

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT

The meeting was called to order by Chairman Tim Huelskamp at 1:30 P.M. on February 21, 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:

TC Anderson, KS Society of Certified Public Accountants
Jim Edwards, KS Assn of School Boards
Erik Sartorius, City of Overland Park
Danielle Noe, Johnson County Governments
Kim Gulley, League of Kansas Municipalities
Randall Allen, KS Assn. of Counties
Rich Gannon, KS Press Assn.

Others attending: See attached list.

Hearing on SB 34 - Continuation of certain exceptions to disclosure of records.

Ken Wilke, committee staff, described this bill and distributed (Attachment 1). There were no questions of staff.

Proponents:

TC Anderson provided testimony (Attachment 2).

Jim Edwards provided testimony (Attachment 3).

Erik Sartorius provided testimony (Attachment 4).

Danielle Noe provided testimony (Attachment 5) and answered questions.

Kim Gulley provided testimony (Attachment 6) and answered questions related to the impact of HPPA.

Randall Allen provided testimony (Attachment 7).

Rich Gannon provided testimony (Attachment 8).

Opponents: None

Senator Huelskamp closed the hearing.

Discussion of SB132 - Elections; optical scanning voting equipment.

A balloon with amendments was distributed as discussed with the Secretary of State's office (Attachment 9). It was moved by Senator Betts and seconded by Senator Reitz to adopt the amendments as presented. Motion carried.

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

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

It was reported that Senator Steineger will support amending the bill to only apply to the Unified Government

CONTINUATION SHEET

MINUTES OF THE Senate Elections and Local Government at 1:30 P.M. on February 21, 2005 in Room 423-S of the Capitol.

of Wyandotte County and Kansas City. Senator Betts moved to make such amendment. The motion died for lack of a second.

Discussion of SB 143 - Elections; direct recording electronic voting systems

Ken Wilke, committee staff, presented a proposed balloon (Attachment 10). He reported that it will have no impact on SB 134. It was moved by Senator Wilson and seconded by Senator Donovan to adopt the amendments as presented. Motion carried.

Senator Betts asked about another amendment previously requested. Committee staff left to locate that language. The amendment was not proposed to the committee.

During the wait, Brad Bryant reported that the language used is consistent with the cleanup from last year.

It was moved by Senator Donovan and seconded by Senator Betts to report the bill favorably as amended. Motion carried.

Closing

The final meeting for the committee to consider bills originated in the Senate this session is tomorrow.

There being no further business, the meeting was adjourned at 2:16 p.m.

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

Guest List for February 21, 2005

Please sign in with **BLACK Ink**.

Name	Representing
Danielle Noe	Johnson County
T.O. Anderson	KSCPA
Randall Allen	Ks. Assn. of Counties
Bindy Hermes	KID
Kim Gullett	LKM
Richard Cannon	KPA
Jim Clark	KBA
Harriet Lange	KAB
Wes Ashton	Overland Park Chamber
Brad Bryant	Sec. of State
Theresa Marie Bush (Terry)	AG
Jim Edwards	KASB
Jeffrey CLAWITER	KATS
Hannie Ann Rover	KATP
GLOD SCHNEIDER	CITY OF WICHITA
Sheri Perry	KDOT
Cynthia LaFramboise	KSTS
Julia Gilmore Gaughan	Disability Rights Center
Beth Lange	SRS

OPEN RECORDS ACT EXCEPTIONS CERTIFIED TO EXPIRE ON JULY 1, 2005*

Senate Elections & Local Govt.
 Date: 2 / 21 / 2005
 Attachment 1

Section	Exceptions Descriptions
1-401	CPAs and their clients—all working papers made by a CPA or employee of a CPA in course of providing professional services to clients
2-1202	parties who register as custom blenders of fertilizer—registration information regarding party's operations
5-512	parties to a dispute resolution proceeding—all verbal or written information transmitted between a party and a neutral person
9-1137	bank compliance review committee proceeding—compliance review documents
9-1712	parties being investigated by State Bank Commissioner—all information gathered in investigation
9-2217	parties being examined by the State Bank Commissioner—all examination reports and correspondence except in connection with disciplinary proceeding conducted by commissioner, liquidation proceeding, or criminal investigation or proceeding
10-630	parties owning or pledging bonds—all registration records of bond issuers; records of ownership or pledge
11-306	individuals—all forms and other personally identifiable data obtained in conjunction with redistricting census
12-189	information collected by cities or counties regarding parties responsible for paying retail sales taxes
12-1,108	a statement or list with a return or statement of intangibles tax liability
12-1694	all information received by city or county regarding parties responsible for paying transient guest tax
12-1698	all information received by city or county regarding parties responsible for paying transient guest tax
12-2819	parties involved in negotiations, actions or proceedings with public boards—documents and records kept or prepared by board
12-4516	records of expungement of certain convictions, arrest records or diversions in municipal courts
16-715	reports of precious metals dealers for law enforcement purposes
16a-2-304	information regarding parties to consumer credit transactions, except in composite form
17-1312e	all info. gathered in making an investigation or examination of cemetery corporations and their permanent maintenance funds
17-2227	all information secured or produced by the administrator in making an investigation or examination of credit unions and their customers
17-5832	all compliance review documents of Savings & Loan Compliance Review Committee
17-7503	amount of franchise tax paid by for-profit domestic corporations
17-7505	amount of any franchise tax paid by for-profit foreign corporations

* The certification was done by the Revisor of Statutes as required by KSA 45-229.

Section	Exceptions Descriptions
17-7511	any information obtained from review of corporation's income tax return
17-7514	copies of requests for extension for time business entities required to file an annual report with the Secretary of State
17-7515 (repealed)	
17-7656 (repealed)	
17-76,139	the amount of franchise tax paid by limited liability companies
19-4321	certain county employees civil service ratings and reports
21-2511	records of persons whose DNA has been tested
22-3711	pre-sentence report, pre-report, pre-post-release report, and supervision history of criminal defendants
22-4707	criminal history record information
22-4909	crime victims' name, address, telephone number, and other information
22a-243	information acquired by and records of the child death review board
22a-244	books, records, papers received by state child death review board pursuant to subpoena
23-605	all verbal and written information transmitted between parties and mediator of parties to domestic dispute resolution
23-9,312	address of child or party upon finding that disclosure that health, safety, or liberty of child would be put unreasonably at risk
25-4161	complaints regarding candidates for public office to the Ethics Commission
25-4165	same subject as above
31-405	information regarding arson investigation
34-251	transactions regarding grain warehouses and their customers
38-1508	all records and reports concerning child abuse or neglect received by law enforcement
38-1520	child in need of care (CINC) information maintained in the CINC information system in a manner that allows for identification of any individual
38-1565	report submitted by foster parent(s), regarding children, other interested parties in reintegration plan
38-1609	diagnostic, treatment, or medical records of juvenile offenders
38-1610	expunged records of juvenile offenders
38-1618	juvenile offender information which identifies individuals
38-1664	reports submitted by juvenile offender's foster parents
39-709b	information regarding applicants for and recipients of public assistance
39-719e	medical assistance recipients regarding information provided by medical benefit plan providers

Section	Exceptions Descriptions
39-934	information received by adult care licensing authorities
39-1434	information in SRS statewide registry of dependant adult abuse and neglect in way that identifies an individual
39-1704	confidential information received by regional interagency councils regarding services for children
40-222	insurance companies examination reports
40-2,156	all reports of acquisitions and dispositions of assets of insurance companies disclosed to Insurance Commissioner
40-2,177 (repealed)	
40-2,178 (repealed)	
40-2,180 (repealed)	
40-2c20	all insurance companies risk based capital (RBC) reports, plans, or corrective orders
40-2c21	same subject as above
40-2d20	RBC reports of health insurance organizations
40-2d21	same subject as above
40-409	information in support of actuarial opinion of life insurance companies
40-956	all info. submitted for examination by Insurance Commissioner to insurance rating organizations
40-1128	insurers of health care providers—the names of any people or facilities involved in reports by insurers of any actions to the Board of Healing Arts
40-2807	insurance companies—the amount of income or other particulars set forth any report or return
40-3012	insurance companies—reports and recommendations by boards of directors to Insurance Commissioner regarding the solvency, liquidation, rehabilitation, or conservation of any insurer
40-3304	domestic insurance companies—consideration for a merger or other acquisition of control when a loan is made in ordinary course of business, identity of the lender
40-3308	insurance companies—all info., documents, and copies obtained in support of the actuarial report
40-3403b	health care organizations & providers—information or materials provided to actuarial firm by the Health Care Stabilization Fund
40-3421	health care providers—reports of claims and actions for medical malpractice
40-3613	insurance companies—orders necessary to correct, eliminate, or remedy the conduct, or condition of a domestic insurer
40-3805	trade secrets contained in books or records of insurance companies
40-4205	same subject as above

Section	Exceptions Descriptions
44-510j	worker's compensation insurance companies or self-insured employers regarding utilization and peer review
44-550b	worker's compensation records relating to financial info. submitted by an employer to qualify as self-insured
44-594	records filed with or maintained by an employer to qualify as a member of or maintain membership in a group-funded workers compensation pool
44-635	interrogatories of the Secretary of Human Resources to companies regarding child labor, work safety, other
44-714	transcript of unemployment benefits hearing not discoverable or admissible in evidence
44-817	information transmitted between a party to a labor dispute and a mediator
44-1005	endeavors at civil rights complaint conciliation
44-1019	civil rights conciliation agreements
44-1514 (repealed)	
45-221	Kansas Open Records Act section that lists 44 exceptions to openness
46-256	candidates for public office—the filing of a complaint and the allegations with the Ethics Commission
46-259	candidates for public office—complaints, documents, & reports filed with, submitted to or made by the Ethics Commission
46-2201	KBI background checks on members of the KPERS Board
47-839	veterinarians and their clients—any info. concerning care of an animal by vets licensed under Veterinary Practice Act
47-844	veterinarians and their clients—information regarding violations except fine paid
47-849	veterinarians—reports and records concerning impaired veterinarians, including executive or review committees
47-1709	veterinarians—any complaint filed
48-1614	trade secrets in nuclear energy development activities
49-406	mining activities—info. pertaining only to the analysis of the chemical and physical properties of coal
49-427	trade secrets
55-1,102	any rates, data, or information of a gas gathering company filed with Corporation Commission
56-1a606	domestic limited partnerships—amount of franchise tax paid
56-1a607	foreign limited partnerships—amount of franchise tax paid
56a-1201	limited liability partnerships—the amount of franchise tax paid
56a-1202	foreign limited liability partnerships—the amount of franchise tax
58-4114	state certified or licensed appraisers—residential addresses of appraisers
59-2135	information pertaining to adoptions of minors

Section	Exceptions Descriptions
59-2802	certain welfare recipients—report containing any info. necessary for court to make findings of fact regarding petition
59-2979 & 59-29b79	individuals—treatment or medical records of any patient or former patient
60-3333	information in voluntary environmental audits
60-3335	same subject as above
60-3336	same subject as above
65-102b	individuals—info. concerning non-infectious diseases obtained by the secretary of Health and Environment
65-118	health care providers—info. as to infectious or contagious diseases
65-119	same subject as above
65-153f	individuals—lab reports, and records regarding tests for syphilis and hepatitis
65-170g	individuals, businesses—records, reports related to potential sources of water pollutants if trade secrets would be divulged
65-177	individuals—data voluntarily made available to the secretary in connection w/ study of diseases and deaths from maternity
65-1,106	individuals—information obtained from tests for sickle cell anemia
65-1,113	individuals—information collected to define the effective distribution of health manpower
65-1,116	individuals—information gathered in testing for diabetes
65-1,157a	individuals—information obtained by secretary in course of newborn hearing screening program
65-1,163	individuals—referral and associated documentation of pregnant women at risk for prenatal substance abuse
65-1,165	same subject as above
65-1,168	individuals—informational collected for cancer registry
65-1,169	same subject as above
65-1,171	same subject as above
65-1,172	same subject as above
65-436	individuals—information received through reports, inspections of hospitals
65-445	individuals and medical care facilities—annual report of medical care facilities
65-507	individuals—information on maternity care and child care facility records
65-525	records of the Department of Health and Environment regarding child care facilities and maternity centers that identify individuals
65-531	individuals—immunization records
65-657	trade secrets regarding food, drugs, and cosmetics
65-1135	nurses—any complaint or report relating to investigation of a nurse

Section	Exceptions Descriptions
65-1467	dentists—any complaint, report or record relating to investigation
65-1627	pharmacists—reports, findings, and other records involving mental and physical examinations or drug screens
65-1831	barbers—investigation information
65-2422d	information contained in vital statistics records pertaining to out of wedlock births
65-2438	individuals—information relating to an infectious or contagious disease
65-2836	licensed health care professionals—information involving mental and physical examinations or drug screens
65-2836a (repealed)	
65-2839a	professionals licensed by the Board of Healing Arts—patient records relating to diagnostic findings or treatment of patients, peer review, risk management records, or investigation procedure records
65-2898a	reports alleging malpractice made to the Board of Healing Arts
65-3015	air quality control—business records containing trade secrets
65-3447	businesses—solid waste information that may disclose trade secrets
65-34,108	storage tanks and records regarding trade secrets
65-34,126	insurance coverage for storage tanks—any confidential information required
65-4019	care and treatment facilities for alcoholism—records that identify individuals
65-4608	drug abuse treatment facilities records that identify individuals
65-4922	risk management records of health care providers
65-4925	health care provider peer review and risk management records
65-5602	mental, alcohol or drug treatment patient records
65-5603	same subject as above
65-6002	AIDS reporting records
65-6003	same subject as above
65-6004	same subject as above
65-6010	same subject as above
65-67a05	records relating to fetal tissue and abortion
65-6803	health care database—procedures for ensuring confidentiality and safety of data
65-6804	same subject as above
66-101c	certain utility records regarding rates

Section	Exceptions Descriptions
66-117	same subject as above
66-151	same subject as above
66-1,190	same subject as above
66-1,203	same subject as above
66-1220a	utilities and trade secrets
66-2010	telecommunications company—certain records
72-996	child with a disability—dispute mediation school records
72-4311	vocational rehabilitation records of persons
72-4452	certain vocational training records of individuals
72-5214	school personnel health records
72-53,106	records of children enrolling in school
72-5427	teacher contracts—mediation records
72-8202f (repealed)	
72-8903	same subject as above
73-1228	utilities and trade secrets
74-2424	tax information in reports to other states, federal government
74-2433f	State Board of Tax Appeals Small Claims Division—certain records
74-4905	individual records regarding Kansas Public Employee Retirement System
74-4909	same subject as above
74-50,131	tax incentives for high performance firms—certain business records
74-5515	records regarding developmental disabilities
74-7308	crime victim records—Crime Victims Compensation Board
74-7338	record of victims and their addresses maintained by Secretary of Corrections
74-7405a	records of office of ombudsman of corrections
74-8104	Kansas Technology Enterprise Corporation—trade secrets
74-8307	Kansas Venture Capital Company Act—trade secrets
74-8705	State Lottery—background investigation of vendors
74-8804	Parimutual Racing—background investigation of licenses
74-9805	State Gaming Agency—background investigation information of employees

Section	Exceptions Descriptions
75-104	Governor's records—records, correspondence, or other papers not required to be disclosed under 45-221 during governor's lifetime
75-712	Attorney General criminal information records
75-7b15	Attorney General—records regarding private investigators
75-1267	project documents related to correctional institutions or other facilities under the jurisdiction or control of the secretary of corrections
75-2943	certain classified civil service employee records
75-4332	public employers-employees relations—mediation records
75-4362	Division of Personnel—results of drug tests
75-5133	Department of Revenue—excise tax information
75-5266	Department of Corrections—psychiatric evaluations of inmates
75-5665	Statewide Trauma Registry—information regarding individuals
75-5666	same subject as above
75-7310	information received from individuals by State Long-Term Care Ombudsman
76-355	University of Kansas School of Medicine teaching aids where patient is identified
76-359	information concerning patient during course of medical study that would otherwise be privileged under 60-427
76-493	Kansas State Veterinary Medical Center peer review records
76-12b11	records of patients in state institutions for the mentally retarded
76-3305	Proprietary information of the University of Kansas Hospital Authority
79-1119	Banks, savings and loans, and trust companies amount of income or any other particulars set forth in any report, statement, or return
79-1437f	real estate sales validation questionnaires
79-15,118	Kansas estate tax-value of any estate or particulars set forth in any report or return
79-3234	income tax tax reports and returns
79-3395	cigarette and tobacco tax statements regarding importation of cigarettes
79-3420	motor fuels tax information in reports, investigations, and verifications
79-3499	same subject as above
79-34,113	same subject as above
79-3614	retailer sales taxes
79-3657	same subject as above
79-4301	Interstate Tax Compact—information
79-5206	Marijuana and controlled substances taxes—facts contained in a report or return



Kansas Society of Certified Public Accountants

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February 21, 2005

To: Senate Elections and Local Government Committee
From: T.C. Anderson, Executive Director
Re: SB 34

Chair Huelskamp and Members of the Committee.

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

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

K.S.A. 1-401 is part of the statutes relating to certified public accountants. It was enacted in 1981 to provide clients of CPAs a privilege regarding communications made by the client to the certified public accountant in person or through the media of books or account and financial records, or as to advice, reports or working papers given or made thereon in the course of professional employment.

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

Once again, I ask for your support of SB 34 and I'll stand for questions.

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Date: 2 / 21 / 2005
Attachment 2

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1-401

Chapter 1.--ACCOUNTANTS; CERTIFIED PUBLIC

Article 4.--GENERAL PROVISIONS

1-401. Certified public accountants; ownership of working papers; client communications, privileged, exception; availability of documents and information for peer reviews and board investigations. (a) Except as otherwise provided in this section, all statements, records, schedules and memoranda, commonly known as working papers, made by a certified public accountant, or by any employee of a certified public accountant, incident to, or in the course of professional service to clients by such certified public accountant, except reports delivered to a client by such certified public accountant, shall be and remain the property of such certified public accountant in the absence of a written agreement between the certified public accountant and the client to the contrary.

(b) No certified public accountant shall be examined through judicial process or proceedings without the consent of the client as to any communication made by the client to the certified public accountant in person or through the media of books of account and financial records, or as to advice, reports or working papers given or made thereon in the course of professional employment, nor shall a secretary, stenographer, clerk or assistant of a certified public accountant be examined without the consent of the client concerned, concerning any fact the knowledge of which any such person has acquired in such capacity or relationship with the certified public accountant. Nothing in this section shall be construed as limiting the authority of this state or of the United States or any agency of this state or of the United States to subpoena books of account, financial records, reports or working papers or other documents and use such information in connection with any investigation, public hearing or court proceeding. This privilege shall not exist when any such communication is material to the defense of an action against a certified public accountant and as otherwise provided by this section.

(c) Nothing in subsection (a) shall prohibit a certified public accountant, or any employee of a certified public accountant, from disclosing any data to any other certified public accountant, or anyone employed by a certified public accountant in connection with peer reviews of such certified public accountant's accounting and auditing practice. Nothing in subsection (a) shall prohibit the board of accountancy from securing working papers in connection with any investigation authorized under law. Nothing in subsection (b) shall prohibit a certified public accountant or anyone employed by a certified public accountant from disclosing any data to any other certified public accountant or anyone employed by a certified public accountant in connection with peer reviews of such certified public accountant's accounting and auditing practice nor shall such disclosure waive the privilege. Persons conducting such peer reviews shall be subject to the same duty of confidentiality in regard to such data as is applicable to certified public accountants under this section.

(d) As used in this section, "certified public accountant" means a person who holds a permit from the board of accountancy to engage in practice as a certified public accountant in this state.

History: L. 1981, ch. 1, § 1; L. 1992, ch. 241, § 1; May 21.



Testimony on **SB 34**
before the
Senate Elections and Local Government
by

Jim Edwards, Governmental Relations Specialist
Kansas Association of School Boards

February 21, 2005

Chairman Huelskamp and Members of the Committee:

Thank you for allowing me the opportunity to appear today to express KASB's support for **SB 34**, a measure that removes the sunset for exceptions to the Open Records Act.

Last year, a coalition comprised of media organizations, city and county organizations and private entities worked to develop compromise language to address this issue. The measure passed both the House and Senate and was signed by the Governor. During the interim, legislative staff determined though that the process used might have been flawed and recommended that the issue be addressed again.

The removal of the five year sunset for current exceptions that are not amended will not mean that these exceptions could not be subject to future scrutiny or deletion.

Thank you for the opportunity to offer our thoughts on this important measure and we encourage your support to pass this measure out of committee. I would be happy to answer questions.



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Testimony Before The
Senate Elections and Local Government Committee
Presented by Erik Sartorius
Regarding SB 34

February 21, 2005

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

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

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

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

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

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

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

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



Johnson County, Kansas

BOARD OF COUNTY COMMISSIONERS

Testimony in support of SB 34

presented to the

Senate Elections and Local Government Committee

by

Danielle Noe

Intergovernmental Relations Coordinator

February 21, 2005

Mister Chairman and Members of the committee:

Thank you for the opportunity to testify in favor of SB 34, relating to the reauthorization of exceptions to the Kansas open records act.

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

In 2003, the Office of the Revisor of Statutes opined that the sunset language applies to all exceptions to disclosure under KORA even if they are not specifically spelled out in KORA but appear elsewhere in statute. Exceptions to disclosure under KORA, which are not subject to sunset, are exceptions required by federal law or which apply solely to the legislature or the state court system. As a part of his duties, the Revisor certified more than 250 exceptions that must be reviewed in accordance with the sunset provision. During the interim, the Special Committee on Local Government reviewed each of the exceptions and made specific recommendations on a number of exceptions and recommended that the remaining exceptions be continued.

As a part of the Johnson County's legislative platform for the past three years, the Board of County Commissioners included a statement regarding open records.

Johnson County believes that an open government is essential to building public confidence. However, the County recognizes that in some circumstances the public interest is better served by preventing the disclosure of sensitive information. Johnson County supports the retention of the exemptions to the Kansas Open Records Act currently found in the law.

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

- Information pertaining to criminal investigations, during the time they are underway, and pursuant to the existing exception in KORA;
- Foster parent information, such as background information or personal information such as names, addresses, etc.;
- Communicable disease information as it pertains to specific individuals;
- Information contained in personnel records such as reprimands, annual evaluations, benefit information, or other personal information; not including items which relate solely to the position such as classification or salary of a particular position;
- Tax and financial information regarding specific individuals or businesses;
- Personal identifying information such as social security numbers, which appear on a variety of documents, including taxes, mortgage documents, etc.;
- Medical, psychiatric, psychological or drug treatment records;
- Library circulation records which pertain to specific individuals;
- Court records pertaining to children or incapacitated persons.

This list is in no way exhaustive of the types of information that the County would not wish to disclose. It is important to note that most of the exceptions are those which pertain to information which could risk the safety of citizens or would cause a person to be easily identified and might disclose private, financial, or health related information about such person.

The Kansas Open Records Act strikes an important balance between openness in government and protecting the private information of individuals. For this reason, and on behalf of the Board of County Commissioners, I respectfully request your support of SB 34.



League of Kansas Municipalities

To: Senate Elections & Local Government
From: Kim Gulley, Director of Policy Development & Communications
Date: 2/21/2005
Re: Support for SB 34

Thank you for the opportunity to appear today on behalf of the 565 member cities of the League of Kansas Municipalities. We appear in support of SB 34 regarding the Kansas Open Records Act (KORA) for the following reasons:

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

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



KANSAS
ASSOCIATION OF
COUNTIES

Testimony on SB 34

Senate Elections and Local Government Committee

Randall Allen, Executive Director

Kansas Association of Counties

February 21, 2005

Chairman Huelskamp and members of the committee, I am Randall Allen, Executive Director of the Kansas Association of Counties. I appreciate the opportunity to submit testimony in support of SB 34, continuing the exceptions to disclosure under the Kansas Open Records Act (KORA). As you are aware, pursuant to a 2000 bill of the Legislature, all exceptions to the KORA will expire on July 1, 2005 unless continued. The Kansas Association of Counties supports retention of the exemptions to the KORA currently found in law. The exceptions to disclosure in K.S.A. 45-229 have been studied by the Legislature since the sunset was enacted in 2000, and our association along with many others, including the Kansas Press Association, has engaged in extensive discussions to arrive at this point. Without passage of SB 34 or comparable legislation in this session of the Legislature, public agencies would be required to disclose many documents which are not appropriate to disclose. We therefore urge the committee to report out SB 34 favorably for passage. Thank you for consideration of our comments.

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.

300 SW 8th Avenue
3rd Floor
Topeka, KS 66603-3912
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Senate Elections & Local Govt.
Date: 2 / 21 / 2005
Attachment 7



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

February 21, 2005

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

From: Rich Gannon, Director of Governmental Affairs, Kansas Press Association

Re: SB 34

Chairman Huelskamp, Committee Members:

My name is Rich Gannon. I am director of governmental affairs for the Kansas Press Association. I am here today to express the KPA's support for SB 34.

First, I want to thank the members of the joint interim committee that met several times this past fall to review every one of the exceptions to open records in the Kansas Open Records Act and also sprinkled throughout the Kansas statutes.

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

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

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

- SB 5, relating to trade secrets.
- SB 38, relating to subpoena powers.
- HB 2118, relating to cemetery corporation records.
- HB 2148, relating to veterinarian disciplinary actions.
- HB 2149, relating to nurse, dentist and pharmacist disciplinary actions.
- HB 2198, relating to child care facility records.
- HB 2281, relating to gubernatorial records.

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

Senate Elections & Local Govt.
Date: 2 / 21 / 2005
Attachment 8

SENATE BILL No. 132

By Committee on Elections and Local Government

1-28

10 AN ACT concerning elections; relating to the use of optical scanning
11 systems to count votes; amending K.S.A. 25-4601, 25-4602, 25-4603,
12 25-4604, ~~25-4605~~ 25-4607, 25-4609, 25-4610, 25-4611, 25-4612 and
13 25-4613 and repealing the existing sections.
14

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

16 Section 1. K.S.A. 25-4601 is hereby amended to read as follows: 25-
17 4601. As used in this act unless the context otherwise requires:

18 (a) "Ballot" means a paper ballot ~~of at least three inches in width and~~
19 ~~seven inches in depth~~ on which candidates' names or questions are
20 printed and ~~are~~ *which is* designed to receive opaque marks which can be
21 detected by optical scanning equipment and which ~~are~~ *is* capable of being
22 counted manually.

23 (b) ~~"Counting location" means the location or locations in the county~~
24 ~~selected by the county election officer for the automatic processing or~~
25 ~~counting, or both, of ballots.~~

26 ~~(c)~~ (c) "Optical scanning equipment" means apparatus designed to ex-
27 amine and detect opaque marks on ballots which represent votes and
28 count and tabulate those votes by electronic methods.

29 ~~(d)~~ (c) "System" means an optical scanning system of automatically
30 counting and tabulating ballots with optical scanning equipment.

31 (d) "Precinct count voting system" means an optical scanning voting
32 system that tabulates ballots at the polling place.

33 (e) "Central count voting system" means an optical scanning voting
34 system that tabulates ballots from multiple precincts at a central location.

35 Voted ballots are placed into secure storage at the polling place and trans-
36 ported to a central counting location.

37 Sec. 2. K.S.A. 25-4602 is hereby amended to read as follows: 25-
38 4602. (a) The board of county commissioners and the county election
39 officer of any county may provide for use of a system using optical scan-
40 ning equipment to be used in the county at national, state, county, town-
41 ship, city and school primary and general elections and in question sub-
42 mitted elections.

43 (b) ~~When the board of county commissioners of any county is pre-~~

1 expense such optical scanning equipment and other items necessary for
2 operation of such system to the secretary of state at the capitol in the city
3 of Topeka, Kansas, for use by the secretary in examining such equipment
4 and system. The secretary of state may require such person, firm or cor-
5 poration to furnish a competent person to explain the system and dem-
6 onstrate by the operation of such system that it will do all the things
7 required by this act and applicable Kansas Statutes Annotated, and
8 amendments thereto, and can be safely used *such system complies with*
9 *state and federal laws*. The secretary of state may employ a competent
10 person or persons to assist in the examination and to advise the secretary
11 as to the sufficiency of such system and equipment and to pay such per-
12 sons reasonable compensation therefor. The costs of employment and
13 other costs associated with the approval of such system shall be paid in
14 advance by the applicant.

15 (b) The secretary of state may require a review of any theretofore
16 approved system using optical scanning equipment and the operation
17 thereof. Such review shall be commenced by the secretary of state giving
18 written notice to the person, firm or corporation which sought approval
19 of the system and to each county election officer and county commis-
20 sioner of counties known to have purchased, leased or rented any such
21 system or equipment. Such notice shall fix a time and place of hearing at
22 which those persons wishing to be heard may appear and give oral or
23 written testimony and explanation of the system, its optical scanning
24 equipment and operation and experience had therewith. After such hear-
25 ing date and after such review as the secretary of state deems appropriate,
26 the secretary of state may renew approval of the system and such equip-
27 ment, require changes therein for continued approval thereof or rescind
28 approval previously given on either a conditioned or permanent basis.

29 (c) The secretary of state may appoint persons to assist county elec-
30 tion officers or county commissioners in the testing of any system using
31 optical scanning equipment and the programs of the system.

32 Sec. 5. ~~K.S.A. 25-4605 is hereby amended to read as follows: 25-~~
33 ~~4605. (a) The board of county commissioners and the county election~~
34 ~~officer may purchase a system with payment by installments, may rent or~~
35 ~~lease a system or may lease optical scanning equipment with option to~~
36 ~~purchase with lease payments to be applied on the purchase price. Con-~~
37 ~~tracts for payment by installments, leases, rental agreements and leases~~
38 ~~with option to purchase may be for terms not exceeding 10 years, and~~
39 ~~The provisions of article 11 of chapter 10 of the Kansas Statutes Anno-~~
40 ~~tated and K.S.A. 79-2925 to 79-2940, inclusive, and amendments thereto,~~
41 ~~shall have no application to such contracts of purchase and lease or rental~~
42 ~~agreements, except that where payment is to be made from the general~~
43 ~~fund the budget shall provide for the raising of the necessary yearly~~

9-3

1 ~~amount to make installment or rental payments. Where the authorized~~
 2 ~~maximum levy for the general fund is insufficient for all other yearly~~
 3 ~~expenses chargeable against such fund and to pay installments or rentals~~
 4 ~~on the system or optical scanning equipment, or where the aggregate~~
 5 ~~limit for taxes is such that a sufficient tax for the general fund cannot be~~
 6 ~~levied to pay all other yearly expenses chargeable against such fund and~~
 7 ~~to pay installments or rentals on the systems, the board of county com-~~
 8 ~~missioners may levy a tax of sufficient millage to provide revenue to pay~~
 9 ~~such installments or rentals and to pay a portion of the principal and~~
 10 ~~interest on bonds issued under the authority of K.S.A. 12-1774, and~~
 11 ~~amendments thereto, by cities located in the county and such levy shall~~
 12 ~~not be within or limited by any aggregate limit of tax for such county.~~

13 (b) ~~For the use of optical scanning equipment or a system, the board~~
 14 ~~of county commissioners may pay the same out of the general fund of~~
 15 ~~such county, or issue time warrants bearing not to exceed 5% interest~~
 16 ~~and payable by not more than three annual tax levies of not to exceed~~
 17 ~~two mills which shall not be within or limited by any aggregate tax levy~~
 18 ~~applying to such county or issue general obligation bonds of such county,~~
 19 ~~such bonds not to be limited by any bonded debt limit and such bonds~~
 20 ~~shall not be considered in determining the bonded debt of the county for~~
 21 ~~the purpose of issuing bonds for other purposes.~~

22 (c) ~~No tax shall be levied under this section, nor shall any moneys be~~
 23 ~~paid from any fund under authority of this section for any contract to~~
 24 ~~purchase, lease or rent any optical scanning equipment or system, if ap-~~
 25 ~~proval of such system or equipment has been rescinded by the secretary~~
 26 ~~of state.~~

27 Sec. 6.] K.S.A. 25-4607 is hereby amended to read as follows: 25-
 28 4607. The ballot information shall be in the order of arrangement pro-
 29 vided for in article 6, chapter 25 of Kansas Statutes Annotated for official
 30 ballots. Such information may be printed on both sides of one ballot or
 31 on more than one ballot. Nothing in this act shall be construed as pro-
 32 hibiting the use of multiple ballots when the information for any election
 33 exceeds the capacity of a single ballot. Voting squares *or ovals* may be
 34 placed before or after the names of candidates and statements of ques-
 35 tions or on a separate paper corresponding to the ballot upon which the
 36 names of candidates and statements of questions appear. Voting squares
 37 *or ovals* shall be of such size as is compatible with the system used. Ballots
 38 shall be printed on paper and with ink compatible with the system used
 39 and the information printed in as plain clear type and size as the ballot
 40 spaces permit. At the bottom of each ballot shall be printed a box, which
 41 shall be placed on the ballot in such a manner so as not to interfere with
 42 the scanning of the ballot.

6 43 Sec. [] K.S.A. 25-4609 is hereby amended to read as follows: 25-

1 4609. (a) ~~When a voter is handed a ballot, such~~ Each voter shall be in-
2 structed *how* to mark the ballot ~~as directed, and to not mark the ballot~~
3 ~~in any other way before such voter enters the voting booth.~~ The voter shall
4 also be instructed to place such person's ballot or ballots in a ballot sleeve
5 or other container after voting, in order that no ~~ballot upon which a choice~~
6 ~~is indicated is votes are exposed.~~

7 (b) In case any elector after entering the voting booth asks for further
8 instruction concerning the manner of voting, two ~~judges~~ *election board*
9 *members* of opposite political parties shall give such instruction to such
10 elector, but no ~~judge~~ *election board member* or other election officer or
11 person assisting an elector shall in any manner request, suggest or seek
12 to persuade or induce any elector to vote for or against any candidate,
13 question or ticket. ~~After receiving such instruction, such elector shall vote~~
14 ~~as in the case of an unassisted voter.~~

15 (c) After the voter has marked the ballot or ballots, the voter shall
16 place it or them in the ballot sleeve provided for this purpose and return
17 it to the judge. The judge shall verify the unique mark on the ballot and
18 deposit the ballot in the ballot box.

7 19 Sec. 13 K.S.A. 25-4610 is hereby amended to read as follows: 25-
20 4610. (a) The optical scanning equipment may be located at any place
21 within the county approved by the county election officer.

22 (b) Within five days prior to the date of the election, the county elec-
23 tion officer shall have the optical scanning equipment tested to ascertain
24 that the equipment will correctly count the votes cast for all offices and
25 on all questions submitted. Public notice of the time and place of the test
26 shall be given at least 48 hours prior thereto by publication once in a
27 newspaper of general circulation in the county where such equipment is
28 to be used. The test shall be ~~observed by at least two election inspectors,~~
29 ~~who shall not be of the same political party, and shall be open to repre-~~
30 ~~sentatives of the political parties, candidates, the press and the public.~~
31 The test shall be conducted by processing a preaudited group of ballots
32 marked as to record a predetermined number of valid votes for each
33 candidate and on each question submitted, and shall include for each
34 office one or more ballots which have votes in excess of the number
35 allowed by law in order to test the ability of the optical scanning equip-
36 ment to reject such votes. If any error is detected, the cause therefor shall
37 be ascertained and corrected and an errorless count shall be made before
38 the optical scanning equipment is approved. ~~The test shall be repeated~~
39 ~~immediately before the start of the official count of the ballots, and at the~~
40 ~~conclusion of the official count in the same manner as set forth above.~~
41 ~~After~~ *The test shall be repeated after* the completion of the count, ~~the~~
42 *The* programs used and ballots and ballot stubs shall be sealed, retained
43 and disposed of in the same manner as paper ballots.

8 1 Sec. ~~19~~ K.S.A. 25-4611 is hereby amended to read as follows: 25-
 2 4611. (a) As soon as the polls are closed, ~~an election~~ *the supervising judge*
 3 shall open the ballot box and count the number of ballots or envelopes
 4 containing ballots that have been cast to determine that the number of
 5 ballots ~~does not exceed~~ *equals* the number of voters shown on the poll
 6 book. If there is ~~an excess~~ *a discrepancy*, this fact shall be reported in
 7 writing to the county election officer with the reasons therefor if known.
 8 ~~The total number of voters shall be entered on the tally sheets.~~

9 (b) The election judge shall place all ballots that have been cast in
 10 the container provided for the purpose, which shall be sealed and deliv-
 11 ered by two election ~~judges~~ *board members* who shall not be of the same
 12 political party, to the counting location together with the *provisional*,
 13 unused, void and defective ballots and returns.

14 (c) All proceedings at the counting location shall be under the direc-
 15 tion of the county election officer and under the observation of two elec-
 16 tion ~~judges~~ *board workers* who shall not be of the same political party
 17 and shall be open to the public, but no persons except those employed
 18 and authorized for the purpose shall touch any ballot, ballot container or
 19 return. If any ballot is damaged or defective so that it cannot properly be
 20 counted by the optical scanning equipment, it shall be counted manually.

21 (d) Advance voting ballots may be counted by the optical scanning
 22 equipment if they have been marked in a manner which will enable them
 23 to be properly counted by such equipment.

24 (e) The return printed by the optical scanning equipment, to which
 25 has been added the return of write-in and advance voting votes and man-
 26 ually counted votes, shall constitute the official return of each precinct or
 27 voting area. Upon completion of the count the returns shall be open to
 28 the public. A copy of the returns shall be posted at the office of the county
 29 election officer.

30 (f) If for any reason it becomes impracticable to count all or a part
 31 of the ballots with optical scanning equipment, the county election officer
 32 may direct that they be counted manually, following as far as practicable
 33 the provisions governing the counting of paper ballots.

9 34 Sec. ~~19~~ K.S.A. 25-4612 is hereby amended to read as follows: 25-
 35 4612. Optical scanning equipment fraud is:

36 (a) Being in unlawful or unauthorized possession of ballots ~~or programs~~,
 37 *optical scanning equipment, computer programs, operating systems, firm-*
 38 *ware or software*; or

39 (b) intentionally tampering with, altering, disarranging, defacing, im-
 40 pairing or destroying any optical scanning equipment or component part
 41 thereof, or any ballot, *operating system, firmware or software* used by a
 42 system.

43 Optical scanning equipment fraud is a severity level 10, nonperson

1 felony.

10 2 Sec. 11. K.S.A. 25-4613 is hereby amended to read as follows: 25-

3 4613. Optical scanning equipment and systems using optical scanning
4 equipment approved by the secretary of state:

5 (a) Shall be capable of being tested to ascertain that the equipment
6 will correctly count votes cast for all offices and on all questions submit-
7 ted; and

8 (b) shall be capable of printing in legible form, reports and summaries
9 of the election results as required by articles 30 and 31 of chapter 25 of
10 Kansas Statutes Annotated; and

11 (c) shall be capable of tabulating votes for candidates for nomination
12 or election of ~~at least seven different~~ all political parties *officially recog-*
13 *nized pursuant to K.S.A. 25-302a, and amendments thereto;* and

14 (d) shall be capable of tabulating votes for any independent candidate
15 of any office; and

16 (e) shall be capable of tabulating votes for constitutional amendments
17 or other questions submitted; and

18 (f) shall be capable of tabulating the number of "write-in" votes cast
19 for any office; and

20 (g) ~~[shall not count any votes for an office or upon a question sub-~~
21 ~~mitted provide notification~~ when the voter has cast more *or fewer* votes
22 for such office or upon such question than the voter is entitled to cast;
23 and

24 (h) ~~shall meet the requirements of applicable federal laws.~~

11 25 New Sec. 12. The secretary of state may adopt rules and regulations:

26 (a) For the use of optical scanning systems to count votes under the
27 election laws of this state; and

28 (b) necessary for the administration of this act.

12 29 New Sec. 13. K.S.A. 25-4601 through 25-4613, inclusive, and
30 ~~amendments thereto, and sections 12 and 13, and amendments thereto,~~
31 shall be known and may be cited as the optical scanning voting systems
32 act.

13 33 Sec. 14. K.S.A. 25-4601, 25-4602, 25-4603, 25-4604, ~~[25-4605]~~ 25-
34 4607, 25-4609, 25-4610, 25-4611, 25-4612 and 25-4613 are hereby
35 repealed.

14 36 Sec. 15. This act shall take effect and be in force from and after its
37 publication in the statute book.

shall not count any votes for an office or upon a question submitted when the voter has cast more votes for such office or upon such question than the voter is entitled to cast;
(h) shall provide notification when the voter has cast more or fewer votes for such office or upon such question than the voter is entitled to cast; and
(i) shall meet the requirements of the help America vote act of 2002 and other federal statutes and regulations governing voting equipment

11 and 12

1 tem, require changes therein for continued approval thereof or rescind
2 approval previously given on either a conditioned or permanent basis.

3 (c) The secretary of state may appoint persons to assist county elec-
4 tion officers or county commissioners in the testing of any electronic or
5 electromechanical voting system and its equipment or the programs of
6 such system.

7 Sec. 5. K.S.A. 25-4406 is hereby amended to read as follows: 25-
8 4406. Electronic or electromechanical voting systems approved by the
9 secretary of state:

10 (a) Shall provide facilities for voting for the candidates for nomination
11 or election of ~~at least seven different~~ *all* political parties *officially recog-*
12 *nized pursuant to K.S.A. 25-302a, and amendments thereto;*

13 (b) shall permit a voter to vote for any independent candidate for any
14 office;

15 (c) shall provide for voting on constitutional amendments or other
16 questions submitted;

17 (d) shall be so constructed that, as to primaries where candidates are
18 nominated by political parties, the voter can vote only for the candidates
19 ~~of the political party with which the voter is affiliated or, if not affiliated,~~
20 ~~according to the voter's declaration when applying to vote~~ *for whom the*
21 *voter is qualified to vote according to article 2 and article 33 of chapter*
22 *25 of the Kansas Statutes Annotated and amendments thereto;*

23 (e) shall afford the voter an opportunity to vote for any or all candi-
24 dates for an office for whom the voter is by law entitled to vote and no
25 more, and at the same time shall prevent the voter from voting for the
26 same candidate twice for the same office;

27 (f) shall be so constructed that in presidential elections the presiden-
28 tial electors of any political party may be voted for by one ~~mark or punch~~
29 *action;*

30 (g) shall provide facilities for "write-in" votes;

31 (h) shall provide for voting in absolute secrecy, except as to persons
32 ~~entitled to assistance~~ *who request assistance due to temporary illness or*
33 *disability or a lack of proficiency in reading the English language;*

34 (i) shall reject all votes for an office or upon a question submitted
35 when the voter has cast more votes for such office or upon such question
36 than the voter is entitled to cast; ~~and~~

37 (j) shall provide for instruction of voters on the operation of voting
38 machines, illustrating the manner of voting by the use of such systems.
39 The instruction may include printed materials or demonstration by elec-
40 tion board workers; *and*

41 (k) *shall meet the requirements of the help America vote act of 2002*
42 *and other federal statutes and regulations governing voting equipment.*

43 Sec. 6. K.S.A. 25-4407 is hereby amended to read as follows: 25-

of the political party with which the voter is affiliated or,
if not affiliated, according to the voter's declaration when
applying to vote

1 4407. (a) When a county has voted to use electronic or electromechanical
 2 ~~voting systems or when~~ a board of commissioners and county election
 3 officer have determined that such a voting system shall be used in a
 4 county, the board of county commissioners and the county election officer
 5 shall provide such number of units as shall be necessary to equip voting
 6 places for the use of voters. The board of county commissioners and the
 7 county election officer may purchase systems with payment by install-
 8 ments, may rent or lease systems or may lease machines with option to
 9 purchase with lease payments to be applied on the purchase price. ~~Con-~~
 10 ~~tracts for payment by installments, leases, rental agreements and leases~~
 11 ~~with option to purchase may be for terms not exceeding ten years, and~~
 12 ~~the~~ *The* provisions of article 11 of chapter 10 of the Kansas Statutes
 13 Annotated and K.S.A. 79-2925 to 79-2940, inclusive, and amendments
 14 thereto, shall have no application to such contracts of purchase and lease
 15 or rental agreements, except that where payment is to be made from the
 16 general fund the budget shall provide for the raising of the necessary
 17 yearly amount to make installment or rental payments. Where the au-
 18 thorized maximum levy for the general fund is insufficient for all other
 19 yearly expenses chargeable against such fund and to pay installments or
 20 rentals on the voting systems, or where the aggregate limit for taxes is
 21 such that a sufficient tax for the general fund cannot be levied to pay all
 22 other yearly expenses chargeable against such fund and to pay install-
 23 ments or rentals on the systems, the board of county commissioners may
 24 levy a tax of sufficient millage to provide revenue to pay such installments
 25 or rentals and to pay a portion of the principal and interest on bonds
 26 issued under the authority of K.S.A. 12-1774, and amendments thereto,
 27 by cities located in the county and such levy shall not be within or limited
 28 by any aggregate limit of tax for such county.

Contracts for payment by installments, leases, rental agreements and leases with option to purchase may be for terms not exceeding 10 years, and the

29 (b) For the use of voting systems the board of county commissioners
 30 may pay the same out of the general fund of such county, or issue time
 31 warrants bearing not to exceed five percent interest and payable by not
 32 more than three annual tax levies of not to exceed two mills which shall
 33 not be within or limited by any aggregate tax levy applying to such county
 34 or issue general obligation bonds of such county, such bonds not to be
 35 limited by any bonded debt limit and such bonds shall not be considered
 36 in determining the bonded debt of the county for the purpose of issuing
 37 bonds for other purposes.

38 (c) No tax shall be levied under this section, nor shall any moneys be
 39 paid from any fund under authority of this section for any contract to
 40 purchase, lease or rent any electronic or electromechanical voting system
 41 or equipment thereof, if approval of such system or equipment has been
 42 rescinded by the secretary of state.

43 (d) *The secretary of state may purchase, rent or lease voting equip-*

1 ~~ment for the purpose of providing such equipment to counties pursuant~~
2 ~~to the provisions of the help America vote act of 2002, which requires~~
3 ~~each polling place to be equipped with at least one voting device which~~
4 ~~is accessible for individuals with disabilities, including nonvisual acces-~~
5 ~~sibility for the blind and visually impaired, in a manner that provides the~~
6 ~~same opportunity for access and participation (including privacy and in-~~
7 ~~dependence) as for other voters.~~

8 Sec. 7. K.S.A. 25-4409 is hereby amended to read as follows: 25-
9 4409. (a) In any voting area where electronic or electromechanical voting
10 systems are used, the county election officer shall provide an adequate
11 number of units of the systems to allow all voters expected by the county
12 election officer to vote at such voting place.

13 (b) ~~The ballot information, whether placed on the ballot or on the~~
14 ~~marking device, shall, as far as practicable, be in the order of arrangement~~
15 ~~provided for paper ballots except that such information may be in vertical~~
16 ~~or horizontal rows, or in a number of separate pages. Ballots for all ques-~~
17 ~~tions must be provided in the same manner and where ballots are placed~~
18 ~~in a marking device, they must be arranged on or in the marking device~~
19 ~~in the places provided for such purpose. Voting squares or ovals may be~~
20 ~~before or after the names of candidates and statements of questions, and~~
21 ~~shall be of such size as is compatible with the type of system used. Ballots~~
22 ~~and ballot labels shall be printed. Ballot information shall be displayed in~~
23 ~~as plain clear type and size as the ballot spaces will reasonably permit.~~
24 ~~Tear off stubs shall be of a size suitable for the ballots or ballot cards~~
25 ~~used and for the requirements of the marking device. Where candidate~~
26 ~~rotation is used, each type of ballot within a voting area shall be of the~~
27 ~~same rotation series. The ballots or ballot cards may contain special~~
28 ~~printed marks and holes as required for proper positioning and reading~~
29 ~~of the ballots by the automatic tabulating equipment. Where candidate~~
30 ~~rotation is used, the voting equipment shall be capable of meeting the~~
31 ~~requirements otherwise provided in law.~~

32 (c) A separate write-in ballot, which may be in the form of a paper
33 ballot, ~~card or envelope in which the elector places his or her ballot card~~
34 ~~after voting~~, shall be provided where necessary to permit electors to write
35 in the names of persons whose names are not on the ballot.

36 (d) ~~The county election officer shall cause the marking devices to be~~
37 ~~put in order, set, adjusted and made ready for voting when delivered to~~
38 ~~the election precincts. Before the opening of the polls the election judges~~
39 ~~shall compare the ballots or ballot labels with the sample ballots fur-~~
40 ~~nished, and see that the names, numbers and letters ballot information~~
41 ~~thereon agree agrees and shall certify thereto on forms provided for this~~
42 ~~purpose. The certification shall be filed with the election returns.~~

43 Sec. 8. K.S.A. 25-4410 is hereby amended to read as follows: 25-

1 shall immediately cancel the defective ballot card by writing on the back
 2 of the ballot card the word "SPOILED" in ink and without detaching the
 3 ballot stub, shall place the ballot in the container for voided ballots in a
 4 manner that does not expose the choices of the voter. The voter shall
 5 only be allowed to follow this procedure three (3) times at any election.

6 ~~—(g) Where ballot cards are used, after the voter has marked his or her~~
 7 ~~ballot card, such voter shall place it inside the envelope provided for this~~
 8 ~~purpose and return it to the judge. The judge shall remove the ballot stub~~
 9 ~~and deposit such stub and the envelope with the ballot card inside in the~~
 10 ~~ballot box.~~

11 Sec. 9. K.S.A. 25-4411 is hereby amended to read as follows: 25-
 12 4411. (a) The vote tabulation equipment may be located at any place
 13 within the county approved by the county election officer.

14 (b) Within five ~~(5)~~ days prior to the date of the election, the county
 15 election officer shall have the automatic tabulating equipment tested to
 16 ascertain that the equipment will correctly count the votes cast for all
 17 offices and on all ~~measures~~ *questions submitted*. Public notice of the time
 18 and place of the test shall be given at least ~~forty-eight (48)~~ 48 hours prior
 19 thereto by publication once in a newspaper of general circulation in the
 20 county or city where such equipment is to be used. The test shall be
 21 observed by at least two (2) election inspectors, who shall not be of the
 22 same political party, and shall be open to representatives of the political
 23 parties, candidates, the press and the public. The test shall be conducted
 24 by processing a preaudited group of ballots and ~~punched or marked as~~
 25 *marked* to record a predetermined number of valid votes for each can-
 26 didate and on each measure, and shall include for each office one or more
 27 ballots which have votes in excess of the number allowed by law in order
 28 to test the ability of the automatic tabulating equipment to reject such
 29 votes. If any error is detected, the cause therefor shall be ascertained and
 30 corrected and an errorless count shall be made before the automatic
 31 tabulating equipment is approved. ~~The test shall be repeated immediately~~
 32 ~~before the start of the official count of the ballots, and at the conclusion~~
 33 ~~of the official count in the same manner as set forth above.~~ After the
 34 completion of the count, the programs used and ballots shall be sealed,
 35 retained and disposed of in the same manner as paper ballots.

36 Sec. 10. K.S.A. 25-4412 is hereby amended to read as follows: 25-
 37 4412. (a) In voting areas where electronic or electromechanical voting
 38 systems are used, as soon as the polls are closed, ~~the election supervising~~
 39 ~~judge shall secure the [marking devices] against to prevent further voting.~~
 40 The judge shall thereafter open the ballot box and count the number of
 41 ballots or envelopes containing ballots that have been cast to determine
 42 that the number of ballots ~~does not exceed~~ *equals* the number of voters
 43 shown on the poll book. If there is ~~an excess~~ *a discrepancy*, this fact shall

[voting equipment

SENATE BILL No. 143

By Committee on Elections and Local Government

1-31

9 AN ACT concerning elections; relating to electronic and electromechanical
10 voting systems; amending K.S.A. 25-4401, 25-4403, 25-4404, 25-
11 4405, 25-4406, 25-4407, 25-4409, 25-4410, 25-4411, 25-4412, 25-4413
12 and 25-4414 and repealing the existing sections; also repealing K.S.A.
13 25-1307, 25-1308, 25-1309, 25-1310, 25-1311, 25-1312, 25-1313, 25-
14 1314, 25-1315, 25-1317, 25-1318, 25-1319, 25-1320, 25-1321, 25-1322,
15 25-1324, 25-1325, 25-1326, 25-1327, 25-1328, 25-1329, 25-1330, 25-
16 1331, 25-1332, 25-1333, 25-1334, 25-1335, 25-1336, 25-1337, 25-1338,
17 25-1339, 25-1341 and 25-1343.
18

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

20 Section 1. K.S.A. 25-4401 is hereby amended to read as follows: 25-
21 4401. As used in this act unless the context otherwise requires:

22 (a) ~~“Automatic tabulating equipment” includes apparatus necessary~~
23 ~~to examine automatically and count votes as designated on ballots and~~
24 ~~data processing machines which can be used for counting ballots and~~
25 ~~tabulating results.~~

26 ~~—(b) “Ballot card” means a ballot which is voted by the process of~~
27 ~~punching.~~

28 ~~—(c) “Ballot labels” means the cards, papers, booklet, pages or other~~
29 ~~material containing the names of offices and candidates and statements~~
30 ~~of measures to be voted on.~~

31 ~~—(d) “Ballot” may include ballot cards, ballot labels and paper ballots~~
32 ~~an electronic display or printed document containing the offices and ques-~~
33 ~~tions on which voters in a specified voting area are eligible to vote.~~

34 ~~(e) (b) “Counting location” means the location in the county selected~~
35 ~~by the county election officer for the automatic processing or counting,~~
36 ~~or both, of ballots.~~

37 ~~(f) (c) “Electronic or electromechanical voting system” means a sys-~~
38 ~~tem of casting votes by use of marking devices and tabulating ballots~~
39 ~~employing automatic tabulating equipment or data processing equipment~~
40 ~~including a direct recording electronic system.~~

41 (d) *“Direct recording electronic system” means a system that records*
42 *votes by means of a ballot display provided with mechanical or electro-*
43 *optical components that can be activated by the voter, that processes data*

1 25-1337, 25-1338, 25-1339, 25-1341, 25-1343, 25-4401, 25-4403, 25-
2 4404, 25-4405, 25-4406, 25-4407, 25-4409, 25-4410, 25-4411, 25-4412,
3 25-4413 and 25-4414 are hereby repealed.

4 Sec. 16. This act shall take effect and be in force from and after its
5 publication in the statute book.