

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:40 a.m. on Thursday, January 20, 2005, in Room 231-N of the Capitol.

All members were present.

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Dee Woodson, Committee Secretary

Conferees appearing before the committee: Barb Hinton, Legislative Post Auditor
Doug Anstaett, Executive Director, Kansas Press Association
Senator John Vratil
Senator Anthony Hensley

Chairman Brungardt noted that Committee members had in their Committee folders copies of various handouts referred to in Dennis Hodgins' overview last week regarding 2004 Interim Indian Gaming Compact, Governor's Executive Summary on Gaming Compact, and Interim Report for the Joint Committee on State-Tribal Relations. He also announced the agenda for next week's meetings.

SB 19 - Legislative post audits, confidentiality of surveys

Chairman Brungardt opened the hearing on **SB 19**. Barb Hinton, Legislative Division of Post Audit, testified in support of the bill on behalf of her office and the Legislative Post Audit Committee, which introduced the bill. She explained that **SB 19** would make all surveys Post Audit administers during the course of an audit confidential by law. Under current law, such surveys generally become public records once the audit is completed. Ms. Hinton reviewed the attached memorandum to her written testimony, which provided the rationale for why this bill represents an important step in promoting good government in Kansas. **SB 19** would help protect employees' identity when they report or make allegations of mismanagement, waste, inefficiencies, abuse, or other potential problems in a survey document. (Attachment 1)

Ms. Hinton explained that under the Kansas Open Records Act (KORA), all workpapers that support Post Audit findings become public after the audit report is issued, except for information that is confidential or privileged by law or that can be discretionarily closed under one of the exemptions of KORA. She reviewed the three sections of KORA that apply to Post Audit situations. She stated that Post Audit can and has used these exemptions to try to protect employees' confidentiality, but they aren't sufficient or specific enough in many situations Post Audit is faced with to protect employees' identity when those individuals have reported certain problems within their agencies. Included with Ms. Hinton's written testimony was a table summarizing workpaper confidentiality provisions in selected states.

Ms. Hinton added that consideration should be given to possibly adding a revision to the bill relating to the confidentiality of the responses to surveys, and it was not Post Audit's intention to keep individuals from getting a blank document of the survey.

Committee questions related to subpoena powers of the Legislative Division of Post Audit, and whether Post Audit would report to law enforcement officials if information within a survey discloses the commission of a crime and whether it caused a conflict with proposed **SB 19**.

Doug Anstaett, Kansas Press Association (KPA), testified in support of **SB 19**. He said that generally KPA opposes most moves to make records confidential, but that this bill was the result of a good faith effort by the Post Audit Division to find ways to improve government. He stated that KPA was supporting its goal of freeing public employees and others from the fear of retaliation by their employers should they honestly fill out questionnaires and surveys for Post Audit. Mr. Anstaett concluded by saying this bill protects those employees without unduly trampling on the people's right to know., and KPA encouraged the Committee to vote for the passage of **SB 19**. (Attachment 2)

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Chairman Brungardt asked Ms. Hinton to review with the Revisor the suggested questions or concerns regarding language within **SB 19**, and possibly consider drafting a balloon amendment.

The Chairman closed the hearing on **SB 19**.

SB 26 - Deleting from the list of legal holidays Washington's birthday and Lincoln's birthday and adding Martin Luther King Jr. Day and President's day

Chairman Brungardt opened the hearing on **SB 26**. Senator Vratil testified in support of and sponsored **SB 26**. He explained the proposed bill amends the existing statute which designates legal public holidays. He said that currently the statute lists Lincoln's birthday and Washington's birthday as legal public holidays even though those dates are no longer observed as such. Senator Vratil stated that currently Martin Luther King, Jr. Day and President's Day are observed as legal public holidays. This proposed bill would bring that statute up to date regarding the legal holidays observed in the State of Kansas.

(Attachment 3)

Having no questions from Committee members, Chairman Brungardt closed the hearing on **SB 26**. He announced if there were no objections, the Committee would take final action on **SB 26**.

Senator Reitz made a motion to pass SB 26 out favorably and place it on the Consent Calendar. The motion was seconded by Senator Brownlee, and the motion passed.

SB 17 -Meetings of party caucuses of the house of representatives and the senate caucuses are to be open meetings

Chairman Brungardt opened the hearing on **SB 17**. Senator Hensley testified that he introduced a bill like **SB 17** two years ago in the 2003 Legislative Session. He explained that the proposed bill would amend the Kansas Open Meetings Act (KOMA) to require that all meetings of political party caucuses within the Legislature would be open to the public. It would also require any meeting of the Senate Committee on Organization, Calendar and Rules (OCR) or any successor committee of that OCR group would be subject to KOMA. He referred to last week's thorough discussion in the Senate Chamber regarding openness in government, and in his opinion these two areas are omissions of that within the legislative process. He stated that he believed in the spirit of open government, and the Legislature should make both caucuses and the OCR subject to KOMA.

Senator Hensley referred the Committee members to the balloon amendment that the Revisor drafted at his request, and asked the Committee to consider in the same spirit of open government. He said that Senator Schodorf also two years ago introduced what was **SB 76** which was referred to Senate Elections and Local Government Committee. He explained that **SB 76** is included in the balloon version, and would require meetings of task forces, advisory committees, or subcommittees of advisory committees created by an incoming governor to be open to the public. Senator Hensley related that when the incoming Governor, Governor Sebelius, could not establish task forces by Executive Order because she had not been sworn in. There was quite a bit of concern expressed through the news media and a law suit filed in order to try and require the incoming Governor's task forces, that were dealing with specific issues, to have open public meetings. (Attachment 4)

Senator Hensley testified that **SB 76** also included Boards of County Commissioners, governing bodies of a city, and Boards of Education of a Unified School Districts; and these units of local government are also included in the balloon for **SB 17**. Chairman Brungardt clarified that KOMA does have a series of things that a meeting can be closed for, i.e. personnel discussions, acquisition of real estate, etc. He asked if those exceptions would still be allowable under this provision as long as they are designated and specified. The Revisor confirmed those exceptions would still be allocable.

Senator Vratil inquired about balloon Sections 3, 4, and 5. He used Section 3 as an example relating to members of a Board of Education up for re-election in April, and four new members are elected. He asked if that would make the law applicable to eleven members of that Board of Education, where there were seven to start with and four newly elected. Senator Hensley responded in the affirmative, but stated that the four newly elected would not take office until July. Senator Vratil said that as he read the balloon

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amendment, for purposes of the KOMA, this would change the majority of a quorum. He explained that right now there are three, and if this bill passes it would be changed to four. Senator Vratil asked if that would mean three members of the existing Board of Education could meet privately and without being in violation of the KOMA. Senator Hensley agreed, and stated that it would be a problem and probably something he and the Revisor should review closely. Senator Ostmeyer stated that this issue did happen in Manhattan in regard to a task force appointed by the Board of Education wherein they closed the meetings and a lot of people got very upset. The Chairman said that if the group had cause to close the meeting for stated reasons they could do that. Commission discussion continued on clarifying this issue.

Doug Anstaett, Kansas Press Association, related an example of a School Board election in Kansas wherein four of the seven board members were replaced, and the newly elected members started having private meetings for three months and plotting strategy before they took office. He said he thought that was part of what Senator Schodorf's bill was aimed at accomplishing. Mr. Anstaett stated that the Kansas Press Association supports Senator Hensley's bill.

Harriet Lange, Kansas Association of Broadcasters (KAB), stated that KAB also supported the passage of **SB 19**.

Senator O'Connor expressed concern about opening up the political caucuses and OCR meetings because of certain subjects discussed, i.e. political strategies. She commented that in those instances the meetings should be able to be closed for discussion of sensitive party issues.

Chairman Brungardt stated that he wanted to retain **SB 19** within the Committee for a while as he was sure there would be more conferees to speak to this bill and more thorough discussion to be held before any action would be taken.

The meeting was adjourned at 11:25 a.m. The next meeting is scheduled for January 25, 2005, at 10:30 a.m.