

SESSION OF 2005

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 78**

As Agreed to March 30, 2005

Brief *

SB 78, as amended, addresses statutes related to public information, including the Kansas Open Records Act (KORA), the Kansas Open Meetings Act, the filing of statements of substantial interest, and other public information-related items, as follows:

- Extend for five years (until July 1, 2010) the life of over 240 KORA exceptions scheduled to expire this July 1 if the Legislature does not continue these exceptions.
- Change from June 1 to July 15 the date the Revisor of Statutes is required to certify the list of KORA exceptions scheduled to expire on the following July 1.
- Delete the requirement that KORA exceptions be "reenacted" to provide instead the exceptions be "continued."
- Amend the Kansas Open Records Act exemptions statute, the Kansas Open Meetings Act executive session statute, and a statute dealing with proceedings before the Kansas Corporation Commission to provide that any confidential records or information relating to security measures provided or received shall not be subject to subpoena, discovery, or other demand in any administrative, criminal, or civil action. The bill also amends an open records exception to expand this exception to include records that reveal security measures designed to protect private property or persons if these records are submitted to a public agency.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

- Add a definition of the term “clearly unwarranted invasion of personal privacy” to clarify the meaning of KSA 45-221(30) providing a public records exception for this purpose.
- Revise the personnel records exception to clarify that public agency employment contracts and related agreements are not exempt from the KORA. The amendment provides an exception to the exemption from disclosure for most personnel records, such as performance ratings or individually identifiable records regarding employees or job applicants. The names of employees, their positions, and salaries are now open records.
- Require each non-profit entity that receives public funds of at least, except for those listed below, to:
 - For fiscal years beginning on or after July 1, 2005, document the receipt and expenditure of the public funds.
 - This requirement is deemed fulfilled if the entity is required by law, grant, contract, or other agreement to file a written financial report, which includes the same type of public funds information, with a federal or state agency or local political or taxing subdivision that provided the public money to the entity.
 - An itemized invoice or statement of the amount of public money received and what it was expended for will satisfy this requirement when the invoice or statement is filed with the federal or state agency or local subdivision.
 - Both of the above reports would be deemed to be a public record according to the Kansas Open Records Act (KORA).
 - Any covered entity may file with the Secretary of State, or make available for review at its own office, a copy of the detailed audit or accounting of public money received by the entity.
 - Make available, upon request, a copy of this documentation regarding all public funds received by the entity. If the entity does not segregate public funds in its accounting practice, it must make the accounting of its entire expenditures and receipts open to the public.
 - Authorize non-profit entities to charge and require advance payment of a reasonable fee for providing the documentation or access to such documentation. The fee must be deter-

mined in the same manner as provided in the KORA, and 25 cents per page would be deemed a reasonable fee for copies.

- Specifically exempt from its requirements any health care provider, individual person, for-profit corporation, or partnership. The term “health care provider” is defined in the bill to include, among others, a non-profit dental service corporation, a non-profit medical and hospital corporation doing business in Kansas, an indigent health care clinic, and an adult care home as otherwise defined in statute.
- Define “public funds” to mean any money received from the United States, the State of Kansas or any political or taxing subdivision thereof, or any officer, board, commission or agency thereof.
- Require that on or before January 15, of each year, the county or district attorney of each county would be required to report to the Attorney General all complaints received during the preceding fiscal year concerning violations of the Open Records Act and Open Meetings Act and the disposition of each complaint. The Attorney General would be required to publish a yearly abstract of such information listing by name the public agencies which are the subject of such complaints or investigations.
- Amend the State Governmental Ethics Law requiring filing of statements of substantial interest to cover on and after January 1, 2006, faculty members of state universities whose base annual salary is at least \$50,000.

Conference Committee Action

In Conference Committee, the House conferees agreed to the Senate amendments to the bill, with the following revisions and additions:

- Add the contents of Substitute for SB 80, as amended by the Senate Committee on Elections and Local Government, which would require certain non-profit entities that receive public funds to document the receipt and expenditure of those funds and, upon request, make this information available under specified guidelines. The Conference Committee further limited the provisions’ application to those non-profit entities (not already

excepted) that receive at least \$350 per year in public funds. The Conference Committee also clarified that an invoice or similar statement used to comply with this provision must report that for which the money was expended.

- Add a definition of the term “clearly unwarranted invasion of personal privacy.” This definition was originally amended into SB 34. The Conference Committee amended it further by adding the phrase "including information that may pose a risk to a person or property." The new definition reads: "revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public."
- Limit the requirement to file statements of substantial interest to those faculty members of state universities whose base annual salary is at least \$50,000.

Background

Representatives of the Office of the Attorney General, the *Lawrence Journal World*, and the Kansas Association of Broadcasters testified in favor of the original SB 78.

According to testimony received, the purpose of the relevant language change is to codify the finding of the Douglas County District Court in the case of *World Company v. University of Kansas*. The lawsuit was brought against the University when the athletic department refused to disclose the terms of employment of KU Athletic Director Lew Perkins.

The House Committee of the Whole amended SB 78 to insert provisions of SB 34 as amended by the House Committee and SB 24 as amended by the Senate Committee of the Whole. The House Committee of the Whole also added an amendment to the Kansas Governmental Ethics Law. These amendments were retained by the Conference Committee.

SB 34, as introduced, was recommended by the 2004 interim Special Committee on Local Government and would have extended a number of Kansas Open Records Act exceptions scheduled to sunset July 1, 2005.

SB 24, as introduced was recommended by the Joint Committee on Kansas Security. The bill would have amended the Kansas Open Records Act and the Kansas Open Meetings Act in regard to confidentiality of security measures.

With respect to Substitute for SB 80, proponents of the original bill included representatives of the Kansas Attorney General, the Kansas Press Association, and the Kansas Association of Broadcasters. Opponents of the original bill included representatives of the American Council of Engineering Companies of Kansas, the American Institute of Architects-Kansas, the Associated General Contractors of Kansas, The Heavy Constructors Association of the Greater Kansas City Area, The Kansas Contractors Association, Cornejo & Sons, the Kansas Medical Society, the Kansas Hospital Association, the Greater Kansas City, Lenexa and Overland Park chambers of commerce, the Travel Industry Association of Kansas, and the City of Overland Park. The original bill covered both for-profit and not-for-profit groups including health care providers. The Senate Committee excluded for-profit groups and limited non-profit applicability.