

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 22, 2005 in Room 519-S of the Capitol.

All members were present except:

Representative Bonnie Huy- excused
 Representative Barbie Craft- excused
 Representative Steve Huebert- excused
 Representative Melody Miller- 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. Shari Weber
 Phillip Cosby
 Doug Anstett, KS Press Assoc.
 Randall Allen, KS Assoc. Of Counties
 Erik Sartorius, City of Overland Park
 Danielle Noe, Johnson County Board of County Commissioners
 Harriet Lange, KS Assoc. Of Broadcasters
 Kim Gulley, League of KS Municipalities
 Jim Edwards, KASB, KNEA

Others attending:

See attached list.

Chairman Vickrey opened the hearing on:

HB 2529 **Grand juries; petitions summoning**

Rep. Weber testified in support of the bill (Attachment 1). She said the proposed legislation would alleviate an obstacle that has recently surfaced in the process of petition submission outlined in **K.S.A. 22-3001**.

Phillip Cosby testified in support of the bill (Attachment 2). He said the intent of the proposed legislation is to remove the requirement of "wards and precincts" in the signers' own handwriting as necessary in the filing of a successful Grand Jury Petition.

Chairman Vickrey closed the hearing on **HB 2529**.

Rep. Sawyer made a motion for the favorable passage of HB 2529. Rep. Storm seconded the motion. Motion carried.

Chairman Vickrey opened the hearing on:

SB 34 **Continuation of certain exception to disclosure of records**

Doug Anstett, Kansas Press Association, testified in support of the bill (Attachment 3). He explained that they strongly support the definition of "clearly unwarranted invasion of personal privacy" because Exemption 30 in the Kansas Open Records Act has been used as a catchall reason to deny the public access to records.

Randall Allen, Kansas Association of Counties, testified in support of the bill (Attachment 4). He explained that without passage of SB 34 or comparable legislation in this session of the Legislature, public agencies would be required to disclose many documents which are not appropriate to disclose.

Erik Sartorius, City of Overland Park, testified in support of the bill (Attachment 5). He said that the re-authorization of exceptions to the Kansas Open Records Act is a top priority of the City.

Danielle Noe, Johnson County Board of County Commissioners, testified as a proponent of the bill (Attachment 6). She requested, on behalf of the Board of County Commissioners, that the Committee remove the new definition of "clearly unwarranted invasion of personal privacy" and pass the bill as amended.

Harriet Lange, Kansas Association of Broadcasters, testified in support of the bill (Attachment 7). She said they support the proposed definition for "clearly unwarranted invasion of personal privacy" because there is currently no clear standard to guide records custodians. She explained that the proposed definition will provide much needed guidance to the hundreds of record custodians across the state who have differing views of what constitutes "invasion of personal privacy."

Don Moler, League of Kansas Municipalities, appeared in support of the bill (Attachment 8). He said that the 2004 interim committee recommended that the current exceptions be continued and **SB 34** accomplishes this recommendation.

CONTINUATION SHEET

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on March 22, 2005 in Room 519-S of the Capitol.

Jim Edwards, Kansas Association of School Boards, appeared in support of the bill (Attachment 9). He also spoke on behalf of the Kansas National Education Association. Mr. Edwards explained that all of the exceptions included in this bill received a thorough review, full debate, and legislative approve when introduced, and can receive the same prior to the end of the five-year period. He said that a one-year extension would not be sufficient because if a thorough review is held for each of the 240 plus exceptions, at a minimum of 45 minutes per issue, there would have to be more than 180 hours of hearings.

Written testimony in support of **SB 34** was submitted by T.C. Anderson, Kansas Society of Certified Public Accountants (Attachment 10).

Written testimony in support of **SB 34** was submitted by Ashley Sherard, Lenexa Chamber of Commerce (Attachment 11).

Chairman Vickrey closed the hearing on **SB 34**.

Balloon amendments relating to insurance provisions (Attachment 12) and security measure provisions (Attachment 13) were distributed to the committee and discussed.

Rep. Goico made a motion to amend SB 34 to include the provisions relating to insurance, and the security measures found in the balloon amendments (Attachments 12 and 13). Rep. Lane seconded the motion. Motion carried.

A balloon amendment relating to requiring that violations of the Kansas Open Records Act (KORA) and the Kansas Open Meetings Act (KOMA) be reported to the Attorney General (Attachment 14).

Rep. Holland made a motion to amend SB 34 by adopting the balloon amendment relating to reporting requirements on KORA and KOMA (Attachment 14). Rep. Goico seconded the motion. The motion carried.

Rep. Yonally made a motion to amend SB 34 to remove the definition of the term "clearly unwarranted invasion of personal privacy" found in Section 1 (h), and to remove Section 1 of the bill. Rep. Oharah seconded the motion. The motion carried.

Rep. Goico made a motion for the favorable passage of SB 34 as Amended, and that because of the substantial changes to the bill, the bill be made a substitute bill. Rep. Lane seconded the motion. The motion carried.

HB 2484 Vendors and transient merchant licenses and fees, exceptions

Rep. Vickrey made a motion to adopt the balloon amendment (Attachment 15), allowing cities to issue a license or permit to vendors and transient merchants engaged in the sale of agricultural, farm, garden or aquacultural products grown by those vendors and transient merchants within the state, and that the license or permit be valid for a period of not less than 60 days from the date of issuance. Rep. Goico seconded the motion. Motion carried.

Rep. Vickrey made a motion for the favorable passage of HB 2484 as Amended. Rep. Sawyer seconded the motion. Motion carried.

Sub SB 143 Elections; direct recording electronic voting systems

Rep. Otto made a motion to adopt a balloon amendment (Attachment 16) relating to elections and paper verification for electronic voting machines and to also include a definition of "Accessible." Rep. Lane seconded the motion. Motion carried.

Rep. Otto made a motion for the favorable passage of SB 143 as Amended, and that because of the substantial changes to the bill, the bill be made a substitute bill. Rep. Lane seconded the motion. The motion carried.

Rep.'s Ohara, F. Miller, and Goico asked to have their votes recorded as "no" votes.

SB 142 Elections; security of advance voting ballots

Rep. Faust-Goudeau made a motion for reconsideration of SB 142. Rep. Lane seconded the motion. Motion failed.

Rep. Vickrey adjourned the meeting.

This was the last scheduled meeting for the 2005 Session.

**House Governmental Organization and Elections
Committee**

Date 3-22-05

Name	Representing
Richard Gannon	KPA
Doug Anstaeht	KPA
Anthony A. Fiedale	ADA/Admin.
Harriet Langa	Ks Assn of B'casters
Julie Malyn	KAC
Phillip Cosby	HB 2529
Vad Rich	SPECTATOR
Brian Newby	Johnson County
Jessica Cafferata	Kearney & Assoc.
Scott Heidner	ACEC Kansas
Ashley Sherard	Lenexa Chamber
Danielle Noe	Johnson County
Erik Santorius	City of Overland Park
Brad Bryant	Sec. of State
SCOTT SCHNEIDER	CITY OF WICHITA

Rep. Shari Weber
68th District
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Herington, KS 67449
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House of Representatives

Testimony on HB 2529 for Governmental Organization and Elections
March 22, 2005

Chairman Vickrey,

Mr. Chairman and members of the committee, I thank you for the opportunity to appear before you today in favor of HB 2529. This piece of legislation would alleviate an obstacle that has recently surfaced in the process of petition submission outlined in K.S.A. 22-3001.

Most recently this technicality was called to my attention when Kansas Senior Judge Ronald Innes filed his decision with the Clerk of the Dickinson County District Court. This decision came nearly a year after a 29 count indictment was filed by a grand jury.

The grand jury was summoned pursuant to a petition filed by a group of citizens. Judges from the Eighth Judicial District reviewed the petition and called for the grand jury.

Innes ruled that because the 248 petition signers had not personally written their voting ward and precinct information on the petition, that it was invalid – thus invalidating the indictment of the grand jury. Attorneys involved in the case had filed a motion requesting the dismissal of the case based on that argument. Innes based his judgment on Kansas state statute 22-3001(2).

HB 2529 strikes the language in current statute that refers to the precinct and ward. The words, “and shall show the precinct and ward or township of which such signer is an elector” would be taken out of the statute. In this day of advanced technology, identifying an elector’s place of residence according to voting records is an easier feat than in years gone by when a keystroke would not easily deliver such information. Additionally, petition signatures are verified against signature records, so the validated signature would appear in the context of specific precinct voter records for verification. The phrase simply is not necessary and only served to negate the monumental effort of gathering signatures, convening a grand jury and then losing the time frame of a year before the judiciary ruled on this technicality of the statute.

This scenario could possibly be repeated in other areas of the state including Salina and Wichita where similar activities of signature gathering are currently taking place. Therefore it behooves us as a legislature to take action to eliminate this difficulty for our citizens.

I ask you to give favorable consideration to this request in an effort to deal with this obstruction with a sense of urgency. I thank you for your review of this statute.

Best regards,

A handwritten signature in black ink that reads "Shari Weber". The signature is fluid and cursive, with a long horizontal line extending to the right.

House Gov. Org. & Elections
Date: 3-22-05
Attachment # 1

Judge says grand jury petition, indictment invalid

CASE DISMISSED

2
1

By LAURA STRODA
News Editor

Nearly a year after a 29-count indictment was filed by a grand jury against the Abilene Lion's Den Adult Superstore, a judge has dismissed the charges, which were all misdemeanors.

This morning, Kansas Senior Judge Ronald Innes filed his decision with the Clerk of the Dickinson County District Court.

The grand jury was summoned pursuant to a petition filed by a group of citizens who oppose the store. Judges from the Eighth Judicial District reviewed the petition and called for the grand jury.

Innes ruled that because the 248 petition signers had not personally written their voting ward and precinct information on the petition, that it was invalid—thus invalidating the indictment of the grand jury. Attorneys for the Lion's Den, J. Michael Murray and Robert Littrell, had filed a motion

requesting the dismissal of the case based on that argument.

Innes based his judgment on Kansas state statute 22-3001(2), which states, in part: Each signer shall add to such signer's signature such signer's place of residence, giving the street and number or rural route number, if any, and shall show the precinct and ward or township of which such signer is an elector.

"K.S.A. 22-3001(2) clearly requires in part that each signor shall show (presumably by writing it on the petition) the precinct and ward of which the signer is an elector. The signors did not do so, but left that task to others as noted," Innes' decision read. "The provision requiring the signers to show their precinct and ward is mandatory in the judgment of the court; and, accordingly, the indictment of the defendant by the grand jury was invalid."

Abilene resident Phil Cosby, who spearheaded the petition drive, said this morning he was in "disbelief."

"I didn't think he would grant (the motion) based on 'it shall show,' which is a little ambiguous," Cosby said. "On the bottom of the petition, it says I swear the signature is that of who it's purported to be and that they understand the complaint. But evidently, the judge determined the ward and precinct has to be in their handwriting."

Cosby said because of the dismissal, Dickinson County will no longer be at the forefront of the fight against pornography. A similar petition was thrown out in Saline County because of the same arguments. Since then, another petition seeking a grand jury has been filed and validated. Cosby helped in organizing that petition drive as well.

"Timing-wise, it puts everything back. Saline County is now at the forefront, followed by, it looks like, Wichita," he said. "So it's not the end. It's just a continuation of more to come."

Cosby said he visited with Wichita mayor Carlos Mayans last week. Cosby also said has been working with Wichitans for the past few months in a similar fight against adult businesses.

The dismissal of the indictment now leaves two options for those seeking to indict the store on obscenity charges—wait for county attorney Keith Hoffman to take up the case, or start all over with another petition to collect 248 valid signatures.

Saline County attorney Ellen Mitchell declined to file charges against two Salina businesses and was chastised by Cosby for not doing so.

"Keith Hoffman said in his campaign he will prosecute obscenity," said Cosby. "I have no reason to doubt that he wouldn't keep his word."

Hoffman said he had no comment this morning.

Topeka attorney Thomas Lemon has been handling the case since the grand jury convened last January.

(Continued from page 1)

Since then, the county has paid him a total of \$30,772.48 for prosecuting services and mileage.

Of that amount, about \$11,000 has come out of the diversion fund. The remainder of Lemon's fees have come out of the county's general fund—which is funded by tax dollars. Lemon was not available for comment this morning.

"If you look at the big picture with what's happening in Kansas in general, the event in Dickinson County is a spark that has gone off across Kansas," said Cosby. "Nothing is in vain."

The Abilene Reflector
Chronicle
March 1, 2005

March 22, 2005

I want to thank the members of the Government Organizations and Elections Committee and Chairman Jene Vickrey for this opportunity to testify.

I speak in support of HB 2529 which is intended to remove the requirement of "wards and precincts" in the signers own handwriting as necessary in the filing a successful Grand Jury Petition. The word "city" needs inserted to read "city or township".

I believe originally the "wards and precincts" were used to assist the County Clerk in finding a qualified registered voters name. In this age of data bases this is no longer needed. It is a vestige of a time preceding automation.

I watched as a Dickinson County, KS. Elections Clerk used only the signature to verify that the signers of a Grand Jury petition were registered voters. Not once were these ward and precinct codes used to locate and validate a signature. During the validation the clerk even corrected incorrect ward and precinct codes and counted the signature as a registered voter of that county. Any cross referencing of a difficult signature was done by using the street mailing address, never a ward or precinct code.

The spirit of the petition is contained in the conclusion of the form being:

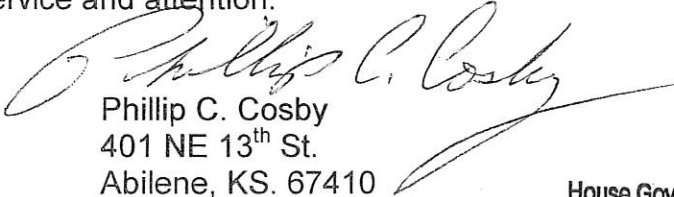
"One of the signers of each paper shall verify upon oath that each signature appearing on the paper is the genuine signature of the person whose name it purports to be and that each signer believes that the statements in the petition are true".

To require that a registered voter pass a county election code geography quiz at the moment a petition is available, which is usually on evenings or weekends, is an unreasonable hoop for voters to jump through. The vast majority of persons cannot tell you the County code for their ward and precinct.

Please remove the words "ward and precinct" from the KS Statute 22-3001 leaving a reasonable requirement of:

"Each signer shall add to such signer's signature such signer's place of residence, giving the street and number or rural route number, if any, and shall show the city or township of which such signer is an elector."

Thank you for your time, public service and attention.


Phillip C. Cosby
401 NE 13th St.
Abilene, KS. 67410

House Gov. Org. & Elections
Date: 3-22-05
Attachment # 2



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

March 22, 2005

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

From: Doug Anstaett, executive director, Kansas Press Association

Re: SB 34

My name is Doug Anstaett, and I am executive director of the Kansas Press Association. I am here today to express KPA's support for Senate Bill 34.

SB 34 is the outgrowth of last year's interim committee assignment to review each and every exception to open records in the Kansas Open Records Act and other exceptions sprinkled throughout the Kansas statutes.

The committee did yeoman's work as it undertook a comprehensive review of well over 200 exceptions to the release of information to the public. Our hats are off to the interim committee and to the Revisor of Statutes' office and the Legislative Research Department.

The KPA raised a number of points during this discussion. Our goals were to reduce the confusion that sometimes exists because of vaguely worded exceptions and to eliminate unnecessary obstacles to public access.

A number of initiatives in this legislative session are an outgrowth of that review, including:

- SB 5, relating to trade secrets.
- SB 38, relating to subpoena powers.
- HB 2118, relating to cemetery corporation records.
- HB 2148, relating to veterinarian disciplinary actions.
- HB 2198, relating to child care facility records.
- HB 2281, relating to gubernatorial records.

Since we initiated legislative review of SB 34, it has picked up an amendment that we strongly support relating to the definition of "clearly unwarranted invasion of personal privacy." We support this because Exemption 30 in the Kansas Open Records Act has been used as a catchall reason to deny the public access to records. With the addition of this definition, that a clearly unwarranted invasion of personal privacy is defined as

House Gov. Org. & Elections
Date: 3-22-05
Attachment # 3

“revealing information that would be highly offensive to a reasonable person and is not of legitimate concern to the public” tightens down this exception. This language is designed to be in conformity with the established law of “private facts” form of invasion of privacy.

We understand there is the possibility that security language from SB 24, which was gutted, will be amended into SB 34. We have no objection to that amendment because it is in line with changes we approved a year ago.

We also support an amendment to require the reporting and compilation of open records and open meetings complaints and the creation of an annual abstract to better track such complaints. We think such a report will be extremely valuable to legislators and members of the press in determining future improvements for KORA and KOMA.

We support SB 34 and these other legislative initiatives and look forward to their swift passage.

Thank you.



Testimony on SB 34

House Governmental Organization and Elections Committee
Randall Allen, Executive Director
Kansas Association of Counties
March 22, 2005

Chairman Vickrey and members of the committee, I am Randall Allen, Executive Director of the Kansas Association of Counties. I appreciate the opportunity to submit testimony in support of SB 34, continuing the exceptions to disclosure under the Kansas Open Records Act (KORA). As you are aware, pursuant to a 2000 bill of the Legislature, all disclosure exceptions in the KORA will expire on July 1, 2005 unless continued. The Kansas Association of Counties supports retention of the disclosure exemptions to the KORA currently found in law. The exceptions to disclosure in K.S.A. 45-229 have been studied by the Legislature since the sunset was enacted in 2000, and our association along with many others, including the Kansas Press Association, has engaged in extensive discussions to arrive at this point.

Without passage of SB 34 or comparable legislation in this session of the Legislature, public agencies would be required to disclose many documents which are not appropriate to disclose. We therefore urge the committee to report out SB 34 favorably for passage, granting another five-year window before the statutory exemptions sunset. Thank you for the opportunity to testify.

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. For more information, please contact Randall Allen or Judy Moler at (785) 272-2585.

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House Gov. Org. & Elections
Date: 3-22-05
Attachment # 4



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Testimony Before The
House Government Organization & Elections Committee
Presented by Erik Sartorius
Regarding SB 34

March 22, 2005

The City of Overland Park appreciates the opportunity to share with the committee its support for Senate Bill 34. The reauthorization of exceptions to the Kansas Open Records Act is a top priority of the City.

The Kansas Open Records Act assures public access to important public records. At the same time, the law allows essential exceptions to protect the privacy of citizens and allow the effective and efficient administration of government programs. As you know, the 2000 Legislature enacted K.S.A. 45-229, creating a legislative review and sunset provision concerning disclosure exceptions to the Kansas Open Records Act. This legislative enactment requires that all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005.

The City of Overland Park believes the Kansas Open Records Act currently strikes a fair balance to create open and efficient government, and strongly supports retention of current exceptions. When contemplating reauthorization of KORA, critical consideration must be given to just whose data is generally contained in records held by the government. More often than not, the information contained in governmental records either belongs to or refers to private individuals.

One longstanding exception to KORA is that for personnel records. This exception was part of the original Kansas Open Records Act, passed in 1984, and is similar to one of nine exceptions found in the Federal Freedom of Information Act. When individuals are hired by public agencies to be our teachers, police officers, firefighters and other public servants, they do not leave their legal protections or their sense of privacy at the door of the public agency. Further, because Kansas recognizes the tort of "invasion of privacy," if public employers were required to disclose information in personnel files, they could be sued by their employees or applicants for releasing damaging information while attempting in good faith to fulfill their obligations under the Kansas Open Records Act.

Another important exception to KORA protects records related to criminal investigations. Law enforcement often responds to situations, whether criminal or non-criminal, that deal with very intimate and personal details of persons lives. When personal relationships are involved, especially familial, or if a person has been physically violated, it

House Gov. Org. & Elections
Date: 3-22-05
Attachment # 5

can be an emotional and trying experience for the participants. The factual circumstances of these incidents, along with identifying information on victims and innocent persons who are involved, are recorded in police investigative reports. The release of this personal information for public scrutiny can be embarrassing and emotionally harmful to those individuals.

This exception is also important for the protection it provides officers and informants. Not only could an investigation be jeopardized, but the officers undercover or conducting surveillance could be exposed to harm if their methods or identity were available via open records. Likewise, informers' safety might be compromised if their identities are made known, particularly since many of them are related to or intimately aware of suspects' alleged criminal activities.

The City does have some concern with an amendment added to SB 34 that alters the definition of "clearly unwarranted invasion of personal privacy." Governmental entities come into possession of a great deal of information that is highly personal in nature, the release of which could have a devastating impact on an individual's personal privacy.

Presumably, the Kansas Press Association has recognized the potential civil liability as the proposed definition recites the standard for the privacy tort involving unreasonable publication of information from a person's private life. The City would request, however, that this Committee consider the fact that the City could also be sued under the theory of violating a person's right to privacy by giving publicity to a matter the unreasonably places the person in a false light.

Under this invasion of privacy theory, an entity can be sued if there is publication, the publication falsely represents a person and the representation is highly offensive to a reasonable person. There is no element under false light invasion of privacy regarding the public's concern. The public's right to know must be tempered by an individual's right to have his or her private matters remain private

The exceptions described above are but some of many important exceptions to the Kansas Open Records Act. Other exceptions likewise balance the need for open government with the necessity for insuring the right to privacy of individuals. Because of this, the City of Overland Park supports SB 34 and respectfully request that the committee recommend SB 34 favorably for passage.



Johnson County, Kansas

BOARD OF COUNTY COMMISSIONERS

Testimony in support of SB 34

presented to the

House Governmental Organization and Elections Committee

by

Danielle Noe

Intergovernmental Relations Coordinator

March 22, 2005

Mister Chairman and Members of the committee:

Thank you for the opportunity to give qualified support for SB 34, relating to the reauthorization of exceptions to the Kansas open records act.

During the 2000 Legislative Session, the legislature modified the Kansas Open Records Act (KORA) to require every public agency to appoint a Freedom of Information Officer. In addition, language was added that sunsets all exemptions to KORA in 2005. Any new exemptions or amended exemptions to disclosure of public records expire on July 1 of the fifth year after enactment unless the legislature acts to reenact the exception. As a part of the sunset, the legislature is directed to review the exceptions before they are scheduled to expire.

Certain types of records which are held and maintained by the County as a matter of law, contain personal or confidential information which could be damaging, embarrassing, or has the potential to be abused if released into the public domain. For example, numerous records contain social security numbers, medical histories, or personally identifiable information. Some of the types of information the County is concerned about maintaining as a private record, include:

- Information pertaining to criminal investigations, during the time they are underway, and pursuant to the existing exception in KORA;
- Communicable disease information as it pertains to specific individuals;
- Tax and financial information regarding specific individuals or businesses;
- Personal identifying information such as social security numbers, which appear on a variety of documents, including taxes, mortgage documents, etc.;
- Medical, psychiatric, psychological or drug treatment records;
- Library circulation records which pertain to specific individuals;
- Court records pertaining to children or incapacitated persons.

This list is in no way exhaustive of the types of information that the County would not wish to disclose. It is important to note that most of the exceptions are those which pertain to

House Gov. Org. & Elections
Date: 3-22-05
Attachment # 6

information which could risk the safety of citizens or would cause a person to be easily identified and might disclose private, financial, or health related information about such person.

The Senate Elections and Local Government Committee amended the bill to include a new definition of “clearly unwarranted invasion of personal privacy.” Johnson County opposes the inclusion of this definition in SB 34. The problem with this definition is that it does not take into account the private interest of the person to whom the information belongs. In interpreting similar laws, courts have often used a balancing test - ***weighing the privacy interests of the individual with the public’s interest in the information.*** We believe that this balancing test is the fairest approach to use when handling sensitive information.

In fact, the balancing approach has been used by the US Supreme Court in interpreting what constitutes a clearly unwarranted invasion of personal privacy under the federal Freedom of Information Act. Specifically, the US Supreme Court has said that that public interest in disclosure must be balanced against the interest that the exemption was intended to protect – that of an *individual’s privacy*. Additionally, the US Supreme Court has made it clear that the only relevant public interest is the extent to which disclosure of the information sought would shed light on an agency’s performance of its statutory duties or otherwise let citizens know what their government is doing. This same test has been used in federal district court in Kansas, as recently as 1996 (see *Barvick v. Cisneros*, 941 F. Supp. 1015 (D.Kan. 1996)). We should also note that KORA was patterned after the open records law in Kentucky; Kentucky has adopted a balancing test similar to the one used by the federal courts.

The definition included by the Senate committee, establishes a two-part test for nondisclosure. The definition does not adequately take into consideration the types of records and information collected and maintained on individuals by their government and the reasons for such collection and maintenance. The first part of the standard uses an objective standard rather than the personal privacy interests’ inquiry that takes place under the federal balancing test. We may not be “highly offended” when the government shares our neighbors’ personal information with the world, but we are “highly offended” when the government shares our own information. The standard in the definition fails to inquire into whether the individual has a personal privacy interest in the requested information.

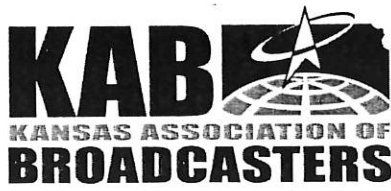
Moreover, phrases like “highly offensive” are misplaced in an open records discussion. They belong in the realm of tortious activities. For example, releasing various lists of home phone numbers and addresses have been a common subject of open records debates. It is unlikely that a reasonable person would find releasing such records to be “highly offensive.” Yet, the court opinions on this issue vary widely depending upon the circumstances. The application of a balancing test is one reason for the varying results. This balancing test provides more opportunity than the “highly offensive” test to consider the various circumstances such as personal safety and the privacy of a person’s home.

In order for the personal privacy exemption to apply, the definition requires that the second prong of the new definition must also be established. So even if releasing the information would be “highly offensive” to a reasonable person, a public agency would still be required to release it

if it has some “legitimate concern” to the public. It does not matter that the legitimate concern may be minor. Again, this definition fails to consider any privacy interests. Without a limit to what may be considered a “legitimate concern” this definition is not likely to be applied fairly across agencies and across the state. Under the balancing test used by the US Supreme court, the only relevant public interest is in the government’s own activities.

Finally, we would simply ask what records does the media claim are not being released that they believe should be released? Or more importantly, what records do they believe will be accessible under the proposed definition that are not currently being disclosed? At no time in the discussion of KORA has anyone shown a need for this definition to correct a problem that exists with the current exception.

The Kansas Open Records Act strikes an important balance between openness in government and protecting the private information of individuals. For this reason, and on behalf of the Board of County Commissioners, I respectfully request that you remove the new definition of “clearly unwarranted invasion of personal privacy” and pass the bill as amended.



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Testimony – SB 34
Before House Committee on Governmental Organization and Elections
March 22, 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 SB 34.

We support passage of SB 34 as amended by the Senate. Continuing the current exceptions to open records to July 1, 2010 makes sense to us. The 2004 Interim Committee on Local Government reviewed these exceptions and we see no reason not to extend them until 2010, at which time they will expire unless the Legislature continues them.

We also support the proposed definition for “clearly unwarranted invasion of personal privacy”. The personal privacy exception in KSA 45-221 is used to deny access to records which contain personal information of any kind, due either to the custodian’s personal views of privacy or concern with divulging too much information. There currently is no clear standard to guide custodians. The proposed definition on page two of the bill, line 35, will provide much needed guidance to the hundreds of record custodians across the state who have differing views of what constitutes “invasion of personal privacy”. By adopting this language the Legislature will provide consistency for disclosure where none now exists.

Thank you for your consideration.

House Gov. Org. & Elections
Date: 3-22-05
Attachment # 7



League of Kansas Municipalities

Testimony was presented
by Don Moler, LKM

To: House Governmental Organization & Elections
From: Kim Gulley, Director of Policy Development & Communications
Date: March 22, 2005
Re: Support for SB 34

Thank you for the opportunity to appear today on behalf of the 574 member cities of the League of Kansas Municipalities. We appear in support of SB 34 regarding the Kansas Open Records Act (KORA) for the following reasons:

- **2000 Compromise.** During the 2000 legislative session, it was agreed by all the major parties that the exemptions to KORA would sunset in July of 2005 and the Legislature would be required to review all of the exceptions to determine whether they are still appropriate. Over the past two interim sessions, KORA has been studied, altered, and studied some more. The 2004 interim committee recommended that the current exceptions be continued and SB 34 accomplishes this recommendation.
- **Interpretation Questions.** The language of the bill adopted in 2000 has raised a number of interpretive questions. Specifically, it is unclear what it takes to "reenact" an exception and start a new five year period. It is our position that "reenact" means just that – an enactment of the Legislature. However, the revisor's office has taken a different interpretation, stating that some type of more formal process must be followed to meet the requirements of the statute. In either case, there is uncertainty as to when various exceptions will expire and it is very important that this be clarified so that local Freedom of Information Officers can implement the act appropriately.
- **Records of Citizens.** Most importantly, I would point out that SB 34 continues most of the exceptions which are currently in place. These exceptions primarily go to the records containing information about our citizens, not the government itself. For example, the personnel records of public employees, names and credit information for utility customers, and names and health information for children participating in public recreation programs are all types of records that are protected by the current exemptions. Allowing the exemptions to expire would invade the privacy of our citizens and put city, county, school district, and state government at risk for costly litigation.

For these reasons, we respectfully request your favorable consideration of SB 34. I would be happy to stand for questions at the appropriate time.

House Gov. Org. & Elections
Date: 3-22-05
Attachment # 8

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

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

Testimony on **HB 34**
before the
House Governmental Organization and Elections Committee

by

Jim Edwards, Governmental Relations Specialist
Kansas Association of School Boards

March 22, 2005

Chairman Vickery and Members of the Committee:

I appear before you today to express KASB's support for **SB 34**, a bill that provides for the continuation of certain exceptions to the disclosure of public records for five years. We believe that the bill, as passed by the Senate, should be passed by this Committee.

All of the exceptions included in this bill received a thorough review, full debate and legislative approval when introduced and any can receive the same prior to the end of the five-year period. We likewise believe that the many Kansans whose records have been closed, and the agencies that hold them, should have ample notice and hearing opportunities before those exceptions for disclosure are reviewed for possible amending or deletion.

In referencing the above, we would remind this body that a one-year extension will not be sufficient if a thorough review is held for each of the 240+ exceptions. At a minimum of 45 minutes per issue, you would have more than 180 hours of hearings.

I thank you for the opportunity to provide this testimony in support of the continuation of the exceptions to open records included in **SB 34**. I will stand for questions.

House Gov. Org. & Elections
Date: 3-22-05
Attachment # 9



Kansas Society of Certified Public Accountants

1080 S.W. Wanamaker, Suite 200 • P.O. Box 4291 • Topeka, Kansas 66604-0291 • 785-272-4366 • Fax 785-272-4468

March 22, 2005

To: House Governmental Organizations and Elections Committee
From: T.C. Anderson, Executive Director
Re: SB 34

Chair Vickrey and Members of the Committee.

Thank you for providing me this opportunity to discuss a portion of SB 34. I am T.C. Anderson, Executive Director of the 2,600 member Kansas Society of Certified Public Accountants.

I write this letter to ask for your favorable consideration of SB 34 which will extend the provisions of K.S.A. 1-401 for another five years.

K.S.A. 1-401 is a section of the statutes relating to certified public accountants. It was enacted in 1981 to provide that working papers prepared by CPAs in the course of business shall remain the property of the CPA unless an agreement to the contrary with the client and to provide clients of CPAs a privilege regarding communications made by the client to the certified public accountant in person or through the media of books or account and financial records, or as to advice, reports or working papers given or made thereon in the course of professional employment.

The privilege was narrowed in 1992 so as to allow the United States government and the State of Kansas to subpoena books or account, financial records, reports or working papers or other documents and use such information in connection with any investigation, public hearing or court proceeding.

Once again, I ask for your support of SB 34.

House Gov. Org. & Elections

Date: 3-22-05

Attachment # 10



The Historic Lackman-Thompson Estate

11180 Lackman Road
Lenexa, KS 66219-1236
913.888.1414
Fax 913.888.3770

TO: Representative Jene Vickrey, Chairman
Members, House Governmental Organization & Elections
Committee

FROM: Ashley Sherard, Vice-President
Lenexa Chamber of Commerce

DATE: March 22, 2005

RE: **SB 34—Extension of KS Open Records Act Exemptions**

The Lenexa Chamber of Commerce would like to express its support for SB 34, which would extend the existing exemptions under the Kansas Open Records Act (KORA) for another five years.

While it is important to maintain governmental openness and accountability, we believe state laws governing open records must carefully balance the public's right of access with the necessity of protecting the privacy and security of individual citizens and the ability of businesses and organizations to safely and effectively conduct their essential functions. We believe the exemptions extended by SB 34 -- whose purposes and reasoning were reviewed by an interim legislative committee -- recognize and respect this critical balance.

Further, although the bill was amended by the full Senate to extend the exemptions only for another five years -- which is current law -- we would strongly support the bill in its original form. As recommended by the interim legislative committee that actually reviewed the exemptions, SB 34 initially would have removed the five year sunset provision and allowed the exemptions to continue indefinitely until further legislative action. To promote efficiency, we would urge the committee to consider returning to this original language.

For these reasons, the Lenexa Chamber of Commerce strongly urges the committee to recommend SB 34 favorable for passage, extending the current exemptions to the Kansas Open Records Act for at least five years. Thank you for your time and consideration.

House Gov. Org. & Elections
Date: 3-22-05
Attachment # 11

Submitted by:

Rep. Joice Theresa Kiernan

Balloon
(Insurance Provisions)

45-221h. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. [See Revisor's Note] (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas Supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

- (A) The information which the agency maintains on computer facilities; and
- (B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

- (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
- (B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

- (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
- (B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq. and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

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

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

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

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

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

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(39) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(40) Market research, market plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(41) The amount of franchise tax paid to the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(42) Records the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; or (B) sewer or wastewater treatment systems, facilities or equipment. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping.

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

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

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

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the

requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

Submitted by:

~~Rep. Goico~~

Theresa Kiernan

Balloon

(Security Provisions)

45-221h. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. [See Revisor's Note] (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas Supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

House Gov. Org. & Elections

Date: 3-22-05

Attachment # 13

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

- (A) The information which the agency maintains on computer facilities; and
- (B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

- (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
- (B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

- (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
- (B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq. and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

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

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

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

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

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

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(39) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(40) Market research, market plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(41) The amount of franchise tax paid to the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(42) Records the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; or (B) sewer or wastewater treatment systems, facilities or equipment. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than

70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. . K.S.A. 2004 Supp. 66-1236 is hereby amended to read as follows: 66-1236. (a) In adopting procedures applicable in proceedings pursuant to K.S.A. 66-1233, and amendments thereto, the state corporation commission shall provide for:

(1) Confidentiality of information so that the amount of recovery requested, the amount of recovery allowed, the method of cost recovery requested and the method of cost recovery allowed is not disclosed;

(2) protective orders for all filings so that the citizens' utility ratepayer board may receive and review documents if the board intervenes;

(3) procedures to reflect rules of the United States nuclear regulatory commission or other regulatory bodies that govern the release of information and documentation which an applicant is required to submit to support the application or supply to the commission, commission staff or intervenors;

(4) the security cost recovery charge to be unidentifiable on customers' bills;

(5) the security cost recovery charge shall be allocated and added to all wholesale and retail rates and future contracts. Any contract existing on the effective date of this act, which does not specifically prohibit the addition of such charges, shall have such charges added;

(6) review of security-related filings in an expedited manner with reference only to security-related items to assure that the proposed items provide enhanced security;

(7) denial of any expenditure that the commission determines is not prudent or is not for security measures and approval of all other expenditures; and

(8) recovery of capital expenditures over a period equal to not more than 1/2 the usable lifetime of the capital investment.

(b) A determination by the commission of the prudence of an expenditure for security measures shall not be based on standard regulatory principles and methods of recovery and shall take fully into account the findings and intent of the legislature as stated in K.S.A. 2004 Supp. 66-1235, and amendments thereto.

(c) The provisions of this act and K.S.A. 66-1233, and amendments thereto, shall apply recovery of prudent expenditures for enhanced security incurred after September 11, 2001.

(d) Any confidential records or information relating to security measures provided or received under the provisions of this act and K.S.A. 66-1233, and amendments thereto, shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 0.. K.S.A. 2004 Supp. 75-4319 is hereby amended to read as follows: 75-4319. (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

(1) Personnel matters of nonelected personnel;

(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

(3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;

(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;

(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;

(6) preliminary discussions relating to the acquisition of real property;

(7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto;

(8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection ~~(e)~~ (d)(1) of K.S.A. 38-1507 and amendments thereto or subsection ~~(f)~~ (e) of K.S.A. 38-1508 and amendments thereto;

(9) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;

(10) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;

(11) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 39-7,119 and amendments thereto;

(12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;

(13) matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; (C) a public body or agency, public building or facility or the information system of a public body or agency; or (D) private property or persons, if the matter is submitted to the agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments; and

(14) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

(d) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(13), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Submitted by:
Theresa Kiernan

Balloon ~~#3~~
↓
Reporting of KORA/
KOMA violations to
sb24sb78.wpd Attorney
General

New Sec. 2. (a) On or before January 15, of each year, the county or district attorney of each county shall report to the attorney general all complaints received during the preceding fiscal year concerning violations of the open records act and open meetings act and the disposition of each complaint.

(b) The attorney general shall compile information received pursuant to subsection (a) with information relating to investigations of violations of the open records act and the open meetings act conducted by the office of the attorney general. The attorney general shall publish a yearly abstract of such information listing by name the public agencies which are the subject of such complaints or investigations.

HOUSE BILL No. 2484

By Committee on Federal and State Affairs

2-17

Submitted by:
Rep. Vickrey

TK

Balloon

House Gov. Org. & Elections
Date: 3-22-05
Attachment # 15

9 AN ACT concerning license or occupation fees, charges and taxes; pro-
10 hibiting the imposition thereof on certain persons; amending K.S.A.
11 12-1617 and 19-2233 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 12-1617 is hereby amended to read as follows: 12-
15 1617. The powers of the cities of the first, second and third classes within
16 this state to impose license or occupation taxes upon peddlers and vendors
17 shall not be construed so as to apply to, or create the power to impose
18 license taxes or occupation taxes upon producers and growers, or their
19 agents or employees engaged in the sale of farm, garden or aquaculture
20 products, or fruits grown within this state.

21 (a) As used in this section, "fee" means any license or occupation fee,
22 charge or tax, vending or peddling fee, charge or tax, transient merchant
23 license fee, charge or tax or any other similar fee, charge or tax.

24 (b) ~~No city shall require any producer, grower, or agent or employee~~
25 ~~of such grower, engaged in the sale of agricultural, farm, garden or aqua-~~
26 ~~cultural products grown by such growers within this state to obtain a~~
27 ~~license or permit as a peddler, vendor or transient merchant.~~ ^

28 (c) No city shall impose any fee against any producer, grower, or
29 agent or employee of such grower, engaged in the sale of agricultural,
30 farm, garden or aquacultural products grown by such growers within this
31 state.

32 Sec. 2. K.S.A. 19-2233 is hereby amended to read as follows: 19-
33 2233. (a) The provisions of ~~this~~ the transient merchant licensing act shall
34 not apply to:

35 (1) Sales at wholesale to retail merchants by commercial travelers or
36 selling agents in the usual course of business;

37 (2) sales or displays at trade shows, expositions or conventions;

38 (3) sales of goods, wares or merchandise by sample catalogue or bro-
39 chure for future delivery;

40 (4) sales or displays at fairs, conventions or shows operated primarily
41 for purposes of amusement, entertainment, recreation or education;

42 (5) sales or displays at sales, fairs, auctions or bazaars operated by
43 church, religious or charitable organizations;

A city may require any producer, grower, or agent
or employee of such grower, engaged in the sale
of agricultural, farm, garden or aquacultural
products grown by such growers within this state
to obtain a peddler's, vendor's or transient merchant's
license or permit. Such license or permit shall be
valid for a period of time of not less than 60 days
from the date of issuance.

Submitted by:

Rep. Holland

SB143Holland.wpd

Proposed Amendment Senate Bill No. 143

Sec. . K.S.A. 25-1308. (a) Approval of machines by secretary of state required. The secretary of state shall examine and approve the kinds or makes of voting machines, and no kind or make of voting machine shall be used at any election where voting machines are authorized to be used unless and until it shall have been approved by the secretary of state and a statement thereof is filed in the office of the secretary of state.

(b) (1) *No electronic or computerized voting machine shall be approved for use in this state unless such electronic voting machine provides for a paper record of each electronically generated ballot that can be reviewed and corrected by the voter at the time the vote is cast.*

(2) (A) *No direct recording voting system purchased after January 1, 2006, may be used in this state unless such voting system has an accessible voter verified paper audit trail.*

(3) *Nothing in this subsection shall be construed as prohibiting the use of a direct recording voting system which does not have an accessible voter verified paper audit trail so long as such system was purchased prior to January 1, 2006.*

(4) *No voter verified paper audit trail required under this subsection shall be used for the purposes of determining the outcome of any election conducted in the state of Kansas.*

(5) *As used in this subsection, "Accessible voter verified paper audit trail" means a component of a direct recording electronic voting system that prints a contemporaneous paper record copy of each electronic ballot and allows each voter to confirm such voter's selections before the voter casts such voters ballot.*

Sec. . K.S.A. 25-1310 is hereby amended to read as follows: 25-1310. (a) A kind or make of voting machine approved by the secretary of state:

(1) Must be so constructed as to provide facilities for voting for the candidates for nomination or election of at least seven different political parties or organizations;

(2) must permit a voter to vote for any person for any office although not nominated as a candidate by any political party or organization;

(3) must provide for voting on constitutional amendments, propositions or questions;

(4) must be so constructed that as to primaries where candidates are nominated by political parties it can be so locked from the outside that the voter can vote only for the candidates of the political party with which such voter is affiliated or, if not affiliated, according to such voter's declaration when applying to vote;

(5) must be so constructed as to prevent voting for more than one person for the same office except where the voter is lawfully entitled to vote for more than one person for that office;

(6) must afford the voter an opportunity to vote for any or all persons for an office as such voter is by law entitled to vote for and no more, and at the same time preventing such voter from voting for the same person twice for the same office;

(7) must be so constructed that in presidential elections the presidential electors of any political party for presidential and vice-presidential candidates may be voted upon at the same time;

(8) must provide facilities for "write-in" votes;

(9) must provide for voting in absolute secrecy in voting, except as to persons entitled to

House Gov. Org. & Elections

Date: 3-22-05

Attachment # 16

Further Amend

Include Definition of "Accessible"

May

assistance;

(10) must be so constructed as to accurately account for every vote cast upon it;

(11) be provided with a "protective counter" or "protective device" whereby any operation of the machine before or after the election will be detected;

(12) be provided with a counter which will show at all times during the election how many persons have voted; and

(13) be provided with a mechanical model illustrating the manner of voting on the machine, suitable for the instruction of voters. Voting machines approved by the state executive council shall continue on the approved list of voting machines.

(b) In addition to the requirements of subsection (a), each electronic or computerized voting machine approved by the secretary of state shall meet the requirements of subsection (b) of K.S.A. 25-1308, and amendments thereto.

New Sec. . No funds received by the secretary of state from any source whatsoever shall be used for the initial purchase, upgrade, retrofit or equipping of any direct recording voting system, or any equipment related thereto, unless such voting system includes or is equipped with an accessible voter verified paper audit trail as defined in K.S.A. 25-1308, and amendments thereto.

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