

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT

The meeting was called to order by Chairman Tim Huelskamp at 1:36 P.M. on February 3, 2005 in Room 423-S of the Capitol.

All members were present.

Committee staff present: Martha Dorsey, Kansas Legislative Research Department
Mike Heim, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes
Janet Engel, Committee Secretary

Conferees appearing before the committee:

Ralph Gage, Kansas Press Association., & "Lawrence Journal World"
Harriet Lange, Kansas Association of Broadcasters
Kim Gulley, League of Kansas Municipalities
Randall Allen, Kansas Association of Counties (written & audience)
Theresa Bush, Attorney General's Office
Doug Anstaett, Kansas Press Association
Harriet Lange, Kansas Association of Broadcasters
Theresa Bush, Attorney General's Office
Richard Gannon, Kansas Press Association
Scott Heidner, Am. Council of Engineering Co. of Kansas
Trudy Aron, American Institute of Architects
Ed Desoignie, Heavy Constructors Association of Greater KC,
Jerry Slaughter, Kansas Medical Society
Chip Wheelen, Kansas Association of Osteopathic Medicine
Robert Vancrum, Greater Kansas City Chamber of Commerce
Wes Ashton, Overland Park Chamber of Commerce,
Ashley Sherard, Lenexa Chamber of Commerce

Others attending: See attached list.

Bill Introductions: None

Hearing on SB 78 - Open records; exceptions; personnel records; reconciling conflicts in duplicate statutes.

Ken Wilke summarized the bill.

Proponents:

Ralph Gage, Kansas Press Association., & "Lawrence Journal World", presented testimony. (Attachment 1)

Harriet Lange, Kansas Association of Broadcasters, presented testimony. (Attachment 2)

Kim Gulley, League of Kansas Municipalities, presented testimony. (Attachment 3)

Randall Allen, Kansas Association of Counties provided written testimony and was present in the audience. (Attachment 4)

Theresa Bush, Attorney General's Office, presented testimony. (Attachment 5)

Opponents: None

Chairman Huelskamp closed the hearing.

Hearing on SB 80 - Open records; public agency; certain records excluded.

Ken Wilke summarized the bill.

Staff note: Many conferees gave verbal testimony that varied from their written testimony because they were reacting to previous suggestions for amendments. The grouping of proponents and opponents was based on their primary positions before the hearing.

CONTINUATION SHEET

MINUTES OF THE Senate Elections and Local Government at 1:36 P.M. on February 3, 2005 in Room 423-S of the Capitol.

Proponents:

Doug Anstaett, Kansas Press Association, presented testimony and a letter from the University of Kansas. (Attachments 6 & 7)

Harriet Lange, Kansas Association of Broadcasters, presented testimony. (Attachment 8)

Theresa Bush, Attorney General's Office, presented testimony. (Attachment 9)

Richard Gannon, Kansas Press Association, offered two amendments and a section of Kentucky law (Attachments 10, 11, & 12).

Opponents:

Many opponents indicated they may remove opposition if some of the proposed amendments are adopted.

Scott Heidner, Am. Council of Engineering Co. of Kansas, presented testimony. (Attachment 13)

Trudy Aron, American Institute of Architects, presented testimony. (Attachment 14)

Ed Desoignie, Heavy Constructors Association of Greater KC, presented testimony. (Attachment 15)

Corey Peterson, Associated General Contractors of Kansas, provided written testimony and was present in the audience. (Attachment 16)

Bob Totten, Kansas Contractors Association., provided written testimony. (Attachment 17)

Ron Cornejo, Cornejo & Sons, provided written testimony. (Attachment 18)

Jerry Slaughter, Kansas Medical Society, presented testimony. (Attachment 19)

Tom Bell, Kansas Hospital Association, provided written testimony with Jennifer Findley present in the audience. (Attachment 20)

Chip Wheelen, Kansas Association of Osteopathic Medicine, provided a proposed amendment. (Attachment 21)

Marlee Carpenter, Kansas Chamber of Commerce, provided written testimony and was present in the audience. (Attachment 22)

Dick Carter, Travel Industry Association of Kansas, provided written testimony and was present in the audience. (Attachment 23)

Robert Vancrum, Greater Kansas City Chamber of Commerce, presented testimony. (Attachment 24)

Wes Ashton, Overland Park Chamber of Commerce, presented testimony. (Attachment 25)

Ashley Sherard, Lenexa Chamber of Commerce, presented testimony. (Attachment 26)

Senator Huelskamp closed the hearing.

Closing

Amendments for SB 67 are not yet ready. They will be provided for a future meeting.

There being no further business, the meeting was adjourned at 2:35.

Senate Elections & Local Government Committee
 Daily, 1:30 - 2:30 p.m. Room 423-S
 Sen Tim Huelskamp, Chair

Guest List for February 3, 2005
 Please sign in

Name	Representing
KEVIN GRAHAM	A. G.
Richard Gannon	KPA
Terence Marcel Bush (Nuckolls)	A. G.
Jim Edwards	KASB
Doug Antlett	KPA
Ralph Page	Lawrence Journal-World
Wes Ashton	Overland Park Chamber
Diane Costello	Olathe Chamber
Dan Hermes	DCCA
Tim Madden	KDOC
Jennifer Findley	ICHA
Rolie Lehman	GKCCF
Andy Shaw	Kearney & Associates
Lisa Elliott	KNEA
DAVID Klepper	KC STAR
Edward DeSoignie	Heavy Constructors Assoc.
Randall Allen	Ks. Assn. of Counties
Debbie Meador	KLA
Bud Burke	City of Olathe

Senate Elections and Local Government Committee

Daily, 1:30 - 2:30 p.m. Room 423-S

Sen Tim Huelskamp, Chair

Guest List for Feb 3, 05

Please sign in

Name	Representing
John Peterson	Ks Hospital Assn
Dick Carter	TIAC
WAGE Bowie	JJA
Melissa Wangemann	Sec of State
Guthrie Laframboise	KSHS
Bob Vancouver	Greater KC Chamber
Wendy Williams	KAPA - Kemca
Scott Heidner	ACEC Kansas
Harriet Lange	Ks Assn of Broadcasters
Chip Wheelen	Asn of Osteopathic Med.
Jerry Gaultner	Dr. MED. Soc.
Andy Post	KAMMCO
Sandy Barnett	Ks. COAL AGAINST SEXUAL & DOMESTIC VIOLENCE
Monica Haskinson	intern Sen. O'Connor (KCSOV)
Kim Gullett	LKM
Joyce Shover	KCSOV
Blake Schred	Lewisa Chamber

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JOURNAL-WORLD®

Ralph D. Gage Jr.
GENERAL MANAGER

February 3, 2005

Senator Tim Huelskamp, Chairman
Senate Committee on Elections and Local Government

Chairman Huelskamp, Committee Members:

My name is Ralph Gage. I am chief operating officer of the World Company of Lawrence, Kansas, and general manager of the Lawrence Journal-World newspaper.

I appreciate the opportunity to speak today in support of Senate Bill No. 78, and particularly in support of the change in Section 1, Paragraph 4, clarifying that employment contracts and agreements are not exempt from the Kansas Open Records Act.

This proposed amendment would codify the finding of the Douglas County District Court in the case of the World Company v. University of Kansas, in which our company brought suit against the university and the Kansas University Athletic Corporation when the university and the athletic department refused to disclose the terms of employment of KU Athletic Director Lew Perkins.

This dispute over the records arose when, shortly after the university revealed that Mr. Perkins' base salary was to be \$420,000 per year, other sources not only in the community but around the state began to assert that the actual value of his employment agreement was considerably higher. In response to our company's KORA request, the university claimed the employment agreement was not subject to the act because it was a "personally identifiable" agreement.

The court's ruling, however, said in part that the state's policy of disclosure should not be limited by exempting any record identifying individuals by name. "Otherwise," wrote District Judge Jack Murphy, "any document with an employee's name on it—whether or not it reveals sensitive information—would fall under this exclusion..."

He said the documents in question "provide goals, incentives, and additions to Lew Perkins' base salary. These agreements address duties and responsibilities for both



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Senate Elections & Local Govt.
Date: 2 / 3 / 2005
Attachment 1

parties and constitute a significant part of Perkins' contract with KU. Since they provide obligations for two parties, the agreements are better defined as 'mutually identifiable' records rather than 'individually identifiable' records..."

"An expenditure of public funds through an employment contract cannot be considered exempt from the KORA," the ruling continued. "Were this true, all payment agreements not specifically included or designated as 'salary' would be exempt from public inspection. The public has a valid right to discover how a public institution spends its money. Nondisclosure in this case is exactly the type of situation the legislature intended to prevent with the passage of the KORA. Disclosure promotes accountability and deters official misconduct.... The public does have an interest in knowing the full compensation of a public employee or any individual paid with public funds."

Obviously we agree. The citizens of the state have the right to know how much their state officials are being paid, and by whom, and for what.

Our lawsuit, assisted by the Kansas Press Association and the Associated Press, pried loose the record. Afterward, even Mr. Perkins and Chancellor Robert Hemenway, who was blamed for the decision to oppose disclosure, said they had nothing to hide. The ruling was a victory for the Legislature, for the intended purpose of the act, and for the citizens of the state. We would urge you to codify it with the amended language drafted in SB78.

The court case represented a considerable expense to our company. Codifying the court ruling and clarifying the records definition may prevent the necessity of others having to decide whether such an expenditure is worthwhile to litigate against an agency funded by taxpayer dollars. Not every business could or would spend the money.

Further, I would encourage the committee to consider changing K.S.A. 45-222 (c), which requires a finding that the defendant acted in bad faith in order for even a successful plaintiff to be reimbursed the cost of litigation. If an agency that lost such a KORA ruling had to reimburse the successful plaintiff, the agencies just might think twice about refusing legitimate requests. As things stand now, there's virtually no penalty associated with refusing a request. It's not punishment when all that happens is that ultimately an agency discloses a public record that should have been revealed without litigation.

In summary, I would reiterate:

- Records that the court stressed were of genuine and legitimate public interest were withheld
- The cost of litigation to make them public is beyond the capability of most individuals and many businesses
- No one, athletic director or other, paid with public money should be able to hide from the citizens of the state the amount or source of the money, or the purposes for which he or she is being paid

Again, I urge you to write this clearly in the public law. Thank you for allowing me to testify in this matter. If you have questions, I'll attempt to answer them.

##



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E-mail harriet@kab.net * www.kab.net

Testimony – SB 78
Before Senate Committee on Elections and Local Government
February 3, 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 in support of SB 78.

We will speak only to the proposed amendment to Section 1 (4) relating to personnel records, and not the other amendments in the bill which are to reconcile bills which passed last year.

We support codifying in statute the recent court decision in the *Lawrence Journal-World v. University of Kansas* lawsuit over access to employment/compensation agreements. KU lost and so did Kansas taxpayers who had to foot the bill for litigating this case. It is our hope that this clarification in statute will deter future denials of access and the potential for costly litigation born not only by the public entity, but also by those who seek access to public records.

We urge your favorable consideration of SB 78. Thank you for your consideration.

Senate Elections & Local Govt.
Date: 2 / 3 / 2005
Attachment 2



League of Kansas Municipalities

To: Senate Elections & Local Government Committee
From: Kim Gulley, Director of Policy Development & Communications
Date: February 3, 2005
Re: Support for SB 78

Thank you for the opportunity to appear today on behalf of the League of Kansas Municipalities (LKM) and our 565 member cities. We appear in support of SB 78.

Last year, LKM and a number of other local government entities, sat down with members of the Kansas Press Association to look for areas of common ground with regard to the Kansas Open Records Act (KORA) exemptions. The changes which are reflected in SB 78 mirror the changes to which our organizations agreed last year.

Because SB 78 attempts to clarify some of the KORA exemptions, I am also asking the Committee to consider clarification of exemption number 26. This exemption currently reads as follows: "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 customer named by the requester shall be subject to disclosure as provided by this act."

As someone who trains local Freedom of Information Officers on the substance of KORA, I cannot in good faith explain exactly what this exemption does. At first, it seems to protect information for individually identifiable customers of a public utility, but then seems to indicate that if the requester can name the person that the information is open. Clearly, there are some aspects of public utility billings which are public in nature (rates, usage, billing information) and other aspects which are personal in nature (customers name, SSN, credit information).

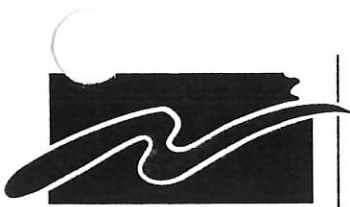
In order to clarify this statute, LKM is suggesting that it be re-worded in a fashion similar to the personnel exemption (number 4). We are recommending that the statute specifically list the information which is available to the public so that there is no question about what is open with regard to utility billings. We recommend that exemption number 26 be worded as follows:

"Records of a utility or other public service pertaining to individually identifiable customers of the utility or service except that this exemption shall not apply to information concerning utility rates, usage, or average billing information."

In other words, the private information of the individual customer would be kept private, but the general information about utility rates, usage, and billing would be open for disclosure.

Again, thank you for your attention to the matters addressed in this bill. I would be happy to stand for questions at the appropriate time.

Senate Elections & Local Govt.
Date: 2 / 3 / 2005
Attachment 3



KANSAS
ASSOCIATION OF
COUNTIES

Written Testimony on SB 78
Senate Elections and Local Government Committee
Randall Allen, Executive Director
Kansas Association of Counties
February 3, 2005

Chairman Huelskamp, I am Randall Allen, Executive Director of the Kansas Association of Counties. I appreciate the opportunity to submit written testimony in support of SB 78, amending the Kansas Open Records Act (KORA). Most of the changes are ones which clarify exemptions (or non-exemptions) that we have understood for some time. For example, we have always advised counties to release, upon request under the Kansas Open Records Act, actual employment agreements or employment contracts with county managers or administrators or other personnel. We have never believed that such agreements, covering employment costs paid with public funds, were exempt from disclosure.

Further, the requirement (page 2, lines 22-25) for a custodian to cite the subsection under which a record is discretionarily closed makes sense, as the custodian would have to know and understand the basis of such exemption to claim it in the first place. Providing the information to a requester of information only serves to communicate the public purpose under which the information is being withheld.

The KAC worked with the Kansas Press Association and other groups to reach consensus on improvements to the Kansas Open Records Act. Accordingly, we urge the committee to report the bill favorably for passage.

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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Senate Elections & Local Govt.
Date: 2 / 3 / 2005
Attachment 4

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**SENATE COMMITTEE
ON ELECTIONS & LOCAL GOVERNMENT
THURSDAY, FEBRUARY 3, 2005
PRESENTATION BY
THERESA MARCEL BUSH
ASSISTANT ATTORNEY GENERAL**

2005 SB 78

Attorney General Phill Kline asked me to appear in support of Senate Bill 78. This bill contains one important amendment to K.S.A. 45-221, which sets forth the types of public records that may be closed.

The amendment is to K.S.A. 45-221(a)(4), personnel records, and would limit closure of contracts or other types of personnel records related to compensation promised or paid to public officials or employees. It is intended to open up records concerning remuneration wherein a public employee or official is promised or paid compensation in connection with performance of their public duties or powers. It is not intended to override current closure laws applicable to retirement accounts. Nor is it intended to open up the records related to a completely outside second job that does not involve performance of public duties. Rather, it is aimed at making it clear that compensation promised or paid to a person because of their status as a public official or employee must be made known to the public.

In the past, public employees and officials have used K.S.A. 45-221(a)(4) to claim that compensation from private sources can be closed, even if that compensation would not have been realized but for the individual's status as a public employee or official. Often times, the additional remuneration is attached to performance of specific duties or accomplishment of goals connected with their official positions.

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We believe that if a person uses their public office or employment status to make money or receive other forms of compensation, not provided for directly by their public employer, that information should be open to the public. Failure to do so promotes the perception that the public agency in question is hiding "secret deals" from the public. As General Kline has stated "Accountability is the cornerstone of representative government and transparency is the corner stone of accountability."



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

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Feb. 3, 2005

To: Sen. Tim Huelskamp, chairman, Senate Elections and Local Government Committee, and committee members

From: Doug Anstaett, executive director, Kansas Press Association

Re: Senate Bill 80

I want to address two changes we are seeking in the Kansas Open Records Act to redefine “public agency” and to define what constitutes a “clearly unwarranted invasion of personal privacy.”

A fundamental change has been taking place in how we deliver governmental services in the past quarter century, but it has accelerated in the past decade.

A number of public services that previously were delivered by traditional public agencies have been shifted both to pseudo-public boards, economic development councils, convention and visitors’ bureaus, chambers of commerce and to private firms and not-for-profit organizations. One doesn’t have to look far to find such services as economic development, tourism promotion, correctional services, solid waste management, foster care and adoption, for instance, being outsourced to organizations and companies who have no obligation under the law to open up their records to public scrutiny.

While we don’t believe the intent of this shift of responsibility was to shield these services from public scrutiny, that is nonetheless what has happened.

Our proposal is designed to bring accountability to all those who receive and spend public dollars to perform what have traditionally been regarded as public functions. We have, as many of you are aware, stirred up a hornet’s nest with this legislation.

It has been the public policy of Kansas and certainly of the United States since the days of our founding to treat those who receive public tax dollars differently from those who provide private services. We’ve done that for a simple reason: those who are paying taxes to support state and local units of government have a right to know how their money is being spent, who is spending it and why.

Thomas Jefferson spoke of this more than two centuries ago. In 1781, he said: “Every government degenerates when trusted to rulers of the people alone. The people themselves are its only safe rulers.”

His thoughts were mirrored by James Madison in 1798: “The right of freely examining public characters and measures, and of free communication among the people thereon ... has ever been justly deemed the only effectual guardian of every other right.”

Senate Elections & Local Govt.

Date: 2 / 3 / 2005

Attachment 6

Our legislation is fairly simple. It attempts to redefine "public agency" to include those private companies that derive at least 50 percent of their annual expenditures from taxes or fees collected by cities, counties, school districts, the state of Kansas or the federal government unless those entities already provide an accounting of their expenditures that could be accessible to the public. This change also defines "public funds."

Why does the public need this kind of information? I'll give you a couple of examples. A few years ago, the Reno County sheriff signed an agreement with a private company to run the Reno County Jail Annex. Convicted of accepting bribes to try to convince the county commission to contract with a certain company, the sheriff had to serve time in jail. The private company that ran the jail annex was insulated from public scrutiny, and that resulted in corruption of a public official.

The Wichita Eagle tried to gain access to the records of the company providing busing services for the Wichita School District because of assaults on children. They wanted to be able to check out the records of those who were driving the vehicles and transporting young children to and from schools, to make sure no threats existed to the safety of the children riding buses in Wichita. Access was denied.

Kansas's Department of Social and Rehabilitation Services is a much different animal today than five years ago. It has farmed out foster care, adoption and other services to private and generally not-for-profit agencies. Cities have contracted out their economic development and tourism responsibilities and we've even had some shift to privatization of corrections functions and landfill management.

There's nothing inherently wrong with those decisions, except that they have shifted huge responsibilities to the private sector with no accompanying accountability. Public agencies are subject to the Kansas Open Records Act and the Kansas Open Meetings Act. Private companies doing public services are not.

We think that is wrong. Millions of public tax dollars go to these pseudo-public agencies each year. We think the people of Kansas have just as much a right to see how those tax dollars are spent as they do those spent for public safety, road maintenance, personnel and other functions.

Therefore, we urge your support of changes to bring more accountability to the spending of public dollars in Kansas.

Definition of clearly unwarranted invasion of personal privacy

In addition, we have asked for an amendment to define in KORA exemption 30 what constitutes a "clearly unwarranted invasion of personal privacy." Our proposed definition is "*revealing information that would be highly offensive to a reasonable person and is not of legitimate concern to the public.*"

Now, there is no definition, so this exemption is often misapplied because the information might prove embarrassing to a public official or individual. Embarrassment should never in and of itself be a reason to conceal a public record.

Thank you.

1

The University of Kansas

Business and Financial Planning

January 25, 2005

Terry Rombeck
Reporter
Lawrence Journal-World
P.O. Box 888
Lawrence, KS 66044-0888

Dear Terry,

I am writing in response to your letter dated January 18, 2005, received January 20, 2005, in which you request information regarding attorneys fees spent in relation to the case World Company v. University of Kansas.

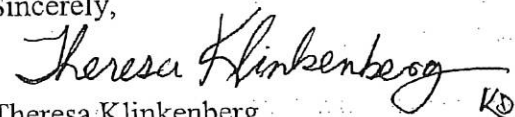
Specifically you request:

1. The number of KU attorney staff hours spent working on the case and the cost of that staff time.
2. The number of KUAC attorney staff hours spent working on the case and the cost of that staff time.
3. Records of all compensation paid to outside attorneys by KU to work on the case including names of attorneys and firms, number of hours worked for and total compensation.
4. Records of all compensation paid to outside attorneys by KUAC to work on the case including names of attorneys and firms, number of hours worked for and total compensation.

With respect to items 1 and 2, we have no records to produce as neither the University attorneys nor the KUAC attorney keep track of time spent on cases.

With respect to item 3, the University did not engage outside attorneys to work on the case. With respect to item 4, KUAC engaged the law firm of Foulston Siefkin to assist with this case. The names of attorneys, number of hours worked and total compensation is shown on the attachment. KUAC has a directors and officers insurance policy that paid all but \$10,000 of the cost related to this case.

Sincerely,



Theresa Klinkenberg
Chief Business & Financial
Planning Officer

Compensation paid to outside attorneys
World Company v. University of Kansas

Foulston Siefken, LLP

<u>Attorney Name</u>	<u>Hours billed</u>	<u>Compensation</u>
W. Wright	120.1	22,218.50
S. Counts	64.1	7,371.50



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Testimony – SB 80
Before Senate Committee on Elections and Local Government
February 3, 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 80.

We appear primarily to support the proposed amendment to SB 80 which defines “clearly unwarranted invasion of personal privacy”. The personal privacy exception in KSA 45-221 is used routinely 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 language 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. We urge your favorable consideration.

In regard to the expanded definition of “public agency” in SB 80, we are supportive of the concept with the trend to privatization of many government functions. However, we have concerns that the definition is too broad and would wrongly include those private for-profit enterprises who merely sell goods and services to government entities, but who do not perform a traditional government function of public trust. We agree that those contractors who are responsible for our child welfare functions should be subject to Kansas Open Records Act, as should the transportation companies who cater primarily to school districts and are entrusted with our children’s safety, or others who are carrying out functions of the highest public trust. We support the concept but at this time cannot support the bill as it currently stands.

Thank you for your consideration.

Senate Elections & Local Govt.
Date: 3 / 2 / 2005
Attachment 8

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**SENATE COMMITTEE
ON ELECTIONS & LOCAL GOVERNMENT
THURSDAY, FEBRUARY 3, 2005
PRESENTATION BY
THERESA MARCEL BUSH
ASSISTANT ATTORNEY GENERAL**

Testimony on SB 80

Attorney General Phill Kline asked me to appear in support of Senate Bill 80 and its proposed amendments to K.S.A. 45-217, the definitions of the Kansas Open Records Act (KORA).

The first amendment is to the definition of a "public agency." It is intended to allow the public to obtain information about how their tax dollars are spent. We understand that there has been some concern about this language applying to vendors, and that alternative language is being provided that would address that concern. There is no intent to make a private entity become a public agency for all purposes, nor is the intent to require an accounting by mere vendors providing goods or services to a public agency. Rather, the goal is to insure that there is a public accounting for expenditures and uses of public moneys given as a grant or gift.

This is good government and common sense. We believe it is necessary to enact such a measure to ensure that use of public moneys is properly accounted for and the public is not left wondering how their tax dollars have been spent.

A public accounting of how all public funds are used should be attached to any expenditure of public moneys. If private entities want to receive such grants and gifts of public funding,

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Attachment 1

they should not be reluctant to provide the public with some assurance that the money was spent in accordance with the terms of the gift or grant. Because the records of private entities are not otherwise subject to openness, this measure attempts to provide for such an accounting.

The second amendment defines "clearly unwarranted invasion of personal privacy." The proposed language codifies Kansas case law on what constitutes such an invasion. We believe that this amendment to the Kansas Open Records Act would greatly aid public record custodians in properly using and applying the closure permitted by K.S.A. 45-221(a)(30). This statute allows records to be closed if disclosure of the record would constitute a "clearly unwarranted invasion of personal privacy." The proposed amendment makes it more clear that the closure allowed by K.S.A. 45-221(a)(30) is not designed to close records for which the person in question does not have or claim a legitimate privacy interest. We have heard anecdotal stories that lead us to suspect that K.S.A. 45-221(a)(30) is perhaps misunderstood or misapplied by some public record custodians who simply are reluctant to provide access to otherwise open public records. Thus, we believe this new definition will help clarify the standard by which a "clearly unwarranted invasion of personal privacy" should be measured.

SENATE BILL No. 80

By Committee on Elections and Local Government

1-21

9 AN ACT concerning the open records act; relating to definitions; amend-
10 ing K.S.A. 45-217 and repealing the existing section.
11

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

13 Section 1. K.S.A. 45-217 is hereby amended to read as follows: 45-
14 217. As used in the open records act, unless the context otherwise
15 requires:

16 (a) "Business day" means any day other than a Saturday, Sunday or
17 day designated as a holiday by the congress of the United States, by the
18 legislature or governor of this state or by the respective political subdivi-
19 sion of this state.

20 (b) "Criminal investigation records" means records of an investiga-
21 tory agency or criminal justice agency as defined by K.S.A. 22-4701 and
22 amendments thereto, compiled in the process of preventing, detecting or
23 investigating violations of criminal law, but does not include police blotter
24 entries, court records, rosters of inmates of jails or other correctional or
25 detention facilities or records pertaining to violations of any traffic law
26 other than vehicular homicide as defined by K.S.A. 21-3405 and amend-
27 ments thereto.

28 (c) "Custodian" means the official custodian or any person designated
29 by the official custodian to carry out the duties of custodian of this act.

30 (d) "Official custodian" means any officer or employee of a public
31 agency who is responsible for the maintenance of public records, regard-
32 less of whether such records are in the officer's or employee's actual
33 personal custody and control.

34 (e) (1) "Public agency" means the state or any political or taxing sub-
35 division of the state or any office, officer, agency or instrumentality
36 thereof, or any other entity receiving or expending and supported in
37 whole or in part by the public funds appropriated by the state or by public
38 funds of any political or taxing subdivision of the state.

39 (2) "Public agency" shall not include:

40 (A) Any entity solely by reason of payment from public funds for
41 property, goods or services of such entity *if the total amount of the public*
42 *funds received annually is less than 50% of such entity's gross annual*
43 *revenue or if such entity files a copy of an annual detailed audit or ac-*

Provided by
Richard Gannon

Senate Elections & Local Govt.

Date: 2 / 3 / 2005

Attachment 10

2-2-2005

1 *counting of such funds as provided by section 2, and amendments thereto;*
 2 (B) any municipal judge, judge of the district court, judge of the court of
 3 appeals or justice of the supreme court; or (C) any officer or employee
 4 of the state or political or taxing subdivision of the state if the state or
 5 political or taxing subdivision does not provide the officer or employee
 6 with an office which is open to the public at least 35 hours a week.

7 (f) (1) "Public record" means any recorded information, regardless
 8 of form or characteristics, which is made, maintained or kept by or is in
 9 the possession of any public agency including, but not limited to, an agree-
 10 ment in settlement of litigation involving the Kansas public employees
 11 retirement system and the investment of moneys of the fund.

12 (2) "Public record" shall not include records which are owned by a
 13 private person or entity and are not related to functions, activities, pro-
 14 grams or operations funded by public funds or records which are made,
 15 maintained or kept by an individual who is a member of the legislature
 16 or of the governing body of any political or taxing subdivision of the state.

17 (3) "Public record" shall not include records of employers related to
 18 the employer's individually identifiable contributions made on behalf of
 19 employees for workers compensation, social security, unemployment in-
 20 surance or retirement. The provisions of this subsection shall not apply
 21 to records of employers of lump-sum payments for contributions as de-
 22 scribed in this subsection paid for any group, division or section of an
 23 agency.

24 (g) "Undercover agent" means an employee of a public agency re-
 25 sponsible for criminal law enforcement who is engaged in the detection
 26 or investigation of violations of criminal law in a capacity where such
 27 employee's identity or employment by the public agency is secret.

28 (h) "Public funds" means any moneys received from the United States,
 29 the state of Kansas or any political or taxing subdivision thereof or any
 30 officer, board, commission or agency thereof, the state or any political
 31 subdivision thereof.

32 New Sec. 2. [Any entity which receives public funds may file in the
 33 office of the attorney general a copy of the annual detailed audit or ac-
 34 counting of public funds received by such entity.]

35 Sec. 3. K.S.A. 45-217 is hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after its
 37 publication in the statute book.

Any not-for-profit entity which receives public funds shall, upon request, make available to any requester a copy of an annual detailed audit or accounting of the expenditure of all public funds received by such entity. If such entity's accounting practice does not segregate public funds from other fund sources, the entity's entire annual detailed audit or accounting shall be open to the public.

1 counting of such funds as provided by section 2, and amendments thereto;
 2 (B) any municipal judge, judge of the district court, judge of the court of
 3 appeals or justice of the supreme court; or (C) any officer or employee
 4 of the state or political or taxing subdivision of the state if the state or
 5 political or taxing subdivision does not provide the officer or employee
 6 with an office which is open to the public at least 35 hours a week.

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 8 of form or characteristics, which is made, maintained or kept by or is in
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 11 retirement system and the investment of moneys of the fund.

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 31 subdivision thereof.

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 33 office of the attorney general a copy of the annual detailed audit or ac-
 34 counting of public funds received by such entity.

35 Sec. 3. K.S.A. 45-217 is hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after its
 37 publication in the statute book.

Provided by
 Richard Gannon

RP
 (i) "Clearly unwarranted invasion of personal privacy"
 means revealing information that would be highly
 offensive to a reasonable person and is not of legitimate
 concern to the public.

61.870 Definitions for KRS 61.872 to 61.884.

As used in KRS 61.872 to 61.884, unless the context requires otherwise:

- (1) "Public agency" means:
 - (a) Every state or local government officer;
 - (b) Every state or local government department, division, bureau, board, commission, and authority;
 - (c) Every state or local legislative board, commission, committee, and officer;
 - (d) Every county and city governing body, council, school district board, special district board, and municipal corporation;
 - (e) Every state or local court or judicial agency;
 - (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
 - (g) Any body created by state or local authority in any branch of government;
 - (h) Any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds;
 - (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;
 - (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
 - (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;
- (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;
- (3) (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.

Provided by
Richard Gannon



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Kansas

Affiliate with:
American Council of Engineering Companies
Kansas Society of Professional Engineers
National Society of Professional Engineers
Professional Engineers in Private Practice

February 3, 2005

TO: Senator Huelskamp and Members of the Senate Elections and Local Government Committee

FROM: Scott Heidner, Executive Director
American Council of Engineering Companies of Kansas (ACEC Kansas)

RE: Senate Bill 80

Good morning, Mr. Chairman and members of the committee. My name is Scott Heidner, I am the Executive Director for the American Council of Engineering Companies of Kansas (ACEC Kansas). ACEC Kansas represents private consulting engineering businesses in Kansas. We have over 60 member companies representing several thousand employees.

I am speaking today in opposition to Senate Bill 80, or at least a part of it. As the bill is currently drafted, a private engineering company would have to make its records and finances available if served with an open request if that business gets more than 50% of its gross annual revenue from public funds. This would be a very damaging situation for many of our firms, and damaging for businesses all across Kansas.

A real example might be helpful. We have member companies that do 55% of their work for governmental entities. We have other members that do 45% of their work for governmental entities. Those firms compete against each other for the same work. If Senate Bill 80 passed in its current form, one of these firms would have to divulge its records and finances for public record, putting it at a significant disadvantage.

I'd like to point out, also, that our members who get 50% or more of their revenue from public funds are *competing* for those funds. They are not tax breaks, nor are they shadowy deals made out of the public eye. They are part of a fair process of open competition.

It is possible that the drafters of the bill cast the net a little wider than intended. If this is the case, we would be very happy to work with them on language that accomplishes their goals without damaging private businesses in the process.

Thank you for your time and consideration. I'd be happy to stand for any questions.

February 3, 2005



TO: Senator Huelskamp and Members of the Senate Elections and
Local Government Committee

FROM: Trudy Aron, Executive Director

RE: Senate Bill 80

President
Mark Franzen, AIA
Overland Park
President Elect
Jan Burgess, AIA
Wichita
Secretary
Keith Blackburn, AIA
Topeka
Treasurer
Douglas R. Cook, AIA
Olathe

Good afternoon, Senator Huelskamp and members of the Committee. I am Trudy Aron, executive director, of the American Institute of Architects in Kansas (AIA Kansas.) We would like to express our opposition to portions of SB 80.

Directors
Rich Bartholomew, AIA
Overland Park
Daniel Crouch, Assoc. AIA
Manhattan
Morris C. Dozier, Jr., AIA
Manhattan
John Gaunt, FAIA
Lawrence
Chad P. Glenn, AIA
Wichita
David S. Heit, AIA
Topeka
Jane Huesemann, AIA
Lawrence
Michael G. Mayo, AIA
Manhattan
Rick McCafferty
Wichita
Hans Nettelblad, AIA
Overland Park
C. Stan Peterson, AIA
Topeka
David Sachs, AIA
Manhattan
Andrew D. Steffes, AIA
McPherson
Gregory D. Tice, AIA
Wichita
J. Michael Vieux, AIA
Leavenworth

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 120 private practice architectural firms designing a variety of project types for both public and private clients including justice facilities, schools, hospitals and other health facilities, industrial buildings, offices, recreational facilities, housing, and much more. The rest of our members work in industry, government and education where many manage the facilities of their employers and hire private practice firms to design new buildings and to renovate or remodel existing buildings.

SB 80 would open the financial records of private companies, including architectural firms, if those firms receive more than 50% of their income from public sources. This could affect a number of our members who design schools and government buildings. It makes it even more onerous for architectural firms since their gross revenues includes all the consultants on a project even those that are only pass-through funds. Opening these records would certainly create an unfair competitive advantage with firms that do private work and/or receive less than 50% of their income from public entities.

The public already has access to the amount firms receive from public entities for each specific project. We have no problem with the disclosure of these amounts after the award. Like Scott Heidner just offered, I too, would be happy to work with others to amend the bill to remove the harm it will cause to private firms.

Thank you. I will be happy to answer any questions the committee may have.

Executive Director
Trudy Aron, Hon. AIA, CAE
aron@aiaks.org

700 SW Jackson, Suite 209
Topeka, KS 66603-3757
Telephone: 785-357-5308 or 800-444-9853
Facsimilie: 785-357-6450
Email: info@aiaks.org

Senate Elections & Local Govt.
Date: 2 / 3 / 2005
Attachment 14



The Heavy Constructors Association

of The Greater Kansas City Area



TESTIMONY OF EDWARD DeSOIGNIE
BEFORE THE SENATE ELECTIONS AND LOCAL GOVERNMENT
COMMITTEE
ON SENATE BILL 80; REGARDING THE KANSAS OPEN RECORDS
ACT
February 3, 2005

OFFICERS

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President

JOHN O'DONNELL
Vice President

GREG KAAZ
Treasurer

EDWARD R. DeSOIGNIE
Executive Director

MARTY MATTHEWS
Assistant Executive Director

DIRECTORS

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JEFF SHOEMAKER
Asphalt Paving Division

ROBERT BARTLEY
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Bridge-River Division

KEVIN R. FAHEY
ROBERT E. LOCH, JR.
Concrete Paving Division

MICHAEL PURSELL
WILLIAM ACE ELLIS, II
Excavation Division

DON GODFREY
JIM KISSICK
Utility Division

Thank you Mr. Chairman and members of the Committee. My name is Edward DeSoignie. I am the Executive Director of the Heavy Constructors Association of the Greater Kansas City Area. The Heavy Constructors represent over 150 companies in the heavy, highway and utility construction industry in the Greater Kansas City Area which includes both Kansas and Missouri.

We thank you for the opportunity to come before you today to speak in opposition to Senate Bill 80 and the negative impacts it would have on our member companies. Senate Bill 80 proposes to amend the Kansas Open Records Act to require any entity receiving any public funds in payment for goods or services provided and those funds make up less than 50 percent of the entity's gross annual revenue. Entities meeting these criteria are required to make records of such revenues public.

Members of our Association who derive their livelihood from the construction of public works for the state and local units of government would find themselves subject to the provisions of the Kansas Open Records Act under Senate Bill 80. These companies would be required to make public, confidential and sensitive company information that would greatly harm these companies.

We do not believe the intent of Senate Bill 80 was to cause harm to private for profit companies by revealing proprietary company information that could be viewed by their competitors. We therefore request that new language be added to the bill that would remove private for profit companies from the legislation. We would support such an amendment.

Thank you for your consideration of these issues.

Senate Elections & Local Govt.

Date: 2 / 3 / 2005

Attachment 15



**WRITTEN TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT
SB 80**

February 3, 2005

By Corey D Peterson, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Corey D Peterson, Executive Vice President of the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

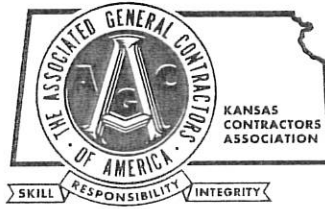
The AGC of Kansas opposes Senate Bill 80 and requests that you not report it favorably for passage.

While the many AGC of Kansas members would not obtain over fifty percent of their revenue from public entities, there are a significant number of companies that do. Depending on the market, some years may have more than others. SB 80 would unnecessarily release private company information to the public.

We are not certain of the intent of this bill, but the AGC sees no benefit in releasing private company records to the public. This will deter quality contractors from wanting to do publicly funded projects, which in the end will drive up the cost of doing business for the public entities.

The AGC of Kansas **respectfully asks that you not recommend SB 80 for passage.** Thank you for your consideration.

THE KANSAS CONTRACTORS ASSOCIATION, INC.



OFFICERS

MARY SULLIVAN, President
Kansas City, Kansas

CORKY BEACHNER, Vice President
St. Paul, Kansas

MIKE MORRAND, Treasurer
Paola, Kansas

STAFF

DAN RAMLOW, Executive Vice President
BOB TOTTEN, Public Affairs Director
JIM RAMSAY, Member Services Director

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LARRY O'DONNELL
Overland Park, Kansas
TOM RITCHIE
Wichita, Kansas
KIP SPRAY
Great Bend, Kansas
FRED WIMAN
Leawood, Kansas

Testimony

By the Kansas Contractors Association

before the Senate Elections and Local Government Committee
regarding SB 80 ...a measure dealing with Open Records

February 3, 2005

Mr. Chairman and members of the Senate Elections and Local Government Committee, I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization represents over 400 companies who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest.

Today, I want to thank you for allowing me to testify in opposition to Senate Bill 80. Our members are very concerned with this measure as we believe it would open up the records of most of our contractors to the public.

If you are not aware of it, most of our members conduct business with either the city, county or state government when it comes to road construction. That means all of our members would qualify for review through this measure and have to file the reports with the attorney general. That is a daunting responsibility for our members and one

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they do not want to do.

In our discussions on this bill, we have struggled with what exactly this bill is wanting to accomplish.

In my previous life, I worked as news director at two television stations in Topeka and I can't for the life of me ever see why we would have ever wanted to know or see the financial records of a highway contractor. A journalist may want to see which contractor had the highest amount of work in Kansas and whether he/she paid the correct wages but that information is already available.

Furthermore, some of the information this bill seeks from our members is already available with the Secretary of State's office. Our members must file incorporation papers every year with the secretary of state which detail certain financial records about every company which does business in Kansas. We believe all necessary information is already over at the secretary of state's office and this bill is not needed.

The basic philosophy of our members is the information that may be released in this law is proprietary and our members don't want the information open to the public. For those reasons, we oppose this bill and I will be glad to answer your questions on this measure.



Inc. 2060 Tulsa PO Box 16204 Wichita, KS 67216
Office (316) 522-5100 Fax (316) 522-8187

RE: Senate Bill 80 and House Bill 2119

Dear Kansas Legislator:

We have just become aware of the proposed amendments to the definitional section of K.S.A. 45-217, a portion of the Kansas Open Records Act. As a privately owned street and highway paving contractor and major employer in Wichita, we have significant concerns regarding the effect of the proposed amendments.

First, it appears that the proposed changes to existing law attempt for the first time to apply the provisions of the Kansas Open Records Act to private businesses that provide goods or services to governmental agencies. We consider this to be an unprecedented and unwarranted intrusion into the affairs of private contractors, which far exceeds the original intent of the legislature in adopting the Open Records Act.

We are also concerned about the lack of guidelines as to which of our business records would become open to the public under this bill. As we read the bill, an alternative to a business which receives more than 50% of its gross annual revenues from publicly funded projects is to file "a copy of an annual detailed audit or accounting of such funds as provided by section 2, and amendments thereto". Section 2 of the bills provides no clarification as to what information is to be required in this audit report. Payments from public agencies for street and highway construction are not separated from other sources of revenue, and it would be extremely difficult to track what happens with those dollars as opposed to non-publicly funded revenues.

Virtually all street and highway construction is done under contracts awarded after statutory open public bidding procedures. Public access to the records of the public agencies which solicit the bids and award the contracts is more than sufficient to carry out the general intent of the Open Records Act.

Finally, please recognize that private businesses are not equipped to deal with the significant burden of responding to Open Records Act requests. We will likely not have access to city, county or state employed attorneys for assistance. For a smaller company, these costs could be very significant. This will only increase the overhead of private contractors, and result in rising costs to the public for the construction of streets and highways.

For all of the above reasons, we urge you to reject House Bill 2119 and/or Senate Bill 80, and thank you for your consideration of our views on these matters.

Sincerely,

Cornejo and Sons, Inc.

Ron Cornejo

Ronald J. Cornejo, President

Senate Elections & Local Govt.
Date: 2 / 3 / 2005
Attachment 18


**KANSAS
MEDICAL
SOCIETY**

KMS

623 SW 10th Avenue
Topeka, KS 66612-1627
785.235.2383
800.332.0156
fax 785.235.5114

www.KMSonline.org

To: Senate Elections and Local Government Committee

From: Jerry Slaughter
Executive Director 

Re: SB 80; Concerning open records

Date: February 3, 2005

The Kansas Medical Society appreciates the opportunity to appear today on SB 80, which amends the open records act. This bill would have the effect of opening most of the records of private physician practices solely because physicians accept payment from public sources such as Medicare and Medicaid. We are opposed to this legislation.

As the bill is currently drafted, any individual or entity that receives more than 50% of gross revenue from public sources would be subject to the open records act. The authors of the legislation probably did not consider the fact that it would apply to virtually any individual health care provider that takes care of Medicaid or Medicare patients. It is not uncommon for medical practices, particularly in rural and underserved urban areas, to derive well over a majority of their annual revenue from treating the poor and the elderly, both publicly funded programs. Our concern with this legislation is that physician practices that serve these populations, faced with subjecting virtually all their business records to public disclosure, will begin to limit the number of patients they accept for these programs, in order to avoid subjecting their practices to the open records act. That will create serious access to care problems in many areas, as these patients will experience difficulty finding practices willing to accept them.

Reimbursement in government programs is already notoriously low, and we struggle to keep physicians in the Medicaid program, in which reimbursement doesn't come close to covering the cost of running a medical practice for the vast majority of services physicians provide. We do not see any public benefit to be derived by subjecting physician practices to the open records act, particularly because it will affect the very providers of care we rely on most heavily to take care of the poor and elderly in our state. The unintended consequence of this legislation will be to drive physicians out of these programs, resulting in more inconvenience for poor and elderly patients and higher costs for the state, as more patients will rely on hospital emergency departments for their care. We strongly urge the committee to reject this bill.

Senate Elections & Local Govt.
Date: 2 / 3 / 2005
Attachment 19



Thomas L. Bell
President

To: Senate Elections and Local Government Committee
Sen. Tim Huelskamp, Chair

From: Tom Bell, President, Kansas Hospital Association

Date: February 2, 2004

Re: SB 80

The Kansas Hospital Association appreciates the opportunity to comment on SB 80 and bring our concerns to the attention of the committee.

Our interpretation of the new definition of “public funds” includes not only money received from the state of Kansas or any Kansas political or taxing subdivision but also includes moneys received from the United States. It is our understanding that “federal funds” include money from the Medicare program. Nearly all of the states’ private, non-public hospitals would be subject to the provisions of SB 80.

We agree that the public should have access to information that explains how public funds are spent; however, as SB 80 is currently written, it places additional administrative burdens on hospitals. At a time when the bureaucratic red-tape costs of health care are already out of control, this added reporting burden would only exacerbate the problem and serve no real public good.

We are unfamiliar with any issue that accounting for the expenditures of public funds by hospitals is not adequate under existing law. On an annual basis each hospital in Kansas is required to file with the state and federal government a Medicare Cost Report which provides a detailed accounting of how Medicare and Medicaid dollars are received and spent. In addition, a detailed financial statement from the hospital is attached to this report. It is our opinion that these current practices provide adequate information regarding the expenditure of these funds and requiring hospitals to complete additional audits and file them with the Attorney General is duplicative.

Thank you for consideration of our concerns. Should you want additional information, please feel free to contact us.

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Kansas Hospital Association

215 SE 8th Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 785

Provided by
Chip Wheelen

Senate Elections & Local Govt.
Date: 3 / 3 / 2005
Attachment 21

1 counting of such funds as provided by section 2, and amendments thereto;
2 (B) any municipal judge, judge of the district court, judge of the court of
3 appeals or justice of the supreme court; ~~or~~ (C) any officer or employee
4 of the state or political or taxing subdivision of the state if the state or
5 political or taxing subdivision does not provide the officer or employee
6 with an office which is open to the public at least 35 hours a week.

delete

7 (f) (1) "Public record" means any recorded information, regardless
8 of form or characteristics, which is made, maintained or kept by or is in
9 the possession of any public agency including, but not limited to, an agree-
10 ment in settlement of litigation involving the Kansas public employees
11 retirement system and the investment of moneys of the fund.

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14 grams or operations funded by public funds or records which are made,
15 maintained or kept by an individual who is a member of the legislature
16 or of the governing body of any political or taxing subdivision of the state.

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18 the employer's individually identifiable contributions made on behalf of
19 employees for workers compensation, social security, unemployment in-
20 surance or retirement. The provisions of this subsection shall not apply
21 to records of employers of lump-sum payments for contributions as de-
22 scribed in this subsection paid for any group, division or section of an
23 agency.

24 (g) "Undercover agent" means an employee of a public agency re-
25 sponsible for criminal law enforcement who is engaged in the detection
26 or investigation of violations of criminal law in a capacity where such
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30 officer, board, commission or agency thereof, the state or any political
31 subdivision thereof.

32 New Sec. 2. Any entity which receives public funds may file in the
33 office of the attorney general a copy of the annual detailed audit or ac-
34 counting of public funds received by such entity.

35 Sec. 3. K.S.A. 45-217 is hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after its
37 publication in the statute book.

, or (D) any health care provider as defined in this section
receiving public funds for providing health care and related
services.

(i) "Health care provider" means a person licensed to practice
any branch of the healing arts, a person who holds a temporary
permit to practice any branch of the healing arts or a person
engaged in a postgraduate training program approved by the state
board of healing arts, a licensed medical care facility, a health
maintenance organization, a licensed dentist, a licensed professional
nurse, a licensed optometrist, a licensed podiatrist, a licensed
pharmacist, a professional corporation organized pursuant to the
professional corporation law of Kansas by persons who are authorized
by such law to form such a corporation and who are health care
providers, or an officer, employee or agent thereof acting in
the course and scope of employment or agency.



The Force for Business

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Legislative Testimony

SB 80

February 3, 2005

Testimony before the Kansas Senate Elections and Local Government
By Marlee Carpenter, Vice President of Government Affairs

Mr. Chairman and members of the committee;

The Kansas Chamber of Commerce and its over 10,000 small, medium and large businesses have some concerns with SB 80. This bill amends the open records act definition of "public agency". If these provisions were enacted, any entity that gets over one-half of its gross annual revenue from public funds, which would consist of city, county, state, or federal funds is considered a "public agency" and is subjected to the open records act. For example, if a contractor does 80% of their business with municipalities in Kansas, their books would be subject to the open records laws. Another example would be a manufacturer that is awarded a large federal government contract. These federal contracts are confidential and would be in conflict if SB 80 were enacted.

These instances apply to all sizes of businesses, large and small and would be an additional burden and disclosure of what is now confidential business information. This type of information could reveal trade secrets and give competitors that do not have to open their books an advantage.

The Kansas Chamber encourages you to amend this section so business information is not released publicly.

The Kansas Chamber, with headquarters in Topeka, is the statewide business advocate becoming the best state in America to do business. The Kansas Chamber and its Chamber Federation, have more than 10,000 member businesses, including local and trade organizations. The Chamber represents small, medium and large employ-

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dollars will be utilized locally. Transient guest tax rates differ across the state as much as the organized entities, which oversee the expenditures. TIAK has long held the opinion that decisions regarding transient guest tax issues, and the oversight of dollars generated by transient guest tax, are best made at the local level.

Finally, the Kansas Legislature has shown its support in developing and promoting Kansas as a leader in research and development through the passage of significant legislation last year. Many entrepreneurs, startup companies, and research entities will be able to capitalize on the revenues made available through last year's Kansas Economic Growth Act legislation. The ultimate affect of this legislation could have a dramatic impact on the desire to locate in our state.

TIAK believes that accountability and disclosure in government is important, but the legislation before us today probably goes further than the bill authors intended, and the potential of unintended consequences to the Kansas economy is far greater than the good this bill seeks to establish.



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Written Statement Re: SB 80
Senate Committee on Elections and Local Government

Travel Industry Association of Kansas
Dick Carter, Executive Director
February 3, 2005

Chairman Huelskamp and Members of the Senate Committee on Elections and Local Government, this written statement is submitted on behalf of the Travel Industry Association of Kansas (TIAK) as an opponent to SB 80.

TIAK is a private, non-profit association dedicated to the promotion and development of travel and tourism in Kansas. Our mission is to speak with a united voice for the travel industry in Kansas. Our membership is comprised of Convention & Visitor Bureaus, Chambers of Commerce, attractions, lodging properties, museums, restaurants, sporting events, festivals, and other businesses affiliated with the promotion of tourism in our state.

SB 80, if passed, would require any entity which receives 50% or more of its budget from public funds, to be subject to the Kansas Open Records Act. Because many of TIAK's members receive money through Transient Guest Tax collection, they would be impacted by this legislation.

This bill raises a number of issues that could have a potentially negative impact on the travel and tourism industry in our state, as well as the ability to recruit and retain businesses or attractions through economic development efforts.

- In many instances convention and visitor's bureaus are bidding competitively for conferences, tradeshow or sporting events, which produce significant revenue for the host community, as well as the state. If these bids were made broadly available, competing cities (and other states) would conceivably have an unfair advantage in their attempt to secure the same conference, tradeshow or event, placing Kansas - and Kansas communities - at a disadvantage.
- Economic development organizations could be harmed by the requirement to release proprietary information used in bids or packages to attract prospective businesses or attractions in our state. If competing communities in other states were able to access information used to attract and secure such developments, Kansas' competitive edge could be jeopardized, and result in the loss of the prospective attraction or business.

It is important to note that many, if not most, local governing bodies have exercised their ability to charter out through home rule powers from the state statute, allowing them to set the collection rate for the transient guest tax, as well as determine the mechanism for how those

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Testimony to Senate Bill 80
Senate Elections and Local Government Committee
Robert J. Vancrum, Kansas Government Lobbyist for the
Greater Kansas City Chamber of Commerce

February 3, 2005

Chairman Huelskamp and other Honorable Senators:

I represent the Greater Kansas City Chamber of Commerce which has nearly 3,000 members in Kansas and an active Kansas State Affairs Committee which monitors legislation and bills in Kansas. Generally our Chamber supports the concept of openness and accountability in government, but regrettably we must appear today in opposition to Senate Bill 80. As drafted, the bill would require that all records of entities who receive more than 50% of their gross annual revenue from the United States, State of Kansas or any political or taxing subdivision thereof be open for inspection or removal of copies by any person no later than the third business day following the date the request is received.

In short, SB80 would force any private business entity which happens to derive 50% of its gross annual revenue in any year to make all of their records available not only to members of the press that are promoting this bill, but competitors, suppliers or subcontractors wanting to know how much you can afford, disgruntled present or former employees, any present or potential collective bargaining unit, any government investigator (whether or not they had probable cause to believe a criminal violation had occurred), even neighbors and other assorted busybodies who are just curious.

Before anyone rushes to defense of the bill prematurely, let me say that we are well aware that the existing open records legislation has certain protections, (most set forth in KSA 45-221) dealing with employee records, proprietary information and various other exemptions. However, the very wording of those exemptions make it clear that they only apply to what has traditionally been deemed to be a public agency. They would give no protection to a truly private business which the bill before you defines to be a public agency, but really isn't.

There are many examples of businesses which typically derive 50% or more of their gross revenues from government contracts – highway contractors, other types of general contractors, many types of software vendors and medical. The most troubling fact is that there are many vendors specializing in the government sector that are small businesses that can't afford to litigate about having all their business records made public. Don the statehouse concession operator comes to mind.

There are also agricultural science and bioscience research startups which this legislature by overwhelming votes last year indicated it wished to promote as a priority in the state of Kansas. Such entities often start out with 50% or even 100% of their revenues from government funds. I am not certain that persons who have promoted this bill, probably with very good intentions, have given as much thought to these ramifications as they should.

My client is not unsympathetic to the desire to have entities which are quasi public or receive substantial grants of public funds be fully accountable to government audit and

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government investigators. I have often seen provisions in contracts and grants allowing such audits or inspections at the request of the agency making the grant or contract. I would expect that our state's Attorney General (which is charged with viewing and approving nearly every state contract of any size) is already making sure those provisions are included on a regular basis. If so, there is no need for legislation for that purpose.

Clearly the legislation intended to make it easier for publishers and media producers to do investigative reporting to determine if public funds are being spent in a way in which the public believes they should be. Certainly this is often a service to the public and we support the goal. We simply believe this bill is far too broadly written and urge you to be aware there is a substantial potential of unintended consequences.



Legislative Testimony

Date: Thursday, February 3, 2005
To: Kansas Senate Elections and Local Government Committee
From: Wes Ashton, Director of Government Relations
Re: Testimony in Opposition to SB 80

Chairman Huelskamp and members of the Committee:

The Overland Park Chamber appreciates the opportunity to appear here today on behalf of the approximately 1000 member-businesses to present testimony in opposition to SB 80. While the Chamber supports the use of auditing of public funds and accountability of spending, we believe that this bill goes too far in its application.

There are many businesses that are members of the Chamber and across Kansas that conduct business with some level of government. This would include construction companies, contractors and a wide variety of other business entities. The Chamber generally supports detailed recording of all money spent with taxpayer dollars. The effect of SB 80, however, would require confidential business records to become public information solely because a business brings in half of its revenue through business contracts. This could put companies that conduct business with government at a distinct disadvantage in future bidding and strip away the right to keep confidential records.

Another issue at stake with SB 80 is the application of a certain percentage to be used to determine who is and is not subject to open records requirements. This may become a competitive disadvantage for businesses that are subject to open records, as well as an increased cost of doing business in the state. One year a company may be subject to open records if they are awarded a government contract, the next year they may not. Applying a certain percentage to the requirement of open records seems to be another obstacle to businesses in Kansas.

Our final concern is the application of this bill, if it were passed, to quasi-public entities. In Overland Park, this could include the Chamber of Commerce, the Economic Development Council, or the Convention and Visitor's Bureau. Jerry Cook, President of the CVB indicated that his records are already open to the public despite any legal requirement. The Chamber and EDC would have concerns with open records under certain conditions. The EDC is a division of the Chamber of Commerce, a not-for-profit entity, and receives some funding from the government through the joint venture of the EDC with the City. The EDC exists for the purpose of economic development in Overland Park, and open records could negatively affect the ability of the OPEDC to retain and recruit businesses. If the OPEDC was working to recruit a new business to Kansas, the open records requirement could risk breaking the deal if sensitive or confidential information became public before negotiations were concluded.



The Chamber realizes and understands the desire of this Committee and the Legislature to ensure that public funds are spent in an appropriate and fair manner. The Chamber also understands the desire of the press to continue its admirable role as a watchdog for the public. This is a tradition in our country that should never be sacrificed. However, changes to SB 80 are needed to find the appropriate median between business confidences and open records. Restricting the access of records to elected officials or requiring a delay before the release of records may be options for this Committee to consider. This could alleviate some negative consequences that will occur if SB 80 were to pass as currently written.

Although the intent of open records in government is a noble one, the practical aspects of SB 80 go too far. They will negatively affect companies that routinely conduct business with government entities. It also could put future economic development at risk by necessary, confidential information being accessible to the public.

Thank you for your time and I will be happy to answer any questions.



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TO: Senator Tim Huelskamp, Chairman
Members, Senate Elections & Local Gov't Committee

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

DATE: February 3, 2005

RE: **SB 80—"Public Agencies" Under the Open Records Act**

The Lenexa Chamber of Commerce would like to express its opposition to SB 80, which would redefine "public agencies" subject to the Kansas Open Records Act (KORA) to include any entity that receives more than 50% of its gross annual revenues from public funds. This change would significantly expand KORA's current scope, potentially granting widespread access to sensitive information held by many non-profit organizations and even private businesses.

While we concur that it is important to maintain accountability in the distribution and use of public funds, state laws governing open records must balance the public's right of access with the necessity of protecting the privacy of individual citizens and the ability of businesses and organizations to conduct their essential functions. We believe SB 80 fails to respect this critical balance.

As written, SB 80 would allow any requester broad access to information held by, for example, certain social service agencies, child welfare organizations, economic development councils, business development agencies, convention and visitors bureaus, hospitals or insurers that receive significant Medicaid reimbursements, and even private sector companies with government contracts, including infrastructure contractors, aviation manufacturers, engineers, architects, and many small businesses.

Some of this information includes sensitive material of little or no legitimate public interest. Although some examples are clear, no one has a truly comprehensive understanding yet of all the types of information potentially at risk, and the existing protections under KORA are primarily aimed at records held by state and local governments based on the experience of many years – experience we do not have in considering the non-profit and private sector arenas. It is not even entirely clear whether there could be implications beyond KORA in redefining all these organizations as "public agencies." As a result, we believe the potential for damaging unintended consequences under SB 80 is immense.

For these reasons, the Lenexa Chamber of Commerce strongly urges the committee not to recommend SB 80 favorable for passage. Thank you.

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