

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT

The meeting was called to order by Chairman Tim Huelskamp at 1:32 P.M. on February 17, 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:

Senator Chris Steineger
Randall Allen, Kansas Association of Counties
Kim Gulley, League of Kansas Municipalities
Brad Bryant, Secretary of State's Office
Brian Newby, Johnson County Election Commissioner
Michael Donnelly, Disability Rights Center of Kansas
Mike Byington, Kansas Association for the Blind and Visually Impaired, Inc.
Kevin Sieh, Topeka Independent Living Resource Center

Others attending: See attached list.

Hearing on SB 204 - Governmental ethics; extension of governmental ethics act to certain units of government.

Ken Wilke, committee staff, summarized the bill and fielded questions.

Janet Williams from the Ethics Commission attended as a resource person to answer questions and did not testify.

Proponents:

Senator Chris Steineger presented testimony and fielded questions. ([Attachment 1](#))

Opponents:

Randall Allen, Kansas Association of Counties, presented testimony. ([Attachment 2](#))

Kim Gulley, League of KS Municipalities, presented testimony and fielded questions. ([Attachment 3](#))

Chairman Huelskamp closed the hearing.

Hearing on SB 143 - Elections; direct recording electronic voting systems

This bill was scheduled for hearing on February 16, but the committee ran out of time. Most materials were distributed in packets then and are attached with these minutes.

Proponents:

Brad Bryant, Secretary of State's Office, summarized the bill and presented testimony. ([Attachment 4](#))

Brian Newby, Johnson County Election Commissioner, provided written testimony. He was in attendance on February 16 and did not return. ([Attachment 5](#))

Michael Donnelly, Disability Rights Center of Kansas, presented testimony. ([Attachment 6](#))

Mike Byington, Kansas Association for the Blind and Visually Impaired, Inc., verbally agreed with comments made by Michael Donnelly.

Michael Donnelly, Mike Byington, and Anthony Fadale (Kansas ADA Coordinator in the audience) fielded questions.

CONTINUATION SHEET

MINUTES OF THE Senate Elections and Local Government at 1:32 P.M. on February 17, 2005 in Room 423-S of the Capitol.

Bob Mikesic, Independence, Inc. provided written testimony (Attachment 7).

Chairman Huelskamp closed the hearing.

Discussion of SB 54 - Roofing materials; fire retardant requirements.

A proposed amendment to replace sections 1, 2, and 3 with a new section 1 was distributed. (Attachment 8) It was moved by Senator Reitz and seconded by Senator Betts to accept the amendment as marked. Motion carried.

It was moved by Senator Reitz and seconded by Senator Betts that the committee favorably pass this bill as amended. Motion carried.

Report from Subcommittee on SB 80 - Open records; public agency; certain records excluded.

Senator O'Connor reviewed the amendment from the subcommittee. (Attachment 9)

It was moved by Senator O'Connor and seconded by Senator Francisco that the committee adopt this amendment as a substitute bill. The motion carried. Senator Wilson asked to have his no vote recorded.

Chairman Huelskamp announced that on Monday the committee will consider sending this substitute bill to the Senate floor.

Closing

The next meeting is Monday, February 21, 2005.

There being no further business, the meeting was adjourned at 2:25 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 17, 2005
 Please sign in

Name	Representing
Randall Allen	Ks. Assoc. of Counties
Ruth Pile	GEC
Janet Williams	GEC
Brad Bryant	Sec. of state
Harriet Lange	Ks Assn of B'casters
Richard Gannon	KPA
Ferry Bush	AG's office
Danielle Kloe	Johnson County
Rob Mearcy	How Law Firm
Ron Appleloft	WaterOne
Jerry K. Walker	KHS
Anthony A. Fidal	AOA/Admin
Ed Rarden	KFD
Michael D. Dwyer	ARC KS
Kim Gulley	LKM
Jeanne Goodwin	City of Wichita
T.O. ANDERSON	KSCRA

orig

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
MEMBER: WAYS & MEANS
EDUCATION
FINANCIAL INSTITUTIONS AND
INSURANCE
ARTS AND CULTURAL RESOURCES
LEGISLATIVE POST AUDIT
INFORMATION AND TECHNOLOGY
RULES AND REGULATIONS

Senate Bill 204

1. This Bill applies Legislative standards for disclosure and reporting to county commissioners and elected officials in cities of the first class, Board of Public Utilities, and USD 259.
 - * Gift limit of \$40.00
 - * Reporting of gifts
 - * "Recreation" limit of \$100.00
2. Lobbyist reporting applies only if lobbyist spends over \$100.00
3. This Bill would realistically apply to only the five big counties and a dozen big cities.

Question 3: What Types of Discounts Or Other Benefits Have The Kansas Speedway or Other Businesses in the Tourism District Made Available to Unified Government or Board of Public Utilities Employees?

ANSWER IN BRIEF *The most frequent benefits made available to Unified Government and Board of Public Utilities employees and officials were discounts on food, merchandise, and hotel rooms. Also, both the Unified Government and the Board of Public Utilities have the use of suites and hospitality tents at the Kansas Speedway and of suites at the T-Bones' Community America Ballpark. The Unified Government hasn't paid for its use of these facilities, but the Board of Public Utilities has.*

Unified Government and the Board of Public Utilities employees aren't governed by State ethics laws, but both have adopted a code of ethics to govern their employees' behavior and have contracted with an ethics administrator to provide advice and training. These findings are discussed in more detail in the sections that follow.

The Most Frequently Identified Benefits Were Discounts on Food, Merchandise, and Hotel Rooms

To determine what benefits had been made available, we contacted management officials for the businesses in the Village West district, interviewed Unified Government and Board of Public Utilities officials and surveyed their employees. Of the 1,550 Unified Government staff surveyed, 368 or 24% responded. Of the 357 Board of Public Utilities staff surveyed, 128 or 36% responded. Survey responses reported a few things that we were unable to confirm or dispel. The following sections discuss only those items that we were able to corroborate.

The most common benefits were discounts on food, merchandise, and hotel stays. No information was available on how often management officials and employees took advantage of these benefits.

Here's a summary of the food, merchandise and hotel stay discounts offered:

Benefits businesses made available to Unified Government and to Board of Public Utilities employees:

- Great Wolf Lodge—discounted family rate for stay: \$119 per night Sunday - Thursday (regular cost is \$209); \$169 per night Friday - Saturday (regular cost is \$259).

Benefits businesses made available to Unified Government employees:

- Applebees—30% discount on food for police and firefighters; A \$10 gift certificate for one employee selected by the Unified Government for its employee appreciation program.
- Arthur Bryants—10% discount on food for police and firefighters.
- Great Wolf Lodge—Free one-night stay during pre-opening; Free one-night stay to one employee selected by the Unified Government for its employee appreciation program.
- Chateau Avalon—Free one-night stay during pre-opening; Free one-night stay to one employee for appreciation program before public opening.
- Nebraska Furniture Mart—Special employee-level discount pricing on merchandise sold during the store's "soft," non-public opening. Store officials told us the discount amount varies depending on the merchandise bought.

Officials from the Kansas Governmental Ethics Commission told us the real question regarding these types of discounts and benefits is whether they were given to influence a particular person. In the case of employees accepting food or hotel room discounts, businesses don't necessarily know which employees will take advantage of the offer, so it's likely those discounts were given to drum up business rather than to try to influence someone in a decision-making capacity.

Unified Government officials pointed out that some of the discounts made available—discounted rooms at Great Wolf Lodge and discounts on merchandise at Nebraska Furniture Mart also were offered to other groups—such as employees of other businesses located in the Kansas City area. Nebraska Furniture Mart officials confirmed that their Kansas City store had a "soft," non-public opening during August 2003 and that they invited employees of several companies with whom they had business relationships. Great Wolf Lodge officials also confirmed that during their soft opening week, they invited various people from the Kansas City community.

Unified Government Officials Have Access To Suites And Other Facilities At the Speedway and T-Bones Ballpark At No Cost

Unified Government officials have access to a suite and hospitality tent at the Speedway and a suite at the Kansas City T-Bones Community America Ball Park. A 32-seat luxury suite at the Speedway rents for about \$37,000 per year. A 100-person hospitality tent rents for about \$15,000 per year. Suites at the Ballpark stadium seat about 20-25 people each and rent for about \$17,000 per year. None of these rental rates include catering costs.

The Unified Government has had free use of facilities at the Speedway through its association with other economic development groups. The following sections describe how the Unified Government acquired access to facilities at the Speedway.

- Speedway luxury suite – Speedway officials told us they have a contract to provide this suite to the Kansas City, Kansas, Chamber of Commerce and an entity called Wyandotte Development, Inc.

In addition, Speedway officials told us that although the contract calls for the Chamber to pay a total fee of \$165,500 for use of the suite for five years, the suite is provided at no cost and is a "pass-through" benefit to the Unified Government because of the economic development efforts made by the Unified Government, Wyandotte Development, Inc., and the Chamber of Commerce.

Unified Government officials told us they use the suite for economic development purposes and they invite guests who may have an interest in locating a business in Wyandotte County. In addition, they contend that any Unified Government employees using the suite are doing so as part of their job duties. Our review of the guests lists for this suite for two Speedway event weekends in 2004 showed that in some cases, the spouses of Unified Government employees attended the events as well.

Officials with the Kansas Governmental Ethics Commission told us that if a State employee or elected official had to attend such an event as part of his or her job duties, the cost of that ticket wouldn't be considered a gift. However, they also said the spouse's ticket would be considered a "gift" and, if valued at more than \$40 (Speedway officials said it's difficult to assign a value to a suite ticket) State ethics guidelines would prohibit a State employee or State elected official from accepting it.

- Hospitality Tent at the Speedway - Chamber of Commerce officials told us the Speedway gave the Chamber and the New Century Partnership a \$180,000 contribution and the use of a 100-person hospitality tent for two motorsports event weekends each year for a four-year period. Along with the tent, the Chamber was given 100 grandstand tickets. Unified Government officials told us that the Chamber provides two free grandstand tickets to the Mayor and each commissioner, as well as free access to the hospitality tent, for these motorsports event weekends. If these same tickets (valued at \$100 each) had been given to a State elected official, he or she couldn't accept them because they would be considered a gift under the State ethics guidelines.

The Kansas City T-Bones Community America Ballpark has provided a 25-seat suite at the Ballpark directly to the Unified Government at no cost. Unified Government officials told us the suite primarily is used to reward their employees for effectiveness. Each suite ticket is worth about \$18. The use of the suite does not include catering costs.

The Board of Public Utilities Paid for Its Use of Facilities At the Speedway and The Ballpark

During the audit, people pointed out to us that the Board also had access to suites and hospitality tents. Our review showed that in 2001, 2002, and 2003, the Board paid between \$150,000 and \$185,000 to sponsor a race called the "BPU 200." That sponsorship included access to a 32-person suite at the Speedway, 200 general

admission tickets to the race event, and 200 tickets to the qualifying event the night before.

The Board also has purchased access to a 100-person hospitality tent at the Speedway for \$15,000 during each of the past 4 years, and 400 race tickets (100 tickets each for 4 separate races) for slightly more than \$20,000.

According to Board officials, they also acquired access to a 20-seat Ballpark suite for every other home game as part of an agreement in which they paid \$35,000 to become an advertising sponsor for a scoreboard at the Ballpark. The Board provided us with proof of payment for these facilities.

***The Unified
Government's and
Board of Public Utilities'
Ethics Policies Address
The Acceptance of Gifts***

Both entities have adopted similar ethics policies governing their officials and employees. The provisions related to the acceptance of gifts are summarized below:

- An official or employee shall not solicit any gift or knowingly accept any gift, directly or indirectly, from any person that he or she knows or has reason to know:
 - ▶ *Is doing business with the Unified Government or Board of Public Utilities.*
 - ▶ *Has a financial interest that may be substantially and materially affected by the performance or nonperformance of the official's or employee's duty.*

- However, an official or employee can accept meals and free tickets to sporting events, unless:
 - ▶ *it would compromise the impartiality and the independence of judgment of the official or employee receiving it, or,*
 - ▶ *if of significant value, would give the appearance of doing so, or,*
 - ▶ *if of significant value, the recipient official or employee believes, or has reason to believe, that it is designed to do so.*

These policies define a "gift" as "the transfer of anything of economic value regardless of the form without adequate and lawful consideration." However, those definitions specifically exclude "complimentary admissions to special events, including dinners, athletic, charitable, cultural or political events, or any other occasion or entertainment, when furnished or available to be furnished to all similarly situated elected officials, officials and employees."

Both entities also contract with a part-time ethics administrator. The ethics administrator, who is a University of Kansas professor in Public Administration, is appointed for the Unified Government

by its Legislative Auditor. The Board of Public Utilities has also contracted with the same professor. The ethics administrator helps develop policies, receives complaints and suggestions, offers advisory opinions, and provides ethics training for all employees. At the direction of the Unified Government's Ethics Commission, the ethics administrator conducts investigations of alleged violations of the ethics code.

***The Ethics
Administrator
Advised Unified
Government Officials
That the Suites, Tickets,
And Hotel Discounts
Were Allowable***

According to the information we were provided, Unified Government officials asked their ethics administrator for advice on accepting the following specific benefits:

- the suite and grandstand tickets/hospitality tent access at the Speedway and suite at the Ballpark.
- free hotel rooms at the Great Wolf Lodge and Chateau Avalon before each hotel's grand opening. The rooms were given to specific Unified Government officials and employees.

The ethics administrator indicated the ticket benefits were allowable under the Government's code of ethics because the code excludes complementary admissions from its definition of gifts. He also concluded the free hotel rooms given during grand openings were allowable because accepting them would be "in the spirit of cooperation and is in no way intended to influence Commissioners or staff members in their policymaking roles."

The ethics administrator apparently wasn't asked for advice about the on-going hotel and restaurant discounts that survey respondents mentioned. In addition, Board of Public Utilities officials told us they just recently contracted with the ethics administrator, and thus far there haven't been any instances where they've needed to consult the ethics administrator for advice.



KANSAS
ASSOCIATION OF
COUNTIES

(2)

Testimony on SB 204
Senate Elections and Local Government Committee
Randall Allen, Executive Director
Kansas Association of Counties
February 17, 2005

Chairman Huelskamp, I am Randall Allen, Executive Director of the Kansas Association of Counties. I am here today to express our opposition to SB 204, a proposal extending state governmental ethics rules to local officers, including the 105 boards of county commissioners. The Association's Legislative Policy Committee met earlier this week to discuss SB 204 and another legislative proposal, and instructed us to urge this committee and the Legislature to consider matters of local governmental ethics a local matter and not a subject for statewide legislation. Local officials, and ultimately their voters at the local level, are capable of making judgments on the ethical behavior. If the voters disagree with the interpretations of the locally elected officials, they will surely make changes in their elected leadership at the ballot box.

Additionally, I want to call your attention to the Code of Ethical Conduct for County Commissioners (attached), a document which was created by a good number of commissioners and formally adopted by the Kansas County Commissioners Association in 2003. Principle 5 on page 2 of the Code addresses a county commissioner's responsibility to "perform the duties of public office with fairness and impartiality so as to enhance public confidence in county government." Some boards of county commissioners have taken steps to formally adopt the Code of Ethical Conduct for their local board and several have framed and posted it in their Commission Chambers as a constant reminder to themselves and the public that they intend to abide by an ethical code.

It has been our impression that the era of big government is over. SB 204 is a step backward, and not a step forward to good or even better government. As such, we urge the committee to kill SB 204. Thank you for considering our comments.

Attachment (1)

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Senate Elections & Local Govt.
Date: 2/17 / 2005
Attachment 2

Kansas County Commissioners Association Code of Ethical Conduct for County Commissioners

Preamble

The opportunity to serve the public as county commissioner is a high honor and confers a sacred trust to the office holder. Stewardship of the public trust not only requires allegiance to the law, but also obligates a county commissioner to act in ways consistent with the highest standards of ethical conduct.

The Kansas County Commissioners Association has adopted this code of ethics as a means of promoting the vitality of the democratic process in county government. The Association believes that in carrying out the duties of public office, from time to time every county commissioner is confronted with ethical dilemmas. The following principles are offered to encourage commissioners to engage in ethical reflection in advance of decision making. Ultimately, the ethical course of action for a county commissioner must be discerned by the dictates of individual conscience and commitment to the public interest.

Principle 1

A county commissioner should be vigorously dedicated to the democratic ideals of honesty, openness and accountability in all public matters involving county government.

- A commissioner should exert good faith effort to communicate the full truth about county matters and avoid structuring information so as to mislead or gain personal advantage.
- Accountability requires a commissioner to accept responsibility for his or her public conduct as well as the actions of the county commission, especially when mistakes occur.
- A commitment to the spirit of open government is characterized by the broadest possible provisions for public access and information sharing, and qualified only by those instances when meetings or certain public records are shielded by state law.
- A commissioner has an obligation to report suspected illegal misconduct by another elected official to the proper investigative authorities.
- The confidentiality of executive sessions of commission meetings must be strictly honored.

Principle 2

A county commissioner should model decorum, respect for others and civility in all public relationships.

- The honor of public office requires a commissioner to behave with courtesy and respect for the dignity of others in all public relationships with other elected officials; employees; citizens, media and representatives of other units of government.
- Commissioners should affirm the value of services provided by government and maintain a constructive attitude about governmental affairs.
- Meetings of the county commission afford a prime opportunity for commissioners to promote conduct that enhances respectful civic discourse.

Principle 3

A county commissioner should actively practice stewardship of the county's human, fiscal and material resources.

- A commissioner should conserve public resources and support the wisest and best use of those resources consistent with the public interest and community need.
- The principle of merit should guide all of a commissioner's human resource management decisions associated with recruitment, hiring, compensation, promotion and discharge.
- A commissioner should advocate for and encourage county employees to adopt practices that promote the most efficient, effective and ethical county services.

Principle 4

A county commissioner should strive for excellence and continuous learning in personal development and in all operations of county government.

- A commissioner, regardless of the length of tenure in office, should actively seek opportunities to develop skills and acquire knowledge in order to perform the duties of public office more effectively.
- A commissioner should dedicate the time necessary to adequately perform the duties of the office of county commissioner.
- As a member of the governing body, a commissioner should advocate and appropriate resources for a *learning courthouse*, a county work environment in which employees are given opportunities to expand their performance capacities.

Principle 5

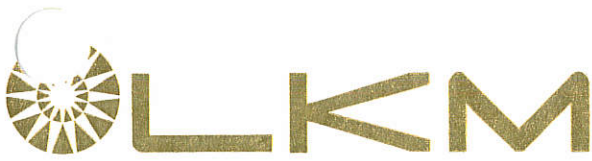
A county commissioner should perform the duties of public office with fairness and impartiality so as to enhance public confidence in county government.

- Impartiality requires a commissioner to engage in conduct unswayed by public clamor, without fear of criticism and without seeking personal financial gain or partisan advantage.
- A commissioner should make decisions free from the influence of family members, private business relationships, or other personal relationships.
- A commissioner should promote county business practices that contribute to public perception of the impartiality of county decisions.
- A commissioner should abstain from voting even if not required to by law if his or her impartiality might be reasonably questioned.
- A commissioner should support the principle of equal employment opportunity and vigorously oppose discrimination in county operations.

Principle 6

A county commissioner should neither seek nor accept any favor from any source that may be offered to influence his or her official decision making.

- Commissioners should decline to accept anything of value that could be construed by a reasonable and informed person as intended to influence the commissioner's actions.
- Avoiding the appearance of impropriety sustains public trust in democracy and is a necessary standard for commissioners to consider in determining an ethical course of action.



League of Kansas Municipalities

To: Senate Elections and Local Government
From: Kim Gulley, Director of Policy Development & Communications
Date: February 17, 2005
Re: Opposition to SB 204

Thank you for the opportunity to appear today on behalf of the member cities of the League of Kansas Municipalities (LKM). We appear in opposition to SB 204.

LKM strongly supports local ethics policies and we conduct annual trainings for cities on the importance of having local rules regarding the actions of locally elected officials and employees. We believe that SB 204 is an unnecessary mandate and we offer the following concerns:

- **Abrogates Local Policies.** Most cities of size have local ethics policies already in place. The rules created under SB 204 would be in conflict with those local policies established by locally elected officials.
- **One-Size-Does-Not-Fit-All.** While SB 204 is limited only to cities of the first class, it is important to note that there are 25 cities of the first class, ranging in size from Wichita (354,617) to Fort Scott (8,065). A universal lobbying policy is simply not appropriate for communities of such varying size.

In short, we believe that this legislation should be rejected as it is unnecessary and unduly restricts the ability of local communities to establish their own ethics policies. We believe that such decisions should be left to locally elected officials and their citizens.

For these reasons, we respectfully request that you do not recommend SB 204 favorably for passage. I would be happy to stand for questions at the appropriate time.

RON THORNBURGH
Secretary of State



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STATE OF KANSAS
Senate Committee on Elections and Local Government

Testimony on Senate Bill 143

Brad Bryant, Deputy Assistant Secretary of State
Elections and Legislative Matters

February 16, 2005

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on behalf of the Secretary of State in support of Senate Bill 143. This bill was proposed by the Secretary of State to:

- (1) update the laws governing the requirements and certification of direct recording electronic (DRE) voting systems,
- (2) bring them into compliance with the Help America Vote Act of 2002 (HAVA), and
- (3) repeal outdated laws in Article 13 of Chapter 25 that provided for lever machines and punch card ballots.

Section 1

This section defines several terms related to electronic voting. It deletes references to ballot cards, labels and marking devices which are relevant only to outdated voting technology. The language we have proposed draws heavily from the Federal Election Commission's 2002 voluntary voting systems standards.

Section 2

This section removes language providing for a petition and election process for counties to change their voting equipment. We have not heard of this process ever being used. The decision as to what type of voting system to use, if any, should be left to the board of county commissioners and the county election officer, who know the needs of the county and the county's budget.

Section 3

This section would amend the general statute that requires certification by the Secretary of State to include operating systems, firmware and software in the process of reviewing voting systems. It is important that the law recognize the fact that automated systems are not limited to hardware.

Section 4

This section also deals with the review and certification process. It removes the requirement that certification hearings be conducted in the Capitol, although they may be done here. Since the

Secretary of State moved to Memorial Hall the hearings most often occur in our office there. Also, the proposed new language of Section 4 recognizes that voting systems must meet the requirements of state laws and federal laws such as HAVA.

Section 5

Subsection (b) has been revised to remove an unnecessary limit on the number of political parties which may appear on the ballot.

Subsection (d) has been revised to provide more flexibility in partisan primary elections. The voting system is required to allow the voter to vote whichever party's ballot the voter is authorized to vote, recognizing the fact that federal courts have ruled Kansas' closed primary law unconstitutional. The Secretary of State has proposed Senate Bill 134 to amend the unconstitutional statute.

Subsection (h) has also been revised to provide flexibility in the voting process. HAVA requires each polling place to have at least one fully accessible, ADA-compliant voting device to allow voters with disabilities to vote independent and secret ballots. However, if some voters with disabilities prefer to receive assistance from persons of their choice or from election board members, their right to receive assistance is preserved.

Subsection (k) requires all electronic voting systems certified for use in Kansas to meet the requirements of HAVA.

Section 6

Subsection (a) is amended two ways: (1) complementing the language of Section 2 of the bill, it removes language referring to an election process to select voting systems for counties, and (2) it removes an unnecessary ten-year limit on county contracts for the purchase, lease or rental of voting systems. Voting systems may last longer than ten years.

Subsection (d) has been added to authorize the Secretary of State to acquire electronic voting systems for counties to meet the requirement in HAVA that each polling place be equipped with at least one fully accessible voting device. Part of the federal funding appropriated by Congress for the implementation of HAVA will be spent on this.

Section 7

This section has been revised to remove language referring to paper ballots, labels, ballot cards, marking devices, and holes, and insert updated language consistent with the electronic display of ballots. It preserves the requirement that voting equipment be able to rotate candidates' names on ballots.

Subsection (d) preserves the requirement that sample ballots be provided at the polling place, which is required by HAVA and existing Kansas law, and that the sample ballots match the ballots on the voting equipment.

Section 8

This section deals with the voting process.

Subsection (b) preserves the requirement that sample ballots be provided at the polling place, which is required by HAVA and existing Kansas law as mentioned in Section 7 above.

Subsection (c) is deleted. This subsection required the posting of voter instructions in addition to the instructions on the ballot. HAVA and another Kansas law already require the posting of voting instructions at the polling place, and the instructions appear on each ballot. References to

ballot cards, punching and marking devices are deleted.

Subsection (d) is deleted. The requirement that voters receive instruction before voting is retained in the new language.

Subsection (f) is deleted. It deals with the process for a voter receiving a replacement ballot if the first one is spoiled or mismarked. This process is done on the voting device in an electronic or electromechanical voting system.

Section 9

This section deals with the public testing of voting equipment before and after each election. A public test is required in the county election office during the week before the election and again at the time of tabulation after the polling places close.

Section 10

This section deals with the procedure for closing the polling place and securing the voting devices when the polls close. It requires a check to ensure that the number of votes cast, including write-in votes, equals the number of voters on the poll book. References to ballot cards have been deleted.

If paper ballots are used at a location that normally votes on an electronic system, and ballots cannot be tabulated automatically using an optical scanner, they are required to be counted manually.

Section 11

In this section, a reference to ballot cards has been removed from a statute requiring a recount procedure.

Section 12

This section defines voting system fraud. It removes references to ballot cards and labels and includes voting equipment, operating systems, firmware, software and ballots.

New Section 13

This section authorizes the Secretary of State to adopt rules and regulations. This authority existed in Article 13 of Chapter 25, which Senate Bill 143 proposes to repeal.

New Section 14

This section provides a name for the series of laws governing electronic and electromechanical voting systems.

Section 15

This is the standard repealer section of the bill, but it should be pointed out that in addition to repealing the statutes amended by SB 143, it repeals all of Article 13 in Chapter 25, which provided for lever machines and punch card ballots. Lever machines have not been used in Kansas since 1995, and to our knowledge, punch card ballots have never been used. These systems are being phased out nationwide by HAVA.

We urge the committee to recommend Senate Bill 143 favorably for passage. Thank you for your consideration.

Wednesday, February 16, 2005

Thank you for the opportunity to meet here again with you and speak regarding Senate Bill 143. As the Election Commissioner for the largest county in the State of Kansas and the county that has invested the most in electronic touch-screen voting equipment, I fully support the changes as proposed by the Secretary of State's office.

The changes are necessary to reflect the changes brought about by the Help America Vote Act. Further, the changes support enhancements to the overall voter experience in Johnson County and the State of Kansas.

The voting experience, as I see it, is somewhat of an understood contract between citizens and the government. Components of the voting experience are interdependent and include expectations around convenience of registration, convenience of voting, assurance of accurate results, assurance of timely results, communications of results and other voter information, and assurance that taxpayer dollars are neither overspent nor underutilized to provide for these components.

Beyond supporting the changes put forth in Senate Bill 143, I also ask that as the committee considers other election legislation in the future, that the impact to the overall voter experience be considered. Our staff is available to work with you and to help evaluate the continuum of the voting experience and consider reasonable benchmarks in all areas that counties in Kansas should target.

In the meantime, I ask that you support Senate Bill 143, appreciate the opportunity to speak with you today, and am available for any questions related to my testimony.

Thank you.

Brian D. Newby



Disability Rights Center of Kansas

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Testimony to the Senate Elections and Local Government Committee

February 15, 2005

Chairman Huelskamp and members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach for the Disability Rights Center of Kansas, formerly Kansas Advocacy and Protective Services (KAPS). The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. As the federally designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws. Those rights are promised in laws like the Americans with disabilities Act of 1990 (ADA), the Help America Vote Act (HAVA), and others. In fact, DRC is the recipient of the Protection and Advocacy for Voting Access program for Kansas.

I'm speaking today in support of SB 143 with one necessary technical amendment. The purpose behind SB 143 is to empower Kansas to comply with the requirements of HAVA, specifically the placement of accessible electronic voting systems in each Kansas polling place. The disability community anxiously awaits the arrival of the day that each person, regardless of disability is given the opportunity to cast an unassisted, independent and private ballot.

DRC recommends that the provision in Sec. 5. K.S.A. 25-4406 (page 4) that allows certain voters to use assistance mirror that provided in K.S.A. 25-2909, "Any voter unable to mark such person's ballot by reason of *temporary illness*, disability, lack of proficiency in reading the English language or any voter 65 or more years of age may request assistance in voting."

**Senate Committee on Elections and Local Government
Testimony for Senate Bill 143
February 17, 2005**

Thank you Chairperson Huelskamp and members of the Committee for the opportunity to express support for Senate Bill 143. I'm Bob Mikesic, Assistant Director for Programs/ Advocacy Coordinator at Independence, Inc., a Center for Independent Living serving people with disabilities and communities in Douglas, Jefferson and Franklin counties in northeast Kansas. Tanya Dorf, Executive Director of Independence, Inc. and Chairperson of the governmental affairs committee for the Kansas Association of Centers for Independent Living (KACIL) also wishes to convey the support of KACIL for Senate Bill 143.

We support Senate Bill 143 because it would ensure that Kansas law meets all the accessibility requirements of the Help America Vote Act of 2002. This includes a very important requirement that each polling place be equipped with at least one voting device that is accessible for individuals with disabilities, including people who are blind or visually impaired, in a way that provides the same opportunity for access, participation, and a private and independent vote. We also respectfully request that you not take any action that would create a delay in obtaining accessible voting machines, such as requiring a voter verified paper audit trail.

Thank you for your work and support of Senate Bill 143 to ensure a private and independent vote become a reality for all citizens of Kansas.

Independence, Inc., 2001 Haskell Ave., Lawrence, Kansas 66046 (785) 841-0333

Senate Elections & Local Govt.
Date: 2 / 17 / 2005
Attachment 7

SENATE BILL No. 54

By Committee on Elections and Local Government

1-19

9 AN ACT concerning roofing materials.

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

11 Section 1. (a) Except as provided in subsection (b), on and after the
12 effective date of this act, no roofing material shall be used in the con-
13 struction, maintenance or replacement of the roof, or any portion thereof,
14 of any residence located in this state unless such roofing material meets
15 or exceeds the fire resistance standards for a class C roof as established
16 by rules and regulations adopted by the state fire marshal pursuant to this
17 act, and amendments thereto, or any municipal building code which has
18 been adopted as required by law, whichever is more restrictive.

19 (b) The provisions of subsection (a) shall not apply to roofing material
20 used in the ~~construction~~, maintenance or replacement of less than 50%
21 of the roof of any residence which was occupied prior to the effective
22 date of this act.

23 Sec. 2. (a) This act shall be administered by the state fire marshal.

24 (b) The state fire marshal shall adopt reasonable rules and regulations
25 consistent with the provisions of this act for the safeguarding of life and
26 property from fire, explosion and hazardous materials.

27 (c) Any rules and regulations of the state fire marshal adopted pur-
28 suant to this section may incorporate by reference specific editions, or
29 portions thereof, of any nationally recognized fire prevention code or
30 nationally recognized building code.

31 (d) The rules and regulations adopted pursuant to this section shall
32 allow the roof of any residence in service prior to the effective date of
33 such rules and regulations, and not in strict conformity therewith, to con-
34 tinue in service, so long as such roof is not determined by the state fire
35 marshal to constitute a distinct hazard to life or property. Any such de-
36 termination shall be subject to the appeal provisions contained in K.S.A.
37 31-140 and amendments thereto.

38 Sec. 3. For the purposes of this act: (a) "Residence" means a single
39 family dwelling.

40 (b) "Nationally recognized code" or "nationally recognized fire pre-
41 vention code" shall have the meaning ascribed to such terms in K.S.A.
42 31-132 and amendments thereto.]
43

1 (c) "Municipality" shall have the meaning ascribed to such term in
2 K.S.A. 31-132 and amendments thereto.

3 (d) "Nationally recognized building code" shall have the meaning as-
4 cribed to such term in K.S.A. 31-132 and amendments thereto.

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

(a) From and after July 1, 2006, any provision of a restrictive covenant that requires the use of any particular roofing material in the construction or replacement of the roof which also does not require such roofing material to meet or exceed Class C fire resistant standards is hereby declared to be contrary to the public policy of this state and unenforceable.

(b) For the purposes of this section, a roofing material shall be deemed to comply with the requirements of subsection (a) if the roofing material has been tested in accordance with one of the following documents as such document exists on July 1, 2005, and found to be in compliance with the Class C fire resistant standards contained therein:

1. United Laboratories Standard 790 (UL 790) entitled "Standard Test Methods for Fire Tests of Roof Coverings";
2. ASTM E108 entitled "Standard Test Methods for Fire Tests of Roof Coverings"; or
3. ASTM D2898 entitled "Standard Test Methods for Accelerated Weathering of Fire-Retardant-Treated Wood for Fire Testing".

8
3

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-*

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.

9-2

From and after January 1, 2006: (a) Except as provided in subsection(b), each not for profit entity which receives public funds shall, upon request, make available to any requester a copy of documentation of the receipt and expenditure of all public funds received by such not for profit entity. If such not for profit entity's accounting practice does not segregate public funds from other fund sources, the not for profit entity's entire accounting of its expenditures and receipts shall be open to the public.

(b) Each not for profit provider of health care services that receives public funds shall be required to document receipt and expenditure of such funds in the aggregate. No not for profit provider of health care services shall be required to report or disclose the name address, telephone number or any other information which would specifically and individually identify any person who received health care services from such not for profit provider of health care services. Any not for profit provider of health care services that is required by state or federal statutes, or any rules or regulations promulgated thereunder, to file a comprehensive financial report with an agency of the state that is available to the public shall be deemed to have fulfilled the requirements of this section. For the purposes of this subsection, the term "provider" shall have the meaning ascribed to it in K.S.A. 40-4602 and amendments thereto.

(c) Each not for profit entity may charge and require advance payment of a reasonable fee for providing access to or furnishing copies of documentation of the receipt and expenditure of public funds as required by this section. Such fee shall be determined in the same manner as for a public agency pursuant to K.S.A. 45-219 and amendments thereto. A fee for copies of documentation of the receipt and expenditure of public funds which is equal to or less than \$.25 per page shall be deemed a reasonable fee.