SENATE BILL No. 206

By Committee on Federal and State Affairs

AN ACT concerning public agencies; relating to the state of Kansas and local units of government; providing certain powers to the attorney general for investigation of violations of the open records act and the open meetings act; open government fund; amending K.S.A. 45-223, 45-228 and 75-4320a and K.S.A. 2014 Supp. 45-222, 75-4320 and 75-4320b and repealing the existing sections.

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

New Section 1. (a) The attorney general may determine by a preponderance of the evidence after an investigation that a public agency has violated K.S.A. 45-215 et seq., and amendments thereto, and may, at any time prior to the filing of an action pursuant to K.S.A. 45-222, and amendments thereto, either enter into a consent order with the public agency or issue a finding of violation to the public agency.

1. If the attorney general enters into a consent order with the public agency, the consent order:
   (1) May contain admissions of fact and any or all of the following:
      (i) Require completion of training approved by the attorney general concerning the requirements of K.S.A. 45-215 et seq., and amendments thereto;
      (ii) impose a civil penalty as provided for in K.S.A. 45-223, and amendments thereto, in an amount not to exceed $250 for each violation; and
      (iii) set forth the public agency's agreement that it will comply with the requirements of the open records act, K.S.A. 45-215 et seq., and amendments thereto; and
   (B) shall bear the signature of the head of the public agency, of any officer found to have violated the provisions of K.S.A. 45-215 et seq., and amendments thereto, and of any other person required by the attorney general. If the public agency is a governing body, all of the members of the governing body shall sign the consent order.

2. If the attorney general issues a finding of violation to the public agency, the finding may contain findings of fact and conclusions of law and require the public agency to do any or all of the following:
   (A) Cease and desist from further violation;
   (B) comply with the provisions of K.S.A. 45-215 et seq., and
amendments thereto;
(C) complete training approved by the attorney general concerning the requirements of K.S.A. 45-215 et seq., and amendments thereto; and
(D) pay a civil penalty as provided for in K.S.A. 45-223, and amendments thereto, in an amount not to exceed $500 for each violation.
(b) The attorney general may require submission of proof that requirements of any consent order entered pursuant to subsection (a)(1) or any finding of violation issued pursuant to subsection (a)(2) have been satisfied.
(c) (1) The attorney general may apply to the district court to enforce a consent order pursuant to subsection (a)(1) or finding of violation pursuant to subsection (a)(2). Prior to applying to the district court, the attorney general shall make a demand to the public agency to comply with the consent order or finding of violation and afford reasonable opportunity for the public agency to cure the violation.
(2) An enforcement action under this section may be filed in the district court of the county where the consent order or finding of violation is issued or is effective. The district court of any county shall have jurisdiction to enforce any consent order or finding of violation.
(3) In any enforcement action under this section, the court on its own motion, or on the motion of either party, may view the records in controversy in camera before reaching a decision.
(4) If the district court finds the attorney general did not abuse the attorney general's discretion in entering into the consent order or issuing the finding of violation, the district court shall enter an order that:
(A) Enjoins the public agency to comply with the consent order or finding of violation;
(B) imposes a civil penalty as provided for in K.S.A. 45-223, and amendments thereto. The penalty shall be set by the court in an amount not less than the amount ordered by the attorney general, nor more than $500 for each violation;
(C) requires the public agency to pay the attorney general's reasonable costs in investigating and bringing an action to enforce the order, including reasonable attorney fees; and
(D) provides for any other remedy authorized by K.S.A. 45-222(a), and amendments thereto, that the court deems appropriate.
(d) Any finding of violation issued by the attorney general pursuant to subsection (a)(2) shall be served upon the public agency:
(1) By certified mail, return receipt requested, to the last known place of business, residence or abode within or without this state; or
(2) in the manner provided in the code of civil procedure as if a petition had been filed.
(e) The attorney general shall maintain and make available for public
inspection all consent orders entered pursuant to subsection (a)(1) and all
findings of violation issued pursuant to subsection (a)(2).

(f) This section shall be a part of and supplemental to the open
records act.

New Sec. 2. (a) In lieu of bringing an action as provided in K.S.A.
45-222, and amendments thereto, the attorney general or a county or
district attorney may resolve the matter by accepting a consent judgment
with respect to any act or practice declared to be a violation of this act.
Before any consent judgment entered into pursuant to this section shall be
effective, such judgment must be approved by the district court and an
entry made thereof in the manner required for making an entry of
judgment. Once such approval is received, any breach of the conditions of
the consent judgment shall be treated as a violation of a court order, and
shall be subject to all the penalties provided by law therefor.

(b) A consent judgment may contain any remedy available to the
district court, except it shall not include an award of reasonable expenses,
investigation costs or attorney fees. A consent judgment may include a
stipulation concerning the production of records requested pursuant to
K.S.A. 45-215 et seq., and amendments thereto, subject to any permissible
redactions as described in the consent judgment.

(c) This section shall be a part of and supplemental to the open
records act.

New Sec. 3. (a) Any complaint submitted to the attorney general shall
be on a form prescribed by the attorney general setting forth the facts that
the complaining party believes show that K.S.A. 45-215 et seq., and
amendments thereto, have been violated. The person submitting the
complaint must attest to the facts under penalty of perjury pursuant to
K.S.A. 53-601, and amendments thereto.

(b) This section shall be a part of and supplemental to the open
records act.

New Sec. 4. (a) The attorney general may determine by a
preponderance of the evidence after an investigation that a public agency
has violated K.S.A. 75-4317 et seq., and amendments thereto, and may, at
any time prior to the filing of an action pursuant to K.S.A. 75-4320a, and
amendments thereto, either enter into a consent order with the public
agency or issue a finding of violation to the public agency.

(1) If the attorney general enters into a consent order with the public
agency, the consent order:

(A) May contain admissions of fact and any or all of the following:

(i) Require completion of training approved by the attorney general
concerning the requirements of K.S.A. 75-4317 et seq., and amendments
thereto;

(ii) impose a civil penalty as provided for in K.S.A. 75-4320, and
amendments thereto, in an amount not to exceed $250 for each violation; and

(iii) set forth the public agency's agreement that it will comply with
the requirements of the open meetings act, K.S.A. 75-4317 et seq., and
amendments thereto; and

(B) shall bear the signature of the head of the public agency, of any
officer found to have violated the provisions of K.S.A. 75-4317 et seq.,
and amendments thereto, and of any other person required by the attorney
general. If the public agency is a governing body, all of the members of the
governing body shall sign the consent order.

(2) If the attorney general issues a finding of violation to the public
agency, the finding may contain findings of fact and conclusions of law
and require the public agency to do any or all of the following:

(A) Cease and desist from further violation;

(B) comply with the provisions of K.S.A. 75-4317 et seq., and
amendments thereto;

(C) complete training approved by the attorney general concerning
the requirements of K.S.A. 75-4317 et seq., and amendments thereto; and

(D) pay a civil penalty as provided for in K.S.A. 75-4320, and
amendments thereto, in an amount not to exceed $500 for each violation.

(b) The attorney general may require submission of proof that
requirements of any consent order entered pursuant to subsection (a)(1) or
finding of violation issued pursuant to subsection (a)(2) have been
satisfied.

(c) (1) The attorney general may apply to the district court to enforce
a consent order pursuant to subsection (a)(1) or finding of violation
pursuant to subsection (a)(2). Prior to applying to the district court, the
attorney general shall make a demand to the public agency to comply with
the consent order or finding of violation and afford reasonable opportunity
for the public agency to cure the violation.

(2) An enforcement action under this section may be filed in the
district court of the county where the consent order or finding of violation
is issued or is effective. The district court of any county shall have
jurisdiction to enforce any consent order or finding of violation.

(3) If the district court finds the attorney general did not abuse the
attorney general's discretion in entering into the consent order or issuing
the finding of violation, the district court shall enter an order that:

(A) Enjoins the public agency to comply with the consent order or
finding of violation;

(B) imposes a civil penalty as provided for in K.S.A. 75-4320, and
amendments thereto. The penalty shall be set by the court in an amount not
less than the amount ordered by the attorney general, nor more than $500
for each violation;
(C) requires the public agency to pay the attorney general's reasonable costs in investigating and bringing an action to enforce the order, including reasonable attorney fees; and

(D) provides for any other remedy authorized by K.S.A. 75-4320a(a), and amendments thereto, that the court deems appropriate.

(d) Any finding of violation issued by the attorney general pursuant to subsection (a)(2) shall be served upon the public agency:

(1) By certified mail, return receipt requested, to the last known place of business, residence or abode within or without this state; or

(2) in the manner provided in the code of civil procedure as if a petition had been filed.

(e) The attorney general shall maintain and make available for public inspection all consent orders entered pursuant to subsection (a)(1) and all findings of violation issued pursuant to subsection (a)(2).

(f) This section shall be a part of and supplemental to the open meetings act.

New Sec. 5. (a) In lieu of bringing an action as provided in K.S.A. 75-4320a, and amendments thereto, the attorney general or a county or district attorney may resolve the matter by accepting a consent judgment with respect to any act or practice declared to be a violation of this act. Before any consent judgment entered into pursuant to this section shall be effective, such judgment must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of the consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

(b) A consent judgment may contain any remedy available to the district court, except it shall not include an award of reasonable expenses, investigation costs or attorney fees.

(c) This section shall be a part of and supplemental to the open meetings act.

New Sec. 6. (a) Any complaint submitted to the attorney general shall be on a form prescribed by the attorney general setting forth the facts that the complaining party believes show that K.S.A. 75-4317 et seq., and amendments thereto, have been violated. The person submitting the complaint must attest to the facts under penalty of perjury pursuant to K.S.A. 53-601, and amendments thereto.

(b) This section shall be a part of and supplemental to the open meetings act.

New Sec. 7. (a) There is hereby created in the state treasury the attorney general's open government fund. Moneys in the attorney general's open government fund shall be used by the attorney general to carry out the provisions and purposes of the open records act, K.S.A. 45-215 et seq.,
and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto. All expenditures from the attorney general’s open government fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or a person designated by the attorney general.

(b) All civil penalties, expenses, costs and attorney fees awarded in an action brought by the attorney general pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto, or the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto, or pursuant to a consent order or finding of violation of the attorney general as provided in section 1 or section 4, and amendments thereto, shall be credited to the attorney general’s open government fund.

New Sec. 8. (a) Subject to the availability of appropriations, the attorney general shall provide and coordinate training throughout the state to promote knowledge of, and compliance with, the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto. The attorney general may consult and coordinate with any appropriate organization to provide training.

(b) The attorney general may establish a program of computerized training to promote knowledge of, and compliance with, the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317, and amendments thereto, and to make training available throughout the state.

(c) The attorney general may approve training programs that satisfy training requirements imposed by the district court or by any order or judgment pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto.

New Sec. 9. The attorney general may adopt rules and regulations to implement and administer the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto.

Sec. 10. K.S.A. 2014 Supp. 45-222 is hereby amended to read as follows: 45-222. (a) The district court of any county in which public records are located shall have jurisdiction to enforce the purposes of this act with respect to such records, by injunction, mandamus, declaratory judgment or other appropriate order, in an action brought by any person, the attorney general or a county or district attorney. The district court may require a defendant to complete training approved by the attorney general concerning the requirements of the open records act.

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

(c) In any action hereunder, or under section 1, and amendments
thereto, the burden of proof shall be on the public agency to sustain its
action.

(d) In any action hereunder, the court shall award costs and a
reasonable sum as an attorney's fee for services rendered in such action,
including proceedings on appeal, to be recovered and collected as part of
the costs to the plaintiff if the court finds that the agency's denial of access
to the public record was not in good faith and without a reasonable basis in
fact or law. The award shall be assessed against the public agency that the
court determines to be responsible for the violation.

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

(f) In any action hereunder brought by the attorney general or a
county or district attorney, if the court finds that any provisions were
violated, the court: (1) May award the attorney general's or the county or
district attorney's reasonable expenses, investigation costs and attorney
fees; and (2) shall award the same if the court determines that the
violation was not in good faith and without a reasonable basis in fact or
law.

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

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

Sec. 11. K.S.A. 45-223 is hereby amended to read as follows: 45-223.
(a) Any public agency subject to this act that knowingly violates any of the
provisions of this act or that intentionally fails to furnish information as
required by this act shall be liable for the payment of a civil penalty in an
action brought by the attorney general or a county or district attorney, in a
sum set by the court of not to exceed $500 for each violation.

(b) Any civil penalty sued for and recovered hereunder by the
attorney general shall be paid into the state general attorney general's
open government fund. Any civil penalty sued for and recovered hereunder
by a county or district attorney shall be paid into the general fund of the
county in which the proceedings were instigated.
Sec. 12. K.S.A. 45-228 is hereby amended to read as follows: 45-228.

(a) In investigating alleged violations of the Kansas open records act, the attorney general or county or district attorney may:

(a)(1) subpoena witnesses, evidence, records, documents or other material;

(b)(2) take testimony under oath;

(e)(3) examine or cause to be examined any records or other documentary material of whatever nature relevant to such alleged violations;

(d)(4) require attendance during such examination of documentary material and take testimony under oath or acknowledgment in respect of any such documentary material; and

(e)(5) serve interrogatories; and

(6) administer oaths and affirmations.

(b) If a public agency claims in writing that any records or documents, or any portion thereof, obtained by the attorney general or a county or district attorney pursuant to subsection (a) are exempt from disclosure for any reason, the attorney general or a county or district attorney shall not further disclose that record or document, nor the contents thereof, unless ordered to do so by a district court enforcing the open records act in connection with such record or document. Such records and documents in the possession of the attorney general or a county or district attorney shall not be subject to a request for inspection and copying under the open records act and shall not be subject to discovery, subpoena, or other process.

(c) Service by the attorney general or a county or district attorney of any interrogatories or subpoena upon any person, shall be made:

(1) By certified mail, return receipt requested, to the last known place of business, residence or abode within or without this state; or

(2) in the manner provided in the code of civil procedure as if a petition had been filed.

(d) If any person willfully fails or refuses to file any response to a request for information, records or other materials required by this section, respond to interrogatories or obey any subpoena issued by the attorney general or a county or district attorney, the attorney general or a county or district attorney may, after notice, apply to the district court of the county where the request, interrogatories or subpoena was issued, or of any other county where venue is proper, and after a hearing thereon the district court may:

(1) Issue an order requiring a response to the request for information, records or other materials, a response to the interrogatories or compliance with the subpoena; or

(2) grant such other relief as may be required, until the person
provides the requested response for information, records or other materials, responds to the interrogatories or obeys the subpoena.

Sec. 13. K.S.A. 2014 Supp. 75-4320 is hereby amended to read as follows: 75-4320. (a) Any member of a body or agency subject to this act who knowingly violates any of the provisions of this act or who intentionally fails to furnish information as required by subsection (b) of K.S.A. 75-4318(b), and amendments thereto, shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed $500 for each violation. In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of this act shall be voidable in any action brought by the attorney general or county or district attorney in the district court of the county in which the meeting was held within 21 days of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act.

(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the state general attorney general’s open government fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

(c) No fine shall be imposed pursuant to subsection (a) for violations of subsection (f) of K.S.A. 75-4318(f), and amendments thereto, which occur prior to July 1, 2009.

Sec. 14. K.S.A. 75-4320a is hereby amended to read as follows: 75-4320a. (a) The district court of any county in which a meeting is held shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-4319, and amendments thereto, with respect to such meeting, by injunction, mandamus declaratory judgment or other appropriate order, on application of any person. The district court may require a defendant to complete training approved by the attorney general concerning the requirements of the open meetings act.

(b) In any action hereunder or under section 4, and amendments thereto, the burden of proof shall be on the public body or agency to sustain its action.

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

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

(e) In any action hereunder brought by the attorney general or a county or district attorney, if the court finds that any provisions of K.S.A. 75-4318 or 75-4319, and amendments thereto, were violated, the court:
(1) May award the attorney general's or the county or district attorney's reasonable expenses, investigation costs and attorney fees; and (2) shall award the same if the court determines that the violation was not in good faith and without a reasonable basis in fact or law.

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

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

Sec. 15. K.S.A. 2014 Supp. 75-4320b is hereby amended to read as follows: 75-4320b. (a) In investigating alleged violations of the Kansas open meetings act, the attorney general or county or district attorney may:
(a) (1) Subpoena witnesses, evidence, records, documents or other material;
(2) take testimony under oath;
(3) examine or cause to be examined any records or other documentary material of whatever nature relevant to such alleged violations;
(4) require attendance during such examination of documentary material and take testimony under oath or acknowledgment in respect of any such documentary material; and
(5) serve interrogatories; and
(6) administer oaths and affirmations.
(b) Service by the attorney general or a county or district attorney of any interrogatories or subpoena upon any person, shall be made:
(1) By certified mail, return receipt requested, to the last known place of business, residence or abode within or without this state; or
(2) in the manner provided in the code of civil procedure as if a petition had been filed.
(c) If any person willfully fails or refuses to file any response to a request for information, records or other materials required by this section, respond to interrogatories or obey any subpoena issued by the attorney general or a county or district attorney, the attorney general or a county or district attorney may, after notice, apply to the district court of the county where the request, interrogatories or subpoena was issued, or of any other county where venue is proper, and after a hearing thereon the district court may:
(1) Issue an order requiring a response to the request for information, records or other materials, a response to interrogatories or
compliance with the subpoena; or

(2) grant such other relief as may be required, until the person provides the requested response for information, records or other materials, responds to the interrogatories or obeys the subpoena.

Sec. 16. K.S.A. 45-223, 45-228 and 75-4320a and K.S.A. 2014 Supp. 45-222, 75-4320 and 75-4320b are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.