

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Carlos Mayans at 3:30 p.m. on February 8, 2000 in Room 519-S of the State Capitol.

All members were present except: Representative Jeff Peterson, excused
Representative Joe Shriver, excused

Committee staff present: Michael Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Lisa Montgomery, Office of the Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:

Representative Jim Garner
Senator Anthony Hensley
Representative Gwen Welshimer
Patricia Michaelis, Archivist, Kansas Historical Society
Melissa Wangemann, Legal Counsel, Office of the Secretary of State
Don Moler, Executive Director, League of Kansas Municipalities
Randy Allen, Executive Director, Kansas Association of Counties
Marolin Kelly and Victo Morales, Kelly & Morales Appraisal Company, Wichita
Shirley Moses, Director, Division of Accounts and Reports
Mark Tallman, Kansas Association of School Boards
Diane Gjerstad, Wichita Public Schools
(Written Testimony) Jeffery Bottenberg, Legal Counsel, Kansas Peace Officers
and Kansas Sheriffs' Association
Gordon and Becky Besser, Oskaloosa

Others attending: See Guest List, [Attachment 1](#)

Chairperson Mayans opened the hearing on **HB 2729** (Open records access and establishment of freedom of information officer) and introduced Representative Jim Garner, sponsor of the bill. Representative Garner stated the bill would establish a freedom of information officer in the Secretary of State's office to develop guidelines for compliance with the various laws on open records. (See [Attachment 2](#) for his full testimony.)

Senator Anthony Hensley testified in support of the bill and recommended establishment of a freedom of information officer as a "watchdog" to assure open government. He noted he has introduced an identical bill in the Senate (**SB 468**).

Patricia Michaelis, State Archivist, Kansas State Historical Society, neither endorsed or opposed any of the pending bills on open records, but did explain the legal responsibilities of her office relating to the disposition of records of state agencies and county offices. She recommended that the phrase "government record" be used rather than "public record" and discouraged the mention of any specific type of record because of the existing legal definition found in K.S.A. 45-402(d) for such materials. Her written testimony narrated various other suggestions: (1) to consolidate all exemptions for access to records into one statute; (2) setting fees for the cost of copying records; (3) setting a response time to requests for records; and (4) setting penalties for violations to the Open Records Act. (See testimony, [Attachment 3](#).)

Melissa Wangemann, Legal Counsel, Office of the Secretary of State, testified that **HB 2729** creates new responsibilities for the Secretary's office to mediate, arbitrate, and enforce the Act. She noted these are atypical to their present responsibilities. Ms. Wangemann recommended that since the Secretary has reduced staff and in light of increasing statutory duties and workload, she suggested the Attorney General and county attorneys be given the necessary law and procedures to enforce the Act. (See testimony, [Attachment 4](#).)

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Don Moler, Executive Director, League of Kansas Municipalities, testified in opposition to **HB 2722** and **HB 2722** that the League does not believe statutory changes to the Act are necessary and creation of a freedom of information officer would only add bureaucracy, increase costs, and cause a slower process. He questioned the limit for copy fees, citing the inequity of a one-page driver's license history at \$3.50 at state level, yet a city would be limited to 25 cents for one page. (See testimony, [Attachment 5.](#))

The Chair advised that Mike Heim has distributed a chart of the differences of the various bills on the subject of open records. He noted that administrative hearings are implied in both **HB 2722** and **HB 2729**; and that the appeal process does not hinder the information officer of making a binding decision on whether a record is open or not. Once a decision is made, it may be appealed to a District Court. (See chart, [Attachment 6.](#))

Randy Allen, Executive Director, Kansas Association of Counties, opposed **HB 2729**. He offered that the bill's imposition of civil penalties is overkill and reinforces distrust. He repeated his belief that continuing education at the state and local levels is the prescription to overcome uneven application or non-compliance. (See testimony, [Attachment 7.](#))

The Chair reminded members of the distributed written testimony of Jeffery Bottenberg, Legal Counsel for the Kansas Peace Officers and Kansas Sheriffs' Associations. Mr. Bottenberg stated that the open records act is not clear as to the standards relating to records that might, by disclosure, constitute an invasion of personal privacy. In view of these perceived legal uncertainties, he stated the civil penalties in **HB 2729** seemed most unfair and troublesome. The associations believe the current ability for an action of mandamus in the District Court ensures access to records. (See testimony, [Attachment 8.](#))

There being no others present to testify, the Chair closed the hearing on **HB 2729**.

The hearing on **HB 2722** (Open records access and establishment of freedom of information officer) was opened. Representative Gwen Welshimer (the bill's sponsor) testified that similar to **HB 2729**, the bill sets fees and establishes a public information officer in the Attorney General's office, and allows a \$500 fine to anyone who denies access to public records. She stated one significant area of concern exists in the area of real property records and the problems professionals and property owners encounter in accessing and verifying the official public record on properties. Representative Welshimer suggested amendments to the bill to use "format" instead of "generate or construct" public records; and to mandate the Property Valuation Division of the Department of Revenue to create a statewide computer system on real property records. (See full testimony, [Attachment 9.](#))

Shirley Moses, Director of Department of Administration's Division of Accounts and Reports, testifying on **HB 2722**, described the bill's provisions as they relate to present law. She questioned the bill's provisions (1) to separate the fee review and reporting duties from the freedom of information officer; (2) the response time frame to requests; and (3) the differing fees for copies. (See her testimony, [Attachment 10.](#))

Mark Tallman, on behalf of the Kansas Association of School Boards, opposed both bills before the committee and testified that requiring "immediate compliance with record requests" and imposing fines on individuals are counterproductive; and, because of the cost, creation of a new public information officer is not justified. (See [Attachment 11.](#)) In response to questions, Mr. Tallman supported expanded education for public officials about the open records statutes.

Diane Gjerstad, Wichita Public Schools, testified about the delicate balance schools experience as between the law's definition of public records and the laws on privacy. She suggested a practical solution to the issue by permitting a "responsible amount of time to respond, without penalty." (See testimony, [Attachment 12.](#))

There being no others present to testify, the hearing on **HB 2722** was closed.

The Chair then continued the discussion on the issue of open records, and introduced Gordon and Becky Besser, of Oskaloosa, who related problems they have encountered since 1993 in response to requests for records pertaining to the rock roads that serve the Bateman Estates Subdivision in Oskaloosa, where they live. They have been told that because the road serving them has not been brought to county

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specifications, it has not been declared a county road. This has affected the valuations of the properties in the subdivision and hindered sales. Some property owners have simply vacated their properties. The Besser's believe the road in question was accepted as a county road and the meeting records are not being shared as the law requires. From this experience, they believe there is not equal access to public records.

There being no other conferees present, the Chairman closed the discussion on open records.

The Chair then indicated that he had just received a letter from Vernon Keel, President of the Kansas Sunshine Coalition for Open Government, in response to the committee's request to identify exemptions to the act that his Coalition believes violates the spirit of the law and should be eliminated. The letter will be promptly copied and delivered to each committee member. (See letter, Attachment 13.)

The meeting was adjourned at 5:45 p.m.

The next meeting is scheduled for February 10, 2000.