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5 **HOUSE BILL No. 2959**

6  
7 By Committee on Utilities

8  
9 2-15

10  
11 AN ACT ~~amending the open records act~~ **concerning the disclosure of**  
12 **information; relating to open records; pertaining to certain con-**  
13 **sulting contracts**; amending K.S.A. 2001 Supp. 45-221 and repealing  
14 the existing section.

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

16 ***New Section 1. (a) On and after January 1, 2003: (1) No faculty***  
17 ***member or other employee of a state educational institution in the***  
18 ***unclassified service under the Kansas civil services act, and amend-***  
19 ***ments thereto; or (2) no faculty member or other employee of a***  
20 ***postsecondary educational institution shall serve as a consultant or***  
21 ***perform consulting services, either individually or as part of a busi-***  
22 ***ness, unless such person has filed a disclosure statement as required***  
23 ***by this section. The disclosure statement shall contain the following***  
24 ***information:***

- 25  
26 ***(1) The names of the contracting parties;***  
27 ***(2) whether or not the faculty member has a substantial interest***  
28 ***in the consulting business;***  
29 ***(3) the date that the contract was approved by the institution***  
30 ***as determined by the board of regents;***  
31 ***(4) the amount of the consideration of the contract;***  
32 ***(5) a summary of the basic terms of the contract; and***  
33 ***(6) any other information required by rules and regulations***  
34 ***promulgated by the board of regents.***

35 ***The information required by paragraphs (1) through (5) shall be***  
36 ***disclosed pursuant to any request therefor made under the open***  
37 ***records act.***

38 ***(b) The disclosure statement required by this section, and***  
39 ***amendments thereto, shall be filed with the secretary of state and***  
40 ***the local information officer of the state educational institution or***  
41 ***post-secondary educational institution and such other locations as***  
42 ***designated by the board of regents by rule and regulation no later***  
43 ***than 10 business days after the contract has been signed by both***

1 *parties. Each disclosure statement, and amendments thereto, re-*  
2 *quired by this section shall be available for public inspection, under*  
3 *the provisions of the open records act, during the normal business*  
4 *hours of any office in which it is filed. Disclosure statements re-*  
5 *quired under this section shall be maintained for a period of five*  
6 *years after the faculty member or unclassified employee of a state*  
7 *educational institution or faculty member or employee of a postse-*  
8 *condary educational institution ceases to be employed by such state*  
9 *educational institution or postsecondary educational institution.*

10 (c) *A separate disclosure statement, or amendment of an existing*  
11 *disclosure statement, shall be filed for each consulting business*  
12 *owned, operated or maintained by such faculty member or other*  
13 *unclassified employee in the unclassified service under the Kansas*  
14 *civil service act, and amendments thereto, of a state educational*  
15 *institution or such faculty member or other employee of a postse-*  
16 *condary educational institution.*

17 (d) *No contract may be divided for the purpose of evading the*  
18 *requirements of this section. All contracts between the same parties*  
19 *during a calendar year shall be treated cumulatively as one con-*  
20 *tract for the purposes of this section.*

21 *New Sec. 2. The statement required by section 1, and amend-*  
22 *ments thereto, shall be signed and dated by the individual making*  
23 *the statement and shall contain substantially the following:*

24 **STATEMENT OF CONSULTING INTERESTS**

25 (name)

26 (office or position of employment for which this statement is filed)

27 (address) (body of statement, including the information prescribed  
28 by section 1 in form prescribed by Kansas board of regents)

29 “I declare that this statement of substantial interests (including  
30 any accompanying schedules and statements) has been examined by  
31 me and to the best of my knowledge and belief is a true, correct and  
32 complete statement of all of my consulting interests and other mat-  
33 ters required by law. I understand that intentional failure to file  
34 this statement as required by law or intentionally filing a false state-  
35 ment is a class B misdemeanor.”

36 \_\_\_\_\_  
37 (date of filing) (signature of person making the statement)

38 *New Sec. 3. As used in this act: (a) “Board of regents shall have*  
39 *the meaning ascribed to it in K.S.A. 76-711, and amendments*  
40 *thereto.*

41 (b) *“Business” shall have the meaning ascribed to it in K.S.A.*  
42 *46-230 and amendments thereto.*

43 (c) *“Consultant” shall have the meaning ascribed to it in K.S.A.*

1 *46-284 and amendments thereto. Consultant also includes any cor-*  
2 *poration, partnership or other business entity in which the individ-*  
3 *ual has a substantial interest.*

4 (d) *“Contract” shall have the meaning ascribed to it in K.S.A.*  
5 *46-231 and amendments thereto.*

6 (e) *“Person” shall have the meaning ascribed to it in K.S.A. 46-*  
7 *223 and amendments thereto.*

8 (f) *“Postsecondary educational institution” shall have the*  
9 *meaning ascribed to it in K.S.A. 2001 Supp. 74-3201b, and amend-*  
10 *ments thereto, except that it shall not include public universities as*  
11 *defined in K.S.A. 2001 Supp. 74-3201b, and amendments thereto.*

12 (g) *“State educational institution” shall have the meaning as-*  
13 *cribed to it in K.S.A. 76-711, and amendments thereto.*

14 (h) *“Substantial interest” shall have the meaning ascribed to it*  
15 *in K.S.A. 46-229 and amendments thereto.*

16 *New Sec. 4. This act shall not apply to any faculty member or*  
17 *other employee of a state educational institution in the unclassified*  
18 *service under the Kansas civil service act, and amendments thereto*  
19 *or any faculty member or other employee of a postsecondary edu-*  
20 *cational institution:*

21 (a) *Who serves in an adjunct faculty position which is a part-*  
22 *time position which is equivalent to 25% or less of a full-time*  
23 *position;*

24 (b) *whose consulting contract has an annual value of \$500 or*  
25 *less;*

26 (c) *who is a lawyer if disclosure would require revealing the*  
27 *identity of a client or otherwise violate the lawyer-client privilege*  
28 *set forth in K.S.A. 60-426, and amendments thereto; or*

29 (d) *who is a physician if disclosure would require revealing the*  
30 *identity of a patient or otherwise violate the physician-patient priv-*  
31 *ilege set forth in K.S.A. 60-427, and amendments thereto.*

32 *New Sec. 5. (a) Failure to file any statement as required by this*  
33 *act or intentionally filing a false statement is a class B misdemeanor.*

34 (b) *Failure to provide access to or a copy of a disclosure state-*  
35 *ment as required by this act shall be deemed to be a violation of*  
36 *the open records act and shall be subject to the provisions of K.S.A.*  
37 *45-222 and 45-223 and amendments thereto.*

38 *New Sec. 6. The Kansas board of regents shall adopt rules and*  
39 *regulations necessary to implement this act on or before January 1,*  
40 *2003.*

41 *New Sec. 7. Sections 1 through 7, and amendments thereto,*  
42 *shall be known and may be cited as the university consulting con-*  
43 *tract sunshine act.*

1 ~~Section 1.~~ **Sec. 8.** K.S.A. 2001 Supp. 45-221 is hereby amended to  
2 read as follows: 45-221. (a) Except to the extent disclosure is otherwise  
3 required by law, a public agency shall not be required to disclose:

4 (1) Records the disclosure of which is specifically prohibited or re-  
5 stricted by federal law, state statute or rule of the Kansas supreme court  
6 or the disclosure of which is prohibited or restricted pursuant to specific  
7 authorization of federal law, state statute or rule of the Kansas supreme  
8 court to restrict or prohibit disclosure.

9 (2) Records which are privileged under the rules of evidence, unless  
10 the holder of the privilege consents to the disclosure.

11 (3) Medical, psychiatric, psychological or alcoholism or drug depend-  
12 ency treatment records which pertain to identifiable patients.

13 (4) Personnel records, performance ratings or individually identifia-  
14 ble records pertaining to employees or applicants for employment, except  
15 that this exemption shall not apply to the names, positions, salaries and  
16 lengths of service of officers and employees of public agencies once they  
17 are employed as such.

18 (5) Information which would reveal the identity of any undercover  
19 agent or any informant reporting a specific violation of law.

20 (6) Letters of reference or recommendation pertaining to the char-  
21 acter or qualifications of an identifiable individual.

22 (7) Library, archive and museum materials contributed by private  
23 persons, to the extent of any limitations imposed as conditions of the  
24 contribution.

25 (8) Information which would reveal the identity of an individual who  
26 lawfully makes a donation to a public agency, if anonymity of the donor  
27 is a condition of the donation.

28 (9) Testing and examination materials, before the test or examination  
29 is given or if it is to be given again, or records of individual test or ex-  
30 amination scores, other than records which show only passage or failure  
31 and not specific scores.

32 (10) Criminal investigation records, except that the district court, in  
33 an action brought pursuant to K.S.A. 45-222, and amendments thereto,  
34 may order disclosure of such records, subject to such conditions as the  
35 court may impose, if the court finds that disclosure:

36 (A) Is in the public interest;

37 (B) would not interfere with any prospective law enforcement action;

38 (C) would not reveal the identity of any confidential source or un-  
39 dercover agent;

40 (D) would not reveal confidential investigative techniques or proce-  
41 dures not known to the general public;

42 (E) would not endanger the life or physical safety of any person; and

43 (F) would not reveal the name, address, phone number or any other

1 information which specifically and individually identifies the victim of any  
2 sexual offense in article 35 of chapter 21 of the Kansas Statutes Anno-  
3 tated, and amendments thereto.

4 (11) Records of agencies involved in administrative adjudication or  
5 civil litigation, compiled in the process of detecting or investigating vio-  
6 lations of civil law or administrative rules and regulations, if disclosure  
7 would interfere with a prospective administrative adjudication or civil  
8 litigation or reveal the identity of a confidential source or undercover  
9 agent.

10 (12) Records of emergency or security information or procedures of  
11 a public agency, or plans, drawings, specifications or related information  
12 for any building or facility which is used for purposes requiring security  
13 measures in or around the building or facility or which is used for the  
14 generation or transmission of power, water, fuels or communications, if  
15 disclosure would jeopardize security of the public agency, building or  
16 facility.

17 (13) The contents of appraisals or engineering or feasibility estimates  
18 or evaluations made by or for a public agency relative to the acquisition  
19 of property, prior to the award of formal contracts therefor.

20 (14) Correspondence between a public agency and a private individ-  
21 ual, other than correspondence which is intended to give notice of an  
22 action, policy or determination relating to any regulatory, supervisory or  
23 enforcement responsibility of the public agency or which is widely dis-  
24 tributed to the public by a public agency and is not specifically in response  
25 to communications from such a private individual.

26 (15) Records pertaining to employer-employee negotiations, if dis-  
27 closure would reveal information discussed in a lawful executive session  
28 under K.S.A. 75-4319, and amendments thereto.

29 (16) Software programs for electronic data processing and documen-  
30 tation thereof, but each public agency shall maintain a register, open to  
31 the public, that describes:

32 (A) The information which the agency maintains on computer facil-  
33 ities; and

34 (B) the form in which the information can be made available using  
35 existing computer programs.

36 (17) Applications, financial statements and other information sub-  
37 mitted in connection with applications for student financial assistance  
38 where financial need is a consideration for the award.

39 (18) Plans, designs, drawings or specifications which are prepared by  
40 a person other than an employee of a public agency or records which are  
41 the property of a private person.

42 (19) Well samples, logs or surveys which the state corporation com-  
43 mission requires to be filed by persons who have drilled or caused to be

1 drilled, or are drilling or causing to be drilled, holes for the purpose of  
2 discovery or production of oil or gas, to the extent that disclosure is limited  
3 by rules and regulations of the state corporation commission.

4 (20) Notes, preliminary drafts, research data in the process of anal-  
5 ysis, unfunded grant proposals, memoranda, recommendations or other  
6 records in which opinions are expressed or policies or actions are pro-  
7 posed, except that this exemption shall not apply when such records are  
8 publicly cited or identified in an open meeting or in an agenda of an open  
9 meeting.

10 (21) Records of a public agency having legislative powers, which re-  
11 cords pertain to proposed legislation or amendments to proposed legis-  
12 lation, except that this exemption shall not apply when such records are:

13 (A) Publicly cited or identified in an open meeting or in an agenda  
14 of an open meeting; or

15 (B) distributed to a majority of a quorum of any body which has au-  
16 thority to take action or make recommendations to the public agency with  
17 regard to the matters to which such records pertain.

18 (22) Records of a public agency having legislative powers, which re-  
19 cords pertain to research prepared for one or more members of such  
20 agency, except that this exemption shall not apply when such records are:

21 (A) Publicly cited or identified in an open meeting or in an agenda  
22 of an open meeting; or

23 (B) distributed to a majority of a quorum of any body which has au-  
24 thority to take action or make recommendations to the public agency with  
25 regard to the matters to which such records pertain.

26 (23) Library patron and circulation records which pertain to identi-  
27 fiable individuals.

28 (24) Records which are compiled for census or research purposes and  
29 which pertain to identifiable individuals.

30 (25) Records which represent and constitute the work product of an  
31 attorney.

32 (26) Records of a utility or other public service pertaining to individ-  
33 ually identifiable residential customers of the utility or service, except that  
34 information concerning billings for specific individual customers named  
35 by the requester shall be subject to disclosure as provided by this act.

36 (27) Specifications for competitive bidding, until the specifications  
37 are officially approved by the public agency.

38 (28) Sealed bids and related documents, until a bid is accepted or all  
39 bids rejected.

40 (29) Correctional records pertaining to an identifiable inmate or re-  
41 lease, except that:

42 (A) The name; photograph and other identifying information; sen-  
43 tence data; parole eligibility date; custody or supervision level; disciplinary

1 record; supervision violations; conditions of supervision, excluding  
2 requirements pertaining to mental health or substance abuse counseling;  
3 location of facility where incarcerated or location of parole office main-  
4 taining supervision and address of a releasee whose crime was committed  
5 after the effective date of this act shall be subject to disclosure to any  
6 person other than another inmate or releasee, except that the disclosure  
7 of the location of an inmate transferred to another state pursuant to the  
8 interstate corrections compact shall be at the discretion of the secretary  
9 of corrections;

10 (B) the ombudsman of corrections, the attorney general, law enforce-  
11 ment agencies, counsel for the inmate to whom the record pertains and  
12 any county or district attorney shall have access to correctional records to  
13 the extent otherwise permitted by law;

14 (C) the information provided to the law enforcement agency pursu-  
15 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and  
16 amendments thereto, shall be subject to disclosure to any person, except  
17 that the name, address, telephone number or any other information which  
18 specifically and individually identifies the victim of any offender required  
19 to register as provided by the Kansas offender registration act, K.S.A. 22-  
20 4901 *et seq.* and amendments thereto, shall not be disclosed; and

21 (D) records of the department of corrections regarding the financial  
22 assets of an offender in the custody of the secretary of corrections shall  
23 be subject to disclosure to the victim, or such victim's family, of the crime  
24 for which the inmate is in custody as set forth in an order of restitution  
25 by the sentencing court.

26 (30) Public records containing information of a personal nature  
27 where the public disclosure thereof would constitute a clearly unwar-  
28 ranted invasion of personal privacy.

29 (31) Public records pertaining to prospective location of a business  
30 or industry where no previous public disclosure has been made of the  
31 business' or industry's interest in locating in, relocating within or expand-  
32 ing within the state. This exception shall not include those records per-  
33 taining to application of agencies for permits or licenses necessary to do  
34 business or to expand business operations within this state, except as  
35 otherwise provided by law.

36 (32) Engineering and architectural estimates made by or for any pub-  
37 lic agency relative to public improvements.

38 (33) Financial information submitted by contractors in qualification  
39 statements to any public agency.

40 (34) Records involved in the obtaining and processing of intellectual  
41 property rights that are expected to be, wholly or partially vested in or  
42 owned by a state educational institution, as defined in K.S.A. 76-711, and  
43 amendments thereto, or an assignee of the institution organized and ex-

1 isting for the benefit of the institution.

2 (35) Any report or record which is made pursuant to K.S.A. 65-4922,  
3 65-4923 or 65-4924, and amendments thereto, and which is privileged  
4 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

5 (36) Information which would reveal the precise location of an ar-  
6 cheological site.

7 (37) Any financial data or traffic information from a railroad company,  
8 to a public agency, concerning the sale, lease or rehabilitation of the  
9 railroad's property in Kansas.

10 (38) Risk-based capital reports, risk-based capital plans and corrective  
11 orders including the working papers and the results of any analysis filed  
12 with the commissioner of insurance in accordance with K.S.A. 40-2c20  
13 and ~~45-2d20~~ 40-2d20 and amendments thereto.

14 (39) Memoranda and related materials required to be used to support  
15 the annual actuarial opinions submitted pursuant to subsection (b) of  
16 K.S.A. 40-409, and amendments thereto.

17 (40) Disclosure reports filed with the commissioner of insurance un-  
18 der subsection (a) of K.S.A. 40-2,156, and amendments thereto.

19 (41) All financial analysis ratios and examination synopses concerning  
20 insurance companies that are submitted to the commissioner by the na-  
21 tional association of insurance commissioners' insurance regulatory infor-  
22 mation system.

23 (42) Any records the disclosure of which is restricted or prohibited  
24 by a tribal-state gaming compact.

25 (43) Market research, market plans, business plans and the terms and  
26 conditions of managed care or other third party contracts, developed or  
27 entered into by the university of Kansas medical center in the operation  
28 and management of the university hospital which the chancellor of the  
29 university of Kansas or the chancellor's designee determines would give  
30 an unfair advantage to competitors of the university of Kansas medical  
31 center.

32 (44) The amount of franchise tax paid to the secretary of state by  
33 domestic corporations, foreign corporations, domestic limited liability  
34 companies, foreign limited liability companies, domestic limited partner-  
35 ship, foreign limited partnership, domestic limited liability partnerships  
36 and foreign limited liability partnerships.

37 (45) *Records the disclosure of which ~~may jeopardize the security of~~*  
38 *~~systems~~ would pose a substantial likelihood of revealing security*  
39 *measures that protect: (A) **Systems**, facilities or equipment used in the*  
40 *production, transmission or distribution of energy, **water** or communi-*  
41 *cations services; or (B) **sewer or wastewater treatment systems, fa-***  
42 *ilities or equipment. For purposes of this paragraph, security*  
43 *means measures that protect against criminal acts intended to in-*



1 ***timidate or coerce the civilian population, influence government***  
2 ***policy by intimidation or coercion or to affect the operation of gov-***  
3 ***ernment by disruption of public services, mass destruction, assas-***  
4 ***sination or kidnapping.***

5 (b) Except to the extent disclosure is otherwise required by law or as  
6 appropriate during the course of an administrative proceeding or on ap-  
7 peal from agency action, a public agency or officer shall not disclose fi-  
8 nancial information of a taxpayer which may be required or requested by  
9 a county appraiser or the director of property valuation to assist in the  
10 determination of the value of the taxpayer's property for ad valorem tax-  
11 ation purposes; or any financial information of a personal nature required  
12 or requested by a public agency or officer, including a name, job descrip-  
13 tion or title revealing the salary or other compensation of officers, em-  
14 ployees or applicants for employment with a firm, corporation or agency,  
15 except a public agency. Nothing contained herein shall be construed to  
16 prohibit the publication of statistics, so classified as to prevent identifi-  
17 cation of particular reports or returns and the items thereof.

18 (c) As used in this section, the term "cited or identified" shall not  
19 include a request to an employee of a public agency that a document be  
20 prepared.

21 (d) If a public record contains material which is not subject to dis-  
22 closure pursuant to this act, the public agency shall separate or delete  
23 such material and make available to the requester that material in the  
24 public record which is subject to disclosure pursuant to this act. If a public  
25 record is not subject to disclosure because it pertains to an identifiable  
26 individual, the public agency shall delete the identifying portions of the  
27 record and make available to the requester any remaining portions which  
28 are subject to disclosure pursuant to this act, unless the request is for a  
29 record pertaining to a specific individual or to such a limited group of  
30 individuals that the individuals' identities are reasonably ascertainable, the  
31 public agency shall not be required to disclose those portions of the record  
32 which pertain to such individual or individuals.

33 (e) The provisions of this section shall not be construed to exempt  
34 from public disclosure statistical information not descriptive of any iden-  
35 tifiable person.

36 (f) Notwithstanding the provisions of subsection (a), any public rec-  
37 ord which has been in existence more than 70 years shall be open for  
38 inspection by any person unless disclosure of the record is specifically  
39 prohibited or restricted by federal law, state statute or rule of the Kansas  
40 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and  
41 amendments thereto.

42 Sec. ~~9~~ **9**. K.S.A. 2001 Supp. 45-221 is hereby repealed.

1     Sec. ~~3~~ **10**. This act shall take effect and be in force from and after  
2 its publication in the statute book.  
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