

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2719

By Committee on Governmental Organization and Elections

1-25

10 AN ACT concerning the open meetings law; relating to executive ses-
11 sions; amending K.S.A. 2005 Supp. 75-4319 and repealing the existing
12 section.

13

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

15 Section 1. K.S.A. 2005 Supp. 75-4319 is hereby amended to read as
16 follows: 75-4319. (a) Upon formal motion made, seconded and carried,
17 all bodies and agencies subject to the open meetings act may recess, but
18 not adjourn, open meetings for closed or executive meetings. Any motion
19 to recess for a closed or executive meeting shall include a statement of
20 (1) the justification for closing the meeting, (2) the subjects to be dis-
21 cussed during the closed or executive meeting and (3) the time and place
22 at which the open meeting shall resume. Such motion, including the re-
23 quired statement, shall be recorded in the minutes of the meeting and
24 shall be maintained as a part of the permanent records of the body or
25 agency. Discussion during the closed or executive meeting shall be limited
26 to those subjects stated in the motion.

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

29 (1) Personnel matters of nonelected personnel;

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

32 (3) matters relating to employer-employee negotiations whether or
33 not in consultation with the representative or representatives of the body
34 or agency;

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

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

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

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

- 1 (8) matters permitted to be discussed in a closed or executive meeting
2 pursuant to subsection (d)(1) of K.S.A. 38-1507 and amendments thereto
3 or subsection (e) of K.S.A. 38-1508 and amendments thereto;
- 4 (9) matters permitted to be discussed in a closed or executive meeting
5 pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;
- 6 (10) matters permitted to be discussed in a closed or executive meet-
7 ing pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;
- 8 (11) matters permitted to be discussed in a closed or executive meet-
9 ing pursuant to subsection (g) of K.S.A. 39-7,119 and amendments
10 thereto;
- 11 (12) matters required to be discussed in a closed or executive meeting
12 pursuant to a tribal-state gaming compact;
- 13 (13) matters relating to security measures, if the discussion of such
14 matters at an open meeting would jeopardize such security measures,
15 that protect: (A) Systems, facilities or equipment used in the production,
16 transmission or distribution of energy, water or communications services;
17 (B) transportation and sewer or wastewater treatment systems, facilities
18 or equipment; (C) a public body or agency, public building or facility or
19 the information system of a public body or agency; or (D) private property
20 or persons, if the matter is submitted to the agency for purposes of this
21 paragraph. For purposes of this paragraph, security means measures that
22 protect against criminal acts intended to intimidate or coerce the civilian
23 population, influence government policy by intimidation or coercion or
24 to affect the operation of government by disruption of public services,
25 mass destruction, assassination or kidnapping. Security measures include,
26 but are not limited to, intelligence information, tactical plans, resource
27 deployment and vulnerability assessments; and
- 28 (14) matters permitted to be discussed in a closed or executive meet-
29 ing pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto.
- 30 (c) No binding action shall be taken during closed or executive rec-
31 cesses, and such recesses shall not be used as a subterfuge to defeat the
32 purposes of this act.
- 33 (d) (1) *A member of a public body or agency may object to partici-*
34 *parting in a closed or executive session if the member believes the action*
35 *violates or subverts the intent of the open meetings act. Upon such objec-*
36 *tion, the closed or executive session may commence or continue only if*
37 *such meeting or session is recorded. Such recording shall be kept for a*
38 *period of time not less than one year after the date of the closed or exec-*
39 *utive session.*
- 40 (2) *The recording of a closed or executive session shall be sealed and*
41 *not be a public record subject to public inspection under the open records*
42 *act. In any action to enforce the open records act, upon order of the court,*
43 *the recording of the closed or executive session shall be unsealed and*

1 *examined by the court in camera. If the court determines it is likely that*
2 *a violation of the act has occurred, the court shall determine what portion*
3 *of the recording of the closed or executive session, if any, should be dis-*
4 *closed for use in the enforcement proceeding to the party seeking enforce-*
5 *ment of this act.*

6 (3) *In determining whether any portion of the recording of the closed*
7 *or executive session should be disclosed to a party under this subsection,*
8 *the court shall weigh the prejudicial effects to the public interest resulting*
9 *from the disclosure of any portion of the recording of the closed or execu-*
10 *tive session against the probative value of such portion needed to enforce*
11 *the provisions of this act. After making its determination, the court may*
12 *permit the party seeking enforcement of this act to inspect or use the*
13 *recording of the closed or executive session, or any portion thereof, under*
14 *such conditions as the court may direct.*

15 (4) *The presence of a recording device, as required by this act, shall*
16 *not constitute or be construed as a violation of the attorney-client*
17 *privilege.*

18 (5) *For the purposes of this section:*

19 (A) *“Recording” means the duplicating, or causing to be duplicated,*
20 *of sound by electronic means or otherwise, on a phonograph record, disc,*
21 *wire, tape, film or other article on which sounds are duplicated.*

22 (B) *“Recorded” means the duplication of, or causing the duplication*
23 *of, sound by a recording device.*

24 **(6) The provisions of this subsection shall not apply to hearings**
25 **conducted pursuant to K.S.A. 72-8901 et seq., and amendments**
26 **thereto.**

27 ~~(d)~~ (e) *Any confidential records or information relating to security*
28 *measures provided or received under the provisions of subsection (b)(13),*
29 *shall not be subject to subpoena, discovery or other demand in any ad-*
30 *ministrative, criminal or civil action.*

31 Sec. 2. K.S.A. 2005 Supp. 75-4319 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its
33 publication in the statute book.