

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 p.m. on March 18, 2004 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Martha Dorsey, Legislative Research Department
Mike Heim Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:

Judy Moler, Kansas Association of Counties
Jim Edwards, Kansas Association of School Boards
Susan Cunningham, Kansas Corporation Commission
Ron Smith, Kansas Department of Commerce
Amy Bertrand, Department of Administration
Danielle Noe, Johnson County
Don Moler, League of Kansas Municipalities
A.J. Kotich, Department of Human Resources
Mary Prewitt, Kansas Board of Regents

Others attending:

See Attached List.

The Chairman opened the hearing on:

HB 2922 public records; exceptions to disclosure

Judy Moler, Kansas Association of Counties, testified in opposition to the bill (Attachment 1). She said the bill contains language that could not be agreed upon in the compromise meetings that took place between the Kansas Press Association and interested parties on the Kansas Open Records Act. She stated that the bill also contains language from the compromises contained in **HB 2889**. She informed that the Kansas Association of Counties supports the language agreed upon in **HB 2889**; however, not the additional language found in **HB 2992**.

Jim Edwards, Kansas Association of School Boards (KASB), testified in opposition to the bill (Attachment 2). He said they disagree with items in the bill as follows:

- Section 1 (4) - Schools are already required to provide information to the print media once a year on salaries and benefits to senior district employees. In addition, all contracts between the district's board and the employee must be made at an open

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- meeting. In addition, schools must report to the Kansas State Board of Education any employment separation brought about by certain acts.
- Section 1 (14) - This is probably much too broad and far reaching.
 - Section 1 (20) - In working with boards, whether they are private, governmental or not-for-profit, one of the most important things an administrator can do is to keep the members of the board informed. In addition, how will this section impact what you do and what you request of legislative research or other state entities as it relates to "proposed legislation?"
 - Section 1 (27) - KASB's legal department believes that current case law is sufficient.

Susan Cunningham, Kansas Corporation Commission (KCC), testified in opposition to the bill ([Attachment 3](#)). She said the KCC opposes the change proposed for K.S.A. 45-221 (a)(26) pertaining to public utility records. She informed that the KCC supports the testimonies presented by the other state agency chiefs/general counsels. She explained that the proposed amendment to subsection (26) seeks to eliminate the KCC's ability to protect otherwise personal, private residential customer information from public disclosure.

Ron Smith, Kansas Department of Commerce, testified in opposition to the bill ([Attachment 4](#)). He said proposed changes to subsection (20) make open records out of private written advice and counsel from members of the public when, instead, confidential candor by advisors is necessary for the Executive Branch to function efficiently.

Amy Bertrand, Department of Administration, testified in opposition to the bill ([Attachment 5](#)). She addressed concerns with the proposed amendments to subsection (4). She explained that the amendment appears to expand the circumstances when an individual employee's personnel records would be available for public inspection. She said the amendment could be construed to include settlement agreements between an agency and an employee.

Danielle Noe, Johnson County, testified in opposition to the bill ([Attachment 6](#)). She said that the amendments in the bill will make the interpretation of KORA more complicated not less. She explained that in many cases the amendments use vague or broad terms that are capable of multiple interpretations. She stated that the amendments encourage bringing a court action to determine whether a record should be open under a particular set of facts.

Don Moler, League of Kansas Municipalities, testified in opposition to the bill ([Attachment 7](#)). He said the League of Kansas Municipalities opposes changes in the following:

- Personnel Exception - proposed changes would allow for the disclosure of employee records, and they believe would not only infringe on the privacy interests of public employees, but would also open up all public sector employers to possible lawsuits from employees whose records were divulged.
- Utility Exemption - proposed change would require all records of a public utility, including information concerning individual customers, be open to the public. The

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- League believes harm could be done with the disclosure of other privileged information which might be included with the application for utility service.
- Personal Privacy Exception - proposed change would have the Attorney General issue rules and regulations regarding when the privacy exception could be utilized by governmental officials. The League believes that changes to this exception are not warranted at this time.

A.J. Kotich, Department of Human Resources, testified in opposition to the bill (Attachment 8). He said they have concerns with the proposed amendments to subsection (a)(4). He stated the proposed changes would appear to allow access to all personnel records of any public officer or employee disciplined for reasons involving public trust. Mr. Kotich said another concern is with subsection (a)(30) which would require the attorney general to promulgate separate rules and regulations by which it would be determined whether a record contains information of a personal nature that disclosure would be a clearly unwarranted invasion of privacy. He said since these determinations would still be subject to common law principles of privacy, and subject to a K.S.A. 45-222 hearing. He suggested the additional language should not be added and the exemption to remain subject to the Court's discretion.

Written testimony in opposition to the bill was submitted by:

- Mike Pepoon, Sedgwick County (Attachment 9)
- Tammy Williams, City of Overland Park (Attachment 10)
- Dianne Gjerstad, Wichita Public Schools (Attachment 11)

Mary Prewitt, Kansas Board of Regents, provided neutral testimony on the bill (Attachment 12). She informed the Committee that the Board of Regents has not taken an official position on the bill and does not support or oppose the bill. She explained that her testimony is intended to inform the Committee of some considerations that have been expressed by those at the state universities who deal with provisions of the Open Records Act on a regular basis and wish the Committee to be fully informed before it decides whether to act on the legislation before it. She said the state universities are concerned about the effect of opening all agreements concerning or involving state employees to public scrutiny. Ms. Prewitt said there is little public policy justification for disclosing employment compensation that is derived from private sources, particularly when an employee is not a state employee but an employee of a not for profit corporation that supports a state agency. She explained that private supplements to some employment contracts are essential to keep the state in a competitive position for some important and highly qualified applicants. Ms. Prewitt informed that *The Lawrence Journal World* has sued the University of Kansas for disclosure of the terms of the contract of the new Athletic Director. She said action by the Legislature on this amendment would definitely impact that litigation.

The Chairman closed the hearing on: **HB 2922**

HB 2889 **KORA; records not required to be open**

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Copies of a letter received by Chairman Vickrey from Sandy Praeger, Commissioner of Insurance, were distributed to Committee members (Attachment 13). Commissioner Praeger said that the various Insurance Code statutes mentioned in the bill all have their own privacy provisions. She said it is her belief that the bill does not impact any of the privacy protections contained within the Insurance Code. She stated that is her clear understanding that the Attorney General shares this opinion.

Minutes

Rep. Yonally made a motion for the approval of the minutes of the March 16, 2004 meeting. Rep. Toelkes seconded the motion. The motion carried.

The meeting adjourned at 4:45 p.m.

The next meeting is scheduled for March 23, 2004.