

## House Substitute for SENATE BILL No. 34

By Governmental Organization and Elections

3-24

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9 AN ACT concerning open records; relating to exceptions to the require-  
10 ment of disclosure thereof; amending K.S.A. 45-229 and K.S.A. 2004  
11 Supp. 45-221, 66-1236 and 75-4319 and repealing the existing sections;  
12 also repealing K.S.A. 2004 Supp. 45-221g, 45-221h and 75-4319b.  
13

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

15 Section 1. K.S.A. 2004 Supp. 45-221 is hereby amended to read as  
16 follows: 45-221. (a) Except to the extent disclosure is otherwise required  
17 by law, a public agency shall not be required to disclose:

18 (1) Records the disclosure of which is specifically prohibited or re-  
19 stricted by federal law, state statute or rule of the Kansas supreme court  
20 or the disclosure of which is prohibited or restricted pursuant to specific  
21 authorization of federal law, state statute or rule of the Kansas supreme  
22 court to restrict or prohibit disclosure.

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

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

27 (4) Personnel records, performance ratings or individually identifi-  
28 ble records pertaining to employees or applicants for employment, except  
29 that this exemption shall not apply to the names, positions, salaries and  
30 lengths of service of officers and employees of public agencies once they  
31 are employed as such.

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

34 (6) Letters of reference or recommendation pertaining to the char-  
35 acter or qualifications of an identifiable individual, *except documents re-*  
36 *lating to the appointment of persons to fill a vacancy in an elected office.*

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

40 (8) Information which would reveal the identity of an individual who  
41 lawfully makes a donation to a public agency, if anonymity of the donor  
42 is a condition of the donation, *except if the donation is intended for or*  
43 *restricted to providing remuneration or personal tangible benefit to a*

1 *named public officer or employee.*

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

6 (10) Criminal investigation records, except ~~that~~ *as provided herein.*  
7 The district court, in an action brought pursuant to K.S.A. 45-222, and  
8 amendments thereto, may order disclosure of such records, subject to  
9 such conditions as the court may impose, if the court finds that disclosure:

10 (A) Is in the public interest;

11 (B) would not interfere with any prospective law enforcement action,  
12 *criminal investigation or prosecution;*

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

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

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

18 (F) would not reveal the name, address, phone number or any other  
19 information which specifically and individually identifies the victim of any  
20 sexual offense in article 35 of chapter 21 of the Kansas Statutes Anno-  
21 tated, and amendments thereto.

22 *If a public record is discretionarily closed by a public agency pursuant*  
23 *to this subsection, the record custodian, upon request, shall provide a*  
24 *written citation to the specific provisions of paragraphs (A) through (F)*  
25 *that necessitate closure of that public record.*

26 (11) Records of agencies involved in administrative adjudication or  
27 civil litigation, compiled in the process of detecting or investigating vio-  
28 lations of civil law or administrative rules and regulations, if disclosure  
29 would interfere with a prospective administrative adjudication or civil  
30 litigation or reveal the identity of a confidential source or undercover  
31 agent.

32 (12) Records of emergency or security information or procedures of  
33 a public agency, or plans, drawings, specifications or related information  
34 for any building or facility which is used for purposes requiring security  
35 measures in or around the building or facility or which is used for the  
36 generation or transmission of power, water, fuels or communications, if  
37 disclosure would jeopardize security of the public agency, building or  
38 facility.

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

42 (14) Correspondence between a public agency and a private individ-  
43 ual, other than correspondence which is intended to give notice of an

- 1 action, policy or determination relating to any regulatory, supervisory or  
2 enforcement responsibility of the public agency or which is widely dis-  
3 tributed to the public by a public agency and is not specifically in response  
4 to communications from such a private individual.
- 5 (15) Records pertaining to employer-employee negotiations, if dis-  
6 closure would reveal information discussed in a lawful executive session  
7 under K.S.A. 75-4319, and amendments thereto.
- 8 (16) Software programs for electronic data processing and documen-  
9 tation thereof, but each public agency shall maintain a register, open to  
10 the public, that describes:
- 11 (A) The information which the agency maintains on computer facil-  
12 ities; and
- 13 (B) the form in which the information can be made available using  
14 existing computer programs.
- 15 (17) Applications, financial statements and other information sub-  
16 mitted in connection with applications for student financial assistance  
17 where financial need is a consideration for the award.
- 18 (18) Plans, designs, drawings or specifications which are prepared by  
19 a person other than an employee of a public agency or records which are  
20 the property of a private person.
- 21 (19) Well samples, logs or surveys which the state corporation com-  
22 mission requires to be filed by persons who have drilled or caused to be  
23 drilled, or are drilling or causing to be drilled, holes for the purpose of  
24 discovery or production of oil or gas, to the extent that disclosure is limited  
25 by rules and regulations of the state corporation commission.
- 26 (20) Notes, preliminary drafts, research data in the process of anal-  
27 ysis, unfunded grant proposals, memoranda, recommendations or other  
28 records in which opinions are expressed or policies or actions are pro-  
29 posed, except that this exemption shall not apply when such records are  
30 publicly cited or identified in an open meeting or in an agenda of an open  
31 meeting.
- 32 (21) Records of a public agency having legislative powers, which re-  
33 cords pertain to proposed legislation or amendments to proposed legis-  
34 lation, except that this exemption shall not apply when such records are:
- 35 (A) Publicly cited or identified in an open meeting or in an agenda  
36 of an open meeting; or
- 37 (B) distributed to a majority of a quorum of any body which has au-  
38 thority to take action or make recommendations to the public agency with  
39 regard to the matters to which such records pertain.
- 40 (22) Records of a public agency having legislative powers, which re-  
41 cords pertain to research prepared for one or more members of such  
42 agency, except that this exemption shall not apply when such records are:
- 43 (A) Publicly cited or identified in an open meeting or in an agenda

1 of an open meeting; or

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

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

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

9 (25) Records which represent and constitute the work product of an  
10 attorney.

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

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

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

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

21 (A) The name; photograph and other identifying information; sen-  
22 tence data; parole eligibility date; custody or supervision level; disciplinary  
23 record; supervision violations; conditions of supervision, excluding  
24 requirements pertaining to mental health or substance abuse counseling;  
25 location of facility where incarcerated or location of parole office main-  
26 taining supervision and address of a releasee whose crime was committed  
27 after the effective date of this act shall be subject to disclosure to any  
28 person other than another inmate or releasee, except that the disclosure  
29 of the location of an inmate transferred to another state pursuant to the  
30 interstate corrections compact shall be at the discretion of the secretary  
31 of corrections;

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

36 (C) the information provided to the law enforcement agency pursu-  
37 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and  
38 amendments thereto, shall be subject to disclosure to any person, except  
39 that the name, address, telephone number or any other information which  
40 specifically and individually identifies the victim of any offender required  
41 to register as provided by the Kansas offender registration act, K.S.A. 22-  
42 4901 *et seq.* and amendments thereto, shall not be disclosed; and

43 (D) records of the department of corrections regarding the financial

1 assets of an offender in the custody of the secretary of corrections shall  
2 be subject to disclosure to the victim, or such victim's family, of the crime  
3 for which the inmate is in custody as set forth in an order of restitution  
4 by the sentencing court.

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

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

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

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

19 (34) Records involved in the obtaining and processing of intellectual  
20 property rights that are expected to be, wholly or partially vested in or  
21 owned by a state educational institution, as defined in K.S.A. 76-711, and  
22 amendments thereto, or an assignee of the institution organized and ex-  
23 isting for the benefit of the institution.

24 (35) Any report or record which is made pursuant to K.S.A. 65-4922,  
25 65-4923 or 65-4924, and amendments thereto, and which is privileged  
26 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

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

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

32 (38) Risk-based capital reports, risk-based capital plans and corrective  
33 orders including the working papers and the results of any analysis filed  
34 with the commissioner of insurance in accordance with K.S.A. 40-2c20  
35 and 40-2d20 and amendments thereto.

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

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

41 (41) All financial analysis ratios and examination synopses concerning  
42 insurance companies that are submitted to the commissioner by the na-  
43 tional association of insurance commissioners' insurance regulatory infor-

1 mation system.

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

4 (43) Market research, market plans, business plans and the terms and  
5 conditions of managed care or other third party contracts, developed or  
6 entered into by the university of Kansas medical center in the operation  
7 and management of the university hospital which the chancellor of the  
8 university of Kansas or the chancellor's designee determines would give  
9 an unfair advantage to competitors of the university of Kansas medical  
10 center.

11 (44) The amount of franchise tax paid to the secretary of revenue or  
12 the secretary of state by domestic corporations, foreign corporations, do-  
13 mestic limited liability companies, foreign limited liability companies, do-  
14 mestic limited partnership, foreign limited partnership, domestic limited  
15 liability partnerships and foreign limited liability partnerships.

16 (45) Records, *other than criminal investigation records*, the disclo-  
17 sure of which would pose a substantial likelihood of revealing security  
18 measures that protect: (A) Systems, facilities or equipment used in the  
19 production, transmission or distribution of energy, water or communi-  
20 cations services; ~~or~~ (B) *transportation and sewer or wastewater treatment*  
21 *systems, facilities or equipment; or (C) private property or persons, if the*  
22 *records are submitted to the agency.* For purposes of this paragraph, se-  
23 curity means measures that protect against criminal acts intended to in-  
24 timidate or coerce the civilian population, influence government policy  
25 by intimidation or coercion or to affect the operation of government by  
26 disruption of public services, mass destruction, assassination or kidnap-  
27 ping. *Security measures include, but are not limited to, intelligence infor-*  
28 *mation, tactical plans, resource deployment and vulnerability*  
29 *assessments.*

30 ~~(46) Any information or material received by the secretary of state~~  
31 ~~pursuant to subsection (b) of K.S.A. 2004 Supp. 44-1518, and amend-~~  
32 ~~ments thereto, except when such information is required to be submitted~~  
33 ~~in an application pursuant to K.S.A. 2004 Supp. 44-1520, and amend-~~  
34 ~~ments thereto.~~

35 (46) *Any information or material received by the register of deeds of*  
36 *a county from military discharge papers (DD Form 214). Such papers*  
37 *shall be disclosed: To the military dischargee; to such dischargee's im-*  
38 *mediate family members and lineal descendants; to such dischargee's*  
39 *heirs, agents or assigns; to the licensed funeral director who has custody*  
40 *of the body of the deceased dischargee; when required by a department*  
41 *or agency of the federal or state government or a political subdivision*  
42 *thereof; when the form is required to perfect the claim of military service*  
43 *or honorable discharge or a claim of a dependent of the dischargee; and*

1 *upon the written approval of the commissioner of veterans affairs, to a*  
2 *person conducting research.*

3 (47) *Information that would reveal the location of a shelter or a sa-*  
4 *fehhouse or similar place where persons are provided protection from*  
5 *abuse.*

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

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

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

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

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

43 (g) *Any confidential records or information relating to security meas-*

1 *ures provided or received under the provisions of subsection (a)(45) shall*  
2 *not be subject to subpoena, discovery or other demand in any adminis-*  
3 *trative, criminal or civil action.*

4 Sec. 2. K.S.A. 45-229 is hereby amended to read as follows: 45-229.

5 (a) It is the intent of the legislature that exceptions to disclosure under  
6 the open records act shall be created or maintained only if:

7 (1) The public record is of a sensitive or personal nature concerning  
8 individuals;

9 (2) the public record is necessary for the effective and efficient ad-  
10 ministration of a governmental program; or

11 (3) the public record affects confidential information. The mainte-  
12 nance or creation of an exception to disclosure must be compelled as  
13 measured by these criteria. Further, the legislature finds that the public  
14 has a right to have access to public records unless the criteria in this  
15 section for restricting such access to a public record are met and the  
16 criteria are considered during legislative review in connection with the  
17 particular exception to disclosure to be significant enough to override the  
18 strong public policy of open government. To strengthen the policy of open  
19 government, the legislature shall consider the criteria in this section be-  
20 fore enacting an exception to disclosure.

21 (b) ~~All~~ *Subject to the provisions of subsection (h), all exceptions to*  
22 *disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and*  
23 *any new exception to disclosure or substantial amendment of an existing*  
24 *exception shall expire on July 1 of the fifth year after enactment of the*  
25 *new exception or substantial amendment, unless the legislature acts to*  
26 ~~re-enact~~ *continue the exception. A law that enacts a new exception or*  
27 *substantially amends an existing exception shall state that the exception*  
28 *expires at the end of five years and that the exception shall be reviewed*  
29 *by the legislature before the scheduled date.*

30 (c) For purposes of this section, an exception is substantially amended  
31 if the amendment expands the scope of the exception to include more  
32 records or information. An exception is not substantially amended if the  
33 amendment narrows the scope of the exception.

34 (d) This section is not intended to repeal an exception that has been  
35 amended following legislative review before the scheduled repeal of the  
36 exception if the exception is not substantially amended as a result of the  
37 review.

38 (e) In the year before the expiration of an exception, the revisor of  
39 statutes shall certify to the president of the senate and the speaker of the  
40 house of representatives, by ~~June 1~~ *July 15*, the language and statutory  
41 citation of each exception which will expire in the following year which  
42 meets the criteria of an exception as defined in this section. Any exception  
43 that is not identified and certified to the president of the senate and the



1 speaker of the house of representatives is not subject to legislative review  
2 and shall not expire. If the revisor of statutes fails to certify an exception  
3 that the revisor subsequently determines should have been certified, the  
4 revisor shall include the exception in the following year's certification  
5 after that determination.

6 (f) "Exception" means any provision of law which creates an excep-  
7 tion to disclosure or limits disclosure under the open records act pursuant  
8 to K.S.A. 45-221, and amendments thereto, or pursuant to any other  
9 provision of law.

10 (g) A provision of law which creates or amends an exception to dis-  
11 closure under the open records law shall not be subject to review and  
12 expiration under this act if such provision:

13 (1) Is required by federal law;

14 (2) applies solely to the legislature or to the state court system.

15 (h) (1) The legislature shall review the exception before its scheduled  
16 expiration and consider as part of the review process the following:

17 (A) What specific records are affected by the exception;

18 (B) whom does the exception uniquely affect, as opposed to the gen-  
19 eral public;

20 (C) what is the identifiable public purpose or goal of the exception;

21 (D) whether the information contained in the records may be ob-  
22 tained readily by alternative means and how it may be obtained;

23 (2) An exception may be created or maintained only if it serves an  
24 identifiable public purpose and may be no broader than is necessary to  
25 meet the public purpose it serves. An identifiable public purpose is served  
26 if the legislature finds that the purpose is sufficiently compelling to over-  
27 ride the strong public policy of open government and cannot be accom-  
28 plished without the exception and if the exception:

29 (A) Allows the effective and efficient administration of a govern-  
30 mental program, which administration would be significantly impaired  
31 without the exception;

32 (B) protects information of a sensitive personal nature concerning  
33 individuals, the release of which information would be defamatory to such  
34 individuals or cause unwarranted damage to the good name or reputation  
35 of such individuals or would jeopardize the safety of such individuals.  
36 Only information that would identify the individuals may be excepted  
37 under this paragraph; or

38 (C) protects information of a confidential nature concerning entities,  
39 including, but not limited to, a formula, pattern, device, combination of  
40 devices, or compilation of information which is used to protect or further  
41 a business advantage over those who do not know or use it, the disclosure  
42 of which information would injure the affected entity in the marketplace.

43 (3) Records made before the date of the expiration of an exception

1 shall be subject to disclosure as otherwise provided by law. In deciding  
 2 whether the records shall be made public, the legislature shall consider  
 3 whether the damage or loss to persons or entities uniquely affected by  
 4 the exception of the type specified in paragraph (2)(B) or (2)(C) of this  
 5 subsection (h) would occur if the records were made public.

6 *(h) Exceptions contained in the following statutes as certified by the*  
 7 *revisor of statutes to the president of the senate and the speaker of the*  
 8 *house of representatives pursuant to subsection (e) of this section on June*  
 9 *1, 2004, are hereby continued in existence until July 1, 2010, at which*  
 10 *time such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712,*  
 11 *9-2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-*  
 12 *4516, 16-715, 16a-2-304, 17-1312e, 17-2227, 17-5832, 17-7503, 17-7505,*  
 13 *17-7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-*  
 14 *4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-*  
 15 *251, 38-1508, 38-1520, 38-1565, 38-1609, 38-1610, 38-1618, 38-1664, 39-*  
 16 *709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20,*  
 17 *40-2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012,*  
 18 *40-3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 44-*  
 19 *510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, 45-221,*  
 20 *46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-*  
 21 *406, 49-427, 55-1,102, 56-1a606, 56-1a607, 56a-1201, 56a-1202, 58-4114,*  
 22 *59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3335, 60-3336, 65-*  
 23 *102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113, 65-*  
 24 *1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-*  
 25 *1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467,*  
 26 *65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-*  
 27 *3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4608, 65-4922, 65-*  
 28 *4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05,*  
 29 *65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a,*  
 30 *66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-*  
 31 *8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-50,131, 74-5515,*  
 32 *74-7308, 74-7338, 74-7405a, 74-8104, 74-8307, 74-8705, 74-8804, 74-*  
 33 *9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-*  
 34 *5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-*  
 35 *12b11, 76-3305, 79-1119, 79-1437f, 79-15,118, 79-3234, 79-3395,*  
 36 *79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.*

37 Sec. 3. K.S.A. 2004 Supp. 66-1236 is hereby amended to read as  
 38 follows: 66-1236. (a) In adopting procedures applicable in proceedings  
 39 pursuant to K.S.A. 66-1233, and amendments thereto, the state corpo-  
 40 ration commission shall provide for:

41 (1) Confidentiality of information so that the amount of recovery re-  
 42 quested, the amount of recovery allowed, the method of cost recovery  
 43 requested and the method of cost recovery allowed is not disclosed;

- 1 (2) protective orders for all filings so that the citizens' utility ratepayer  
2 board may receive and review documents if the board intervenes;
- 3 (3) procedures to reflect rules of the United States nuclear regulatory  
4 commission or other regulatory bodies that govern the release of infor-  
5 mation and documentation which an applicant is required to submit to  
6 support the application or supply to the commission, commission staff or  
7 intervenors;
- 8 (4) the security cost recovery charge to be unidentifiable on custom-  
9 ers' bills;
- 10 (5) the security cost recovery charge shall be allocated and added to  
11 all wholesale and retail rates and future contracts. Any contract existing  
12 on the effective date of this act, which does not specifically prohibit the  
13 addition of such charges, shall have such charges added;
- 14 (6) review of security-related filings in an expedited manner with ref-  
15 erence only to security-related items to assure that the proposed items  
16 provide enhanced security;
- 17 (7) denial of any expenditure that the commission determines is not  
18 prudent or is not for security measures and approval of all other expend-  
19 itures; and
- 20 (8) recovery of capital expenditures over a period equal to not more  
21 than  $\frac{1}{2}$  the usable lifetime of the capital investment.
- 22 (b) A determination by the commission of the prudence of an ex-  
23 penditure for security measures shall not be based on standard regulatory  
24 principles and methods of recovery and shall take fully into account the  
25 findings and intent of the legislature as stated in K.S.A. 2004 Supp. 66-  
26 1235, and amendments thereto.
- 27 (c) The provisions of this act and K.S.A. 66-1233, and amendments  
28 thereto, shall apply recovery of prudent expenditures for enhanced se-  
29 curity incurred after September 11, 2001.
- 30 (d) *Any confidential records or information relating to security meas-*  
31 *ures provided or received under the provisions of this act and K.S.A. 66-*  
32 *1233, and amendments thereto, shall not be subject to subpoena, discovery*  
33 *or other demand in any administrative, criminal or civil action.*
- 34 Sec. 4. K.S.A. 2004 Supp. 75-4319 is hereby amended to read as  
35 follows: 75-4319. (a) Upon formal motion made, seconded and carried,  
36 all bodies and agencies subject to the open meetings act may recess, but  
37 not adjourn, open meetings for closed or executive meetings. Any motion  
38 to recess for a closed or executive meeting shall include a statement of  
39 (1) the justification for closing the meeting, (2) the subjects to be dis-  
40 cussed during the closed or executive meeting and (3) the time and place  
41 at which the open meeting shall resume. Such motion, including the re-  
42 quired statement, shall be recorded in the minutes of the meeting and  
43 shall be maintained as a part of the permanent records of the body or

1 agency. Discussion during the closed or executive meeting shall be limited  
2 to those subjects stated in the motion.

3 (b) No subjects shall be discussed at any closed or executive meeting,  
4 except the following:

5 (1) Personnel matters of nonelected personnel;

6 (2) consultation with an attorney for the body or agency which would  
7 be deemed privileged in the attorney-client relationship;

8 (3) matters relating to employer-employee negotiations whether or  
9 not in consultation with the representative or representatives of the body  
10 or agency;

11 (4) confidential data relating to financial affairs or trade secrets of  
12 corporations, partnerships, trusts, and individual proprietorships;

13 (5) matters relating to actions adversely or favorably affecting a per-  
14 son as a student, patient or resident of a public institution, except that  
15 any such person shall have the right to a public hearing if requested by  
16 the person;

17 (6) preliminary discussions relating to the acquisition of real property;

18 (7) matters permitted to be discussed in a closed or executive meeting  
19 pursuant to K.S.A. 74-8804 and amendments thereto;

20 (8) matters permitted to be discussed in a closed or executive meeting  
21 pursuant to subsection ~~(e)~~ (d)(1) of K.S.A. 38-1507 and amendments  
22 thereto or subsection ~~(f)~~ (e) of K.S.A. 38-1508 and amendments thereto;

23 (9) matters permitted to be discussed in a closed or executive meeting  
24 pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;

25 (10) matters permitted to be discussed in a closed or executive meet-  
26 ing pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;

27 (11) matters permitted to be discussed in a closed or executive meet-  
28 ing pursuant to subsection (g) of K.S.A. 39-7,119 and amendments  
29 thereto;

30 (12) matters required to be discussed in a closed or executive meeting  
31 pursuant to a tribal-state gaming compact;

32 (13) matters relating to security measures, if the discussion of such  
33 matters at an open meeting would jeopardize such security measures,  
34 that protect: (A) Systems, facilities or equipment used in the production,  
35 transmission or distribution of energy, water or communications services;  
36 (B) transportation and sewer or wastewater treatment systems, facilities  
37 or equipment; (C) a public body or agency, public building or facility or  
38 the information system of a public body or agency; or (D) private property  
39 or persons, if the matter is submitted to the agency for purposes of this  
40 paragraph. For purposes of this paragraph, security means measures that  
41 protect against criminal acts intended to intimidate or coerce the civilian  
42 population, influence government policy by intimidation or coercion or  
43 to affect the operation of government by disruption of public services,

1 mass destruction, assassination or kidnapping. Security measures include,  
2 but are not limited to, intelligence information, tactical plans, resource  
3 deployment and vulnerability assessments; and

4 (14) matters permitted to be discussed in a closed or executive meet-  
5 ing pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto.

6 (c) No binding action shall be taken during closed or executive recesses,  
7 and such recesses shall not be used as a subterfuge to defeat the  
8 purposes of this act.

9 (d) *Any confidential records or information relating to security meas-*  
10 *ures provided or received under the provisions of subsection (b)(13), shall*  
11 *not be subject to subpoena, discovery or other demand in any adminis-*  
12 *trative, criminal or civil action.*

13 New Sec. 5. (a) On or before January 15, of each year, the county or  
14 district attorney of each county shall report to the attorney general all  
15 complaints received during the preceding fiscal year concerning violations  
16 of the open records act and open meetings act and the disposition of each  
17 complaint.

18 (b) The attorney general shall compile information received pursuant  
19 to subsection (a) with information relating to investigations of violations  
20 of the open records act and the open meetings act conducted by the office  
21 of the attorney general. The attorney general shall publish a yearly ab-  
22 stract of such information listing by name the public agencies which are  
23 the subject of such complaints or investigations.

24 Sec. 6. K.S.A. 45-229 and K.S.A. 2004 Supp. 45-221, 45-221g, 45-  
25 221h, 66-1236, 75-4319 and 75-4319b are hereby repealed.

26 Sec. 7. This act shall take effect and be in force from and after its  
27 publication in the statute book.