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STATE OF KANSAS

Testimony: HB2292 (Proponent)

Senate Committee on Transparency & Ethics
Tuesday, March 23, 2021

Chairwoman Bowers and members of the Committee:

HB2292 was introduced at the request of the Office of Secretary of State to make clear that the physical and facility security exemption to the Kansas Open Records Act includes cybersecurity. As you will see from reviewing the bill, three cybersecurity related definitions are added to K.S.A. 45-217 and cybersecurity is added to the existing exemptions of K.S.A. 45-221(a)(12).

In Kansas, every record is subject to public release unless it is covered by an exemption. There are areas in state and federal law that are currently being used to cover election security and cyber-security. However, they are lacking in specificity and could subject the state to litigation. Our goal with HB2292 is to provide a narrow exemption for material that is detailed enough it could be used by bad actors to penetrate our election systems.

Requests for election security records are becoming more frequent. In situations where uncertainty exists on what an individual or media outlet is seeking, we visit directly with the journalist to get more information and do our best to produce the records in a timely manner. The issue lies with out-of-state entities and national reporters who submit broad requests and question the specific authority we have to withhold any record. The provisions contained in HB2292 provides clarity to state law to ensure we are not forced to produce details of system weaknesses or vulnerabilities, information that could be used to attack our systems, and specific defensive measures.

Since election infrastructure was reclassified as critical national infrastructure in 2017 (42 U.S.C 5192c), states throughout the nation have implemented provisions to account for election security and cyber-security. Some give very broad discretion to public officials while others include election or cyber threats under terrorism exemptions. Some even have very specific cyber-security provisions.

Last session, our office introduced this legislation (SB454) and it passed the Senate by a vote of 39 to 0. Due to the coronavirus pandemic, the bill did not advance in the House of Representatives because of the early adjournment of session. Our office worked with the Kansas Broadcasters Association, Kansas Press Association, Loud Light, ACLU and the Sunshine Coalition to ensure the bill does not unnecessarily limit access to information to the press or public.

On behalf of the Office of Secretary of State, we respectfully ask for your support of HB2292.

Respectfully submitted,

Katie Koupal
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