



**Oral Opponent Testimony on
SB 47, relating to boards of education
House Education Committee**

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Chair Estes and Members of the Committee,

KASB appears today in strong opposition to SB 47. The bill's provisions violate local school boards' constitutional rights and their responsibility to oversee their districts. The bill:

- narrows the governing powers of school boards and upends over 50 years of legislative action, legal precedent, and local school board policy regarding Kansas open meetings laws solely with respect to school boards;
- requires school boards to adopt policies and procedures for conducting board business that the Legislature does not and would not require of itself or other elected bodies in Kansas;
- upends districts' policies and procedures on building access and security while opening districts up to new liability related to student and staff privacy rights; and
- jeopardizes districts' ability to protect against cyberattacks.

SB 47 is a substantial legislative overreach and should be rejected.

KASB's members are the nearly 2000 locally elected school board members in 285 public school districts across Kansas. Local control of school district governance and management decisions is a foundational principle throughout KASB's member-adopted legislative policies:

Local Control of Public Schools

In addition, Article 6, Section 5 states, "Local public schools under the general supervision of the state board of education shall be maintained, developed and operated under locally elected boards." We support management of public schools under locally elected boards of education, including setting curriculum, staffing, financial management and policies, so that such schools can progress and meet State Board standards.

School Board Authority and Accountability

As the constitutional authority charged with the management of local schools, **the school board is accountable to district patrons through the electoral process and must be the final authority on local management decisions** for expenditures, personnel, facilities, and programs.

(Emphasis added). Further, KASB's member-adopted permanent policies speak specifically in opposition to the open meetings proposals in SB 47:

KASB supports the current requirements and exceptions in the Kansas Open Meetings and Kansas Open Records Acts. **Boards of education and school districts should not be subject to more stringent or onerous open meetings or open records requirements than those that apply to other government entities.**

(Emphasis added). Based on these policies and the concerns discussed in more detail below, we ask the committee to reject SB 47.

SB 47 Upends over 50 Years of Open Meetings Policy in Kansas, Targeting Only School Boards and Imposing Requirements that the Legislature Would Not Impose Upon Its Own Public Meetings

SB 47 tries to sneak what amount to changes to the Kansas Open Meetings Act into law by placing them instead in sections of the Kansas statutes that relate to the powers and duties of boards of education. By approaching the proposed changes in this way, the bill both damages good governance at the school board level and upends over 50 years of state sunshine law policy and precedent—but only for locally elected boards of education.

On page 2, beginning on Line 10, the new language proposed for K.S.A. 72-1138 subjects school boards, and only school boards, to different open meetings requirements for agendas and public participation than apply under the Kansas Open Meetings Act to all other public bodies and agencies in Kansas. See K.S.A. 75-4317 et seq.

Meeting Agendas

SB 47 would permit any board member to add a discussion item to the agenda at any board meeting, without requiring a motion, second, and vote by a majority of board members to

amend the agenda. The bill enshrines into law a mandate that a single board member can override the will of the majority of their board colleagues regarding board business. This proposal goes against the intent and purpose of the Open Meetings Act.¹ If a board member wishes to add an agenda item during a public meeting, that member need only secure a second and the votes of three other board members to have that item placed on the meeting agenda, as is already provided for in state law:

A majority of the full membership of the board shall constitute a quorum for the purpose of conducting any business of the school district, and **the vote of a majority of the full membership of the board shall be required for the passage of any motion** or resolution.

K.S.A. 72-1138. This process allows the board president to keep order and follow standard parliamentary procedure, keep the meeting moving, and ensure that business meetings are spent on the pressing business of the district and on initiatives the majority of the board has agreed to consider or pursue toward their mission of educating the children of their communities.

Moreover, the bill would override the local board policies of most, if not all, school boards in Kansas for developing board meeting agendas and requesting items be placed on board agendas.

To protect the orderly and efficient conduct of the business of school districts, in service of educating Kansas kids, boards of education must retain the same ability to control their agendas and focus their meetings on agreed-upon priorities as is afforded all other governing bodies in Kansas. These powers are necessary and proper fundamentals of good governance, as they ensure that the important work of the board is carried out at every board meeting.

Public Participation

SB 47 would make public comment a requirement at every regular board of education meeting. Notably, such a mandate is absent from the Kansas Open Meetings Act and would not be required of any other public body under the bill except school boards. Thus, the bill overturns

¹ SB 47 seeks to impose mandates on school boards that do not apply to any other governing body or agency in Kansas. See, e.g., *U.S.D. No. 407 v. Fisk*, 232 Kan. 820, 660 P.2d 533 (Kan. 1983) (KOMA does not mandate agendas); *Stevens v. City of Hutchinson*, 11 Kan. App. 2, 726 P.2d 279 (Kan. Ct. App. 1986) (the public body is “always free to amend a published agenda at any time” using normal rules of order); Kansas Attorney General’s FAQs about the Kansas Open Meetings Act, <https://www.ag.ks.gov/divisions/administration/open-government/koma-faq#:~:text=Does%20a%20group%20subject%20to,meetings%20is%20a%20policy%20decision> (accessed 3/10/2025) (KOMA does not mandate public comment; whether to have it is a policy decision of the publicly body or agency).

both current state law only for school boards and voids the current public participation policies adopted by boards of education across the state.

The bill's provisions would override a board president's ability to keep order in a meeting during public comment. In this respect, just like a legislative committee chair's authority to preside over a committee meeting, board presidents need the flexibility provided under current law to ensure that board meetings are conducted in a safe, efficient, and professional manner. Of extreme concern to boards of education, the bill's proposed mandate may very well endanger the legal status of public comment at school board meetings as a limited public forum, an outcome that would lead to boards of education losing the ability to enforce reasonable decorum and time/place/manner restrictions on public participation in school board meetings.² Losing the ability to enforce reasonable decorum rules may result in significant disruptions at school board meetings. We urge the committee to consider these potentially serious consequences of changing the law in this area, as well as the optics of requiring school boards to comply with a mandate that the Legislature almost certainly would not adopt for itself.

The changes proposed in SB 47 would be significant departures from current law and policy governing business meetings of boards of education and other governing bodies in Kansas. Such significant departures should only be considered if there is compelling evidence of substantial, systemwide dysfunction in the application of these laws and policies to public bodies. Such evidence is completely lacking with respect to SB 47, not only for school boards but more broadly for any other governing bodies in Kansas, including the Legislature itself.

Kansas school boards go to great lengths to ensure board meetings are accessible to the public, as the law requires, and to communicate with and seek input from parents and stakeholders at school board meetings and through site councils, advisory committees, public fora, surveys, letters to parents and families, and other communication and feedback-gathering tools. Most school boards in Kansas allow time for public comment as a standard part of most of their regular board meetings. Similarly, there are several circumstances where the law requires boards of education to have public hearings, which boards dutifully hold. SB 47 detracts from the purpose of school board meetings. Boards of education are obligated to conduct their meetings in such a way as to ensure they are open to the public and so that the public can understand the actions that are being taken, hear board member discussion, and observe board actions/decisions. The proposed changes undercut boards' ability to devote adequate meeting time to do that business and turn board business meetings into meetings of the public instead of meetings of the board. The work of boards of education is important, and the ability to do

² See *Spiehs v. Larsen*, Case 5:23-cv-04107, Document 95, at 9-10 (D. Kan., Mar. 6, 2025) (holding that a city commission can enforce decorum rules in public comment at a city commission meeting in part because the city retains the discretion under the Kansas Open Meetings Act whether to have public comment as part of its business meeting).

that work should be supported in law to the full extent as it is for other governing bodies and agencies.

Considering the extensive work that local boards are doing to seek parent and stakeholder input, and without substantial, compelling evidence of a need or justification to radically alter state law as it currently exists, KASB respectfully suggests that this bill is a poorly crafted solution in search of a non-existent problem. We ask that our boards continue to be allowed to decide, based on the length and nature of their agenda, when to allow time for public comment at their meetings.

Building Access and Security

It is well-established, both in the private and the public sector, that the power and authority of a governing body (such as a school board) is vested in the body as a whole and not in individual board members acting alone.³ Unfortunately, SB 47 also upends this principle. Section 3 of the bill amends K.S.A. 72-1416 to mandate an individual school board member have unrestricted access to any district facility or property at any time that the property is in use, either for district business or programs or for community uses. This would, for example, require a district to allow unlimited access by a school board member to a school building when it is being used for weekend or after-hours community activities to which a board member has no connection or reason to attend. What would be the rational basis for permitting such broad access to an individual board member? An individual board member is not entitled to access to district property different from a member of the public when that board member is acting as an individual and not as part of the board. Boards of education have policies and procedures in place that govern access by the public to district property, and board members currently are and should continue to be subject to those same policies and procedures when visiting district property in their individual capacities. Boards of education also have policies and procedures applicable to the conduct of board business by members of the board and other matters that are on point to this concern that the legislature should not overturn by statute.

Individual school board members are not district employees, and therefore only have a right to confidential information about students and staff when there is a matter before the board of education that requires disclosure of such information. Even then, such protected information must only be shared with board members to the extent necessary for the board to fulfill its duties and generally only within the parameters of a properly conducted executive session at a school board meeting. Board members are not empowered to make decisions on behalf of the district except when they are meeting together at a properly noticed public meeting of the

³ See, e.g., KSA 72-1131 (“Every unified school district shall possess the usual powers of a corporation for public purposes.”).

entire board of education.⁴ The provisions in SB 47 would broaden the scope of an individual board member's power and authority with respect to school district property, outside the context of a public meeting and board policy and procedure, in a way that places at risk all these long-standing principles of law and good governance. The bill includes no limitations on board member access to sensitive or protected areas holding protected employee information; it has no restrictions on board member access to classrooms, offices, or other areas where they may have access to private student information protected under IDEA, FERPA, HIPPA, or other laws protecting student and staff privacy. Similarly, having board members audit classrooms may be in violation of mandatorily negotiable evaluation procedures. Such unrestricted individual access could create new liability, prohibited practice concerns with bargaining units, and added administrative burdens and expense for districts with respect to such sensitive information under the conditions SB 47 would impose.

SB 47 Increases Districts' Vulnerability to Cyberattacks by Mandating How Districts Structure Email Accounts/Access for School Board Members

The language requiring all board members' emails to be disclosed and publicized at the state and local levels overrides our members' efforts to protect their districts from cybersecurity attacks. One of the simplest ways to hack into a school district's system is to send a spoofing or phishing email to school board members or district employees. If one person takes the bait, the entire district is at risk for a cyberattack. For this reason, many districts have a fillable form on their website for those who want to email a person with a school district account--such forms are routinely used to protect against these types of attacks by many entities including, for example, members of the United States Congress.

The legislature has been vocal, and rightfully so, about how school districts are addressing their vulnerability to cyberattacks. Recent surveys of the scope of cybersecurity challenges for school districts indicate that upwards of 82% of K-12 schools have recently been targeted by cyberattacks, with cybercriminals increasingly focused on phishing and social engineering attacks that attempt to exploit school districts through peoples' email.⁵ We urge the committee to reject this bill's one-size-is-good-for none approach and uphold local control over how districts deploy their limited resources to protect the security and integrity of their IT systems.

In closing, SB 47 represents an intrusion into the rights and responsibilities of locally elected school boards to conduct district business in a professional, efficient, and responsible manner. It puts districts at risk of cybersecurity attacks. And it represents another chapter in the attacks on

⁴ See, e.g. KSA 72-1138(a) (A majority of the full membership of the board shall constitute a quorum for the purpose of conducting any business of the school district, and the vote of a majority of the full membership of the board shall be required for the passage of any motion or resolution.”).

⁵ “82% of K-12 Schools Recently Experienced a Cyber Incident,” <https://www.k12dive.com/news/k-12-schools-experienced-cyber-incident-cis/741915/> (accessed 3/10/2025).

public education that are causing good people to resign from or not run for volunteer school board seats, driving teachers out of the profession, and putting Kansas children at educational risk. For these reasons, KASB strongly opposes SB 47. We respectfully request that the committee vote no on this problematic bill.

Thank you.

***KASB is a non-profit service organization built on an abiding belief in Kansas public schools.
We have put the needs of students and K-12 leaders first since 1917.***