

SESSION OF 2002

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 529**

As Amended by Senate Committee on  
Elections and Local Government

**Brief\***

SB 529 amends the Kansas Open Meeting Act (KOMA) to require the recording of sound by electronic means or otherwise of all executive or closed sessions of meetings of all legislative and administrative bodies covered by KOMA. The recording must be kept for not less than four months.

The bill clarifies that the recording is not intended to abrogate the attorney-client privilege which may otherwise apply to discussions during an executive session.

The tape recording of an executive session shall be sealed and not be a public record subject to the Kansas Open Records Act.

In any action to enforce KOMA, upon order of the court, the recording of the executive session shall be unsealed and examined by the court *in camera*. The court shall determine what portion of the tape recording of the executive session, if any, should be disclosed for use in the enforcement proceeding to the party seeking enforcement.

In determining whether any portion of the recording of the executive session should be disclosed, the court shall weight the prejudicial effects of the public interest resulting from the disclosure of any portion of the recording against the probative value of that portion needed to enforce the provisions of KOMA. After making its determination, the court may permit the party seeking enforcement to inspect or use the recording or any portion of it, under conditions set by the court.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/cgi-bin/fulltext/bills.cgi>

## **Background**

The bill was supported by the Kansas Press Association, a number of Kansas publishers, the Kansas Association of Broadcasters, and the Kansas Sunshine Coalition for Open Government. Proponents said the bill would safeguard openness in government and would help overcome ignorance or abuse of the KOMA by public bodies.

Opponents included the Kansas Association of School Boards, the Kansas Association of Counties, the Kansas County Commissioners Association, the Kansas Legislative Policy Group, the League of Kansas Municipalities, the Unified Government of Wyandotte County/Kansas City, Kansas. Opponents said the bill would create problems regarding security and custody of the recordings, and possibly destroy the attorney-client privilege now utilized regarding some discussions in executive session.

The fiscal note said potential costs to the state in regard to added judicial time cannot be estimated.