

MINUTES OF THE HOUSE ELECTIONS AND GOVERNMENTAL ORGANIZATION COMMITTEE

The meeting was called to order by Chairman Mike Burgess at 3:30 P.M. on February 15, 2007 in Room 231-N of the Capitol.

All members were present except:

Representative Melody McCray-Miller- excused
Representative Deena Horst- excused
Representative Mike Peterson- excused
Representative Jo Ann Pottorff- excused
Representative Harold Lane- excused

Committee staff present:

Martha Dorsey, Legislative Research Department
Matt Spurgin, Legislative Research Department
Mike Heim, Revisor of Statutes Office
Maureen Stinson, Committee Assistant

Conferees appearing before the committee:

Doug Ansteatt
Dan Gibb
Jim Edwards
Judy Moler
Kim Winn

Others attending:

See attached list.

HB 2493 Open meetings; open records; training of public officials

Chairman Burgess opened the hearing on **HB 2493**.

Doug Ansteatt, Kansas Press Association, testified in support of the bill (Attachment 1). He explained that they support the bill because it requires elected and some appointed officials who work for public agencies in Kansas to undergo training on the Kansas Open Records Act and the Kansas Open Meetings Act after being sworn into office. He said that the amendment (Attachment 2) they propose is designed to meet some of the objections posed to the original bill by the Kansas Attorney General's Office and other interested parties.

Dan Gibb, Assistant Attorney General, testified in support of the bill (Attachment 3). He recommended allowing their office the time to meet with the interested parties and continue working on amending language to **HB 2493** that would address their concerns.

Jim Edwards, Kansas Association of School Boards, testified in support of the bill (Attachment 4). He explained that their group has offered many times in both the House and the Senate, the concept of mandatory training for school board members on a variety of subjects, whether it be on the Kansas Open Meetings Act, Kansas Open Records Act, or a multitude of other school board related functions and duties.

Written testimony in support of the bill was submitted by Harriet Lange, Kansas Association of Broadcasters (Attachment 5).

Judy Moler, Kansas Association of Counties, testified in opposition to the bill (Attachment 6). She emphasized that their group supports training on the Kansas Open Records Act and the Kansas Open Meetings Act but that they don't think a statutory mandate is necessary.

Kimberly Winn, League of Kansas Municipalities, testified in opposition to the bill (Attachment 7). She stated their group's belief that by and large public officials in this state act reasonably and there is no evidence of widespread violations of the Kansas Open Meetings Act and the Kansas Open Records Act.

Chairman Burgess closed the hearing on **HB 2493**.

CONTINUATION SHEET

MINUTES OF THE House Elections and Governmental Organization Committee at 3:30 P.M. on February 15, 2007 in Room 231-N of the Capitol.

HB 2083 Campaign finance, use of unexpended campaign funds

Rep. Brunk made a motion for the favorable passage of **HB 2083**. Rep. Metsker seconded the motion. The motion passed. Rep. Don Dahl requested to be recorded as a "No" vote.

HB 2173 Elections; advance voting; identification clarification

Rep. Vickrey made a motion to adopt a technical amendment to **HB 2173**. Rep. Storm seconded the motion. The motion passed. Rep. Sawyer made a motion for the favorable passage of **HB 2173** as amended. Rep. Storm seconded the motion. The motion passed.

The meeting was adjourned.

The next meeting is scheduled for Monday, February 19, 2007.



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

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Feb. 15, 2007

To: Rep. Mike Burgess, chairman, and members of the House Elections and Governmental Organization Committee

From: Doug Anstaett, KPA executive director

Re: HB 2493

Mr. Chairman and members of the Committee:

Thank you for this opportunity to address a bill to promote good government in Kansas. We believe that when we have informed public officials, the public's business is more likely to be transacted with transparency and according to state law.

That's what HB 2493 is all about ... equipping elected officials in Kansas with the knowledge they need about our open records and open meetings laws so they conduct public business.

The balloon amendment we are proposing today is designed to meet some of the objections posed to our original bill by the Kansas Attorney General's Office and other interested parties.

The Kansas Press Association supports SB 2493 because it requires elected and some appointed officials who work for public agencies in Kansas to undergo training on the Kansas Open Records Act and the Kansas Open Meetings Act after being sworn into office.

While there certainly are numerous instances where KOMA and KORA violations are willful in nature, we believe the vast majority of mistakes are made because public officials aren't trained adequately on the laws of open government.

The KPA office and our legal hotline attorney, Mike Merriam of Topeka, spend a great deal of time interpreting the law and refereeing disputes over KORA and KOMA. Between the two offices, we handle hundreds of calls a year from newspaper reporters and editors who have witnessed their local elected officials misinterpreting or misapplying our open government laws. We even get a number from public officials wanting to make sure they are doing the right thing.

Currently, several state associations and the Kansas Attorney General's Office provide excellent training in KOMA and KORA. We acknowledge those programs in our bill by giving the AG's Office the authority to list them as official training programs that can meet the requirements of HB 2493.

But while they are good programs, they simply don't reach enough public officials. In addition, budget restrictions and the sheer size of Kansas create obstacles to live training sessions. It is not realistic to suggest a city council member drive several hundred miles to attend a one-hour session on KOMA nor is it cost-effective to ask a presenter to make the same trip but in the opposite direction.

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What happens is that hundreds, if not thousands, of public officials subject to KOMA and KORA take on their new responsibilities with deficient knowledge of what the law requires.

We want to change that.

In Texas, whose law we liberally borrowed for this bill, the attorney general's office provides the materials for such training. Texas has produced some tremendous programs on video that comprehensively address all aspects of its law. During the training, elected officials meet in groups and can ask questions and present scenarios that might come up along the way. It works.

Why should we hand over some of this important responsibility to the Kansas Attorney General's Office? Because in addition to county and district attorneys, the AG's office has the statutory duty and authority to enforce KORA and KOMA.

It is my understanding that some of our state associations that represent public officials have decided to oppose this bill because they might be required to subject their training regimen to the scrutiny of the attorney general.

Let me point something out: I think you all would agree that the Kansas Press Association and the Kansas Association of Broadcasters have an up close and personal interest in KORA and KOMA, yet we believe so strongly that training is necessary that we are willing to work with attorneys general — both Democrat and Republican — to compile a non-partisan, balanced training program that applies to all public officials of all political persuasions. The traditional adversaries on these issues must trust the process enough to allow the enforcing authority in the state sufficient latitude to create such a program.

Granted, there will be some cost involved in this endeavor, if it is done right. But the cost should not be prohibitive. The Kansas Press Association wants you to know that we believe so strongly in this legislation that we will pay our fair share of the cost of producing the training materials and of distribution to the 105 counties of Kansas. In fact, we can promise to you today that we would provide the materials free of charge to our 240 member newspapers — which are located in all 105 Kansas counties — so that every public official has access to the materials.

This training will not cost \$185,000, as at least one fiscal note estimates. As we said in our testimony on a similar bill in the Senate, we would adamantly oppose the bill if that were the case.

We're even willing to mandate training without mandating penalties for those who, for legitimate reasons, can't complete the training on time. All we ask is that public agencies make a good faith effort — because in the end it will lead to better government and more public participation in the political process.

We pledge to work with the League of Kansas Municipalities, the Kansas Association of Counties, Kansas Association of School Boards, the Kansas Attorney General's Office and other interested parties to produce an educational training program that is not cumbersome but certainly more than adequate to address the majority of open government questions that arise during the conduct of public business.

Thank you.

Proposed Amendment to House Bill NO. 2493

By House Committee on Elections & Governmental Organization

AN ACT concerning public information; establishing training programs under the open records and open meetings acts.

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

1 Section 1. (a) Each elected or appointed public official who is a member of a public body
2 subject to the open meetings act, K.S.A. 75-4317 et seq, and amendments thereto, shall complete a
3 course of training regarding the responsibilities of the public body and its members under the open
4 meetings act. The required course of training shall be completed not later than the 90th day after the
5 date the official:

6 (1) Takes the oath of office, if the official is required to take an oath of office prior to
7 assuming such official's duties as a member of the public body; or

8 (2) assumes such official's duties as a member of the public body if no oath is required.

9 (b) The attorney general shall establish the content for the course of training required by
10 subsection (a) ~~and ensure that such training is made available.~~ The attorney general may provide the
11 training or may approve any acceptable course of training offered by or to a public body or member
12 of such body. ~~or other entity. The attorney general shall make available at no cost at least one~~
13 ~~acceptable course of training on videotape or a functionally similar and widely available medium or~~
14 ~~format.~~ The training shall include instruction in:

15 (1) The general background of the legal requirements for open meetings;

16 (2) the applicability of the open meetings act to public bodies;

17 (3) procedures and requirements regarding quorums, interactive communications, what

1 constitutes public business, and notice requirements ~~and recordkeeping~~ under the open meetings act;

2 (4) procedures and requirements of holding an open meeting;

3 (5) procedures and requirements for holding an executive session or closed meeting; ~~and~~

4 (6) the penalties and other consequences for failure to comply with the open meetings act;

5 and

6 (7) any other information deemed necessary or advisable by the Attorney General.

7 (c) ~~The attorney general or other~~ entity providing the training required by this section shall
8 provide a certificate or some other written proof of course completion to each person who completes
9 the training required by this act. Each public body or person subject to the open meetings act shall
10 maintain and make available for public inspection all records pertaining to the attendance and
11 completion of the training required by this section ~~by its members.~~

12 (d) Unless pursuant to court order or a consent agreement arising out of an alleged violation
13 of the Act, any individual who completes the training required by this section as a member of one
14 public body shall not be required to complete similar training for any other public body on which
15 such individual serves. ~~The~~ Each individual receiving such training shall provide a copy of ~~such~~
16 ~~individual's~~ their proof ~~certificate~~ of completion of training to the clerk or other appropriate official
17 of each public body on which such individual serves. Failure to provide such proof shall require
18 that the individual retake ~~to avoid retaking~~ the training required by this section.

19 (e) The failure of one or more members of a public body to complete the training required
20 by this section shall not affect the validity of an action taken by such public body.

21 (f) Proof or a certificate of completion of the training required by subsection (a) shall be
22 admissible as evidence in any prosecution under the open meetings act; however, evidence that a

1 defendant has completed a course of training offered under this section shall not constitute prima
2 facie evidence that the defendant knowingly violated the act.

3 (g) This section shall be supplemental to and a part of the open meetings act.

4 Sec. 2: (a) (1) Each elected or appointed public official who is a member of the governing
5 body of a public agency subject to the open records act, K.S.A. 45-215 et seq, and amendments
6 thereto, shall complete a course of training regarding the responsibilities of the public agency and
7 its personnel under the open records act. The required course of training shall be completed not later
8 than the 90th day after the date the official:

9 (A) Takes the oath of office, if the official is required to take an oath of office prior to
10 assuming such official's duties as a member of the public agency; or

11 (B) assumes such official's duties as a member of the public agency if no oath is required.

12 (2) In lieu of personally taking the training required by this subsection, a public official may
13 designate ~~an official~~ a custodian, as such term is defined in K.S.A. 45-217, and amendments thereto,
14 to satisfy the training requirements of this section for the public official. Designation of ~~an official~~
15 a custodian shall not relieve a public official ~~from~~ of the duty to comply with any other requirement
16 of the Kansas open records act and amendments thereto. The designated ~~official~~ custodian shall
17 complete the training course regarding the responsibilities of the governmental body which the
18 official custodian serves not later than the 90th day after the date the official custodian assumes such
19 official custodian's duties.

20 (b) The attorney general shall establish the content for the course of training required by
21 subsection (a) ~~and ensure that the training is made available~~. The office of the attorney general may
22 provide the training or may approve any acceptable course of training offered by or to a public

1 agency or its designated record custodian. ~~or other entity. The attorney general shall ensure that at~~
2 ~~least one course of training approved or provided by the attorney general is available on videotape~~
3 ~~or a functionally similar and widely available medium or format at no cost. The training shall include~~
4 instruction in:

5 (1) The general background of the legal requirements for open records and public access by
6 members of the public to public records;

7 (2) the applicability of the open records act to public agencies;

8 (3) procedures and requirements regarding complying with a request for inspection or copies
9 of public records; ~~and~~

10 (4) penalties and other consequences for failure to comply with the open records act; and

11 (5) any other information deemed necessary or advisable by the Attorney General.

12 (c) The office of attorney general or other entity providing the training shall provide written
13 proof ~~a certificate~~ of course completion to persons who complete the training required by this
14 section. Each public agency, including any official custodian thereof, shall maintain and make
15 available for public inspection all records pertaining to the attendance and completion of the training
16 required by this section by each member of the governing body of the public agency and each official
17 custodian of such agency.

18 Unless pursuant to court order or a consent agreement arising out of an alleged violation of
19 the Act, any individual who completes the training required by this section as a member of one
20 public body shall not be required to complete similar training for any other public body on which
21 such individual serves. ~~The~~ Each individual receiving such training shall provide a copy of ~~such~~
22 ~~individual's~~ their proof ~~certificate~~ of completion of training to the clerk or other appropriate official

1 of each public body on which such individual serves. Failure to provide such proof shall require
2 that the individual retake ~~to avoid retaking~~ the training required by this section.

3 (e) A certificate of completion of the training required by subsection (a) shall be admissible
4 as evidence in any prosecution under the open records act; however, evidence that a defendant has
5 completed a course of training offered under this section shall not constitute prima facie evidence
6 that the defendant knowingly violated the act.

7 (f) This section shall be supplemental to and a part of the open records act.

8 Sec. 3. (a) Each elected or appointed public official who is a member of a public body
9 subject to the open meetings act, K.S.A. 75-4317 et seq, and amendments thereto, who was elected
10 or appointed to such position on or before January 1, 2008, shall complete a course of training
11 required by section 1, and amendments thereto, on or before January 1, 2009, regarding the
12 responsibilities of the public body and its members under the open meetings act.

13 (b) Each elected or appointed public official who is a member of the governing body of a
14 public agency, including each official custodian of such agency, subject to the open records act,
15 K.S.A. 45-215 et seq., and amendments thereto, who was elected or appointed to such position on
16 or before January 1, 2008, shall complete a course of training required by section 2, and amendments
17 thereto, or before January 1, 2009, regarding the responsibilities of the public agency and its
18 personnel under the open records act.

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

21

22



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House Elections & Governmental Organization Committee

HB 2493

Assistant Attorney General Dan Gibb
Office of Attorney General Paul Morrison

February 15, 2007

Mr. Chairman and members of the committee, thank you for allowing me to testify today.

I am here to testify on behalf of the Office of Attorney General in support of the concept of mandatory training and education on the Kansas Open Records Act and Kansas Open Meetings Act (KORA/KOMA). While General Morrison does not support the exact language that is in House Bill 2493, he does believe that this is a worthwhile effort and is committed to investing the resources of the Attorney General's office to help draft language that is acceptable to all of the interested parties.

Over the last few days, our office has been working to draft amending language to HB 2493, which we believe will address many of the concerns of the various interested parties on this subject. Attorney General Morrison believes such language must take into account the following concerns:

- **Resources:** As currently written, HB 2493 places far too much of a burden on the resources of the Attorney General's office. Additional staff (including attorneys) would be necessary to provide the massive amount of in-person training mandated by the legislation. With the time constraints currently in place in HB 2493, it is hard to imagine the Attorney General's office alone producing the technology necessary to train the approximately 10,000 public officials that would be eligible for training.
- **In-Person Training:** Considering the number of public officials that would be required to sit for training on KORA/KOMA, and the geographic constraints involved, it is important to recognize the reality that many, if not most public officials will need to receive training through electronic means, rather than through in-person training.
- **Consistency in Training:** As written, HB 2493 permits the Attorney General's office to allow other organizations to provide KORA/KOMA training, yet still retain control over the subject matter of such training. The Attorney General's office, as enforcer of the KORA/KOMA, supports this provision and believes we

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must retain oversight of the training curriculum to ensure that public officials are operating with the same understanding of the law.

Education and training on the KORA/KOMA law is essential because it will help to prevent the oftentimes inadvertent breaking of these laws in the future. Mandatory training of public officials will reduce the need for any future KORA/KOMA legislation that could increase penalties and expand the scope these laws.

Ultimately, it is important that the bill language be drafted deliberately and take into account all of the possible implications of a new law. I recommend allowing our office the time to meet with the interested parties and continue working on amending language to HB 2493 that would address our concerns.

Thank you for your time and I look forward to answering any questions.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

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Testimony on **HB 2493**
before the
House Elections and Governmental Organization Committee

by

Jim Edwards, Governmental Relations Specialist
Kansas Association of School Boards

February 15, 2007

Chairman Burgess and Members of the Committee:

I thank you for the opportunity to appear before you today to support the concept of training embodied in **HB 2493**. It should not come as a surprise to you that KASB believes school board members can benefit from training to effectively carry out their responsibilities and duties for their elected positions.

KASB has offered many times in both the House and Senate, the concept of mandatory training for school board members on a variety of subjects, whether it be on the Kansas Open Meetings or Record Acts (KOMA or KORA) or a multitude of other school board-related functions and duties. This has been done due to the realization that the operational process of school boards is becoming more challenging and complex. We worked diligently last year on a bill in the Senate (**SB 410**) in an attempt to get this issue addressed.

We stand ready to assist in offering this and other types of training to school board members to help ensure Kansas school district patrons and public at large are well served.

I would stand for questions.

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Written Testimony
HB 2493
House Committee on Elections and Governmental Organization
February 15 2007
By
Harriet Lange, President
Kansas Association of Broadcasters

Kansas Association of Broadcasters serves a membership of free-over-the-air radio and television stations in Kansas. We appreciate the opportunity to provide written testimony in support of HB 2493

We don't believe there is a high percentage of public officials in Kansas who purposefully try to circumvent the Kansas Open Records and Open Meetings laws. However, violations do occur and many times these violations may be due to public officials just not being informed about the requirements in KORA and KOMA.

We are aware that the state associations, like the Kansas Association of Counties, League of Kansas Municipalities, and Kansas Association of School Boards provide training for their members on open government and we applaud them for it. In spite of these efforts, they are not reaching all of the officials who need the training. The passage of HB 2493 will bring uniformity and consistency to training for public officials, and more importantly, it will promote openness and increase compliance with KORA and KOMA.

We urge passage of HB 2493.

Thank you for your consideration.



KANSAS
ASSOCIATION OF
COUNTIES

Testimony on HB 2493
Before the Senate Federal and State Affairs Committee
By Judy A. Moler
General Counsel/Legislative Services Director
February 15, 2007

The Kansas Association of Counties thanks the Committee for the opportunity to speak on HB 2493. This bill has been introduced during several past sessions. The Kansas Association of Counties (KAC) opposed it then as we still do. It has a companion bill SB 194 that was heard earlier this year in the Senate.

The KAC believes that this is a solution to a non-existent problem. The KAC holds approximately 3-4 workshops on Open Meetings/Open Records each year. The most recent workshop was held as part of a two day program for new commissioners. It was attended by 35 new commissioners. Prior to that our November Annual meeting in which roundtables on KOMA/KORA, were presented was attended by over 600 county officials. Admittedly, not all 600 attended the roundtables but the tables were full at each presentation.

In addition, this will not be the only time these topics are offered this year. The KAC has made a concerted effort to educate public officials about KOMA/KORA. We have printed brochures in conjunction with the League of Kansas Municipalities outlining the requirements of the law

I want to make clear that the KAC supports training on KOMA/KORA....we just don't think it needs a statutory mandate. We at the KAC feel that adding this additional layer of bureaucracy in providing training programs is not necessary....and is at best redundant. The Kansas Association of Counties respectfully requests that the Committee reject HB 2493.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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Date: 2-15-2007
Attachment # 6



League of Kansas Municipalities

To: House Elections and Governmental Organization
From: Kimberly Winn, Director of Policy Development & Communications
Date: February 15, 2007
Re: HB 2493

Thank you for the opportunity to appear before you today on behalf of the member cities of the League of Kansas Municipalities (LKM). We believe that by and large public officials in this state act reasonably and there is no evidence of widespread violations of the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA). That being said, we are strong advocates for KOMA/KORA training and we have been training city and county officials on these Acts since their inception.

Unfortunately, the approach spelled out in HB 2493 is seriously flawed.

- **Application to all public officials.** HB 2493 applies to all public officials, both elected or appointed. While we believe that we can discern who falls into the category of an "elected" official, the term "appointed" is more vague. Technically, all city employees may fall under the term "appointed." For example, K.S.A. 15-204 refers to the appointment of the municipal judge, clerk, treasurer, chief of police, law enforcement officers, and "such other officers as deemed necessary." This bill could be interpreted to require all police officers to undergo KOMA and KORA training and we would argue that this is an inappropriate use of their time.
- **HB 2493 is unworkable.** As written, HB 2493 applies to well over 10,000 individuals in the state. It mandates that it is the responsibility of the Attorney General's office to ensure that all 10,000 receive the desired training within 90 days of taking their oath of office. LKM puts on numerous trainings of this type each year. The LKM training on KOMA/KORA is a four hour training with half of the time dedicated to KOMA and half dedicated to KORA. It is unclear whether there are even enough daylight hours in 90 days to cover 10,000 persons with this type of training. Our next KOMA/KORA training is this Saturday, February 17th in Abilene and all of you are invited to attend.
- **Local approach is preferable.** After this same bill was introduced last year, we agreed to specifically discuss the proposal during the LKM policy process. The city officials who participated in that process said they could support a requirement that each public entity provide some type of local briefing on KOMA and KORA, but they could not support the full-fledged mandate under the direction of the Attorney General's office as contemplated in this bill.

In conclusion, we oppose the unworkable mandate proposed in HB 2493 and respectfully request that you do not recommend it favorably for passage.