

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 March 7, 2006 in Room 519-S of the Capitol.

All members were present except:

- Representative Mario Goico- excused
- Representative Tom Holland- excused
- Representative Melody Miller- excused

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:

- Marilyn Nichols, Shawnee County Register of Deeds
- Kathy Sacs, Office of the Secretary of State
- Ed Cross, Kansas Independent Oil & Gas Association
- Matt Veatch, Kansas State Historical Society
- Tony Scott, Kansas Society of Certified Public Accountants
- Richard Gannon, Kansas Press Association

Others attending:

See attached list.

Chairman Vickrey opened the hearing on:

SB 336 **Uniform Real Property Electronic Recording Act**

Marilyn Nichols, Shawnee County Register of Deeds, testified in support of the bill (Attachment 1). She said that the proposed legislation is entirely permissive in nature and does not "mandate" all Register's of Deeds to be read at the same rate to receive electronic recordings.

Kathy Sachs, Deputy Assistant Secretary of State, testified in support of the bill (Attachment 2). She said the Electronic Recording Commission created by the legislation would ensure that the proper considerations be given to the complex subject of electronic government.

Ed Cross, Kansas Independent Oil & Gas Association, testified in support of the bill (Attachment 3). He emphasized the importance of the language in the bill that states that Register of Deeds MAY accept electronic filings but SHALL continue to accept paper filings.

Matt Veatch, Kansas State Historical Society, requested an amendment to Section 5 of the bill that would include the "state archivist or the state archivist's designee" as a member of the Electronic Recording Commission (Attachment 4).

Kathy Olson, Kansas Banker's Association, submitted written testimony (Attachment 5). She urged the Committee to proceed at a pace that will allow those who will be developing the statewide standards, as well as those who will be implementing those standards, adequate time within which to do so.

Chairman Vickrey closed the hearing on **SB 336**.

SB 336 **Uniform Real Property Electronic Recording Act**

Rep. Otto made a motion to amend Section 5 of the bill that would include the state archivist or the state archivist's designee and one person representing the agriculture industry, appointed by the Governor, as members of the Electronic Recording Commission. Rep. F. Miller seconded the motion. Motion carried.

CONTINUATION SHEET

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on March 7, 2006 in Room 519-S of the Capitol.

Rep. Swenson made a motion for the favorable passage of SB 336 as amended. Rep. Sawyer seconded the motion. Motion carried.

Chairman Vickrey opened the hearing on:

SB 499 **Re-authorization of certain exceptions to KORA**

Tony Scott, Kansas Society of Certified Public Accountants, testified in support of the bill (Attachment 6). He spoke in favor for the continuation of the long-standing peer review confidentiality provision found in **K.S.A. 1-501**.

Richard Gannon, Kansas Press Association, requested an amendment relating to continued education on Kansas Open Records Act (K.O.R.A.) and the Kansas Open Meetings Act (K.O.M.A.).

Chairman Vickrey closed the hearing on **SB 499**.

Approval of Minutes

Rep. Sharp made a motion to approve the minutes of the March 2, 2006 meeting. Rep. Swenson seconded the motion. Motion carried.

Chairman Vickrey adjourned the meeting.

The next meeting is scheduled for March 9, 2006.

KANSAS REGISTER OF DEEDS ASSOCIATION

Marilyn L. Nichols
Shawnee County Register of Deeds
700 SE 7th Street, Room 108
Topeka, Kansas 66603-3932

TESTIMONY OF THE KANSAS REGISTER OF DEEDS ASSOCIATION
TO THE HOUSE GOVERNMENTAL ORGANIZATIONS AND ELECTIONS
COMMITTEE

SB 336

March 7, 2006

Chairman Vickrey and Distinguished Members of the Committee:

I am here as the Register of Deeds for Shawnee County as well as on behalf of the Kansas Register of Deeds Association. I thank you for the opportunity that allows me to offer this testimony before you today.

Our understanding of the intent of this bill is to create uniformity regarding electronic recordings in the Register of Deeds' Offices across the State of Kansas. At this point in the legislative process we are proponents; offering testimony in support of the bill and in support of the amendments made in the Senate Committee.

We offered testimony in the Senate as a "neutral" party with concerns that were addressed to our satisfaction as now shown in the current amendment. SB 336 now supports a member of the Secretary of State's Office (for notary concerns) being on the recording commission. It also added a member of the title industry for which we have no objection.

The Register of Deeds Association appreciates the fact that legislation is being considered that will assure standardization in the application of electronic recordings. The Register's across the state strive to be consistent in procedures and document requirements. We also appreciate the fact that this legislation is entirely permissive in nature and does not "mandate" all Register's of Deeds to be ready at the same rate to receive electronic recordings.

I thank you for your time and attention to this important matter and would be happy to stand for any questions.

House Gov. Org. & Elections
Date: 3 - 7 - 2006
Attachment # 1

RON THORNBURGH
Secretary of State



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STATE OF KANSAS

TESTIMONY OF THE SECRETARY OF STATE
TO THE GOVERNMENTAL ORGANIZATION / ELECTIONS
ON THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

March 7, 2006

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to offer testimony regarding the Uniform Real Property Electronic Recording ACT (URPERA). We support the concept of electronic government and we believe the commission created by this legislation will ensure that the proper consideration is given to this complex subject.

The Kansas version of the Uniform Electronic Transactions Act, (UETA), assigns the task of developing procedures for electronic notarizations to the Secretary of State by rule and regulation (see K.S.A. 16-1611). Our office has promulgated rules and regulations outlining the requirements for electronic notarizations. Since most filings covered in SB 336 require notarization, we appreciate the fact that this office was added by the Senate as a member of the Electronic Recording Commission created by this bill.

Thank you for your time. I would be glad to answer any questions regarding my testimony.

A handwritten signature in black ink that reads "Kathy Sachs".

Kathy Sachs, Deputy Assistant Secretary of State
Electronic Government Services

House Gov. Org. & Elections
Date: 3-7-2006
Attachment # 2



Kansas Independent Oil & Gas Association

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Testimony to the House Governmental Organization and Elections Committee

Senate Bill 336 – The uniform real property electronic recording act

Edward P. Cross, Executive Vice President
Kansas Independent Oil & Gas Association

March 7, 2006

Good Morning Chairman Vickrey and members of the committee. I am Edward Cross, Executive Vice President of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA is an 850+ member organization representing the interests of independent oil and gas producers in Kansas. I present testimony today in support of Senate Bill 336 but want to emphasize some concerns and be on record voicing these concerns.

Senate Bill 336 will help counties with huge volumes of recordings to deal with volume issues. We want to emphasize our support and underscore the language in the bill that states that Register of Deeds MAY accept electronic filings but SHALL continue to accept paper filings. The bill states that electronic and paper filings are required to be in the same index, but the bill does not say the index has to be the paper one. Register of Deeds are permitted to convert paper filings to electronic format, but this cannot be allowed to be reason to impose electronic formatting standards onto paper filings. Any new formatting standards must be addressed on their own merits. Contentious issues surrounding formatting and content of recorded instruments are ongoing. This bill should not be a backdoor way those issues. SB 336 is a good measure that will help those counties with huge volumes of recordings. For good reasons, the general public and industries in a larger number of counties deal in paper recordings and are not structured to work in electronic documents. For these reasons and more, paper filings must be retained and whatever special format standards may come to be required for electronic filing should not be imposed on paper filings too.

The oil and gas industry is also supportive of the structure of the committee to be formed to develop the standards. In addition to Register of Deeds, the committee draws representatives from various industries and professions that work with recording issues. We are happy that the oil and gas industry will have a representative on the committee.

Thank you for listening to our concerns. We are supportive of SB 336. Thank you for your time and consideration. I stand for questions.

House Gov. Org. & Elections
Date: 3-7-2006
Attachment # 3

**Testimony Before the House Committee on Governmental Organization and Elections
Regarding SB 336, An Act concerning uniform laws: creating the uniform real property
electronic recording act**

Matthew Veatch, State Archivist, Kansas State Historical Society

March 7, 2006

Chairman Vickery and members of the committee, thank you for the opportunity to speak with you today about Senate Bill 336, which would authorize electronic recording of real property records. My name is Matt Veatch and I am the State Archivist, employed by the Kansas State Historical Society (KSHS).

We certainly do not oppose authorizing registers of deeds to create and maintain real property records in digital form. Electronic documents produce administrative efficiencies and records access improvements that government agencies cannot afford to ignore. The Historical Society does, however, have a keen interest in and statutory responsibility for ensuring the long-term preservation of electronic government records with enduring value. Among the State Archivist's statutory duties detailed in KSA 45-406 is the responsibility to "provide advice and assistance to state and local agencies . . . with regard to proper arrangement, storage, preservation and accessibility of the government records with enduring value remaining in their custody." Real property records, whether in paper or digital form, certainly qualify as records of enduring legal and historical value. Because of this records preservation concern and responsibility, the Historical Society's primary interest in SB 336 relates to Section 5, the portion of the legislation that would create an "electronic recording commission" to set standards for electronic recording of real property records. Simply stated, we propose an amendment to Section 5 that would include the "state archivist or the state archivist's designee" as a member of the electronic recording commission.

In addition to our statutory obligation to offer records preservation advice to local government, the Historical Society also could provide digital preservation experience and expertise to the electronic recording commission. Beginning in the mid-1990's, the KSHS, working closely with other state agencies, developed guidelines and best practices for the management and preservation of electronic government records. More recently, the Historical Society, in cooperation with the State Library, launched KSPACE, the Kansas State Publications Archival Collection, our first effort to create a digital archives. Through these digital preservation initiatives, KSHS staff has developed an appreciation for the challenges presented by electronic records preservation -- challenges tied closely to the rapid pace of technological change. We believe that the lessons learned over ten years of exploring electronic records preservation issues would be a valuable addition to the electronic recording commission. I respectfully request that you consider our proposed amendment to add the State Archivist to this commission. Thank you.

URLs for previous electronic records management and preservation efforts:

Electronic Records Management Guidelines
www.kshs.org/archives/ermguide.htm

Managing Electronic Mail
da.state.ks.us/itab/E-Mail%20Guidelines.pdf

KSPACE
www.kspace.org

House Gov. Org. & Elections
Date: 3-7-2006
Attachment # 4



March 7, 2006

To: House Committee on Governmental Organization & State Affairs

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 336: Uniform Real Property Electronic Recording Act

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present written testimony regarding **SB 336**. While our members are watching the progress of this bill with great interest, we did not feel that our testimony would introduce any new arguments for or against the bill.

As you know, URPERA was drafted to specifically authorize a recorder, at the recorder's option, to accept electronic documents for recording and to index and store those documents. The proposal is to take effect upon publication in the statute book, which will be July 1st of this year.

While we believe that the electronic filing and storage of such data is inevitably the way of the future, we also respect the importance of maintaining reliable real estate records. These records are vital in establishing the chain of title of ownership on a certain piece of property. In addition, they help protect the owner's interest in property by providing a reliable record of the current ownership. Finally, accurate mortgage records are important in ensuring the perfection of a security interest in a piece of property.

For these reasons, we urge the committee to proceed at a pace that will allow those who will be developing the statewide standards, as well as those who will be implementing those standards adequate time within which to do so. We hope that once the standards are implemented, there will be adequate time to allow those people and entities who are filers of these documents to become familiar with the requirements of electronic filing and thus reduce the amount of mistakes made by these filers.

With documents so very important to real estate transactions, there is much danger in rushing into such a dramatic change. Thank you for allowing the KBA to offer written testimony on this most important matter.

House Gov. Org. & Elections
Date: 3-7-2006
Attachment # 5




Kansas Society of Certified Public Accountants

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TESTIMONY

To: The Honorable Jene Vickrey, Chairman
Members of the Committee on Governmental Organization and Elections

From: Tony A. Scott, Executive Director
Kansas Society of Certified Public Accountants 

Re: SB 499 Pertaining to Certain Exceptions to the Kansas Open Records Act

Date: March 7, 2006

Chairman Vickrey and Members of the Committee:

Thank you for allowing me this opportunity to appear and present testimony at today's hearing on SB 499.

My name is Tony A. Scott. I am Executive Director of the Kansas Society of Certified Public Accountants ("KSCPA"), a statewide association of 2,600 members dedicated to implementing strategies that enhance the well-being of our members, the accounting profession and the general public we serve.

I am testifying today as a proponent of SB 499 and, in particular, for the continuation of the long-standing peer review confidentiality provision found in K.S.A. 1-501.

Peer review confidentiality relates to documents prepared and maintained in connection with peer reviews performed by and for Certified Public Accountants in the State of Kansas. Peer review is an educational, mentoring and quality control program for CPAs who perform attestation services, meaning audits, financial reviews and financial compilations. The KSCPA is the official administrator of the Kansas Peer Review Program for both the Kansas Board of Accountancy and the American Institute of Certified Public Accountants.

The stated intent of the Kansas legislature is to provide certain exceptions to disclosure under the Kansas Open Records Act if:

- 1) The public record is of a sensitive or personal nature concerning individuals;
- 2) the public record is necessary for the effective and efficient administration of a governmental program; or
- 3) the public record affects confidential information.

In the case of peer review confidentiality found in K.S.A. 1-501, all three exceptions are satisfied.

House Gov. Org. & Elections
Date: 3-7-2006
Attachment # 6

TESTIMONY of Tony A. Scott Re: SB 499
The Honorable Jene Vickrey, Chairman
Members of the Committee on Governmental Organization and Elections
March 7, 2006
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First, peer review records are both sensitive and personal as it relates to the reviewed CPA and/or the reviewed CPA's firm. During the course of a peer review, the reviewer completes dozens of pages of detailed questions, and prepares numerous memorandums and other working papers, relating to the reviewed CPA's system of professional quality control. The reviewed CPA is professionally bound to provide equally detailed, sensitive, personal and professional information regarding his or her CPA practice. Confidential review and/or documentation of sensitive and personal client information is also part of the peer review process and must also be protected from public scrutiny.

Second, the development of peer review-related records is necessary for the effective and efficient administration of the peer review program. The development and maintenance of detailed documentation are fundamental elements of a CPAs work. While the KSCPA and the peer review program are not *per se* "governmental," as official Peer Review Program Administrator for and on behalf of the Kansas Board of Accountancy and the American Institute of CPAs the KSCPA and Peer Review Program certainly operate in a quasi-governmental capacity.

Third, records created in the course of a peer review affect confidential information on multiple levels. Peer review-related confidentiality involves privileged communications between the reviewing CPA and the reviewed CPA as well as privileged communications between the reviewed CPA and his or her clients. As previously stated, during the peer review process the reviewing CPA documents the most intimate details of the reviewed CPA's professional practice, including client-related details, which, if disclosed to the public, would harm the reviewed CPA and potentially harm his or her clients.

Finally, disclosure of peer review records is not necessary either to inform the public about, or to protect the public from, a CPA who may perform substandard professional attestation services. To the extent the public wishes to be informed of a particular CPA's professional competence vis-à-vis formal disciplinary measures taken by the Kansas Board of Accountancy, those records are a matter of public record and are available from the Board.

Financial accounting involves massive numbers of transactions and tremendous amounts of data, and CPAs operate in an incredibly complex and ever-increasing regulatory environment. A CPA's work also requires substantial professional judgment and professional estimations. From time-to-time even the most professionally competent, capable and integrity-minded CPA will make a mistake. Peer review helps CPAs minimize those mistakes through a system of quality control and by providing educational and mentoring feedback in a candid and confidential way.

We encourage the continuation of peer review confidentiality found in K.S.A. 1-501 and respectfully request this Committee approve SB 499.

Thank you again for allowing me this opportunity to testify here today. I will now stand for questions.

TAS/mmi

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