

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT

The meeting was called to order by Chairman Tim Huelskamp at 1:30 P.M. on March 15, 2005 in Room 423-S of the Capitol.

All members were present.

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

Conferees appearing before the committee:

Pat Michaelis, State Archivist, Kansas State Historical Society

Others attending: See attached list.

**Hearing on HB 2281 - Disposition of gubernatorial records.**

Ken Wilke, committee staff, summarized this bill.

Proponents:

Pat Michaelis provided testimony (Attachment 1) and answered questions.

There being no opponents, Senator Huelskamp closed the hearing.

**Discussion of SB 80 - Open records; public agency; certain records excluded.**

Senator O'Connor reported on the work of the subcommittee and distributed a proposed substitute bill (Attachment 2). There were close to fifty people involved with the subcommittee and she believes all concerns were addressed. There were questions and discussion about the report.

It was moved by Senator O'Connor and seconded by Senator Reitz to adopt the subcommittee balloon amendments. Motion carried.

It was moved by Senator O'Connor and seconded by Senator Wilson that the committee adopt the above as a substitute for SB 80 and report it favorably. Motion carried.

Senators Wilson, Francisco, and Reitz thanked the subcommittee for doing a wonderful job. They felt the subcommittee did a remarkable job of sorting through a difficult situation and reaching a positive solution.

**Discussion of HB 2243 - Lan-Del joint water districts; transfer of assets, liability and territory.**

Senator Francisco reported that she is still waiting on language from Lansing. It was agreed to hold this bill for discussion at the next meeting.

**Discussion of HB 2118 - Cemetery merchandise trust funds; disclosure of certain information.**

Senator Betts discussed this issue with a researcher, including a situation where a farmer pulled headstones from a railroad cemetery. Senator Pyle expressed concern about providing access while protecting the rights of the property owner. Senator Donovan suggested that this is a complicated issue that other states have probably already addressed. He recommended that Kansas research options before taking action. No action was taken.

**Discussion of HB 2018 - Acquisition of rural water district by another district.**

Senator Francisco asked about an amendment for HB 2018 related to the number of people on the board, etc. It was not ready.

**Closing**

There being no further business, the meeting was adjourned at 2:20 p.m.



**Testimony Before the Senate Committee on Elections and Local Government  
Regarding HB 2281, An Act Concerning governor's records  
Patricia A. Michaelis, State Archivist, Kansas State Historical Society  
March 15, 2005**

**General Remarks**

We are very pleased to see this bill being considered. We feel it clarifies much of the ambiguity in the existing statute regarding disposition of and access to governor's records. The records of the governor possess great historical significance and the Kansas State Historical Society is committed to devoting the necessary resources to preserve and provide access to these records for future generations. This bill provides for opening the records of the governor to researchers in a more timely manner than the existing statute. Any costs associated with this bill are costs the Historical Society is committed to absorbing as part of its duties to arrange and describe the records of the governor and to make them available to the public. The House Committee on Governmental Organization and Elections addressed a number of concerns that we had about the bill and these are reflected in the bill as amended by the Committee and passed by the House. Therefore, we support the passage of this bill in its current form.

SENATE BILL No. 80

By Committee on Elections and Local Government

1-21

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

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

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

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

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

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

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

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

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

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

certain public funds; relating to records concerning the  
expenditure thereof

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

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

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

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

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

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

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

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

2 36 Sec. 4. This act shall take effect and be in force from and after its  
37 publication in the statute book.

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

(b) (1) Except as provided in paragraph (3), any not for  
profit entity that receives public funds that is required by  
law or the terms of a grant, contract or other agreement  
to file a written financial report which includes the  
receipt of public funds and the expenditure of such  
funds with an agency of the United States, an agency of  
this state, or any political or taxing subdivision thereof,  
shall be deemed to have fulfilled the requirements of  
this section upon filing such report. Otherwise an  
itemized invoice or statement by the not for profit entity  
of the amount of public funds received and the  
expenditure thereof shall be deemed to have complied  
with the requirements of this section when such itemized  
invoice or statement is filed with an agency of the  
United States, an agency of this state, or any political or  
taxing subdivision thereof, that provided the public  
funds to the not for profit entity.

(2) Any report referred to in paragraph (1) of this  
subsection, shall be deemed to be a public record of the  
agency of this state or any political or taxing subdivision  
thereof and subject to inspection or disclosure in  
accordance with the Kansas open records act.

(3) Any not for profit entity which receives public funds  
may file in the office of the secretary of state or make  
available for review in such not for profit entity's office,  
a copy of the detailed audit or accounting of public  
funds received by such not for profit entity.

(c) Each not for profit entity may charge and require  
advance payment of a reasonable fee for providing  
access to or furnishing copies of documentation of the  
receipt and expenditure of public funds as required by  
this section. Such fee shall be determined in the same

manner as for a public agency pursuant to K.S.A. 45-219  
and amendments thereto. A fee for copies of  
documentation of the receipt and expenditure of public  
funds which is equal to or less than \$.25 per page shall  
be deemed a reasonable fee.

(d) The provisions of this section shall not apply to any:

- (1) Health care provider;
- (2) individual person;
- (3) for profit corporation; or
- (4) partnership.

(e) For the purposes of this section: (1) "Health care  
provider" shall have the meaning ascribed to it in K.S.A.  
65-4915 and amendments thereto. Health care provider  
shall also include any:

- (A) Not for profit dental service corporation  
doing business in this state pursuant to K.S.A.  
40-19a01 et seq. and amendments thereto;
  - (B) Not for profit medical and hospital  
corporation doing business in this state pursuant  
to K.S.A. 40-19c01 et seq. and amendments  
thereto;
  - (C) indigent health care clinic as such term is  
defined in K.S.A. 75-6102 and amendments  
thereto; and
  - (D) adult care home as such term is defined in  
K.S.A. 39-923 and amendments thereto.
- (2) "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.

2-2