

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 22, 2005 in Room 423-S of the Capitol.

Committee members absent: Kay O'Connor - excused

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

Conferees appearing before the committee: None

Others attending: See attached list.

**SB 80 - Open records; public agency; certain records excluded.** Chairman Huelskamp announced that this bill has been blessed to continue in subcommittee.

**SB 142 - Elections; security of advance voting ballots.** Potential amendments were provided as suggested by the Secretary of State's office (Attachment 1). It was moved by Senator O'Connor and seconded by Senator Betts to amend the bill as presented. The motion carried.

It was moved by Senator O'Connor and seconded by Senator Betts to report the bill favorably as amended. The motion carried.

**SB 34 - Continuation of certain exceptions to disclosure of records.** Chairman Huelskamp apologized that the bill was not heard until yesterday and needs to be worked today. He was of the understanding that the House of Representatives planned to work a corresponding bill. The chairman suggested an amendment to extend the exceptions for just one year to permit time for more careful consideration. Senator O'Connor added that some exceptions were worked very quickly during the summer session and still deserve more time. A potential amendment was distributed (Attachment 2) which will extend the exceptions for one year. It was moved by Senator O'Connor and seconded by Senator Peterson to amend the bill as presented. The motion to amend carried.

A potential amendment was distributed (Attachment 3) to add the definition for "Clearly unwarranted invasion of personal privacy". It was moved by Senator O'Connor and seconded by Senator Betts to amend the bill as presented. The motion to amend carried.

It was moved by Senator Francisco and seconded by Senator Pyle to pass this bill favorably as amended. The motion carried.

**SB 164 - Cities; quarterly reports, publication of.** It was moved by Senator Betts and seconded by Senator Donovan to amend this bill by adding HB 2083 into SB 164 with the entire bill taking effect from and after its publication in the Kansas Register. Copies of HB 2083 and its supplemental note were provided in the committee bill books and are not attached to these minutes. Mike Heim, committee staff, fielded questions about dual majority. The motion to amend carried with Senators Reitz and Wilson asking to have their opposition noted in the minutes.

It was moved by Senator Donovan and seconded by Senator Francisco to amend line 16 on page 2 to permit 180 days instead of the 60 as printed. The motion to amend carried.

It was moved by Senator Betts and seconded by Senator O'Connor to pass this bill favorably as amended. The motion carried with Senators Reitz and Wilson asking to have their opposition noted in the minutes.

There being no further business, the meeting was adjourned at 2:04 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 22, 2005

Please sign in with **BLACK Ink.**

Name	Representing
DICK CARTER	TIAK
Sharon Joseph	Ks ADAAPT
Michael Byington	Ks Assn F/A Blind & Visually Impaired
Kevin Sisk	TILRC
Ashley Sheard	Lexxa Chamber
Danielle Hox	Johnson County Govt
Harriet Lange	Ks Assn of Broadcasters
Jesse BORTON	KSOS
Ron Seiber	Heinlaw Firm
Richard Gannon	KPA
Doug Anstaeht	KPA
Brad Bryant	Sec. of state
Erik Sartorius	City of Overland Park
Rebecca Bailey	KMS
Jm Edwards	KASB
SCOTT SCHNEIDER	CITY OF WICHITA
Melissa Wangemann	Sec of state
Martin Hauer	Hauer's Capital Repers

SENATE BILL No. 142

By Committee on Elections and Local Government

1-31

9 AN ACT concerning elections; relating to advance voting ballots; amend-  
10 ing K.S.A. 25-1132 and 25-1136 and K.S.A. 2004 Supp. 25-1124 and  
11 25-1128 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 2004 Supp. 25-1124 is hereby amended to read as  
15 follows: 25-1124. (a) Upon receipt of the advance voting ballot, the voter  
16 shall cast such voter's vote as follows: The voter shall make a cross or  
17 check mark in the square or parentheses opposite the name of each can-  
18 didate or question for whom the voter desires to vote. The voter shall  
19 make no other mark, and shall allow no other person to make any mark,  
20 upon such ballot. If the advance voting ballot was transmitted by mail,  
21 the voter personally shall place the ballot in the ballot envelope bearing  
22 the same number as the ballot and seal the envelope. The voter shall  
23 complete the form on the ballot envelope and shall sign the same. Except  
24 as provided by K.S.A. 25-2908, and amendments thereto, the ballot en-  
25 velope shall be mailed or otherwise transmitted to the county election  
26 officer. If the advance voting ballot was transmitted to the voter in person  
27 in the office of the county election officer or at a satellite advance voting  
28 site, the voter may deposit such ballot into a locked ballot box without an  
29 envelope.

30 (b) Any ~~sick, physically disabled or illiterate~~ voter who *has a tempo-*  
31 *rary illness or disability or who is not proficient in reading the English*  
32 *language and is unable to apply for or mark or transmit an advance voting*  
33 *ballot, may request assistance by a person who has signed a statement*  
34 *required by subsection (d) in applying for or marking an advance voting*  
35 *ballot.*

36 (c) Any voted ballot may be transmitted to the county election officer  
37 by the voter or by another person ~~upon request of~~ the voter. Any such  
38 voted ballot shall be transmitted to the county election officer before the  
39 close of the polls on election day.

40 (d) The county election officer shall allow a person to assist a ~~sick,~~  
41 ~~physically disabled or illiterate~~ voter *who has a temporary illness or dis-*  
42 *ability or who is not proficient in reading the English language* in applying  
43 for or marking an application or advance voting ballot, provided a written

designated in writing by

1 one kind of advance voting ballot at a particular election, or in a declaration form on an advance voting ballot envelope.

2  
3 ~~(f) Nothing in this section shall be construed to prohibit any person from mailing, carrying or otherwise conveying advance voting ballots or sets of advance voting ballots to the county election officer upon request of advance voting voters.~~

4  
5  
6  
7 (g) A voter may return such voter's advance voting ballot to the county election officer by personal delivery or by mail. ~~Upon request of the voter, a member of the voter's family may return the advance voting ballot by personal delivery or mail.~~

8  
9  
10  
11 ~~(g) (h) Violation of any provision of this section is a class C misdemeanor level 9 nonperson felony.~~

12  
13 Sec. 3. K.S.A. 25-1132 is hereby amended to read as follows: 25-1132. (a) All advance voting ballots which are received in the office of the county election officer not later than the hour for closing of the polls on the date of any election specified in subsection (b) of K.S.A. 25-1122 and amendments thereto, shall be delivered by the county election officer to the appropriate special election board provided for in K.S.A. 25-1133 and amendments thereto.

14  
15  
16  
17  
18  
19  
20 (b) Except as provided in subsection (c), upon receipt of the advance voting ballot, the county election officer shall compare the voter's signature on the ballot envelope with the voter's signature on the voter's application for registration to verify that the advance voting ballot was submitted by the registered voter.

21  
22  
23  
24 (c) The provisions of subsection (b) shall not apply to any advance voting ballot which:

- 25  
26  
27 (1) Was submitted by the voter at the election officer's office; or  
28 (2) is accompanied by a statement from a person who provided assistance to a voter who has a temporary illness or disability or who is not proficient in reading the English language in accordance with K.S.A. 25-1124 and amendments thereto.

29  
30  
31  
32 Sec. 4. K.S.A. 25-1136 is hereby amended to read as follows: 25-1136. (a) The vote of any advance voting voter may be challenged in the same manner as other votes are challenged, as nearly as may be, and the judges of the special election board shall determine the validity of each advance voting ballot. Whenever the judges determine that the form accompanying an advance voting ballot is insufficient, or that the voter is not a registered voter, or the challenge is otherwise sustained, the advance voting ballot envelope shall not be opened. In all such cases, the judges shall endorse on the back of the envelope the word "provisional" and state the reason for sustaining the challenge.

33  
34  
35  
36  
37  
38  
39  
40  
41  
42 (b) ~~Any~~ An advance voting ballot envelope which has not been signed shall not be opened, and no vote on the ballot therein shall be counted.

Upon written designation by the voter, a person other than the voter may return the advance voting ballot by personal delivery or mail. Any such person designated by the voter shall sign a statement that such person has not exercised undue influence on the voting decisions of the voter and agrees to deliver the ballot as directed by the voter

If the signatures do not match, the county election officer shall make a reasonable effort to contact the voter and verify the authenticity of the signature.

1 ~~Such envelope or if the envelope has not been signed. If the signature on~~  
 2 ~~the envelope does not match the voter's signature on the voter registration~~  
 3 ~~records, such ballot shall be challenged in the same manner in which~~  
 4 other votes are challenged.

and the county election officer is unable to verify that the voter signed the ballot envelope,

5 (c) Whenever it shall be made to appear to the judges of a special  
 6 election board by sufficient proof that an advance voting voter has died,  
 7 the envelope containing the advance voting ballot of such deceased voter  
 8 shall not be opened. In all such cases, the judges shall endorse on the  
 9 back of the envelope the word "provisional" and the reason for sustaining  
 10 the challenge.

11 (d) If objection is made to an advance voting ballot because of form,  
 12 condition, or marking thereof, the ballot shall be marked "void" if the  
 13 judges uphold the objection to the entire ballot, and otherwise shall be  
 14 marked on the back thereof, "objected to" with a statement of the sub-  
 15 stance of the objection.

16 (e) Void, provisional and objected to advance voting ballots shall be  
 17 transmitted to the county election officer in the same manner as person-  
 18 ally cast provisional ballots are transmitted but shall be placed in separate  
 19 envelopes or sacks, appropriately labeled and sealed. Votes contained in  
 20 void and provisional advance voting ballots shall not be included in the  
 21 total of votes certified by the special election board. Void, provisional and  
 22 objected to advance voting ballots shall be reviewed by the board of  
 23 county canvassers, and such board shall finally determine the acceptance  
 24 or rejection of each void, provisional or objected to ballot.

25 Sec. 5. K.S.A. 25-1132 and 25-1136 and K.S.A. 2004 Supp. 25-1124  
 26 and 25-1128 are hereby repealed.

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

# SENATE BILL No. 34

By Committee on Elections and Local Government

1-13

the Kansas open records act; pertaining to definitions; pertaining to

45-217 and

9 AN ACT concerning exceptions to disclosure of records; amending  
10 K.S.A. 45-229 and repealing the existing section.

sections

2

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

12 Section 1, K.S.A. 45-229 is hereby amended to read as follows: 45-  
13 229. (a) It is the intent of the legislature that exceptions to disclosure  
14 under the open records act shall be created or maintained only if:

INSERT NEW SECTION ATTACHED.

15 (1) The public record is of a sensitive or personal nature concerning  
16 individuals;

17 (2) the public record is necessary for the effective and efficient ad-  
18 ministration of a governmental program; or

19 (3) the public record affects confidential information. The mainte-  
20 nance or creation of an exception to disclosure must be compelled as  
21 measured by these criteria. Further, the legislature finds that the public  
22 has a right to have access to public records unless the criteria in this  
23 section for restricting such access to a public record are met and the  
24 criteria are considered during legislative review in connection with the  
25 particular exception to disclosure to be significant enough to override the  
26 strong public policy of open government. To strengthen the policy of open  
27 government, the legislature shall consider the criteria in this section be-  
28 fore enacting an exception to disclosure.

Subject to the provisions of subsection(h), all

29 (b) ~~All~~ exceptions to disclosure in existence on July 1, 2000, shall  
30 expire on July 1, 2005, and any new exception to disclosure or substantial  
31 amendment of an existing exception shall expire on July 1 of the fifth year  
32 after enactment of the new exception or substantial amendment, unless  
33 the legislature acts to reenact *continue* the exception. A law that enacts a  
34 new exception or substantially amends an existing exception shall state  
35 that the exception expires at the end of five years and that the exception  
36 shall be reviewed by the legislature before the scheduled date.

37 (c) For purposes of this section, an exception is substantially amended  
38 if the amendment expands the scope of the exception to include more  
39 records or information. An exception is not substantially amended if the  
40 amendment narrows the scope of the exception.

41 (d) This section is not intended to repeal an exception that has been  
42 amended following legislative review before the scheduled repeal of the  
43

2-2

1 Only information that would identify the individuals may be excepted  
2 under this paragraph; or

3 (C) protects information of a confidential nature concerning entities,  
4 including, but not limited to, a formula, pattern, device, combination of  
5 devices, or compilation of information which is used to protect or further  
6 a business advantage over those who do not know or use it, the disclosure  
7 of which information would injure the affected entity in the marketplace.

8 (3) Records made before the date of the expiration of an exception  
9 shall be subject to disclosure as otherwise provided by law. In deciding  
10 whether the records shall be made public, the legislature shall consider  
11 whether the damage or loss to persons or entities uniquely affected by  
12 the exception of the type specified in paragraph (2)(B) or (2)(C) of this  
13 subsection (h) would occur if the records were made public.

14 (h) *Exceptions contained in the following statutes as certified by the*  
15 *revisor of statutes to the president of the senate and the speaker of the*  
16 *house of representatives pursuant to subsection (e) of this section on June*  
17 *1, 2004, are hereby continued in existence and shall not expire under the*

18 *provisions of this section:* 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217,  
19 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516,  
20 16-715, 16a-2-304, 17-1312e, 17-2227, 17-5832, 17-7503, 17-7505, 17-  
21 7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909,  
22 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251,  
23 38-1508, 38-1520, 38-1565, 38-1609, 38-1610, 38-1618, 38-1664, 39-  
24 709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-  
25 2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-  
26 3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 44-510j,  
27 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, 45-221, 46-  
28 256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406,  
29 49-427, 55-1,102, 56-1a606, 56-1a607, 56a-1201, 56a-1202, 58-4114, 59-  
30 2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3335, 60-3336, 65-102b,  
31 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113, 65-1,116,  
32 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172,  
33 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-  
34 1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-  
35 3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4608, 65-4922, 65-  
36 4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05,  
37 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a,  
38 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-  
39 8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-50,131, 74-5515,  
40 74-7308, 74-7338, 74-7405a, 74-8104, 74-8307, 74-8705, 74-8804, 74-  
41 9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-  
42 5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-  
43 12b11, 76-3305, 79-1119, 79-1437f, 79-15,118, 79-3234, 79-3395,

until July 1, 2006 at which time such exceptions shall  
expire

7 and ] 1 79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206. are  
 2 Sec. ~~2~~ K.S.A. 45-229 is hereby repealed.  
 3 Sec. ~~3~~ This act shall take effect and be in force from and after its  
 4 publication in the statute book.

3

4

2-3



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

(a) "Business day" means any day other than a Saturday, Sunday or day designated as a holiday by the congress of the United States, by the legislature or governor of this state or by the respective political subdivision of this state.

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

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

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

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

(2) "Public agency" shall not include:

(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity; (B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court; or (C) any officer or employee

of the state or political or taxing subdivision of the state if the state or political or taxing subdivision does not provide the officer or employee with an office which is open to the public at least 35 hours a week.

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

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

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

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

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

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