Approved: 3/25/08
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Tim Huelskamp at 1:30 P.M. on February 21, 2008 in Room 423-S of the Capitol.

All members were present.

Committee staff present:
Martha Dorsey, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes
Jerry Donaldson, Legislative Assistant
Zoie Kern, Committee Assistant

Conferees appearing before the committee:
Brad Bryant, Professor Michael kautsch, Ralph Gage, Goug Anstaett
Richard Gannon, Sandy Jocquot, Dale Goter, Judy moeller, Stuart Little

Others attending:
See attached list.

Ken Wilke Revisor of Statues office gave a brief summary of **SB 616.**
Senator Barone gave testimony in favor of **SB 616** (Attachment 1).
Discussion.
Brad Bryant Secretary of states Office testified as an opponent to **SB 616** (Attachment 2).
Discussion.
Hearing closed on **SB 616.**

Open Hearing on **SB 621.**
Ken Wilke of Revisor of Statues Office gave summary of **SB 621.**
Questions.
Professor Michael Kautsch from Kansas University gave testimony in as a proponent to **SB 621** (Attachment 3).
Discussion.
Ralph Gage Lawrence Journal World gave testimony as proponent to **SB 621** (Attachment 4).
Discussion.
Doug Anstaett Kansas Press Association testified in support of **SB 621** (Attachment 5).
Discussion.
Richard Gannon submitted testimony on **SB 621** for Dan Simon publisher for The Olathe News (Attachment 6).
Sandy Jocquot League of Kansas Municipalities testified in opposition to **SB 621** (Attachment 7).
Discussion.
Dale Goter City of Wichita gave testimony in opposition to **SB 621** (Attachment 8).
Discussion.
Judy Moler Kansas Association of Counties testified as an opponent to **SB 621** (Attachment 9).
Stuart Little on behalf of Johnson County Government gave testimony in opposition to **SB 621** (Attachment 10).
Hearing closed on **SB 621.**

Meeting adjourned.

Respectfully submitted,

Zoie Kern, Committee Assistant

Senate Elections and Local Government Committee

Daily, 1:30 - 2:30 p.m. Room 423S

Senator Tim Huelskamp, Chair

Guest List for 2/21, 2008

Please print in BLACK ink.

Name	Representing
Judy Moler	KAC
Sandy Jaquet	LKM
Brad Bryant	Sec. of State

Testimony of Senator Jim Barone
in support of SB 616
Senate Elections and Local Government Committee
Thursday, February 21, 2008

Chairman Huelskamp and Members of the Committee:

I stand before you as a proponent of Senate Bill 616, an act concerning elections; pertaining to applications for advanced ballots.

SB 616 allows any voter to make an application for and receive permanent advance voting status. Presently, only the disabled or those with a permanent illness may legally apply for the permanent advance voting status. I expect we have all heard of cases being decided both ways by our election officers based upon their review of the situation and judgment. SB 616 would make it easier to obtain permanent advance status and would also remove the "judgement factor" and responsibility from the County Elections Officer.

Once permanent advance voting status is obtained it could only be changed by a specific action of the voter, such as a request in writing that such registered voter's permanent advance voting status be discontinued; a change in registered voter's residence; or the performance of any act that requires such registered voter to reapply for voter registration.

Mr. Chairman, I believe this bill would be another step along the road of increasing voter participation and would ask the Committee to recommend the bill for passage.

Thank you for your favorable consideration.

Elections and Local Government 2-21-08
attachment 1

RON THORNBURGH
Secretary of State

Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

Senate Committee on Elections and Local Government

Testimony on Senate Bill 616

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

February 21, 2008

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 616. The Secretary of State opposes passage of this legislation. If enacted, this bill would allow any registered voter to apply for and receive permanent advance voter status, which means the voter would automatically receive a ballot by mail each election. The permanent status would continue until the voter requested removal from the permanent list, changed residence, or became unregistered for any reason.

First, we are concerned about ballot security. This will greatly increase the number of ballots being sent through the mail. For years we have recognized that mailed advance ballots are the least secure method of voting and represent an opportunity for fraud, voter intimidation and coercion. The Secretary of State has proposed and supported various bills to expand advance voting opportunities in the past, but only if security measures are adequate. We have proposed legislation to tighten the security of mailed advance ballots, but it has not become law. Without some controls on the handling of ballots, it is not wise to expand advance voting by mail.

Second, we are unsure of the fiscal and administrative impact on county election offices.

Third, we are hesitant to support further changes to the administration of elections, especially in the area of advance voting, in this presidential election year when the Legislature has already approved an expansion of the satellite advance voting program. Part of our hesitation is due to the difficulty in predicting the number of voters who will take the opportunity to become permanent advance voters.

We believe this is not the year to adopt this legislation. The proposal needs to be studied and its effect on the administration of elections assessed. We recommend the committee not pass Senate Bill 616.

Elections and Local Government 2-21-08
attachment 2

Business Services: (785) 296-4564
FAX: (785) 296-4570
Web Site: *www.kssos.org*
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Elections: (785) 296-4561
FAX: (785) 291-3051

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Statement by Mike Kautsch for a hearing by the Senate Committee on Elections and Local Government concerning Senate Bill 621, at 1:30 p.m. Thursday, February 21 ,2008*

In my view, Senate Bill 621 is fully consistent with the Kansas Legislature's declaration of public policy in favor of open meetings, as well as with past amendments to the Kansas Open Meetings Act (KOMA), and interpretations of the Act by the Kansas Attorney General and the courts. Moreover, SB 621 resembles efforts in other states to make certain that government officials discuss public business openly.

In KOMA (specifically, K.S.A. 75-4317), the Legislature pronounced "that meetings for the conduct of governmental affairs and the transaction of governmental business" should be open, and the Legislature specifically disapproved of meetings that are held in a "time or place in order to subvert the policy of open public meetings." The Kansas Supreme Court has noted the benefits of KOMA, noting that the law "seeks to increase public confidence in government by increasing the access of the public to the decision-making processes of government. This increases the accountability of governmental bodies, and deters official misconduct." (*State ex rel. Stephan v. Board of County Com'rs of County of Sedgwick*, 244 Kan. 536, 538-539 (1989), citing Tacha, *The Kansas Open Meeting Act: Sunshine on the Sunflower State?*, 25 Kan.L.Rev. 169, 170-71 (1977))

KOMA makes clear (in K.S.A. 75-4317a) that the public is entitled to be present when members of a public body or agency discuss the "business or affairs" of the body or agency, except when the members involved in the discussion constitute less than a majority of a quorum. A problem, however, is that members of a body or agency may hold a series of meetings, each of which involves less than a majority of a quorum and so need not be open, but all of which include discussion of a matter of public business and, together, involve a majority of a quorum. SB 621 would impose a duty upon members of a public body or agency a duty to recognize when serial meetings of less than a majority involve a discussion of public business that should be conducted in the open. SB 621 would make the spirit of the law explicit in KOMA.

Kentucky is among states that legislatively have addressed serial meetings, providing (in K.R.S. 61.810(2)), that if such meetings "are held for the purpose of avoiding the requirements" of openness, they are contrary to the law. In states that have not addressed the serial meeting problem statutorily, courts have favored openness. As the Kansas Attorney General approvingly has noted, courts in a number of other states have required that meetings be open if they occur in a "sequential or circular series," the meetings share "a common topic of discussion concerning public business" and the "total number of participants" is sufficient to trigger application of an open meetings statute. (Kan. Atty. Gen. Op. No. 98-26)

** Professor of law and director of Media, Law and Policy, School of Law, University of Kansas. This statement and any testimony based upon it are wholly expressions of personal views and are not offered as representations of any official position or institutional policy of the School of Law in particular or the University of Kansas in general.*

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The World Company

Lawrence Journal-World **Mediaphormedia** **Sunflower Broadband**

February 21, 2008

TO: Sen. Tim Huelskamp, chair, and members of the Senate Elections and Local Government Committee

FROM: Ralph Gage, director of special projects, The World Company, Lawrence, Kansas

IN RE: SB 621

Chairman Huelskamp and committee members:

Thank you for this opportunity to speak this afternoon, and to endorse SB 621 and its intention of clarifying for elected officials and Kansas citizens, in today's technological environment, what is a public meeting in our state.

I represent the Lawrence Journal-World, a daily newspaper; 6News Lawrence, a television news-gathering operation; eight weekly newspapers (the Baldwin City Signal, the Eudora News, the De Soto Explorer, the Shawnee Dispatch, the Bonner Springs-Edwardsville Chieftain, the Lansing Current, the Basehor Sentinel, and the Tonganoxie Mirror) and KTKA-TV, Channel 49 in Topeka. These enterprises have the public seat at the table at meetings of the Legislature, city councils and city commissions, school boards, county commissions and other public agencies throughout Northeast Kansas. Our staff members are in city halls, schools, courthouses and the statehouse on behalf of citizens in numerous cities and counties.

The foundation of our democratic form of government is an element of trust and confidence between the citizens who elect their representatives and those who are chosen. Most of the time in Kansas, this implicit relationship has been honored and respected by all. However, in an era increasingly marked by skepticism and divisiveness, it is more essential today than ever to have transparency in the operation of government. In such an environment, it particularly becomes necessary for additional elements to be incorporated into our laws in order to address changes in technology that were not imagined when the Kansas Open Meetings Act was enacted. E-mail, "texting," Web site postings and future developments not yet envisioned need to be outflanked by a law that gets to the essence of the matter: Public business should be conducted in public.

SB 621 would do that, benefiting both our citizens and their office-holders by making clear that serial discussions, no matter how conducted, are not permissible in dealing with public issues. SB 621 would set out the rules for everyone.

I appreciate this opportunity to be here today in support of SB 621, and urge you to approve it.

Thank you.

P.O. Box 888
Lawrence, Kan. 66044

rgage@ljworld.com

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Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers
5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

Feb. 21, 2008

To: Sen. Tim Huelskamp, chair, and members of the Senate Elections and Local Government Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: SB 621

Chairman Huelskamp and committee members:

Thank you for the opportunity to speak in support of SB 621, a long overdue attempt to close a significant loophole in the law regarding what constitutes a public meeting in the state of Kansas.

It's been 10 years since former Attorney General Carla Stovall rendered her opinion that serial meetings violate the Kansas Open Meetings Act. I think it's high time we held our public officials to a higher standard of conduct.

In 1998, Stovall was asked to render an opinion about whether certain scenarios violated the Kansas Open Meeting Act. This is quoting directly from her opinion:

"The serial communications you ask about lack a majority of a quorum at any given time, but ultimately involve a majority of a quorum. One example is a calling tree: A public board needs to discuss an issue that the members believe is too sensitive to be discussed in public, but for which there is no statutory authority for an executive session. The chair proposes each of the members telephone the others, one by one, to discuss their opinions on the issue. If the board has six or more members, a majority of a quorum is at least three. A calling tree would involve no more than two board members speaking to one another at the same time. The chair would then call each of the members to 'survey' their opinions. A formal vote would be taken at the next open meeting.

"Such serial communications can take other forms. For instance, groups of less than a majority of a quorum may gather at different locations and discuss the issue before the board. A staff person not subject to KOMA circulates between the groups letting each know the content of the discussions of the other groups until a consensus is formed.

"Such serial communications could also occur through e-mail. One member e-mails another, who adds to the e-mail and sends it along to the next ..."

So what did she decide? Stovall wrote: *"In summary, a series of meetings each of which involves less than a majority of a quorum of a public body, but collectively totaling a majority of a quorum, at which there is a common topic of discussion of the business or affairs of that body constitutes a meeting for purposes of the KOMA."*

Her opinion couldn't have been more specific, and her intent any more apparent. Such meetings outside the confines of the regular meeting room were violations of the spirit of the Kansas Open Meetings Act and had to be banned.

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Of course, as we all know, attorney general opinions are just that ... opinions. They do not have the force of law. To be put into effect, it must become law.

Our ability to communicate electronically has mushroomed since the Stovall opinion of 1998. There has been a proliferation of high-tech innovations ranging from text messaging to podcasting to instant paging to real-time online chatting that have made it easier to communicate at any time and with anyone. It has gotten so bad that the city attorney of Topeka found it necessary to admonish members of the Topeka City Council about the propriety of e-mailing each other during — yes, during — city council meetings. He said it likely constituted a violation of KOMA.

Our most recent example of a blatant disregard for KOMA also comes from the Topeka City Council. After failing to override a mayoral veto concerning the purchase of a second police helicopter, one of the city council members sought assurances from the Topeka city attorney that he would not be violating KOMA if he talked to four other council members to get them to sign onto an attempt to — you guessed it — purchase that same helicopter.

OK, so why doesn't the Kansas Open Meetings Act ban such surreptitious discussions? Well, the Shawnee County District Attorney has ruled that since the deputy mayor didn't tell each succeeding council member what had been discussed with the others, the contacts were not "interactive" in nature and, therefore, within the scope of KOMA.

Topeka is not alone in its attempts to circumvent KOMA. We hear about similar attempts every month from around the state of Kansas and the attorney who provides our KPA legal hotline gets numerous inquiries every month about this topic.

We think the absence of a statutory remedy in light of the 1998 opinion has led to a proliferation of serial discussions under a number of guises, including but not limited to a perceived need to "educate" elected and appointed officials in the days leading up to a public meeting. We're all for education, but we're adamantly opposed to what so often happens in these cases: secret, behind-the-scenes consensus building, arm-twisting, policy-making and outright decision-making, which are all — or certainly should be — violations of KOMA.

Whether you call them "serial meetings," "sequential meetings," "continuing meetings" or "circular meetings," these surreptitious gatherings of a majority of a quorum of public councils, commissions, advisory boards and other elected and appointed officials, often have what we believe to be a sinister purpose: to shut the public out of the important process of building the case for a particular public policy decision.

Therefore, we urge you to support the codification of Attorney General Stovall's 1998 opinion, No. 98-26, that such meetings are contrary to KOMA, they are contrary to the concept of open and honest government and that they should be banned in favor of sunshine, citizen participation and good government.

Thank you.

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THE OLATHE NEWS
Established
1861

TO: Sen. Tim Huelskamp, chair
Members of the Senate Elections and Local Government Committee

FROM: Dan Simon, Publisher, The Olathe News, Lenexa Centennial, Hometown Journal; Chair, Kansas Press Association Legislative Committee

RE: SB 621

Sen. Huelskamp and committee members:

Thank you for considering my testimony today. I apologize for not appearing in person but please accept my sincere thanks for considering this written testimony.

The changing world in which we operate has necessitated the need to tighten regulations of communications between elected officials. The technological explosion of the past 20 years has made communication outside the regular meeting room between members much too easy. Violations of the "spirit" of the Kansas Open Meetings Act have become widespread.

The time has come to make prohibition of serial communications the letter of the law.

Email, text messaging and instant messaging have made doing the people's business easier in some ways, but it has also opened a Pandora's box of sorts. We in the newspaper business think this bill is critical to minimize violations and raise the public's confidence in open government in Kansas.

There is the temptation — intentional or not — for elected officials to conduct meetings electronically or over the phone. Who among us doesn't have a cell phone in our pocket or purse? Who isn't accessible at all times?

What may originate as a short call to a fellow board member can easily turn into a violation of the public's trust when another elected official, and then another, are brought into the process. Business done outside the public's view does nothing but breach the trust that is necessary for representative government to work properly.

SB 621 is the public's best chance to make clear to public officials that KOMA says what it means and means what it says. Public business is to be conducted in the sunlight.

Thank you for your consideration.

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LKM
League of Kansas Municipalities

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

To: Senate Elections and Local Government Committee

From: Sandy Jacquot, Director of Law/General Counsel

Date: February 21, 2008

Re: Opposition to SB 621

On behalf of the 585 member cities of the League of Kansas Municipalities (LKM), thank you for the opportunity to offer our comments regarding SB 621. We have several concerns about this legislation.

The very concept of a "serial meeting" is not based in statutory or common law. While a previous Attorney General wrote an opinion where the concept of a "serial meeting" was discussed, we believe that the current law is clear and should not be amended. We further believe that the provisions of SB 621 will create much confusion among the public officials that must apply the law. Under current law, three elements must be met in order for there to be a "meeting" under KOMA: 1) a majority of a quorum; 2) engaged in interactive communication; 3) discussing the business of the body. This is a standard which is easily explained and understood in most situations.

Codifying the concept of a "serial meeting" could have dramatic consequences at both the local and state levels. For example, in a city where at least two councilmembers can talk, Councilmember A could talk to Councilmember B, then Councilmember B could talk to Councilmember C. Under SB 621, Councilmembers A and C are engaged in a "meeting," even though neither of them knew about it. There will be serious consequences at the state level as well. When the majority or minority whip goes person to person to determine where the votes stand on a bill, that could constitute a "serial meeting." Thus, notice would have to be given and such discussions would have to be open meetings. Just how would that occur? In addition, when a committee secretary goes person to person to get signatures for a conference committee report, that could constitute a "serial meeting."

It is significant to note that one of the required elements for a meeting, interactive communication, is missing. In addition, there is not time frame within which the communications must occur to constitute a meeting. Whether it would it be a day, a month, two months or even a year is unclear. Further clouding the issue is what "subvert the policy" of the KOMA means in this bill. It appears to be an intent provision, but the way its written would be impossible to apply, unless communicating in the fashion described is per se intent.

Perhaps the more troubling and unworkable is the concept of staff or even a citizen causing a violation of the open meetings act without the knowledge of any

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governing body member, as set forth in Section (c). Here is an example: the city manager talks individually with each governing body member about whether to put an item on the agenda. She does not tell each member what she discussed with the other. Under this bill, the city manager, who is not subject to the KOMA, has precipitated a violation of the act, without any of the governing body members interacting or having knowledge. How about instead of the city manager visiting individually with the governing body it is a representative of a local group encouraging each governing body member to hold down taxes? Under the language of the bill, a violation has occurred. Each communication would have to be noticed up as open to the public. Therefore, we are left with staff being unable to communicate with the governing body except when they are seated as a body and citizens being unable to meet with their governing body members. How is this policy good for effective and efficient government? It makes it impossible for staff to communicate with governing body members and limits citizens' ability to petition their government.

The current law provides a clear definition for public officials to follow. While application may be difficult in certain, narrow circumstances, we do not believe that a change in law is warranted at this time. For these reasons, we ask that you do not report SB 621 favorably for passage. I would be happy to stand for questions at the appropriate time.

CITY OF WICHITA
Dale Goter
Government Relations Manager

TESTIMONY

City of Wichita
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
dgoter@wichita.gov

Kansas Senate Elections and Local Government Committee
Feb. 21, 2008
Opposition testimony to SB621

The City of Wichita stands in opposition to SB621.

While the City of Wichita is strongly supportive of open government and citizen engagement, this legislation would have an unintended negative effect on the quality of local government.

Our opposition is based on the following observations:

1/ The current Open Meetings Act provides adequate protection of the public's right to appropriate access to government meetings.

2/ Meetings that involve less than a majority of a quorum cannot result in official action. Thus, no conclusive compromise of public interest is possible.

3/ The day-to-day schedules of local officials such as the Wichita City Council would become tortuously restrained. Casual conversations among two members as they routinely pass each other during the day might be construed as "serial" if a common topic circumstantially presented itself.

4/ The full application of the proposed legislation would require a host of media notices throughout the day as sporadic and unscheduled conversations occur between two Council members.

5/ "Serial" conversations often cover procedural issues and the most mundane of topics. Is the thermostat set too hot? Whose turn is it to make coffee? Should a workshop be scheduled to discuss a particular issue?

6/ Lines 30-35 are most troubling, in that they appear to restrain individual members of the public from contacting elected officials on a single topic. The individual elected official would have no way of knowing whether similar conversations had previously taken place with other members of the elected body. The net result would be the discouragement of communication between elected officials and their constituents.

5/ Finally, and perhaps most importantly, this additional restriction on basic communication among elected officials will only shift additional power and responsibility to unelected local government staff. The result would be a serious diminishment of efficiency and accountability and a compromise of citizen and taxpayer interests.

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Attachment 8

KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
Before the Senate Elections and Local Government Committee
February 21, 2008
SB 621
By Judy A. Moler, General Counsel/Legislative Services Director

Thank you, Chairman Huelskamp and Members of the Committee for allowing the Kansas Association of Counties to provide testimony on SB 621. I am Judy Moler representing the Kansas Association of Counties.

The Kansas Association of Counties is appearing in opposition SB 621. This bill would have a chilling effect on all internal conversations as well as communication with constituents. We are especially troubled by Section (c) of the legislation which would not allow a non-member of the body or agency to meet individually with members of a governing body. This would make the workings of local government very cumbersome when county administrators and/or department heads seek to meet with their commissioners. Each such meeting would bring scrutiny as to the "intent" of the meeting. In addition, it would seem this language would not allow members of the public to meet with various governing body members in order to inform them of their opinions on various matters to come before the Board of County Commissioners. In fact, this seems as if it would be an abridgement of the public's first amendment rights as citizens.

We believe that this bill has serious flaws and for that reason we would ask the committee to reject SB 621.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, education 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.

300 SW 8th Avenue
3rd Floor
Topeka, KS 66603-3912
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Elections and Local Government 2-21-08
Attachment 9

STUART J. LITTLE, Ph.D.
Little Government Relations

Senate Elections and Local Government Committee

Testimony on Senate Bill 621

February 21, 2008

Chairman Huelskamp and Members of the Committee,

My name is Stuart Little and I appear today on behalf of Johnson County Government in opposition to Senate Bill 621.

Johnson County Government supports and adheres to the current Kansas law regarding Open Meetings and Open Records. Our opposition to Senate Bill 621 is not opposition to public access to the activities of governing. Our concerns with Senate Bill 621 emphasize the challenges this legislation will raise for effective functioning of government decision-making.

Johnson County Government and all the cities of Johnson County so strongly support the current law on open records and open meetings that for the first time in 2008 all the cities and the county united on a joint legislative platform that endorses current law. As the joint platform states in part, "Johnson County government and the Cities within Johnson County believe that an open government is essential to building public confidence. However, we recognize that in some circumstances the public interest is better served by preventing the disclosure of sensitive information. Johnson County government and the Cities within Johnson County support the retention of the exceptions" in the Kansas Open Records Act and Open Meetings Act.

Johnson County has reviewed the recommended changes to current law regarding the Open Records Act and Open Meetings Act contained in Senate Bill 621. Our review of the proposed legislation presents of number of very specific challenges to the efficient and effective conducting of the public's business in county government. Among the specific areas of concern are:

- The terminology "intended to determine, influence or develop consensus" seems very hard to enforce. How do you determine what someone "intended"?
- Language appears to include staff members who need to talk to multiple commissioners about a pending matter.
- What might be the negative impact on internal conversations with staff or constituents? Will Commissioners be reluctant to talk to constituents or staff if they believe staff or constituents will also talk to other Commissioners?
- Section C, the last full sentence suggests that if SB 621 were the current law, I would have to notify the press or be in violation of the Open Meetings law if I discussed a bill with the County Manager or a commissioner. With this language in SB 621, it appears

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the county managers and staff would have to schedule open meetings to discuss virtually anything. It also appears to apply to individual constituents.

As you leave this hearing for time on the Senate floor today or a reception later this evening, and one of you asks the other what they think the Committee ought to do with Senate Bill 621, that is exactly the luxury you will be taking away from your county commissioners.

I would be happy to stand for questions.