

## MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT

The meeting was called to order by Vice Chairman Kay O'Connor at 1:33 P.M. on February 8, 2005 in Room 423-S of the Capitol.

All members were present except: Tim Huelskamp- excused

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: Senator Mark Gilstrap  
Theresa Bush, Attorney General's office  
Richard Gannon, KS Press Assn.  
Harriet Lange, KS Assn. of Broadcasters  
Judy Moler, KS Assn. Counties  
Don Moler, League of KS Municipalities

Others attending:  
See attached list.

**Bill Introductions**

Senator O'Connor reminded members that the deadline for individuals to introduce bills is tomorrow, February 9. For committees it is Friday, February 11, and this committee will not meet Friday.

**Hearing on SB 164 - concerning cities; relating to quarterly reports of the treasurer; amending KSA 12-1608 and repealing the existing section.**

Ken Wilke, committee staff, described this bill. Mike Heim, committee staff, clarified city classifications. The fiscal note was provided in the meeting packets.

Proponents: Senator Mark Gilstrap provided verbal testimony and answered questions. The bill is based on his difficulty in meeting the 30 day window at year end in a weekly newspaper. His written testimony was provided later (Attachment 1).

Opponents: There were no opponents.

Senator O'Connor closed the hearing.

**Hearing on SB 79 - concerning the attorney general; establishing an office of public integrity.**

Martha Dorsey, committee staff, described this bill. The fiscal note was provided in the meeting packets.

Proponents:

Theresa Bush, Attorney General's office provided testimony (Attachment 2). She stated that the fiscal note was written with out consulting her and that she does not foresee adding staff to fill this role because only the reporting function is new. No new staff will be required unless public use is extensive. She fielded questions.

Doug Anstaett, KS Press Association provided testimony (Attachment 3). There were no questions.

Harriet Lange, KS Association of Broadcasters provided testimony (Attachment 4). There were no questions.

Opponents:

Judy Moler, KS Association of Counties provided testimony (Attachment 5) and fielded questions.

Senator Betts asked Ms. Bush to provide a written statement from her office related to the minimal fiscal

CONTINUATION SHEET

MINUTES OF THE Senate Elections and Local Government at 1:33 P.M. on February 8, 2005 in Room 423-S of the Capitol.

impact of this bill and no need to actually create an office or position.

Don Moler, League of KS Municipalities provided testimony (Attachment 6) and fielded questions.

Senator O'Connor closed the hearing.

**Closing**

The next meetings are Wednesday, February 9 and Thursday, February 10.

There being no further business, the meeting was adjourned at 2:11 p.m.

Senate Elections & Local Government Committee

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

Sen Tim Huelskamp, Chair

Guest List for February 8, 2005

Please sign in

Name	Representing
Judy Moler	KAC
Don Moler	LKM
Kim Gulley	LKM
Danielle Noe	Johnson County
Harriet Lange	Ko Assn of B'casters
Jeff Cook	intern
Sen. MARK Gilstrap	senate
Erik Sartorius	City of Overland Park
Doug Anstætt	KPA
Richard Cannon	KPA
Theresa Mural Bush	AG's
SCOTT SCHNEIDER	City of Wichita
Lucas Bell	Kearney and Associates

Testimony in Support of SB 164  
Elections & Local Government Committee  
by Senator Mark Gilstrap  
February 8, 2005

Madam Vice Chair, I rise in support of SB 164 for selfish reasons. As the Deputy Revenue Director of the Unified Government of Wyandotte County, it is my responsibility to prepare the quarterly report. We have 30 days to have the report published. Our newspaper that handles this publication is a weekly newspaper. The 30 days are only a problem after year end when journal entries need to be prepared. I ask the committee to consider changing the statute to 45 days.

I have not talked to anyone opposed to this.

I ask your favorable consideration on this legislation. I stand for questions and thank you.

**SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE  
TUESDAY, FEBRUARY 8, 2005  
PRESENTATION BY  
THERESA MARCEL BUSH  
ASSISTANT ATTORNEY GENERAL**

**TESTIMONY FOR SENATE BILL NO. 79**

Attorney General Phill Kline supports passage of Senate Bill No. 79.

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

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

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

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

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



## **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

**Feb. 8, 2005**

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

**From:** Doug Anstaett, executive director, Kansas Press Association

Thank you for the opportunity to discuss Senate Bill 79, an act that would establish an Office of Public Integrity under the auspices of the Kansas Attorney General's Office.

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

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

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

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

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

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

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

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

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



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Testimony – SB 79  
Before Senate Committee on Elections and Local Government  
February 8, 2005  
By Harriet Lange, President  
Kansas Association of Broadcasters

Mr. Chairman, Members of the Committee, I am Harriet Lange with the Kansas Association of Broadcasters. KAB serves a membership of free-over-the-air radio and television stations in Kansas. We appreciate the opportunity to appear before you today on SB 79.

We support passage of SB 79 and the creation of an Office of Public Integrity. The bill formalizes the process of filing of complaints and the investigation of alleged violations to Kansas open government laws. And it provides for the collection of information related to complaints of alleged violations. The collection and distribution of this information will have a positive impact on compliance with our open records and open meetings laws and it will help to provide consistency in the interpretation and application of these laws.

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

Thank you for your consideration.

Senate Elections & Local Govt.  
Date: 2 / 8 / 2005  
Attachment 4





## TESTIMONY

Senate Elections and Local Government  
SB 79

February 8, 2005

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

Thank you, Chairman Huelskamp and Members of the Senate Committee for allowing the Kansas Association of Counties to provide testimony on SB 79.

The Kansas Association of Counties opposes the passage of SB 79 which provides for an office of public integrity to be established within the office of the Attorney General. Certainly the Kansas Association of Counties is in support of public integrity and open government; however, we can find no reason that the office is needed nor the expense to the state warranted.

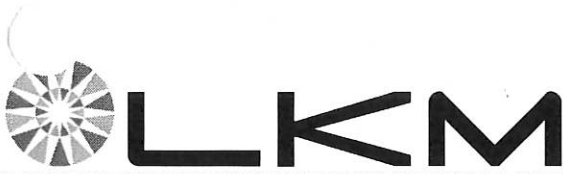
This idea was first posited with the other legislation proposed by the Kansas Press Association (KPA) several years ago. As compromise and agreement was reached among the interested parties and the KPA, the idea of this office was discarded. The current law which allows for investigation of complaints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

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

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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Senate Elections & Local Govt.  
Date: 2 / 8 / 2005  
Attachment 5



League of Kansas Municipalities

**To:** Senate Elections and Local Government Committee  
**From:** Don Moler, Executive Director  
**Re:** Opposition to SB 79  
**Date:** February 8, 2005

First, I would like to thank the Committee for allowing the League to testify today in opposition to SB 79. I am going to set out, as briefly as I possibly can, the reasons why we believe SB 79 is not necessary nor should it be enacted.

- **Kansas Doesn't Need an Open Meetings/Records Czar.** It is the opinion of the League, and the thousands of city officials that we represent, that there is not a systemic problem which would necessitate the actions contemplated by SB 79. In effect, we believe this is a solution in search of a problem. There are literally thousands and thousands of meetings of locally elected governing bodies and other local groups covered by the Open Meetings Act every year. Only a infinitesimally small percentage are ever even alleged to violate the Open Meetings Act. Of that number, we believe most are the result of ignorance of the law as opposed to a direct intent to violate the law. To this end, we do not believe that there is a problem which necessitates the creation of a State Open Meetings/Records Czar.
- **SB 79 is Redundant and Unnecessary.** Investigation and enforcement of the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA) already rests within the authority of the Kansas Attorney General. K.S.A. 45-222 specifically authorizes the AG to enforce KORA, and K.S.A. 45-228, enacted as part of an agreement in 2000, specifically grants subpoena and other powers to the Attorney General. With respect to KOMA, K.S.A. 75-4320 specifically authorizes the Attorney General to enforce KOMA, and K.S.A. 75-4320b specifically grants subpoena and other powers to the AG. In short, the Attorney General has the full statutory authority to investigate and bring suit for violations of both KOMA and KORA. This bill is absolutely redundant and unnecessary.
- **The Fiscal Note is Misleading.** Well, you can't have it both ways. Either there is a significant problem which needs to be addressed by the Attorney General's office or there isn't. If there is a significant problem, which cannot now be handled by the current staffing of the Attorney General's office, we would suggest that you are not going to solve the problem, if in fact it does exist, merely by the addition of one FTE. The League would suggest that this is simply the proverbial camel's nose under the tent. Essentially what is being suggested here is the hiring of one FTE with a salary of \$62,260, miscellaneous expenses of \$35,600, for a grand total of \$97,860. Expending additional taxpayer dollars for an office which is unnecessary and redundant is unwise.

Senate Elections & Local Govt.

Date: 2 / 8 / 2005

Attachment 6

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

I will be happy to answer any questions the Committee may have concerning our opposition to SB 79.