

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 March 6, 2008 in Room 423-S of the Capitol.

All members were present except Senator Reitz.

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:

Rick Anderson, Doug Anstaett, Richard Gannon, Don Moler, Gloria Hevener

Others attending:

See attached list.

**SB 621** balloon (Attachment 1) was distributed to Committee.

Discussion.

Ric Anderson from the Topeka Capital Journal gave testimony in favor of amended **SB 621** (Attachment 2).

Discussion.

Doug Anstaett, executive director of the Kansas Press Association gave testimony in support of amended **SB 621** (Attachment 3).

Discussion.

Richard Gannon, publisher of The Liberty Sentinel gave a summary of KOMA violations (Attachment 4).

Discussion.

Judy Moler, Kansas Association of Counties gave written testimony in opposition to **SB 621** (Attachment 5).

Don Moler executive director of League of Kansas Municipalities gave testimony in regards to his concerns with amended **SB 621** (Attachment 6).

Discussion.

Written testimony was submitted for Michael Pepoon Assistant County Counselor of Segwick County in opposition to **SB 621** (Attachment 7).

Hearing closed on amended **SB 621**.

Open hearing on **SB 609**.

Ken Wilke gave a brief summary of fiscal note for **SB 609** (Attachment 8).

Gloria Hevener treasurer of the board of directors for Stratton Oaks Villas in favor of **SB 609** (Attachment 9).

Discussion.

Hearing closed on **SB 609**.

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 3/06, 2008

Please print in BLACK ink.

Name	Representing
Richard Gunn	KPA
Ric Anderson	Topeka Capital-Journal
Cindy Kelly	KASB
Loria Swann	HOA
ERIK SARTORIUS	City of Overland Park
Sean Miller	CAPITOL STRATEGIES
Ron Mealy	LITTLE BOYS RELIANCE
Doug Anhalt	KPA
Tom Moler	LHM
Venica Robinson	Sen. Huelskamp - Intern

SENATE BILL No. 621

By Committee on Elections and Local Government

2-13

9 AN ACT concerning open meetings; pertaining to serial communications  
10 with members of the governing body of municipalities; amending  
11 K.S.A. 75-4317a and repealing the existing section.  
12

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

14 Section 1. K.S.A. 75-4317a is hereby amended to read as follows: 75-  
15 4317a. (a) As used in this act, "meeting" means any gathering, assembly,  
16 telephone call or any other means of interactive communication by a  
17 majority of a quorum of the membership of a body or agency subject to  
18 this act for the purpose of discussing the business or affairs of the body  
19 or agency.

20 (b) Any meeting by persons who are members of a body or agency  
21 subject to this act and who constitute less than a majority of a quorum  
22 shall be open to the public if such meeting is one in a series intended to  
23 determine, influence or develop consensus of a majority of a quorum of  
24 the body or agency and to subvert the policy of open public meetings as  
25 pronounced in subsection (a) of K.S.A. 75-4317, and amendments thereto.

26 (c) A meeting shall be deemed to be serial if such meeting involves  
27 less than a majority of a quorum of a public body but is one in a series  
28 of meetings that collectively involve a majority of a quorum and that share  
29 a common topic of discussion of the business or affairs of that body or  
30 agency. A serial meeting that must be open to the public includes those  
31 in which a non-member of the body or agency meets individually with  
32 members intending to determine, influence or develop consensus of a ma-  
33 jority of a quorum of the body or agency and to subvert the policy of open  
34 public meetings as pronounced in subsection (a) of K.S.A. 75-4317 and  
35 amendments thereto.

36 Sec. 2. K.S.A. 75-4317a is hereby repealed.

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

that (1) collectively involve a majority of a quorum, (2) share a common topic of discussion of the affairs of the body or agency, (3) are intended by any participant or participants to determine, influence or develop consensus of a majority of a quorum in preparation for binding action concerning the common topic and (4) are intended

This subsection shall not be construed to prohibit meetings by less than a majority of a quorum of members except when such meetings occur in a series with intent as specified herein.

adopted 2/26/08

Senate Elections & Local  
Government Committee  
3/6/08  
Attachment 1



# THE TOPEKA CAPITAL-JOURNAL

Thank you, Mr. Chairman and members of the committee, for the opportunity to appear here today in support of this important bill.

I'm here to represent The Topeka Capital-Journal, where I am a news columnist and the coordinator of the editorial page, but also as a lifelong Kansan who believes openness and transparency in the conduct of government business are vital components of a successful democracy.

The bill you're considering today would provide a meaningful step towards assuring Kansans their elected officials are operating openly and responsibly.

I believe the bill would be especially welcomed here in Topeka, where the recent controversial purchase of a police helicopter triggered an investigation into concerns over serial communications among members of the Topeka City Council.

The investigation came after the council added, without notice, a measure to its December 4 meeting agenda to purchase the helicopter. That measure was crafted in response to a veto of the purchase by Topeka Mayor Bill Bunten.

After the council approved the item – which required a simple, five-vote majority as opposed to the six votes that would have been needed for a veto override -- it was later revealed that the five council members who voted in the majority of had privately discussed acquisition of the helicopter before the item was placed on the agenda.

The issue prompted an outcry from Topeka residents and drew the attention of Shawnee County District Attorney Robert Hecht, who conducted an investigation into the council majority members' private discussions.

Mr. Hecht ruled that while the council members had not violated the letter of the Kansas Open Meetings Act, they may have, in his words, "violated the spirit of the K.O.M.A.'s provisions that the conduct of governmental affairs and the transaction of governmental business be open to the public".

The Capital-Journal agreed with Mr. Hecht's findings, which is partly why we support the measure before you today. We believe both the public, and those who represent the public, would be well-served by more clear definition and regulation of serial meetings.

Thank you

Ric Anderson

*Elections and Local  
Government 3-06-08  
Attachment 2*



## 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

March 6, 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:

The committee received our detailed testimony at the hearing on Feb. 20. I want to take this opportunity today to make what I believe is an irrefutable statement:

Since the Shawnee County District Attorney has ruled twice that meetings of small groups that add up to more than a majority of a quorum are permissible if they aren't "interactive," the failure to do something to correct this gaping loophole in the Kansas Open Meetings Act would put the Kansas Legislature's seal of approval on such meetings.

If, as Robert Hecht has ruled, that under KOMA as it is written today elected and appointed officials on councils, commissions, school boards, and advisory committees can legally discuss business in secret that should be discussed in public, our entire system of self-government is indeed in jeopardy.

The Topeka City Council serves as this year's poster child for secrecy in government. They lined up their votes outside a public meeting. Five of the nine members threw their support behind a proposal without ever having read it, then foisted this nonsense on an unsuspecting public — without notice and without public comment.

SB 621, as amended, says to the Topeka City Council and any other board or commission that this kind of behavior is unacceptable — and unlawful. It says that serial communications fly in the face of the Kansas Open Meetings Act and our cherished concept of self-government. And it says that serial communications spit in the eye of our citizens, who discover too late that they didn't have a place at the table.

If the Kansas Legislature fails to act, legislators will have sanctioned such surreptitious meetings by default. In fact, you will have provided public officials with a ready-made roadmap to more and more secrecy.

Those who think KOMA is a nuisance and ignore it anyway will be emboldened to do even more behind closed doors. And those who have tried to be faithful public servants will face more pressure from their peers to cut corners. After all, the Legislature says it's OK.

Our coveted system of open government is at risk. And only the Kansas Legislature can fix this mess. It's time for this committee and this Legislature to step up to the plate and say enough is enough.

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Attachment 3*

41  
The Liberty Sentinel summary of KOMA violations.

08/08/06 The McCune City Council acknowledged violating KOMA. Crawford County Attorney does not impose penalty.

08/16/06 Bourbon County Attorney cites Fort Scott City Commission for violating KOMA. City officials acknowledge violation and underwent KOMA review session.

08/12/06 Topeka Mayor and city attorney discourage Topeka City Council members from using e-mail to communicate with each other during their meetings.

10/26/06 Mitchell County Attorney advises County Commission on KOMA violation. County Attorney also states that he has attempted to explain KOMA to the commission on several occasions and has swept under the rug too many violations.

01/31/07 Linn County voters oust county commissioner in recall election due to KOMA violations.

04/15/07 Kiowa County Attorney asks the Kiowa County District Court to assess a \$500 penalty against the three commissioners for a KOMA violation.

05/05/07 Brown County Attorney orders Morrill City Council members to take a one-hour class on KOMA and current and former mayor required to "sign off" that they had read the outline of KOMA.

07/10/07 Dickenson County Commissioners ordered to obtain KOMA training.  
(by A.G.)

08/22/07 Sedgwick County Attorney fines City of Wichita \$100. The Board of Appeals for Plumbers and Gas Fitters violated KOMA with an executive session.

09/20/07 Beloit City Council was ordered to acknowledge KOMA violation and apologize to the public. (by Mitchell County Attorney)

11/15/07 Neosho County Commission, county counselor and county coordinator ordered to get KOMA training. (by county attorney)

12/04/07 Lawrence City Commission is ordered to obtain 2hrs. of KOMA training.  
(by A.G.)

1/10/08 The five council members and the mayor of Garfield have been ordered by the Attorney General's office to take at least 1.5 hours of KOMA training for holding an illegal executive session. (Violation on 7/02/07)

2/28/08 Thomas County Commissioners have been ordered to obtain 1½ hours of KOMA training for holding an illegal executive session held on 12/28/07. (by A.G.)

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attachment 4*



**KANSAS**  
ASSOCIATION OF  
**COUNTIES**

TESTIMONY

Before the Senate Elections and Local Government Committee  
WRITTEN TESTIMONY IN OPPOSITION TO

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 written testimony in opposition to SB 621.

The Kansas Association of Counties is appearing in opposition SB 621 as it is currently written. We applaud the removal of Section (c) of the bill that we spoke against in prior testimony.

The troubling part of the bill as it is now written is the removal of the word "interactive" as an element required for a meeting to occur. This would allow for any "one way" communication to be considered a meeting when in reality a true meeting did not occur. This omission of interactive would cloud not only this issue of serial meetings, but the entire Kansas Open Meetings Act and result in confusion, inability to communicate and certainly unintended violations of the Act.

For these reasons, we still continue to 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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Attachment 5*



League of Kansas Municipalities

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

To: Senate Elections and Local Government Committee

From: Don Moler, Executive Director

Date: March 6, 2008

Re: Opposition to SB 621

On behalf of the 584 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 state and local levels. For example, in a city where at least two councilmembers can speak outside of a meeting, Councilmember A speaks to Councilmember B, Councilmember B subsequently speaks 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. For example, when three members of this committee speak to one another in sequence concerning a matter before the committee, it would constitute a violation of the KOMA should this legislation pass. Furthermore, when a member of leadership, or any member, goes legislator to legislator to determine where the votes stand on a bill, that could constitute a "serial meeting" and a violation of the act could occur if a majority of a quorum were involved. In the House that would involve 32 individuals and in the Senate that would involve 11 individuals.

It is significant to note that the key required element for a meeting, interactive communication, has been removed from the definition in the Open Meetings Act. This is a very serious matter as it not only impacts the so-called "serial meetings" contemplated in this bill, but would impact all aspects of the Kansas Open Meetings Act. Thus, with the word interactive deleted from the definition of meetings, the sending of a postcard, email, nod, wink, foot shuffle, or any other type of one-way communication could constitute a "meeting" under this tortured definition. Further clouding the issue is what "subvert the policy" of the KOMA means in this bill. It

[www.lkm.org](http://www.lkm.org)

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appears to be an intent provision, but the way its written, it would be impossible to apply.

In contrast, the current law definition of a meeting is easily explained and understood. 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 not report SB 621 favorably for passage. I would be happy to stand for questions at the appropriate time.



**OFFICE OF THE COUNTY COUNSELOR  
SEDGWICK COUNTY, KANSAS**

**Michael D. Pepon**  
Assistant County Counselor

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COUNTY COURTHOUSE § 525 N. MAIN, SUITE 359 § WICHITA, KS 67203-3790  
PHONE (316) 660-9340 § FAX (316) 383-7007

**TESTIMONY SB 621  
COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT  
MARCH 6, 2005**

Chairman Huelskamp and members of the committee, I appreciate the opportunity to present written testimony on behalf of Sedgwick County in opposition to SB 621. In Sedgwick County, where two county commissioners can now meet outside of a public meeting, this bill would effectively end any communication between our county commissioners.

Sedgwick County has always been in favor of open government and supports the strong public policy statement as contained in K.S.A. 75-4317. But SB 621 and the amendments being proposed before this committee go beyond promoting open government and is potentially a trap for elected officials to be in violation of the Kansas Open Meetings Act. The first significant flaw in the legislation is the blatant inconsistency with the definition of "meeting" in section 1 (a) and its contradictory use in section 1 (b). But the proposed deletion of the word "interactive" in line 16 of the bill is even more problematic. The purpose of the current language in K.S.A. 75-4317a is to prevent a majority of a quorum from discussing matters before the public body in private to effectively end any public debate on the issue. The only way in which this can occur is through some sort of "interactive" communication between members of a governing body that would involve discussion, persuasion or some other intent to develop consensus of a majority of a quorum. Without the word "interactive" in the definition of meeting, a governing body could be in violation if one member wore a t-shirt containing his/her a position on an issue if viewed by a majority of a quorum. Why shouldn't an elected official be able to state a position on a matter and disseminate the same to his/her fellow board members or staff so long as interactive dialogue is not taking place? Under the current version of the bill a county commissioner could possibly be in violation of the Act for sending an email indicating that he/she will be out of town and unable to attend an upcoming meeting.

The current statutes involving open meetings when read in conjunction with interpretations by the Attorney General's Office provide effective open government. The intended or unintended consequences of SB 621 go well beyond effective open government and instead may punish those elected officials serving their on their city, county and township boards, or even those citizens

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volunteering their time on committees and subcommittees for these governmental agencies. For the above reasons we respectfully request that you do not support SB 621.

*S: SHARED WPDAT MDP Local 24 - Open Records Request Response.doc*

March 3, 2008

The Honorable Tim Huelskamp, Chairperson  
Senate Committee on Elections and Local Government  
Statehouse, Room 262-E  
Topeka, Kansas 66612

Dear Senator Huelskamp:

SUBJECT: Fiscal Note for SB 609 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 609 is respectfully submitted to your committee.

SB 609 would create the Homeowners' Association Dispute Resolution Act. An association and a resident must participate in the negotiation of a dispute if either party makes a request for mediation in writing. However, the resident's participation in the mediation would be optional. If the parties agree to mediation, a mediator must be appointed within 60 days of the request. Mediators would be required to disclose their education, training, relevant experience, professional or community affiliations, any conflicts of interests, and the names of references. If the parties are unable to agree upon the selection of a mediator, one would be appointed by the Attorney General. The Attorney General must maintain a list of qualified mediators for the purposes of this Act.

Mediation may not exceed two hours unless the parties agree to longer periods. The association would pay for two-thirds of the cost of mediation while the resident would pay the rest of the balance. Parties may be assisted, at their own expense, by legal counsel. The settlement terms would be open to disclosure to all residents. The bill would also require the Attorney General to develop written educational materials and a website for the purposes of providing guidance to homeowners' associations and their residents regarding best practices of corporate governance. Homeowners' associations must notify their residents of the availability of this information and the website no later than the next annual meeting that follows the effective date of this Act.

SB 609 would create requirements for nonprofit homeowners' associations regarding the disclosure of information to residents within the association, open meetings, and the appointment of an election inspector. The inspector would oversee and ensure the integrity of the board of

directors' election. The bill would also require that members of the board of directors be elected from members of the association. Elected board members would serve a term of one year and then could be reelected upon expiration of the term of office. SB 609 would take effect upon its publication in the *Kansas Register*.

Estimated State Fiscal Effect				
	FY 2008 SGF	FY 2008 All Funds	FY 2009 SGF	FY 2009 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$60,000	\$60,000
FTE Pos.	--	--	--	--

The Attorney General's office estimates passage of SB 609 would require \$60,000 from the State General Fund to create written educational materials and a website. Any fiscal effect resulting from this bill is not reflected in *The FY 2009 Governor's Budget Report*.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Jeff Conway, Department of Commerce  
Matt Sinovic, Attorney General's Office

**Testimony on the Homeowner's Association Bill, SB 609**  
**Before the Senate Committee on Elections and Local Government**

Mister Chairman and Members of the Committee, **I am Gloria Hevener**, Treasurer of the Board of Directors, Stratton Oaks Villas. I am hopeful that the State of Kansas will pass legislation to protect our homeowners and their assets. Currently, to my knowledge, Kansas has no governing provisions specific to maintenance provided homes associations.

My concern is this: Homes Association Boards currently do not have guidance from the state in the form of statutes that govern how they are structured, managed, and disputes mediated in a professional and consistent manner. If appropriate legislation is not mandated to control Boards of Directors in some fashion, the residents of these communities and others may not have a voice in decisions made that ultimately affect their most prized asset, their home.

I live in Stratton Oaks, a "maintenance-provided" homes association. Our residents pay \$175.00 per month homes association dues. The Pulte Homes Construction Company was the builder of our 100 Villas.

At the time we purchased our homes we were provided governing documents by the builder. The documents included By-Laws and Declarations. Since our dues are pooled to pay for everything in the community except for "some" interior and exterior maintenance, I believe it is imperative that we have mandates to follow regarding our governing documents.

Declarations are specific as to what homeowners can and cannot do related to their building maintenance, exterior landscaping, etc. However, this past year, our Board of Directors decided to treat our document as a "cookie cutter document" that Pulte provided to all the communities they have built, and proceeded to interpret them lightly.

I support following our governing bylaws and declarations as they stand, because we bought them along with our homes at the time of purchase. I don't believe 3-5 people that have been elected as a Board of Directors should be allowed

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Attachment 9*

to follow them loosely. **If amendments are required to satisfy the majority of the community, then a legal process should be followed to amend our governing documents.** The Declarations were filed by Pulte at the Register of Deeds Office in Johnson County so I feel that they are the legal documents that should be followed responsibly.

I believe a majority vote of all villa residents should be mandated to make changes to bylaws and declarations. Our Declarations state that we must have a majority of the homeowners to make changes, but our bylaws do not require a majority vote.

Our bylaws state that three officers be elected to serve on the Board of Directors. However, if more officers are desired, it states that an amendment of the bylaws can be done with a majority vote of the Board of Directors. We did amend our bylaws to allow for five Board members. However, this amendment was prepared by just creating a letter and allowing all of our Board members to sign it without a legal process or agreement from all residents. This concerns me because altering governing documents means that the community would have to live with what a few Board members decided was best for all. This could be most anything.

I was responsible for the Appearance Control Committee this past year and in trying to follow the Declarations, some Board members felt that we could make allowances for what the Board thought was appropriate. I was sitting in a hot seat many times because I continued to refer to what our Declarations stated when we denied requests for change.

I searched on the Kansas website to see if there was any legislation or current law concerning governance of homes associations. I found one house bill that had been in committee for some time. I then called my Senator Julia Lynn and together we formulated SB 609, which includes many of the precepts in the house bill, but also includes a complaint resolution process.

SB 609 covers what I believe to be appropriate to control what the Board of Directors in communities, such as ours, can and cannot do without the majority vote of the residents. One vote per residence should be allowed.

I believe a website, as outlined in this bill, would be most helpful. This bill would provide for a State mediator to step in when required to address disputes and problems.

At this time our Declarations state that a lien can be placed on the home of residents who do not follow the governing documents. However, a resident could ignore a lien as it would not be payable until the home was sold. If they were to live there for 20 years, maybe it would never be paid. Some form of legal policy is needed to address immediate repercussions without overstepping bounds or having to hire an attorney to settle each individual problem.

An attorney to settle each dispute could be very expensive to the homes association and cause the homes association to pay out more than they could afford to ensure that everyone follows the governing documents. Homes associations, as you know, are non-profit and only have budget to maintain the operating and reserves expenses. SB 609 could provide consistency in how homes associations are governed and handle disputes. SB 609 would be good for both Board members and residents.

Thank you for the opportunity to testify before this Committee, and I will stand for questions.