

As Amended by House Committee

Session of 2005

HOUSE BILL No. 2281

By Committee on Governmental Organization and Elections

2-3

10 AN ACT concerning governor's records; providing for the disposition of
11 gubernatorial records; amending K.S.A. 75-104 and repealing the ex-
12 isting section.
13

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

15 Section 1. K.S.A. 75-104 is hereby amended to read as follows: 75-
16 104. (a) The governor shall keep and maintain a full and complete record
17 of the following applications or petitions made to the governor:

18 (1) Applications or petitions for executive pardon, commutation of
19 sentence or clemency;

20 (2) applications or petitions for the appointment of a named individ-
21 ual to public office when a vacancy occurs and when the governor is
22 restricted to the appointment of nominees so submitted;

23 (3) applications or petitions for the appointment of a person from a
24 list of persons submitted by an association, agency or committee where
25 the governor is limited to make an appointment only from that list;

26 (4) applications for the approval of grants where the governor's ap-
27 proval is a condition precedent to the making of such grants either by a
28 state agency or by the federal government;

29 (5) applications or petitions for declarations of emergency;

30 (6) petitions for the calling of a special session of the legislature pur-
31 suant to section 5 of article 1 of the constitution of the state of Kansas;
32 and

33 (7) applications or petitions directed to the governor and requesting
34 that the governor take action in accordance with subsection (c) of K.S.A.
35 75-3711 and amendments thereto and exercise a function otherwise spec-
36 ified by statute for the state finance council.

37 (b) The record required to be kept under subsection (a) and all re-
38 cords of the financial affairs and transactions regarding the receipt and
39 expenditure of state moneys shall remain on file in the office of each
40 governor during the governor's term of office ~~and for a period of three~~
41 ~~years following the expiration of such term.~~

42 (c) ~~Following the three-year period prescribed in subsection (b), all~~
43 ~~records kept and maintained pursuant to subsection (a) shall be trans-~~

1 ~~ferred to the custody of the state historical society and the records of the~~
2 ~~financial affairs and transactions kept and maintained pursuant to sub-~~
3 ~~section (b) shall be kept in the office of the governor, subject to disposal~~
4 ~~as may be authorized by the state records board.~~

5 ~~—(d) Records, correspondence and other papers of the governor which~~
6 ~~are not required to be kept and maintained under subsections (a) or (b)~~
7 ~~shall not be subject to review or audit by the legislative post auditor under~~
8 ~~the legislative post audit act.~~

9 ~~—(e) Upon completion of the term of office as governor, all records,~~
10 ~~correspondence and other papers gubernatorial records, as defined in~~
11 ~~section 2, and amendments thereto, of the former governor not required~~
12 ~~to be kept and maintained under subsections (a) or (b) which relate to~~
13 ~~the former governor's public duties while governor shall be transferred~~
14 ~~to the custody of the state archivist of the state historical society as pro-~~
15 ~~vided in section 2, and amendments thereto. During the lifetime of the~~
16 ~~former governor, no person shall have access to any such records, cor-~~
17 ~~respondence or other papers which are not required to be disclosed under~~
18 ~~K.S.A. 45-221 and amendments thereto, except upon consent of the for-~~
19 ~~mer governor, and the former governor shall be considered the official~~
20 ~~custodian of such records, correspondence and other papers which are~~
21 ~~not required to be disclosed.~~

22 ~~(f) (d) Upon the death of a governor while in office, all records, cor-~~
23 ~~respondence and other papers gubernatorial records, as defined in section~~
24 ~~2, and amendments thereto, of such deceased governor not required to~~
25 ~~be kept and maintained under subsections (a) or (b) which relate to such~~
26 ~~governor's duties while governor shall be transferred to the custody of~~
27 ~~the state archivist of the state historical society as provided in section 2,~~
28 ~~and amendments thereto.~~

29 ~~(g) (e) A person elected or succeeding to the office of governor shall~~
30 ~~be governed by the provisions of this section as it existed at the time such~~
31 ~~person was elected or succeeded to such office.~~

32 New Sec. 2. (a) as used in this section:

33 (1) "Documentary material" means all books, correspondence, mem-
34 orandums, documents, papers, pamphlets, works of art, models, pictures,
35 photographs, plats, maps, films, and motion pictures **regardless of phys-**
36 **ical form or characteristics or storage media**, including, but not lim-
37 ited to, audio, audiovisual or other electronic or mechanical recordings.

38 (2) "Gubernatorial records" means documentary materials, or any
39 reasonably segregable portion thereof, created or received by the gov-
40 ernor, the governor's immediate staff, or a unit or individual of the office
41 of the governor whose function is to advise and assist the governor, in the
42 course of conducting activities which relate to or have an effect upon the
43 carrying out of the constitutional, statutory or other official or ceremonial

1 duties of the governor. Such term (A) includes any documentary materials
2 relating to the political activities of the governor or members of the gov-
3 ernor’s staff, but only if such activities relate to or have a direct effect
4 upon the carrying out of constitutional, statutory or other official or cer-
5 emonial duties of the governor; but (B) does not include any documentary
6 materials that are (i) official records of an agency; (ii) personal records;
7 (iii) stocks of publications and stationery; or (iv) extra copies of documents
8 produced only for convenience of reference, when such copies are clearly
9 so identified.

10 (3) “Personal records” means all documentary materials, or any reason-
11 ably segregable portion thereof, of a purely private or nonpublic char-
12 acter which do not relate to or have an effect upon the carrying out of
13 the constitutional, statutory or other official or ceremonial duties of the
14 governor. Such term includes: (A) Diaries, journals or other personal
15 notes serving as the functional equivalent of a diary or journal which are
16 not prepared or utilized for, or circulated or communicated in the course
17 of, transacting government business; (B) materials relating to private po-
18 litical associations and having no relation to or direct effect upon the
19 carrying out of constitutional, statutory or other official or ceremonial
20 duties of the governor; and (C) materials relating exclusively to the gov-
21 ernor’s own election to the office of governor and materials directly re-
22 lating to the election of a particular individual or individuals to federal,
23 state or local office, which have no relation to or direct effect upon the
24 carrying out of constitutional, statutory or other official or ceremonial
25 duties of the governor.

26 (4) “State Archivist” means the archivist of the state employed under
27 K.S.A. 75-3148, and amendments thereto.

28 (5) “Former governor”, when used with respect to gubernatorial re-
29 cords, means the former governor during whose term or terms of office
30 such gubernatorial records were created.

31 (b) The state of Kansas shall reserve and retain complete ownership,
32 possession and control of gubernatorial records, and such records shall
33 be administered in accordance with the provisions of this section.

34 (c) Through the implementation of records management controls and
35 other necessary actions, the governor shall take all such steps as may be
36 necessary to assure that the activities, deliberations, decisions and policies
37 that reflect the performance of such governor’s constitutional, statutory
38 or other official or ceremonial duties are adequately documented and that
39 such records are maintained as gubernatorial records pursuant to the
40 requirements of this section and other provisions of law.

41 (d) Documentary materials produced or received by the governor,
42 the governor’s staff, or units or individuals in the office of the governor
43 the function of which is to advise and assist the governor, to the extent

1 practicable, shall be categorized as gubernatorial records or personal re-
2 cords upon their creation or receipt and be filed separately.

3 (e) During the governor's term of office, the governor may dispose
4 of those gubernatorial records that no longer have administrative, histor-
5 ical, informational or evidentiary value ~~if (1) the governor obtains the~~
6 ~~views, in writing, of the state archivist concerning the proposed disposal~~
7 ~~of such gubernatorial records, and (2) the state archivist states that the~~
8 ~~state archivist does not intend to take any action under subsection (g) in~~
9 **accordance with a records retention and disposition schedule de-**
10 **veloped by the state archivist in cooperation with the governor.**

11 (f) In the event the archivist notifies the governor under subsection
12 (e) that the state archivist does intend to take action under subsection
13 (g), the governor may dispose of such gubernatorial records if copies of
14 the disposal schedule are submitted to the legislative coordinating council
15 at least 60 calendar days in advance of the proposed disposal date.

16 (g) The state archivist shall request the advice of the legislative co-
17 ordinating council with respect to any proposed disposal of gubernatorial
18 records whenever the state archivist considers that (1) these particular
19 records may be of special interest to the legislature; or (2) consultation
20 with the legislative coordinating council regarding the disposal of these
21 particular records is in the public interest.

22 (h) (1) Upon the conclusion of a governor's term of office, or if a
23 governor serves consecutive terms upon the conclusion of the last term,
24 the state archivist shall assume responsibility for the custody, control and
25 preservation of, and access to, the gubernatorial records of that governor.
26 The state archivist shall have an affirmative duty to make such records
27 available to the public as rapidly and completely as possible consistent
28 with the provisions of this act.

29 (2) The state archivist shall deposit all such gubernatorial records in
30 a gubernatorial archival depository established ~~by~~ **at** the state historical
31 society. The state archivist is authorized to designate, after consultation
32 with the former governor, ~~a director at each depository or facility~~ **an**
33 **employee of the state historical society**, who shall be responsible for
34 the care and preservation of such records.

35 (3) The state archivist is authorized to dispose of such gubernatorial
36 records which the state archivist has appraised and determined to have
37 insufficient administrative, historical, informational or evidentiary value
38 to warrant their continued preservation. Notice of such disposal shall be
39 published in the Kansas register at least 60 days in advance of the pro-
40 posed disposal date.

41 (i) (1) Prior to the conclusion of the governor's term of office or last
42 consecutive term of office, as the case may be, the governor shall specify
43 durations, not to exceed 12 years, for which access shall be restricted with

- 1 respect to information, in a gubernatorial record, within one or more of
2 the following categories:
- 3 (A) Specifically authorized under criteria established by an executive
4 order to be kept secret in accordance with federal or state law for security
5 purposes and in fact properly classified pursuant to such executive order;
 - 6 (B) relating to appointments to state office;
 - 7 (C) specifically exempted from disclosure by statute so long as such
8 statute (i) requires that the material be withheld from the public in such
9 a manner as to leave no discretion on the issue, or (ii) establishes partic-
10 ular criteria for withholding or refers to particular types of material to be
11 withheld;
 - 12 (D) trade secrets and commercial or financial information obtained
13 from a person and privileged or confidential;
 - 14 (E) confidential communications requesting or submitting advice, be-
15 tween the governor and the governor's advisers, or between such advisers;
16 or
 - 17 (F) personnel and medical files and similar files the disclosure of
18 which would constitute a clearly unwarranted invasion of personal privacy.
- 19 (2) (A) Any gubernatorial record or reasonably segregable portion
20 thereof containing information within a category restricted by the gov-
21 ernor under this subsection shall be so designated by the state archivist
22 and access thereto shall be restricted until the earlier of (i) (a) the date
23 on which the former governor waives the restriction on disclosure of such
24 record, or (b) the expiration of the duration specified under this subsec-
25 tion for the category of information on the basis of which access to such
26 record has been restricted; or
- 27 (ii) upon a determination by the state archivist that such record or
28 reasonably segregable portion thereof, or of any significant element or
29 aspect of the information contained in such record or reasonably segreg-
30 able portion thereof, has been placed in the public domain through pub-
31 lication by the former governor, or the governor's agents.
- 32 (B) Any such record which does not contain information within a
33 category restricted by the governor under this subsection, or contains
34 information within such a category for which the duration of restricted
35 access has expired, shall be exempt from the provisions of subsection (i)(3)
36 until the earlier of (i) the date which is five years after the date on which
37 the state archivist obtains custody of such record pursuant to subsection
38 (f), or (ii) the date on which the state archivist completes the processing
39 and organization of such records or integral file segment thereof.
- 40 (C) During the period of restricted access specified pursuant to this
41 subsection, the determination whether access to a gubernatorial record
42 of reasonably segregable portion thereof shall be restricted shall be made
43 by the state archivist, in the state archivist's discretion, after consultation

1 with the former governor, and, during such period, such determinations
2 shall not be subject to judicial review, except as provided in subsec-
3 tion(i)(5). The state archivist shall establish procedures whereby any per-
4 son denied access to a gubernatorial record because such record is re-
5 stricted pursuant to a determination made under this paragraph, may file
6 an administrative appeal of such determination. Such procedures shall
7 provide for a written determination by the state archivist or the state
8 archivist's designee, within 30 working days after receipt of such an ap-
9 peal, setting forth the basis for such determination.

10 (3) (A) Subject to the limitations on access imposed pursuant to this
11 section, gubernatorial records shall be administered in accordance with
12 the Kansas open records act. Access to such records shall be granted on
13 nondiscriminatory terms.

14 (B) Nothing in this act shall be construed to confirm, limit or expand
15 any constitutionally-based privilege which may be available to an incum-
16 bent or former governor.

17 (4) Upon the death or disability of a governor or former governor,
18 any discretion or authority the governor or former governor may have
19 had under this section shall be exercised by the state archivist unless
20 otherwise previously provided by the governor or former governor in a
21 written notice to the state archivist.

22 (5) The district court of Shawnee county shall have jurisdiction over
23 any action initiated by the former governor asserting that a determination
24 made by the state archivist violates the former governor's rights or
25 privileges.

26 (j) Notwithstanding any restrictions on access imposed pursuant to
27 subsection (i):

28 (1) The state archivist and persons employed by the state historical
29 society who are engaged in the performance of normal archival work shall
30 be permitted access to gubernatorial records in the custody of the state
31 archivist;

32 (2) subject to any rights, defenses or privileges which any agency or
33 person may invoke, gubernatorial records shall be made available:

34 (A) Pursuant to subpoena or other judicial process issued by a court
35 of competent jurisdiction for the purposes of any civil or criminal inves-
36 tigation or proceeding;

37 (B) to an incumbent governor ~~is-if~~ such records contain information
38 that is needed for the conduct of current business of the governor's office
39 and that is not otherwise available; and

40 (C) to either house of the legislature, or, to the extent of matter within
41 its jurisdiction, to any committee or subcommittee of the legislature if
42 such records contain information that is needed for the conduct of its
43 business and that is not otherwise available; and

- 1 (3) the gubernatorial records of a former governor shall be available
2 to such former governor or ~~the former governor's~~ **to a representative**
3 **of the former governor** designated ~~representative by letter from the~~
4 **former governor.**
- 5 (k) The state archivist shall promulgate rules and regulations neces-
6 sary to carry out the provisions of this section. Such regulations shall
7 include:
- 8 (1) Provisions for advance public notice and description of any gu-
9 bernatorial records scheduled for disposal pursuant to subsection (h)(3);
- 10 (2) provisions for providing notice to the former governor when ma-
11 terials to which access would otherwise be restricted pursuant to subsec-
12 tion (i)(1) are to be made available in accordance with subsection (j)(2)(B);
- 13 ~~—(3) provisions for notice by the state archivist to the former governor~~
14 ~~when the disclosure of particular documents may adversely affect any~~
15 ~~rights and privileges which the former governor may have; and~~
- 16 ~~(4)~~ **(3)** provisions for establishing procedures for consultation be-
17 tween the state archivist and appropriate state and federal agencies re-
18 garding materials which may be subject to state or federal law.
- 19 Sec. 3. K.S.A. 75-104 is hereby repealed.
- 20 Sec. 4. This act shall take effect and be in force from and after its
21 publication in the statute book.