

HOUSE BILL No. 2346

By Committee on Federal and State Affairs

2-14

1 AN ACT concerning the attorney general; creating the open government
2 unit; relating to the open records act and open meetings act; amending
3 K.S.A. 75-4320a and K.S.A. 2012 Supp. 45-222 and repealing the
4 existing sections.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) There is hereby established an open government
8 unit in the office of the attorney general. The open government unit shall
9 have the powers and duties provided by this section.

10 (b) (1) Upon receipt of a request for review or investigation pursuant
11 to the provisions of K.S.A. 75-4520a or K.S.A. 2012 Supp. 45-222, and
12 amendments thereto, the attorney general shall consult with the
13 appropriate county or district attorney to determine if there is a pending or
14 planned investigation on the same matter. If there is an investigation on the
15 same matter by such county or district attorney, the county or district
16 attorney shall complete the investigation, and the attorney general shall not
17 be required to take any further action. If there is no pending investigation,
18 the attorney general shall determine if further action is warranted. If the
19 alleged violation is unfounded, the attorney general shall advise the person
20 who requested review and the public agency, and no further action is
21 required.

22 (2) If the attorney general determines that further investigation is
23 warranted, the attorney general shall conduct such investigation. The
24 attorney general's authority to investigate pursuant to this section includes,
25 but is not limited to, those powers set forth in K.S.A. 45-228, and
26 amendments thereto, for violations of the open records act, and K.S.A. 75-
27 4320b, and amendments thereto, for violations of the open meetings act.

28 (c) (1) The attorney general shall have the right to review all
29 necessary and relevant records. To the extent the records or documents
30 produced by a public agency contain information that is claimed to be
31 exempt from disclosure under the open records act, K.S.A. 45-215 et seq.,
32 and amendments thereto, or other statutory privilege or exemption, the
33 attorney general shall not further disclose that information or records and
34 such records and information shall not be subject to a request for
35 inspection or copying under the open records act, K.S.A. 45-215 et seq.,
36 and amendments thereto.

1 (2) The attorney general may exercise discretion to resolve the
2 request for review or investigation by mediation, filing an enforcement
3 action in district court pursuant to K.S.A. 45-222 or 75-4320a, and
4 amendments thereto, or by a means other than issuance of a final order.
5 The decision not to issue a final order shall not be reviewable.

6 (3) If the person who requested review initiates legal proceedings to
7 pursue a remedy pursuant to K.S.A. 45-222 or 75-4320a, and amendments
8 thereto, such person shall notify the attorney general. The attorney general
9 shall take no further action on the request and shall notify the parties of
10 such decision.

11 (d) Prior to completion of the investigation, the public agency subject
12 to the complaint shall have the opportunity to respond to the complaint.
13 After the public agency's response, the attorney general may issue a final
14 order, which shall be based upon an examination of the issues and the
15 records gathered during such investigation. The final order shall make
16 findings of fact and conclusions of law, and be binding upon the person
17 who requested review and the public agency alleged to have violated the
18 open records act, K.S.A. 45-215 et seq., and amendments thereto, or open
19 meetings act, K.S.A. 75-4317 et seq., and amendments thereto. Such final
20 order shall include such provisions as the attorney general determines are
21 appropriate including, but not limited to, injunction, any penalties
22 authorized by K.S.A. 45-223 or 75-4320, and amendments thereto, any
23 attorney fees authorized by K.S.A. 45-222 or 75-4320a, and amendments
24 thereto, a requirement for training about the open records act, K.S.A. 45-
25 215 et seq., and amendments thereto, or open meetings act, K.S.A. 75-
26 4317 et seq., and amendments thereto, and a requirement that the
27 reasonable cost of the attorney general's investigation be reimbursed by the
28 non-prevailing party.

29 (e) The attorney general's final order shall not constitute an action for
30 enforcement under the open records act, K.S.A. 45-215 et seq., and
31 amendments thereto, or the open meetings act, K.S.A. 75-4317 et seq., and
32 amendments thereto, within the meaning of K.S.A. 77-603, and
33 amendments thereto. The attorney general's final order shall be a final
34 agency order subject to review under the provisions of the Kansas judicial
35 review act, K.S.A. 77-601 et seq., and amendments thereto. If the public
36 agency receives a final order finding a violation of the open records act,
37 K.S.A. 45-215 et seq., and amendments thereto, or open meetings act,
38 K.S.A. 75-4317 et seq., and amendments thereto, such public agency shall
39 either take action as soon as practicable to comply with any directives or
40 initiate judicial review pursuant to the Kansas judicial review act, K.S.A.
41 77-601 et seq., and amendments thereto. If the final order concludes that
42 no violation of the open records act, K.S.A. 45-215 et seq., and
43 amendments thereto, or open meetings act, K.S.A. 75-4317 et seq., and

1 amendments thereto, has occurred, the person who requested review may
2 initiate judicial review pursuant to the Kansas judicial review act, K.S.A.
3 77-601 et seq., and amendments thereto. Pursuant to K.S.A. 77-609(b),
4 venue shall be in the district court of Shawnee county, Kansas.

5 (f) (1) A public body that discloses records in accordance with the
6 attorney general's final order shall not be liable for penalties under K.S.A.
7 45-223, and amendments thereto, or costs under K.S.A. 45-222, and
8 amendments thereto.

9 (2) Final orders issued pursuant to this section shall be published and
10 made available to the public on the attorney general's website.

11 (g) (1) The attorney general shall promulgate rules and regulations to
12 implement and administer this act.

13 (2) Subject to the availability of appropriations, the attorney general
14 shall provide and shall coordinate training throughout the state to promote
15 knowledge of, and compliance with, the open records act, K.S.A. 45-215
16 et seq., and amendments thereto, or open meetings act, K.S.A. 75-4317 et
17 seq., and amendments thereto.

18 (3) The attorney general shall appoint an advisory board to assist the
19 attorney general in the attorney general's duties under the open records act,
20 K.S.A. 45-215 et seq., and amendments thereto, or open meetings act,
21 K.S.A. 75-4317 et seq., and amendments thereto.

22 Sec. 2. K.S.A. 2012 Supp. 45-222 is hereby amended to read as
23 follows: 45-222. (a) (1) The district court of any county in which public
24 records are located shall have jurisdiction to enforce the purposes of this
25 act with respect to such records, by injunction, mandamus or other
26 appropriate order, in an action brought by any person, the attorney general
27 or a county or district attorney.

28 (2) *In lieu of an action for enforcement pursuant to subsection (a)(1),*
29 *a person who believes the open records act has been violated may request*
30 *that the attorney general review or investigate the alleged violation*
31 *pursuant to section 1, and amendments thereto. Any such request for*
32 *review or investigation shall be on a form prescribed by the attorney*
33 *general, set forth the facts that the complaining party believes show that*
34 *the open records act has been violated, and be attested under penalty of*
35 *perjury.*

36 (b) In any action hereunder, the court shall determine the matter de
37 novo. The court on its own motion, or on motion of either party, may view
38 the records in controversy in camera before reaching a decision.

39 (c) In any action hereunder, the court shall award costs and a
40 reasonable sum as an attorney's fee for services rendered in such action,
41 including proceedings on appeal, to be recovered and collected as part of
42 the costs to the plaintiff if the court finds that the agency's denial of access
43 to the public record was not in good faith and without a reasonable basis in

1 fact or law. The award shall be assessed against the public agency that the
2 court determines to be responsible for the violation.

3 (d) In any action hereunder in which the defendant is the prevailing
4 party, the court shall award to the defendant costs and a reasonable sum as
5 an attorney's fee for services rendered in such action, including
6 proceedings on appeal, to be recovered and collected as part of the costs if
7 the court finds that the plaintiff maintained the action not in good faith and
8 without a reasonable basis in fact or law.

9 (e) Except as otherwise provided by law, proceedings arising under
10 this section shall be assigned for hearing and trial at the earliest practicable
11 date.

12 (f) The provisions of subsections (c) and (d) concerning the awarding
13 of costs and attorney fees for services rendered during an appeal shall
14 apply only to actions which are based on causes of action accruing on or
15 after July 1, 2004.

16 Sec. 3. K.S.A. 75-4320a is hereby amended to read as follows: 75-
17 4320a. (a) (1) The district court of any county in which a meeting is held
18 shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-
19 4319, and amendments thereto, with respect to such meeting, by
20 injunction, mandamus or other appropriate order, on application of any
21 person.

22 (2) *In lieu of an action for enforcement pursuant to subsection (a)(1),*
23 *a person who believes the open meetings act has been violated may*
24 *request that the attorney general review or investigate the alleged*
25 *violation pursuant to section 1, and amendments thereto. Any such request*
26 *for review or investigation shall be on a form prescribed by the attorney*
27 *general, set forth the facts that the complaining party believes show that*
28 *the open meetings act has been violated, and be attested under penalty of*
29 *perjury.*

30 (b) In any action hereunder, the burden of proof shall be on the public
31 body or agency to sustain its action.

32 (c) In any action hereunder, the court may award court costs to the
33 person seeking to enforce the provisions of K.S.A. 75-4318 or 75-4319,
34 and amendments thereto, if the court finds that the provisions of those
35 statutes were violated. The award shall be assessed against the public
36 agency or body responsible for the violation.

37 (d) In any action hereunder in which the defendant is the prevailing
38 party, the court may award to the defendant court costs if the court finds
39 that the plaintiff maintained the action frivolously, not in good faith or
40 without a reasonable basis in fact or law.

41 (e) Except as otherwise provided by law, proceedings arising under
42 this section shall take precedence over all other cases and shall be assigned
43 for hearing and trial at the earliest practicable date.

1 (f) As used in this section, "meeting" has the meaning provided by
2 K.S.A. 75-4317a, and amendments thereto.

3 Sec. 4. K.S.A. 75-4320a and K.S.A. 2012 Supp. 45-222 are hereby
4 repealed.

5 Sec. 5. This act shall take effect and be in force from and after its
6 publication in the statute book.