

Approved: 5-8-13
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Ralph Ostmeyer at 10:30 a.m. on March 13, 2013, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Connie Burns, Committee Assistant

Conferees appearing before the Committee:

Anthony Fadale, State ADA
Martha Gabehart, Kansas Commission on Disability Concerns
Rich Ganon, Kansas Press Association
Greg Ireland, Topeka Capital-Journal
Jan Jarman, Wichita, Kansas
James Franko, Kansas Policy Institute
Bob Weeks, Wichita, Kansas
Tony Lauer, Shawnee, Kansas
Walter Hermreck, Wichita, Kansas
Kim Winn, League of Kansas Municipalities
Dale Goter, City of Wichita
Melissa Wangemann, Kansas Association of Counties
Susan Hubbell, Kingman County Register of Deeds
Marilyn Nichols, Shawnee County Register of Deeds
Leslee Rivarola, City of Lenexa
Stuart Little for Ed Eilert of Johnson County
Kelly Arnold, Sedgwick County Clerk
Tom Krebs, Kansas Association of School Boards
Don Pyle, Crawford County Clerk

Committee Business

SB 214 - Sale of bottle rockets prohibited; criminal penalty

Senator Emler moved to reconsider the committees' action on SB 214 and not report out. Senator Longbine seconded the motion. The motion carried.

HB 2193 – Public facilities; accessibility standards for disabled persons

Chairman Ostmeyer opened the hearing on **HB 2193**.

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The minutes of the Federal and State Committee at 10:30 a.m. on March 13, 2013, in Room 144-S of the Capitol.

Staff provided an overview of the bill.

Anthony Fadale, State ADA Coordinator, appeared before the committee as a proponent on the bill. (Attachment 1) The bill would align the state accessibility laws with the federal Americans Disabilities Act (ADA) standards.

Martha Gavehart, Executive Director, Kansas Commission on Disability Concerns, appeared in favor of the bill. (Attachment 2) The bill would align the state accessibility laws with the federal Americans disabilities Act (ADA) standards architects and builders must use in Kansas. This change would align with the federal requirement; there will be only one standard to follow making it much easier to design and build.

Chairman Ostmeyer closed the hearing on **HB 2193**.

The Chairman called for the committees' pleasure on the bill.

*Senator Olson moved to pass **HB 2193** out favorably and place on the Consent Calendar. Senator Holmes seconded the motion. The motion carried.*

SB 10– Open meetings; minutes required; open records; charges limited

Chairman Ostmeyer opened the hearing on **SB 10**.

Staff provided an overview of the bill and proposed amendments. (Attachment 3)

Senator LaTurner testified in favor of the bill. (Attachment 4) The bill is intended to make government more open and accessible to the people of Kansas; addresses excessive fees for requests, and will require minutes to be taken at any meeting where the Kansas Open Meetings Act applies. Senator LaTurner discussed the proposed amendments.

Rich Gannon, Director of Governmental Affairs, Kansas Press Association, spoke in favor of the bill. (Attachment 5) Mr. Gannon stated it was time to trim the sails of government and once again have our public officials realize they work for the public, not the other way around.

Greg Ireland, Publisher, The Topeka Capital-Journal, appeared before the committee as a proponent on the bill. (Attachment 6) The Cap-Journal believes a transparent and open government fosters trust in its citizens, while the opposite serves only to breed suspicion and malcontent; and in recent years have faced greater challenges in getting information that should be easily available to the public, and have seen government agencies asking for ever increasing fees to comply with the requests.

Jan Jarman, Wichita, Kansas, testified in favor of the bill. (Attachment 7) Ms. Jarman stated that when fees are high, and localities are given broad discretion to set the fees, people are deterred from using the law the way it was meant to be used; and allowing localities to set their own rates on KORA means they will discourage KORA request by charging exorbitant fees; as what happened in her case.

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James Franko, Vice President/Policy Director, Kansas Policy Institute, spoke in favor of the bill. (Attachment 8) The bill is a good step in keeping Kansas government accountable.

Bob Weeks, Wichita, Kansas, testified in support of the bill. (Attachment 9) Mr. Weeks stated Kansas could use as a model the federal Freedom of Information Act (5 USC § 552), which provides for a limit on fees in certain cases: "*Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media.*"

Tony Lauer, Shawnee, Kansas, spoke in favor of the bill. (Attachment 10) Mr. Lauer stated citizens who choose to verify the efficiency of government agencies are met with immediate inefficiency.

Walter Hermreck, Wichita, Kansas, testified in support of the bill. (Attachment 11) As a citizen and a tax payer, he feels he has the right and responsibility to his family, fellow citizens of the community and even the elected officials themselves to hold them accountable for the decisions they make; and this can only be accomplished by ensuring citizens having easy and predictable access to public records with a uniform standard.

Rhonda Humble, publisher, Gardner News, provided written testimony in support of the bill. (Attachment 12)

Opponents:

Kim Winn, Deputy Director, League of Kansas Municipalities, (LKM) testified in opposition of the bill. (Attachment 13) LKM believes that this bill is an unfunded mandate on local governments and unnecessarily regulates minute-keeping. Current law requires that municipalities not charge more than "reasonable" fees for open records requests, KSA 45-219 (c); under the bill staff time and other expenses could not be charged to the requestor of a record; this means that the remaining taxpayers in a community would ultimately be paying the expenses for an individual requestor.

Dale Goter, Governmental Relations Manager, City of Wichita, spoke in opposition of the bill. (Attachment 14) The bill is an unfunded state mandate that places a significant financial burden on local taxpayers. The City of Wichita is a strong supporter of public engagement as assured by KORA; and is its firm belief that governments function at their highest level when citizens have maximum access to public records and public meetings. Informed citizens are the cornerstone of effective and efficient government. It is extremely unfair to the taxpayer to ask that public funds subsidize KORA requests that can literally paralyze local governments by forcing the commitment of staff resources that otherwise would be serving the general public's interests. It is extremely unfair to the taxpayer to ask that public funds subsidize KORA requests that can literally paralyze local governments by forcing the commitment of staff resources that otherwise would be serving the general public's interests.

Melissa Wangemann, General Counsel/Director of Legislative Services, Kansas Association of Counties, (KAC) appeared as an opponent of the bill. (Attachment 15) KAC believes the real problem besmirching open government is lack of enforcement, which ultimately comes from lack of funding. KAC appreciates

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the concerns raised about open government; and wants to do their part to ensure open government, but does not agree with the methods given in the bill. KAC looks forward to working out another method of achieving the intent of the legislation.

Marilyn L. Nichols, Shawnee County Register of Deeds, testified in opposition of the bill. (Attachment 16) Ms. Nichols does not support the revision as written for the reason of sounding and acting like an unfunded mandate coming from the state down to the local layers of government.

Susan Hubbell, Kingman County Register of Deeds, spoke as an opponent of the bill. (Attachment 17) The bill will not provide the revenue that is required to fulfill the duties of the Register of Deeds and meet the standards of open government; these services cost time and money to provide, so if the requester does not pay for these services, then the taxpayer will.

Leslee Rivarola, City of Lenexa Assistant City Administrator, testified in opposition of the bill. (Attachment 18) The City of Lenexa makes public information available and accessible free of charge in many instances, but strongly urges the committee's consideration in prohibiting the City of Lenexa from charging administrative time to broad requests.

Stuart Little presented Ed Eilert, Chairman of the Board of County Commissioners, Johnson County, testimony in opposition of the bill. (Attachment 19) Johnson County's process of providing live-streaming of the meetings and archived video recordings for public access at any time provide the highest level of transparency concerning governmental decisions. If this legislation moves forward any provisions pre-determining the format of meeting minutes should be removed.

Kelly B. Arnold, Sedgwick County Clerk, spoke in opposition of the bill. (Attachment 20) Mr. Arnold requested a change to the language requiring the secretary of state to determine a format for minutes in the bill. Sedgwick County Clerks keeps verbatim minutes for their citizens and believe that is their citizens best method of receiving full and complete access as provided under KOMA.

Tom Krebs, Governmental Relations Specialist, Kansas Association of School Boards, (KASB) testified as an opponent of the bill. (Attachment 21) There are two significant portions of the bill:

1. *It shall be the duty of the presiding officer of the meeting to ensure that minutes are kept at each meeting. The Secretary of state shall determine the format of the minutes.* (To that language KASB stands neutral)
2. *Is removing the ability of an entity to collect any more than \$0.25 per page for copies made under KORA.* (KASB rises as opponents to that language)

To remove the ability to collect more than \$0.25 per copy, making it clear that no staff time was ever to be considered in calculating the final cost, and believe, it is an unfunded mandate of no small expense.

Don Pyle, Crawford County Clerk/Election Officer, testified in opposition of the bill. (Attachment 22) Mr. Pyle opposes the bill because he feels that the County should be able to recover expenses involved with Requests For Open Records, and respectfully requested that the committee carefully consider these factors in making their decisions on the bill.

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Written testimony was provided in opposition of the bill by:

Donna Zimmerman, Barton County Clerk, provided written testimony in opposition of the bill. (Attachment 23) Ms. Zimmerman's testimony stated that it was difficult to see any scenario where there needs to be oversight from the Secretary of State regarding keeping of minutes.

Karen D. Defore, Cowley County Clerk/Election Officer, provided written testimony in opposition of the bill. (Attachment 24)

Sharon Seibel, Ford County Clerk, provided written testimony in opposition of the bill. (Attachment 25)

Katie Killen, Assistant to the City Manager, City of Shawnee, provided written testimony in opposition of the bill. (Attachment 26) The City of Shawnee Governing Body adopted a 2013 State Legislative Program; and some of the positions that were adopted in the program include:

- opposition to unfunded mandates
- maintaining Home Rule – including the ability to charge fees for services

Dick Carter, on behalf of the City of Overland Park (City), provided written testimony in opposition of the bill. (Attachment 27) The City of Overland Park continues to support and champions the opportunity to provide open and transparent government, to specifically include providing access to public records maintained by the City; however, it is imperative that the City have the legal authority to recover the reasonable costs associated with public records request and thus effectively manage the limited tax dollars available to provide all City services.

Barbara Bilke, Register of Deeds, Cherokee County, provided written testimony in opposition of the bill. (Attachment 28)

Neutral:

Kathleen Selzler Lippert, Executive director, Kansas State Board of Healing Arts, (KSBH) provided testimony as neutral on the bill. (Attachment 29) KSBH is required by many state and federal laws to hold the medical records and other documents held by this agency confidential. Ms. Lippert provided a copy of some of the state and federal statutes that prohibit release of confidential information.

Chairman Ostmeyer closed the hearing on **SB 10**.

The next meeting is scheduled March 14, 2013. The meeting was adjourned at 11:50 a.m.