure of an appointive member of the board of administration to file his oath upon reappointment to such office creates a vacancy in such office and works a forfeiture of all rights thereto. State ex rel. Johnson v. Cahill, 49 N.D. 895, 193 N.W. 938 (1923).

58 Am. Jur. 2d, Oath and Affirmation, §§ 6-14; 63 Public Officers and Employees, §§ 124-126.

**Judge's Oath.**

Under the oath provided in this section, the judge must enforce the provisions of the Constitution when they are in conflict with a

67 C.J.S. Oaths and Affirmations, §§ 1-7; 67 C.J.S. Officers and Public Employees, § 46.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

**Section 5.** Unless otherwise provided by law, all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public.

Source: Art. amd. 92, approved Sept. 3, 1974 (S.L. 1973, ch. 530, § 1; 1975, ch. 604).

ered, and all school board-teacher contract negotiating sessions, are required by this provision and section 44-04-19 to be open to the public. Dickinson Educ. Ass'n v. Dickinson Pub. Sch. Dist. No. 1, 252 N.W.2d 205 (N.D. 1977).

**Cross-References.**

Certain economic development records exempt, see § 44-04-18.4.

**Collateral References.**

Administrative Law and Procedure ⇌ 124, 473; Counties ⇌ 52; Municipal Corporations ⇌ 85-92; Schools and School Districts ⇌ 57; States ⇌ 67; Zoning ⇌ 359.

Applicability of provision for access to legislative records and information, see § 44-04-18.6.

**Appeal by City Attorney.**

City attorney has authority pursuant to section 40-20-01 to take an appeal where the city is a party to the action without the need of specific authorization to appeal granted by city commissioners at an open meeting; therefore, the provisions of this section relating to open meetings had no application to authority of city attorney to take an appeal in an action involving the city. State Bank of Burleigh County Trust Co. v. City of Bismarck ex rel. Bismarck Bd. of City Comm'rs, 316 N.W.2d 85 (N.D. 1982).

2 Am. Jur. 2d, Administrative Law, § 229; 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 161.

20 C.J.S. Counties, § 79, 80; 62 C.J.S. Municipal Corporations, §§ 391-400; 73A C.J.S. Public Administrative Bodies and Procedure, §§ 134, 136, 139; 78 C.J.S. Schools and School Districts, §§ 148, 149; 81A C.J.S. States, § 120; 101 C.J.S. Zoning, § 213.

**Teacher Contract Negotiations.**

School board meetings at which teacher contract offers and counter-offers are consid-

Validity, construction, and application of statutes making public proceedings open to the public, 38 A.L.R.3d 1070, 34 A.L.R.5th 591.