

MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 P.M. on February 9, 2006 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Legislative Research Department
Martha Dorsey, Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:

Brad Bryan, Office of the Secretary of State
Don Merriman, Saline County
Jamie Shew, Douglas County
Brian Newby, Johnson County
Bill Gale, Sedgwick County
Richard Gannon, Kansas Press Association
Harriet Lange, Kansas Association of Broadcasters
Janis McMillen, League of Women Voters of Kansas
Molly Baumgartner
Mark Tallman, Kansas Association of School Boards
Randall Allen, Kansas Association of Counties
Diane Gjerstad, Wichita Public Schools
Sandy Jacquot, League of Kansas Municipalities
Jerry Slaughter, Kansas Medical Society
Eric Sartorius, City of Overland Park

Others attending:

See attached list.

Chairman Vickrey opened the hearing on:

HB 2744 **Advance voting; satellite voting**

Brad Bryant, Deputy Assistant Secretary of State, testified in support of the bill (Attachment 1). He said the bill would allow more counties to establish satellite advance voting sites. He explained that current law restricts satellite advance voting to those counties with populations greater than 250,000 (Johnson and Sedgwick Counties).

Don Merriman, Saline County Election Officer and County Clerk, testified in support of the bill (Attachment 2). He stated he favors making voting more available and accessible for the voting public.

Jamie Shew, Douglas County Clerk, testified in support of the bill (Attachment 3). He stated that by currently allowing only two counties the privilege of additional access to the polls, citizens in the other counties are denied the same right.

Brian Newby, Johnson County Election Commissioner, testified in support of the bill (Attachment 4). He said that allowing advance voting universally would further ensure a level playing field for all candidates in races that cross county lines.

Bill Gale, Sedgwick County Election Commissioner, testified in support of the bill (Attachment 5). He explained that in-person advance voting is the fastest growing advance voting option.

Written testimony in support of the bill was submitted by R.J. Wilson, Crawford County Clerk (Attachment 6).

Chairman Vickrey closed the hearing on **HB 2744**.

Chairman Vickrey opened the hearing on:

HB 2719 **Open meetings; recording of closed or executive sessions**

Richard Gannon, Kansas Press Association, presented the written testimony of Doug Anstaett (Attachment 7). Mr. Anstaett's testimony, in support of the bill, explained that the bill gives the public and the press a realistic opportunity to make sure nothing else, nothing illegal, is being discussed when elected officials go behind closed doors.

CONTINUATION SHEET

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on February 9, 2006 in Room 519-S of the Capitol.

Janis McMillen, League of Women Voters of Kansas, testified in support of the bill ([Attachment 8](#)). She explained that the proposed legislation provides an avenue for challenging the request or need for a closed meeting, before the meeting actually occurs.

Harriet Lange, Kansas Association of Broadcasters, testified in support of the bill ([Attachment 9](#)). She said that the potential always exists for public distrust when executive sessions by public bodies occur.

Molly Baumgartner testified in support of the bill ([Attachment 10](#)). She explained that the passage of this bill will offer a means for elected officials to verify that executive sessions are lawful.

Written testimony in support of the bill was submitted by Randy Brown, Kansas Sunshine Coalition for Open Government ([Attachment 11](#)).

Mark Tallman, Kansas Association of School Boards, testified in opposition to the bill ([Attachment 12](#)). He stated that the existence of recordings will inevitably raise issues about the quality and security of the recordings.

Randall Allen, Kansas Association of Counties, testified in opposition to the bill ([Attachment 13](#)). He said they oppose the bill because they are not aware that there is a problem. He testified that the bills seems to be a solution in search of a problem.

Sandy Jacquot, League of Kansas Municipalities, testified in opposition to the bill ([Attachment 14](#)). She explained that the bill would radically alter the delicate balance that the Kansas Open Meetings Act (KOMA) currently strikes between the need for certain privacy and the right of the public to have access to information.

Diane Gjerstad, Wichita Public Schools, testified in opposition to the bill ([Attachment 15](#)). She reminded that the purpose of an executive session is not to protect the privacy of the elected public officials, but to protect the privacy of student information or employee information or the business which would put the public body at a disadvantage if done in public, for example, a land acquisition.

Eric Sartorius, City of Overland Park, testified in opposition to the bill ([Attachment 16](#)). He explained that opening executive sessions to tape recordings, no matter how well intentioned, will compromise the purpose of the closed session.

Written testimony in opposition to the bill was submitted by Fred Luck, Kansas Hospital Association ([Attachment 17](#)).

Jerry Slaughter, Kansas Medical Society, addressed the Committee but provided no written testimony. He did distribute a proposed amendment ([Attachment 18](#)).

Approval of Minutes

Rep. Lane made a motion to approve the minutes of the February 7, 2006 meeting. Rep. Huebert seconded the motion. Motion Carried.

Chairman Vickrey adjourned the meeting.

The next meeting is scheduled for Tuesday, February 14, 2006.

**House Governmental Organization and Elections
Committee**

Date 2-9-2006

Name	Representing
Richard Genners	KPA
Molly Baumgardner	self - public
Randall Allen	Ks. Association of Counties
Sandy Jaquost	LKM
Don Merriman	Saline Co. Clerk/Elections
BILL GALE	SEDLWICK COUNTY ELECTIONS
Brian Newby	Johnson County Election Office
Hamilton Lantz	Ks Assn B Casters
LUKE BELL	KEARNEY
Charlotte Esau	self
Stephanie Wing	Secretary of State
M. Ke Huttles	USA
Erik Sartorius	City of Overland Park
Kot May	LBR
Chad Austin	KHA
Fred Luckey	KHA
DAN MORIN	KMS
JERRY SLAUGHTER	
Jamie Epstein	Rep. storm
Winston Brooks	Wich. IA Public Schools
Diane Gjerstad	Wichita Public School
Mark Tallman	KASIP
Janis Mc Miller	Ks. L.W.V
Ernestine Krehbiel	KS League of Women Voters

RON THORNBURGH
Secretary of State



Memorial Hall, 1st Floor
120 S. W. 10th Avenue
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STATE OF KANSAS
House Committee on Governmental Organization and Elections

Testimony on House Bill 2744

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

February 9, 2006

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of House Bill 2744. This bill will expand voting opportunities for Kansans by allowing more counties to establish satellite advance voting sites. Current law restricts satellite advance voting to those counties with populations greater than 250,000—Johnson and Sedgwick Counties.

The Secretary of State has frequently proposed and supported legislation to expand voting opportunities, including proposing the original bill to adopt advance voting in 1995. It is imperative that any expansion in voting opportunities be considered only if it can be accomplished with adequate security measures to protect the integrity of the electoral process. The experience we have with satellite voting since its inception in 1999 has proven that it can be done in a secure fashion, and recent technological advancements will enable the effective expansion of satellite advance voting as proposed in this legislation.

We support this expansion of satellite advance voting for the following reasons:

- It represents an expansion of a program that has already proven to be popular among voters.
- It offers voters additional opportunity and convenience, thereby encouraging higher turnout.
- It can be done without compromising the security or integrity of the process.

We recommend the committee report House Bill 2744 favorably for passage. Thank you for your consideration.

House Gov. Org. & Elections
Date: 2-9-2006
Attachment # 1



Saline County Clerk

Donald R. Merriman - County Clerk

Phone: (785) 309-5820

FAX: (785) 309-5826

E-mail: don.merriman@saline.org

www.saline.org

P.O. Box 5040

300 West Ash

Salina, Kansas 67402-5040

February 9, 2006

Honorable Jene Vickrey
Chairperson – Governmental Organization and Elections Committee
And Committee Members

Re: H.B. #2744

Chairman Vickrey:

As Saline County Election Officer and County Clerk, I am supportive of H.B. #2744 to allow any county to plan for and offer Satellite Advance Voting Sites. I am always in favor of making voting more available and accessible for the voting public.

This amendment of K.S.A. 2005 Supp. 25-1122, also, has support of the Kansas County Clerks' and Election Officials' Association and members of the Election Committee of the Association.

Thank you for the time allotted today.

Sincerely,

A handwritten signature in cursive script that reads 'Donald R. Merriman'.

Donald R. Merriman
Saline County Election Officer and County Clerk
(Chair of the Election Committee – KCCEOA)

DRM:ll

House Gov. Org. & Elections

Date: 2-9-2006

Attachment # 2



JAMIE SHEW
DOUGLAS COUNTY CLERK

1100 Massachusetts
Lawrence, KS 66044
Phone: 785-832-5267
Fax: 785-832-5192

Connie S. Ingle
Deputy Clerk - Elections

Marni D. Penrod
Chief Deputy Clerk

House Committee on Governmental Organization and Elections

Testimony on HB 2744

Jamie Shew, Douglas County Clerk

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of HB 2744. This bill represents a great opportunity for the citizens of Douglas County to increase their access to the democratic process. Advance voting has become an increasingly popular way for citizens to participate in elections. During the 2004 General Election, 10,020 citizens advance voted in Douglas County, representing 19.6% of the total cast votes. Of these, 4,661 were in-person advance voters. The 2004 in-person advance totals surpass the *total* number of advance votes cast in 2000, when 4,421 citizens advance voted. In 2000, the advance vote represented 11.10% of the total votes cast. All indications exhibit that participation in advance voting will continue to increase in future elections.

The current law restricts any form of satellite advance voting in Douglas County. As a result, my ability to respond to citizens' needs and increase their opportunities for access to the polls is limited. While most testimonies will concentrate on the impact of advance voting on larger elections, the opportunity presented in this bill for the citizens of my county are best highlighted in an example involving a smaller election.

On December 22, 2005, Baldwin City in Douglas County held a very important special election regarding Sunday liquor sales in response to a citizen petition. The timing of the election caused concern about voter participation. Due to the current law I could not offer in-person advance voting in Baldwin City, which may have increased opportunities for citizen participation. Therefore, under the current law, citizens who live in or around Lawrence have additional access to voting that can not be offered to the other citizens in the county. By approving HB 2744, you will give me the tools to offer equal voting access to *all* voters in Douglas County.

In addition to equal access within the county, approving HB 2744 provides equity throughout the state of Kansas. By allowing only two counties the privilege of additional access to the polls, citizens in the other counties are denied the same right. While offering in-person advance voting may not be the choice for every county, it should at least be an option for those of us who want to meet citizen needs and increase opportunities for their involvement in the elections process.

Thank you for your time, and I am available to stand for any questions.

House Gov. Org. & Elections
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Attachment # 3

Johnson County Election Office



Brian D. Newby
Election Commissioner

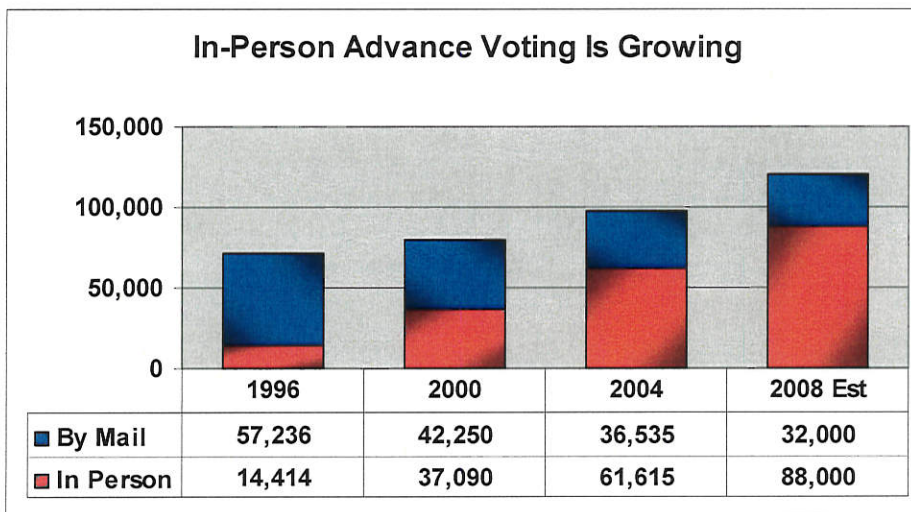
TESTIMONY BEFORE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

Thursday, February 9, 2006

Thank you for the opportunity to speak briefly in support of House Bill 2744.

Although Johnson County has had advance voting for several years, this bill impacts our residents and voters as well in a way I will explain in a moment.

First, however, let me provide a brief history of the impact of advance voting for our presidential elections. The chart below shows the growth of advance voting since 1996. We have seen the number of advance voters in person increase dramatically and we expect continued growth in 2008.



We have utilized 3 advance voting locations in the past and anticipate using either 3 or 4 this fall, with a target of 8 advance voting locations in 2008.

House Gov. Org. & Elections
Date: 2-9-2006
Attachment # 4

Securing polling locations is a major challenge for us. Schools have security apprehensions, churches can be seen by voters as having conflicts of interests in some races, and counties generally do not have funds to pay for polling location rental. So, the movement to advance voting is important as preparation for the potential of having fewer polling locations available on election day.

As time permits, either today or at another time, I would be glad to go through a deep dive of the various benefits and challenges of advance voting, although it is more than fair to say generally that advance voting has been a major success in Johnson County.

Beyond supporting other counties by testifying, I also think there is a fairness aspect that impacts Johnson County races and should be considered by the Committee as another reason to allow statewide advance voting.

Often, races cross county boundaries. For instance, my particular U.S. Congressional Representative has part of his district in Wyandotte and Douglas counties. It's possible that advance voting, for instance, in Johnson County but not in Douglas County could create an unfair advantage or disadvantage for a particular candidate because the voting processes are not uniform between the counties. Allowing advance voting universally would further ensure a level playing field for all candidates in races that cross county lines.

I know your time is short. I support House Bill 2744 and stand for questions.

Thank you.

Brian D. Newby



Historic Courthouse • 510 North Main, Suite 101 • Wichita, Kansas 67203
Telephone 316-660-7100 • Fax 316-660-7125 • www.sedgwickcounty.org/elections

**Testimony before House Governmental Organization and Elections Committee
by Bill Gale, Sedgwick County Election Commissioner**

2/9/06

Thank you for the opportunity to appear before you in support of HB 2744.

I appreciate the chance to highlight some of the benefits of satellite advance voting in Sedgwick County.

- Advance voting grows in popularity with the voters each election cycle.
- In-person advance voting is the fastest growing advance voting option (it increased 50% from the 2000 Presidential election to the next one in 2004, while advance voting by mail decreased by 16%).
- In 2004 and 2005 Sedgwick County experimented with a “roving” satellite that succeeded in providing greater convenience to voters throughout the county.
- We have found that more voters are using the in-person option each day leading up to Election day, with the vast majority doing so the final week before Election day.
- The Sedgwick County Election Office is now working to increase the advance voting satellite options for the 2006 elections with more locations throughout the county in the week before Election day.
- The functionality of the new statewide election computer system and our new voting machines will make it easier for us to provide this popular option to the voters.

These are a few of the reasons why I support HB 2744 and expanding this opportunity to other counties. I am available for any questions you may have.

House Gov. Org. & Elections
Date: 2-9-2006
Attachment # 5

Crawford County Clerk R.J. Wilson

Testimony in support of House
Bill 2744
Provided by R.J. Wilson, Crawford
County Clerk



Mr. Chairman Vickrey and Honorable members of the House Governmental Organization and Elections Committee:

Thank you for this opportunity to submit testimony today in support of House Bill 2744. I certainly wish I were in Topeka with you today, but the pending birth of my third child has been keeping me close to home for several weeks. Julie and I have joked several times when the desire has arisen to travel to Topeka for the purpose of conferring on legislation important to Crawford County that it would be nice if I were in the same area code at least once when she goes into labor. Therefore, I am unable to join you today, but four years as a member of the House Elections Committee (now GO&E) provided me an invaluable opportunity to learn about elections and campaign finance and I will always be eternally grateful for the experience and the friendships fostered during my years in the Kansas Legislature.

As the administration of elections becomes more scrutinized through the final implementation of the Help America Vote Act it becomes more and more important for local election officials to have additional tools at their disposal to assure that every vote is counted and every voice is heard.

I am writing to each of you today to ask for your favorable consideration in providing a powerful and effective tool to my office, and the 104 offices like mine, as we prepare for the 2006 Primary and General elections. Your expansion of Satellite Advance Voting will be of great service to the taxpayer and the voting public of Kansas.

The implementation of electronic voting equipment in every polling place in the state has proven expensive. In Crawford County, the cost of technology is at a minimum \$10,200 per polling place. This cost is forcing many counties to consider consolidation of polling places. As Crawford County moves toward consolidation (50 polling places to fewer than 25) it is clear that polling places on Election Day will become more congested and there will be potential for longer wait times for the voting population. No matter how hard an election official tries to alleviate these problems there is simply a finite number of people you can get in the door and back out the door of a polling place before congestion becomes a problem.

Written testimony in support of HB 2744
Page 1 of 2

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countyclerk@ckt.net ~ phone: 620-724-6115

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Attachment # 6

Crawford County Clerk R.J. Wilson

We plan to add additional boards, more technological assistance, improved polling place design, and a better business process for addressing voters' needs; but in the end our consolidated polling places can only absorb so many people in a limited space in a short amount of time. Furthermore, almost 70% of our county's population resides within, or around Pittsburg, 20 minutes away from the County Courthouse, the only place in our county currently allowed to offer in person advance voting. Satellite Advance Voting will be a useful tool in coping with the size of the community and its distance from the County Seat.

Your committee's thoughtful consideration of expanding satellite advance voting will allow the voting population a more convenient opportunity to vote in advance of the election. More advance voters means less stress for our consolidated polling places on Election Day, and less stress on the polling place equates to a better experience for the voter and more successful administration of the election. For this reason I can not stress enough the importance of more opportunities for advance voting, either by mail or by satellite, for the voting population of our state. Your decisions on this bill will have a profound and lasting positive impact on the administration of elections in this state.

I believe that the fiscal note for this legislation will be manageable for the counties and I believe the rewards will greatly outweigh any potential negatives as we bring better service to the people of Kansas. Thank you for your potentially favorable consideration of HB 2744 and thank you again for the opportunity to testify in writing today.

Best wishes:



R.J. Wilson
Crawford County Clerk

PS: Thank you for introducing this bill as a committee bill and thanks to Representative Sharp for making the introduction.

Written testimony in support of HB 2744
Page 2 of 2

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Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

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Feb. 9, 2006

To: Rep. Jene Vickrey, chairman of the House Governmental Organization and Elections Committee, and committee members

From: Doug Anstaett, executive director, Kansas Press Association

Re: HB 2719

Thank you for the opportunity to address the merits of HB 2719, a bill to require tape recording of executive sessions of public bodies in Kansas under certain circumstances.

The Kansas Open Meetings Act, approved by the Kansas Legislature in the mid-1980s, states in its first sentence that open meetings are the declared policy of Kansas.

Here's what KOMA then says: In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public. It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings ...

That second sentence is a strong admonition to public bodies: Don't go behind closed doors with the intention of subverting KOMA. If you do, you are going against the public policy of the state of Kansas.

So, why do we have KOMA? It's certainly not designed to make life easier for elected officials. Not at all. It's to make sure they realize they operate in the sunshine, even when they wish they could close the door, shut out the public and "speak frankly" with each other.

I was a newspaper reporter, editor and publisher for 30 years before coming to the Kansas Press Association. I heard the arguments through the years for private discussions of public business. "Oh," some of my own friends would argue, "we could do a much better job if it weren't for you pesky reporters and the public listening in on our discussions." They actually believed what they were saying.

Making public policy has often been compared to making sausage. As we all know, the insinuation is that lawmaking and sausage-making are ugly undertakings. Certainly, the process is often tedious, sometimes unappetizing, and even exhausting. But it is that way by design.

Representative government was not designed to be a well-oiled machine. Frankly, our Founding Fathers designed it more like a parking lot with a series of speed bumps along the way to keep us moving forward, yet slowly and methodically. They called those speed bumps checks and balances.

What we're asking for under this bill is a check on the right of our elected officials to meet behind

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Date: 2-9-2006
Attachment # 7

closed doors. We're not asking for a single change in the exceptions in KOMA. If a public body sticks to those subjects — and avoids all others not covered by the motion or allowed by Kansas state law — it has nothing to worry about. Under HB 2719, in the rare instance when a judge is asked to listen to a tape, he or she will be guided by a clear, unambiguous Kansas Open Meetings Act.

What we're asking you to do is give the public and the press a realistic opportunity to make sure nothing else, nothing illegal, is being discussed when our elected officials go behind closed doors.

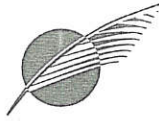
After all, how can the public know what is going on if the means for ascertaining the facts don't exist?

Former President Ronald Reagan had a favorite saying that is fitting for this issue: Trust, but verify. He was referring to the former Soviet Union when he said he would agree to begin reducing the number of our nation's nuclear weapons, but only if the United States retained the right to verify that Soviet missiles were being dismantled and destroyed as well, and not just moved to a new location. He didn't just take their word for it; he instituted safeguards that would prove they were doing what they said they were doing.

That is what we are asking for with this legislation: Trust, but verify. The tape recording of a closed meeting or executive session will provide the verification — if it ever becomes an issue — that the public body followed the law when it went behind closed doors. And, even then, only that portion of the meeting that was conducted illegally will come under scrutiny. Boards, commissions, councils and other public bodies will be able to freely and frankly discuss personnel issues, legal problems and other lawfully allowed topics without fear of disclosure. There will be no chilling effect, unless they veer outside of Kansas public policy as stated in KOMA. If they do violate public policy, they should definitely feel a chill.

We urge you to support HB 2719.

Thank you.



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Feb. 9, 2006

To: Rep. Jene Vickrey, chairman of the House Governmental Organization and Elections Committee, and committee members

From: Kansas Press Association

Re: This is an editorial that ran today in the Hays Daily News by John Montgomery, editor and publisher, on the subject of HB 2719

A proposed measure to audiotape closed-door meetings of city and county commissions and other elected boards is a relatively painless way to enforce the state's open meetings law. Opposition to the bill in the Kansas Legislature is without merit, if not a little suspicious.

The idea has not gotten much traction in the Legislature in recent years. Maybe we need an egregious violation of the open meetings act to reveal the need. But, then, it is hard as it is to prove such wrongdoing.

Yet we know it is not uncommon. A city commission goes into so-called executive session and closes the door to discuss "personnel" or some other blanket reason specifically allowed in the law as an exception to the requirement that meetings should be open to the public. The exceptions to the open meetings rule are not the problem. The question is: Are the conversations always kept on subject?

The proposed bill has a simple solution. The executive sessions would be tape recorded, and then if anyone suspects a violation a judge can listen and make a ruling.

As usual, the local government lobby is out against the bill.

Don Moler, executive director of the League of Kansas Municipalities, said the open meetings law already is restrictive enough. But no one is seeking to make it more restrictive, just to make sure existing law is enforced.

Moler said that taping the closed sessions would "have a chilling effect on open and frank discussion." We cannot imagine why, unless someone feared he was venturing too far off subject. That they would be taped would not mean they would be heard, and then possibly only by a judge.

Moler might be speaking only for himself. If commissioners, council and school board members fear being taped, then we should all fear what sort of business they are conducting behind closed doors.

In other words, fear suggests guilt. Otherwise, no one should be intimidated by this legislation. And, after all, the point is to serve the interests of citizens, not the comfort of officials.



LEAGUE OF WOMEN VOTERS® OF KANSAS

February 9, 2006

The Honorable Jene Vickrey, Chair
Governmental Organization and Elections
The Kansas House of Representatives

President
Janis McMillen
Overland Park

Chairman Vickrey and members of the committee

1st Vice President
Sharon Ailsieger
Wichita

I appreciate the opportunity to speak on behalf of the League of Women Voters of Kansas regarding HB 2719. The League believes that a democratic government depends upon the informed and active participation of its citizens at all levels of government. The League further believes that governmental bodies must protect a citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible. At the same time we recognize, and we support, that there are valid situations that must be discussed in closed or executive sessions by public bodies.

2nd Vice President
Doris Slocombe
Emporia

Secretary
Carol Snyder
Overland Park

The intent of this proposed legislation provides an avenue for challenging the request or need for a closed meeting, before the meeting actually occurs. If a challenge is stated by one member of this public body, there must then be an exact record, via a recording device, of the content of the closed meeting. A member of the public body might be in the best position to recognize that the closed meeting could be construed as a violation, either unintentional or intentional, of the Open Meetings Act.

Directors
Mary Ann Bradford
Topeka

Emma Doherty
Salina

The bill provides safeguards regarding the content of the closed meeting in that the record of the meeting would be sealed and could only be opened under a court order. Further, the court would review the contents to determine what portion of the closed meeting, if any, was inappropriate or was relevant to the challenge.

Gwen Elliott
Topeka

Ellen Estes
Wichita

You may or may not be aware that other states have similar legislation. In just a very quick review, I learned that Iowa, Illinois and Texas all have laws requiring recording of all closed or executive sessions of public bodies. Texas also provides an alternative of having certified minutes of the closed session in lieu of a recording.

Linda Johnson
Manhattan

Bob Kruh
Manhattan

This proposal, while seemingly cumbersome at first reading, could be construed as a protection for members of that public body. If a challenge to the closed meeting comes after the meeting has occurred, and there is no record available regarding the content of the closed meeting, either democratic principles may be compromised, or members of that public body may be at risk in the future should related litigation occur. It is my understanding that current Kansas law prohibits taking minutes of closed sessions, as they would then become part of open records. Currently, the record of the meeting relies solely on the memories of the participants. Those participants may well have different recollections of the discussion.

Carrie Moore
Lawrence

Bill Powell
Salina

HB 2719 offers a reasonable proposal to assure openness in government while protecting the necessary privacy of certain information and/or individuals. It could also serve as a safeguard for the participants of closed meetings.

Janis McMillen
Janis McMillen

House Gov. Org. & Elections
Date: 2-9-2006
Attachment # 8



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Testimony
HB 2719
House Committee on Governmental Organization and Elections
February 9, 2006
By
Harriet Lange, President
Kansas Association of Broadcasters

Mr. Chairman, Members of the Committee, I am Harriet Lange, president of the Kansas Association of Broadcasters (KAB). KAB serves a membership of free-over-the-air local broadcast stations in Kansas. We appreciate the opportunity to appear before you in support of HB 2719.

The potential always exists for public distrust when executive sessions by public bodies occur. The provisions in HB 2719 will help to eliminate that distrust by providing for taping of these closed sessions under certain circumstances. If a member of a public body thinks the potential for a KOMA violation exists, the taping of the executive session will either discourage the violation, or it will document it. Either way, the public wins. If there is no violation or court action alleging a violation, the tape never becomes public. The ability for a public body to freely discuss legitimate sensitive issues in a legitimate closed session is left intact.

We urge you to pass HB 2719. Thank you for your consideration.

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Date: 2-9-2006
Attachment # 9

February 9, 2006

House Committee Hearing
HB 2719

My name is Molly Baumgardner. I have been a teacher and debate/forensics coach at Louisburg High School for the last five years. I also served as a five time, county-wide elected, member of the Johnson County Community College Board of Trustees. JCCC holds the distinction of being the third largest institution of higher education in this great state of Kansas.

I am here today to speak in support of House Bill Number 2719.

I understand that versions of this bill have been repeatedly introduced over the years but have never received serious consideration. For a multitude reasons, I believe the time is right for you to lend your support to this bill.

First, the ability for school boards, community college boards, city commissions, and county commissions to physically record executive sessions is no longer physically and financially prohibitive. Current recording devices are physically much smaller in physical size, making it very easy to store recorded executive sessions. Likewise, the cost for an effective recording device is now a minor expenditure. In addition, most public entities are already recording open meetings as a more efficient means of keeping meeting minutes.

Second, governing entities are facing greater scrutiny from the media and the public. The passage of this bill will offer a means for elected officials to verify that executive sessions are lawful. They would be able to do this in a manner, through court determination. This does not place the process into the hands of another elected or appointed person i.e., the district attorney.

Third, there is empirical evidence that the mere suggestion of recording the behavior of people fosters the most positive response in actual behavior. Elected or appointed officials as well as college presidents, school district superintendents, city managers, and attorneys for the body or agency will be far more likely to abide by the open meetings requirements if there is a recording device at the ready.

Fourth, the proper following of the open meetings act is questionable in Kansas. Spring Hill, Piper, Merriam, and Johnson County have elected/appointed entities have had executive session behavior challenged. New buildings are built but the initial proposals are not made in open session. A vote is taken after lengthy executive sessions without the benefit of public discussion. Motions for action to be taken are prepared prior to executive session.

And fifth, it is my personal experience that executive sessions are abused.

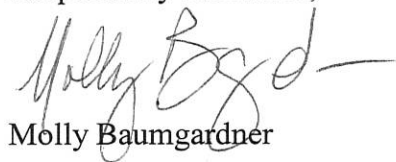
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During my 18 year tenure as an elected board member, the protection of executive session was used for:

- Ad hominem attacks on elected officials
- Discussions about students and employees that had grievances
- Discussions about the living conditions and extra marital relationships of students and employees
- Ad hominem attacks on employee negotiation team members
- Discussions about matters relating to actions adversely affecting a person as an employee of the institution though they had requested a public hearing
- Discussions relating to the proposed new construction of buildings and the expansion of an existing building
- Polling of the board prior to a public vote
- Directing the president to enter into a buyer's contract, on behalf of the college, with three real estate representatives without a public vote
- Discussions of bond referendum strategy
- Discussion of a lobbyist contract for the partner of an appointed board member that was present
- Discussion of a letter from a concerned parent of a student
- Arguments that erupted over the issue of executive session violations

It is difficult for me to imagine that the board I served on was totally unique to all other boards, councils, or commissions throughout the state. When talking to board, commission, and council members, I have learned that the frustrations of not abiding by the limits of executive session are shared by others. I know, as do you, that at times, all governing bodies face difficult issues that are not protected by the executive session. For these reasons, as a policymaker, I urge every one of you to support this bill.

Respectfully submitted,



Molly Baumgardner



Written Testimony

HB 2719

Submitted to the House Committee on Governmental Organization and Elections

Feb. 9, 2006

Randy Brown

Executive Director, Kansas Sunshine Coalition for Open Government

Thanks very much for allowing the Kansas Sunshine Coalition to offer written testimony today in support of HB 2719. The Coalition is an organization of educators, journalists and other citizens that includes the Kansas Professional Chapter of the Society of Professional Journalists, the Kansas Press Association, the Kansas Association of Broadcasters and the Elliott School of Communication at Wichita State University. The Coalition's core belief is that open government is essential to the functioning of our democracy.

We believe that HB 2719, which would require taping of executive sessions of public bodies under minimal circumstances, is a common sense way to increase both the reality and the public's perception of governmental honesty and integrity. Executive sessions by nature breed suspicion. The safeguards in HB 2719 would eliminate some of that suspicion with compromising the ability of public officials to deal with justifiably sensitive issues.

The recording of an executive session begins only if a member of a public body or agency believes the content of the session subverts the intent of the open meetings act. The tape is kept for a year -- under seal from the public. If the session is challenged by court action, a judge steps in and decides the matter. HB 2719 also explicitly provides that the court "shall weigh" any prejudicial effects to the public interest that might result from the public disclosure of the content of the meeting.

I know this is an old and sometimes tiresome issue for some of you. I would just add that in discussing it over the years with scores, if not hundreds, of Kansans, I have yet to talk to one who thinks that the restricted taping of executive sessions is a bad idea.

Thanks again for your time and consideration.

Board of Directors

Ron Keefover, President
Education-Information Officer
Kansas Judicial Center

Doug Anstaett
Executive Director
Kansas Press Association

Nickie Flynn
Assistant News Director
KWCH-TV

Randy Brown
Executive director
Senior Fellow
Elliott School of Communication

Liz Montano
President-elect
News Director
WIBW

Nicholas Jungman
Business reporter
The Wichita Eagle

Buzz Merritt
Editor, retired
The Wichita Eagle

Mike Kautsch
Professor of Law
University of Kansas

Les Anderson
Associate Professor
Elliott School of Communication

Harriet Lange
President
Kansas Association of Broadcasters

John C. Lewis
President
Lewis Legal News, Inc.

Michael W. Merriam
Lawyer

House Gov. Org. & Elections

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KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on **HB 2719**
before the
House Governmental Organization and Elections

by

Mark Tallman, Assistant Executive Director/Advocacy
Kansas Association of School Boards

February 9, 2006

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to comment on **HB 2719**. This bill would amend the Kansas Open Meetings Act to require executive sessions of public bodies be recorded if any member objects to participating on the grounds the action violates or subverts the intent of the Open Meetings Act.

KASB has a long-standing position opposing the recording of executive sessions. We believe that any recording of such a session compromises the purpose and justification of such sessions, which is to protect the privacy interests of individuals or the interests of the public in areas such as negotiations and legal matters. KASB always stresses to our members that executive sessions are only to protect the privacy of other parties, not the school board or its individual members.

We believe the existence of recordings will inevitably raise issues about the quality and security of the recordings. The presence of a recording device could have a chilling effect on the individuals appearing before the board, such as employees, students and parents. Therefore, we oppose **HB 2719**.

Should a member of the public body believe that an executive session is dealing with issues outside the reasons set within the Open Meetings Act, we have a simple solution: do not participate. Leave the meeting immediately. Report your concerns to the appropriate enforcement agency, such as the county attorney, who can initiate an investigation of the matter, including questioning of other members of the public body under oath.

I would also note that KASB has appeared in support of a Senate bill to require training of elected officials regarding the Kansas Open Meeting Act.

Thank you for your consideration.

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KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
concerning
HB 2719
Tape Recording of Executive Sessions
Presented by Randall Allen
Governmental Organization
and Elections Committee
February 9, 2006

Chairman Vickrey and members of the committee, my name is Randall Allen, Executive Director of the Kansas Association of Counties (KAC). I appreciate the opportunity to testify on behalf of the Kansas Association of Counties and our 96 member counties *in opposition to* HB 2719, requiring the taping of closed or executive sessions of governing bodies in certain situations.

The primary reason we are opposed to this bill is that we are not aware that there is a problem. Never once since a bill of this nature was last heard by legislative committee has a member of the press or a member of the public contacted our office saying that there was a situation or concern regarding the content of closed session discussions that merited a bill to resolve. As such, HB 2719 seems to us a solution in search of a problem. Knowing that there are legitimate public policy issues that demand the attention of legislators this year, we ask that the proponents of this legislation do what legislators ask of proponents on other bills, i.e. to first work with affected parties to reach an understanding of different points of view and, if possible, reach a solution short of a legislative remedy. If a problem is identified with the current application of the Kansas Open Records Act which demands a solution, and our association or our members are not willing to discuss a solution(s), then we would understand the advancement of a legislative solution through normal processes. As such, we urge the committee to table this bill. Thank you for the opportunity to comment on HB 2719.

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 members. Inquiries concerning this testimony can be directed to Randall Allen or Judy Moler at the KAC by calling (785) 272-2585.

300 SW 8th Avenue
3rd Floor
Topeka, KS 66603-3912
785•272•2585
Fax 785•272•3585

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League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: House Governmental Organization and Elections Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

DATE: February 9, 2006

RE: Opposition to HB 2719

First, I would like to thank the Committee for allowing the League of Kansas Municipalities to testify today in opposition to HB 2719. This bill would radically alter the delicate balance that the Kansas Open Meetings Act (KOMA) currently strikes between the need for certain privacy and the right of the public to have access to information. In addition, there are protections in the KOMA making this bill unnecessary.

HB 2719 would allow a member of a public body or agency to object to participation in an executive session if that member believes the action violates or "subverts the intent" of the KOMA. At that point, the executive session could only proceed if tape recorded and the tape preserved for at least a year. Then, the tape is subject to review and possible release by a court. First, K.S.A. 75-4320b provides adequate enforcement options for addressing any perceived violation. That statute gives the county or district attorney and the attorney general the ability to subpoena witnesses and documents, take testimony under oath and review any other material pertinent to an investigation. Thus, if a member of the public body was concerned about a violation of the KOMA, he or she could testify as to the violation without the need for a tape recording. In addition, there is nothing preventing any person from declining to go into executive session because that person feels the KOMA may be violated by the action and then that person later making a complaint to the county or district attorney or the attorney general. This proposed legislation is just another example of a solution looking for a problem. The current law is quite adequate to address the issue that this legislation is attempting to regulate.

There are other logistical issues that arise with this legislation. A simple objection, whether or not it is made in good faith, triggers the tape recording of the executive session. If a disgruntled official objects to every executive session, all sessions would have to be recorded. Further, who would be the custodian of these secret, and only subject to court order, tapes? Typically records of this type would be maintained by the city clerk, but if the executive session happened to be about the city clerk, clearly that would be unworkable. Therefore, there would be the possibility that numerous individuals would have to be named custodians of the executive session tapes that are supposed to be privileged. Despite the attempt in this legislation to protect the attorney-client privilege, it is doubtful that the privilege could survive the pitfalls of this bill. I do not believe any attorney would advise their client with a recording device in the room.

www.lkm.org

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Perhaps the most disturbing aspect of this legislation is that it presupposes that local officials and others cannot be trusted to carry out their statutory duties as provided by the KOMA. The League has much more faith in local government officials and believes that the current law is working well. We do not believe that there has been any showing that would support such a drastic and problematic change in the KOMA and would urge this Committee to reject HB 2719. Thank you again for allowing the League to testify in opposition to HB 2719.

Governmental Organizations and Elections
Representative Vickery, Chair

H.B. 2719 Taping of Executive Sessions

February 9, 2006

Diane Gjerstad
Wichita Public Schools

Mr. Chairman and members of the Committee:

First would like to remind the committee that the purpose of an executive session is not to protect the privacy of the elected public officials, but to protect the privacy of student information or employee information or the business which would put the public body at a disadvantage if done in public – a good example would be land acquisition.

I rise in opposition to this bill.

What is very different for school boards is that they deal with highly sensitive information on students under consideration for expulsion or suspension. The privacy of student information is governed by strict rules under FERPA. When a student's conduct results in a recommendation of suspension or expulsion, the parent/guardian has the right to appeal to with the Board of Education. The meeting of the parent, student and Board is held in private under the Executive Session exemption of the Kansas Open Meetings Act. First imagine yourself as a parent in this uncomfortable, difficult and emotional position. You have asked to meet with the Board of Education – you are nervous. You walk into the room, sit down and see a tape recorder running in the middle of the table!! Can you imagine the anxiety this would place on the parent? The questions which would be raised knowing a taped history of your student's exploits was now sitting in someone's office?

Executive Sessions are for a narrow range of topics for the Board to have a frank, private conversation. Taping will have a chilling affect.

A number of questions are raised – who is responsible for the integrity of the tapes, under what conditions are the tapes to be stored, what is the process for access, who is responsible if the tape is inaudible or defective, who is responsible for destruction of tapes, who is going to ensure a retired Clerk disposed of tape correctly?

Mr. Chairman, if an elected official believes there is a violation of law a call to the District Attorney's office is the appropriate route; we oppose this bill.

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8500 Santa Fe Drive
Overland Park, Kansas 66212
• Fax: 913-895-5003
www.opkansas.org

Testimony Before The
House Governmental Organization & Elections Committee
Regarding
House Bill 2719

February 9, 2006

The City of Overland Park appreciates the opportunity to appear before the committee and present testimony in opposition to House Bill 2719, which would require the taping of executive sessions of governmental bodies.

The City believes the Kansas Open Meetings Act (KOMA) currently strikes a fair balance to create open and efficient government, and strongly supports retention of current exceptions to the act. Specific topics for which executive sessions are allowed are clearly spelled out, as is the requirement that no binding action be taken in executive session (K.S.A. 75-4319 (c)). The focus of the ability to go into executive session is, for example, to protect the privacy of individuals discussed in such sessions (personnel matters), to allow discussion of litigation strategies and other legal issues with the public entity's attorneys (attorney-client privilege) or to allow public entities to negotiate effectively for the purchase of land (preliminary discussions relating to the acquisition of real property).

It was only two years ago that the City of Overland Park came to the legislature seeking a specific exception to the Kansas Open Meetings Act and the Kansas Open Records Act. After September 11, 2001, our police department began an in-depth review of our security procedures and an analysis of potential targets in our community. There was some question as to whether such work products and their presentation to the city council were covered under current exceptions to KORA and KOMA. Understandably, city officials did not want to place sensitive, detailed response plans in the public realm. These concerns will resurface if HB 2719 is passed, as a theft, misplacement, or accidental loss of tapes could again threaten to place sensitive briefings into the hands of individuals who would use them against our citizens.

Opening executive sessions to tape recordings, no matter how well intentioned, will compromise the purpose of the closed session. The recording may become an open recording. The privileged status of attorney/client privileged communications may be lost by permitting such recording. The recording will certainly have a chilling effect on frank discussions. If council members are concerned that privileged conversations with city attorneys will not remain privileged, or that other sensitive information will be exposed, will they ask the necessary questions, no matter how uncomfortable, in order to ensure that the city's interests are protected? Will they address personnel matters head

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on, or will discussions of possible action be tempered with concerns that the employee will eventually hear deliberations where they are mentioned in an unfavorable light? Human nature suggests that individuals tend to tame their conversations when they believe they are being overheard. At the same time, most would agree frankness is needed at times to address serious issues.

The *Topeka Capital-Journal* had an editorial a few weeks ago about this subject. They noted the frequency with which citizens, newspapers, and legislators exclaim that government should be run more like a business. The advantage businesses have, however, is that the balance between public and private information tilts more toward the ability to conduct operations behind closed doors. They are required to produce some information for public consumption, and some have to have meetings where their shareholders can question them. The presumption for business, however, is that their dealings may be conducted in private.

For governments, that balance is rightly shifted the opposite direction. The vast majority of government business is conducted in broad daylight, with public comment and involvement encouraged and expected. For over thirty years, though, the Kansas Open Meetings Act has recognized that there are limited, legitimate instances where government entities should be able to consider issues in private. The City of Overland Park asks that you not do away with this current balance, and reject House Bill 2719.



Thomas L. Bell
President

February 9, 2006

TO: House Committee on Government Organizations and Elections

FROM: Fred J. Lucky, Senior Vice President

RE: **Comments Regarding HB 2719**

The Kansas Hospital Association appreciates the opportunity to comment on the provisions of House Bill 2719 regarding changes to the open meetings law. We would like to bring to the attention of the committee the need to protect the proceedings of issues directly related to risk management and peer review activities as described in K.S.A. 65-4915 and K.S.A. 65-4921. The deliberations in these types of proceedings require open and frank discussion that these statutes foster.

Therefore, we support the amendment offered by the Kansas Medical Society that would exclude executive sessions in which risk management and peer review issues are conducted.

Thank you for your consideration of our position.

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Submitted by:
Jerry Slaughter
KS. Medical
Society

HB 2719

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, except that in no event shall the court order disclosure, or allow disclosure, of any recording made pursuant to this subsection (d)(2) to the extent the recording involves, constitutes, or pertains to, peer review as defined by K.S.A. 65-4915, as amended, or risk management functions and activities described and defined by K.S.A. 65-4921, et seq., as amended.

1 a violation of the act has occurred, the court shall determine what portion
2 of the recording of the closed or executive session, if any, should be dis-
3 closed for use in the enforcement proceeding to the party seeking enforce-
4 ment of this act.

5 (3) In determining whether any portion of the recording of the closed
6 or executive session should be disclosed to a party under this subsection,
7 the court shall weigh the prejudicial effects to the public interest resulting
8 from the disclosure of any portion of the recording of the closed or exec-
9 utive session against the probative value of such portion needed to enforce
10 the provisions of this act. After making its determination, the court may
11 permit the party seeking enforcement of this act to inspect or use the
12 recording of the closed or executive session, or any portion thereof, under
13 such conditions as the court may direct.

14 (4) The presence of a recording device, as required by this act, shall
15 not constitute or be construed as a violation of the attorney-client
16 privilege.

17 (5) For the purposes of this section:

18 (A) "Recording" means the duplicating, or causing to be duplicated,
19 of sound by electronic means or otherwise, on a phonograph record, disc,
20 wire, tape, film or other article on which sounds are duplicated.

21 (B) "Recorded" means the duplication of, or causing the duplication
22 of, sound by a recording device.

23 ~~(d)~~ (e) Any confidential records or information relating to security
24 measures provided or received under the provisions of subsection (b)(13),
25 shall not be subject to subpoena, discovery or other demand in any ad-
26 ministrative, criminal or civil action.

27 Sec. 2. K.S.A. 2005 Supp. 75-4319 is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the statute book.