

Approved: Al Ramirez 3-17-93
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on March 9, 1993 in Room 531-N of the Capitol.

All members were present except: Senator Feleciano - Excused
Senator Lee----- Excused
Senator Vidricksen-Excused

Committee staff present: Julian Efird, Legislative Research Department

Fred Carman, Revisor of Statutes
Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee: Harry Herington, League Attorney, The League of Kansas Municipalities
David Gurss, Director Planning & Zoning Department
Saline County
Willie Martin, Board of Sedgwick County Commissioners
David Furnas, Executive Director, Kansas Press Association
Davis Merritt, Jr., Editor, The Wichita Eagle
Barry Hokanson, Jo. Co. Planning Director

Others attending: See attached list

The meeting was called to order by Chairman Ramirez who welcomed all present to the committee and stated the agenda for today was **SB 268** - state and local government computer technology and data management act. He called on Harry Herington, League of Municipalities, to present his testimony. (Attachment 1)

Mr. Herington appeared in support of the bill. He went through the balloon, giving the amendments and by whom they were offered. He stated the majority of the amendments on the balloon had already been presented to the committee by William Bradley of the Information Network of Kansas. The balloon was worked out between the League of Municipalities, Kansas Association of Counties, Information Network of Kansas, The Geographic Information Systems Policy Board, Johnson County, City of Overland Park, and other entities. All appeared to be present with the exception of the Kansas Association of Counties.

After Mr. Herington had gone through the bill, Fred Carman, Revisor, stated that on page 5, line 11, the word "not" had been left out of the bill. It should read, 'the public agency shall not be required to provide'. This was an error in the original bill.

David Gurss, Saline County was next to address the bill. (Attachment 2) His testimony stated that the Kansas Open Records Act does not make a distinction between "records" and manipulation of records. This bill is supported because it will allow local governments to make the distinction between "records" and "products and services". The anticipation is that public requests for manipulated information will increase significantly, especially requests from the commercial sector. The challenge is to retain accountability without allowing taxpayer-financed data to be exploited by one group at the expense of the public at large.

In response to a question from one of the committee members, Mr. Gurss responded that they would like to charge a reasonable fee to manipulate the data. They are not at the point where the public has been asking for this information, but this is anticipated and the need is to identify the kind of information that is going to be needed on a routine basis and make it available to the public.

In another response, Mr. Gurss agreed with the comment that the bottom line is some way to legitimately come up with a charge, not necessarily for information, but the manipulation of information and to come up with a fee that is fair for all parties.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, Room 531-N
Statehouse, at 1:30 p.m. on March 9, 1993.

Willie Martin, Sedgwick, County appeared in support of the bill. (Attachment 3) The necessity to computerize has created opportunities and problems. Two key priorities are the provision of fast and accurate access to public records and the protection of the taxpayers investment. Government information is being used to profit a few individuals and prevents the taxpayer from obtaining a fair return on the investment made.

In response to the question, don't most local units of government charge a fee for information, Ms. Martin replied that there are copy charges. She stated they are not looking at the taxpayer asking for a few pieces of information, but mass kinds of endeavors that entail many additional dollars.

The Chairman stated there were no other conferees in support of the bill on the list and asked if anyone else would care to speak in support of the bill.

Barry Hokanson, Director of Planning, Johnson County, asked to speak. Mr. Hokanson appeared at an earlier hearing of **SB 268**. He added he just wanted to make a quick point. In addition to the cost of copying the database, one of the key interests Johnson County has is in having the legislative or statutory authority to create agreements and contracts along the lines of consortiums. Principle groups could be utilities, possibly city and county agreements, and school districts. An example of a concern would be a third party holdout; one that would not be willing to join in at the outset and who would come in and for a few dollars get what others had invested tens or hundreds of thousands of dollars to implement.

Mr. Hokanson was asked for an example of this. He used as an example topographic maps where the contour is being collected into a computerized form from aerial photography. In this case that product would cost the county in the range of two million dollars. The cost of updating could be anywhere from one hundred thousand to two hundred thousand a year. An agreement could be formed with cities, utilities and school districts or realtors that would say if they would like more frequent updates of that information, they would agree, under contract, to annual updates. If they could persuade KPL, KCPL, and Southwestern Bell to join into such an agreement, but the cable tv companies hold out and do not participate, then as soon as the product was ready, they could come in and get the product simply for the cost of the tape. This has happened.

The Chairman called on the opponents of the bill to give testimony.

David Furnas, Executive Director, Kansas Press Association, spoke to the bill. (Attachment 4) Mr. Furnas stated that this bill would allow government to charge the average person on the street, developers, utility companies, the media and other units of government an access fee which would offset the initial hardware and software costs, not just the time taken to develop the database. Access to public information contained in geographic information systems is the issue. It is not so much the information that the planners want to protect, but the ability to conduct searches and overlay that information with a variety of databases and generate new information. This new information has value. The private and newspaper industry has recognized this for years and now government is starting to recognize this fact. After a few other comments, Mr. Furnas stated he had asked Mr. Davis Merritt, Editor, The Wichita Eagle, to appear today to comment on the bill.

The Chairman called on Mr. Merritt, who distributed his testimony. (Attachment 5)

Mr. Merritt stated that access to public records in Kansas is already much more difficult than in most states. This bill would make access that much more difficult and expensive for citizens, both business and private. This bill is trying to deal with a problem that will have to be dealt with soon and that is how appropriate access to computerized records can be achieved while at the same time protecting against the kinds of cost concerns that are heard about from local and state governments. Mr. Merritt was pleased to see the removal of Section 6, but still had some very real concerns with the bill. Philosophically the notion that governments can enter into exclusive agreements with for-profit organizations to handle public information that the taxpayers have already paid for is a troubling thing. All the information kept is because the Legislature has decided that certain information needs to be kept and requires this. If public records are kept, it must be for the reason that the public have access to them. Further impediments between the public and that information makes no sense. This is information paid for by the taxpayer. It is Mr. Merritt's understanding that there might be an exemption made for the media, but how is 'media' to be defined. In deciding which group is legitimate media and which group isn't is seen as a very real philosophical and practical problem. In this bill, every citizen who wants a record will be subject to the arbitrary and capricious ideas of local officials about what is an appropriate cost. This needs to be dealt with, but this bill is not one of the ways. Mr. Merritt stated that if only the government has information, then only the government has power. Mr. Merritt answered a few questions and listened to several comments.

The Chairman adjourned the meeting.

The next meeting is scheduled for March 10, 1993.

GUEST LIST

COMMITTEE: Senate
Gov. Org. Committee

DATE: 3-9-93

| NAME | ADDRESS | COMPANY/ORGANIZATION |
|--------------------|---|------------------------------|
| David Gurs | 300 W. Ash, Salina | Salina County |
| Rod Broberg | 300 W. Ash, Salina | Salina County |
| Richard Miller | KDHE Forbes Field | KDHE |
| Bob Eckhardt | KHP, Topeka (GHO) | KHP |
| Oalew E. Buig | 818 Kansas Ave, Topeka | Western Resources |
| KENNETH A. KEEN | 538 N. MAIN, WICHITA | SEDERWICK COUNTY |
| BARRY HOKANSON | JOHNSON CO COURTHOUSE 111 S. CHERRY OLAHIE | JOHNSON COUNTY |
| JOSIE STRAMBERG | " " " | " " |
| Bill Buxton | SRS, Topeka | |
| Kim Fowler | DPS, Topeka | State of KS |
| Kevin Darter | DPS, Topeka | DoA Administration |
| Catherine Holdeman | Wichita | City of Wichita |
| Jim Bullock | Kansas Geological Survey | Lawrence |
| Larry Bushy | Kansas Geol. Survey | Lawrence |
| Jim Kent | L.S.D.B 2nd Floor | Treasurer |
| Harry Herington | Topeka | LIAISON of KS Municipalities |
| Jon McKenzie | Topeka | KCC |
| Nobuko K. Folmsbee | Topeka | AG's office |
| Gerry Ray | Overland Park | Johnson County |
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**THE LEAGUE
OF KANSAS
MUNICIPALITIES**

**Municipal
Legislative
Testimony**

AN INSTRUMENTALITY OF KANSAS CITIES 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Senate Committee on Governmental Organization
FROM: Harry Herington, League Attorney
DATE: March 9th, 1993
RE: Testimony Supporting SB 268

I appreciate the opportunity to appear on behalf of the League of Kansas Municipalities to express our support for SB 268, The State and Local Government Computer Technology and Data Management Act. Attached to my testimony is a bill balloon that was worked out between the League of Kansas Municipalities, Kansas Association of Counties, The Information Network of Kansas, The Geographic Information Systems Policy Board, Johnson County, City of Overland Park and various state and local government entities.

The majority of the changes in the balloon were originally requested by William Bradley, the Chairman of the Information Network of Kansas during testimony offered before this committee on February 16th, 1993 and I would defer any questions you might have concerning those revisions to representatives of INK that are present today. I would like to briefly cover the changes offer in the bill balloon and I would then stand for any questions you might have concerning the balloon. Thank you.

*G. O. Comm.
3/9/93
Attachment 1*

SENATE BILL No. 268
By Committee on Ways and Means

2-9

8 AN ACT enacting the state and local government computer tech-
9 nology and data management act; relating to information man-
10 agement technology, access to public records and the provision
11 of electronic products and services by public agencies; authorizing
12 certain agreements and fees; amending K.S.A. 45-219 and K.S.A.
13 1992 Supp. 45-217 and repealing the existing sections.

14

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

16 New Section 1. The provisions of sections 1 through 5 and
17 amendments thereto shall be known and may be cited as the state
18 and local government computer technology and data management
19 act.

20 New Sec. 2. As used in sections 1 through 5 and amendments
21 thereto:

22 (a) "Electronic products and services" means computer-related
23 services and products provided by any public agency, and includes
24 any of the following:

25 (1) Electronic manipulation of the data contained in public re-
26 cords in order to tailor the data to a customer's request, or to develop
27 a new information product that did not exist but for the request and
28 meets the needs of the customer;

29 (2) duplicating public records in alternative formats not used by
30 the public agency, providing periodic updates of an electronic file
31 or database or duplicating an electronic file or database;

32 (3) providing on-line access to an electronic file or database;

33 (4) providing information that cannot be retrieved or generated
34 by the existing computer application or operation programs of the
35 public agency;

36 (5) providing functional electronic access to the information sys-
37 tem of the public agency, including the capability for alphanumeric
38 query and printing, graphic query and plotting, nongraphic data
39 input and analysis, and graphic data input and analysis;

40 (6) providing licenses to operating or application software de-
41 veloped by the public agency or developed by a private contractor
42 for the public agency; and

43 (7) generating maps, listings, special reports and analyses or other

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1 standard or customized products from an electronic geographic in-
2 formation system or relational database management system.

3 (c) ~~(b)~~ "Local governmental entity" includes any county, city or other
4 political or taxing subdivision of the state, or any officer, agency,
5 authority or instrumentality thereof.

6 ~~(d)(e)~~ "Public agency" means the state and any officer, agency, au-
7 thority or instrumentality thereof, or any local governmental entity.

8 New Sec. 3. (a) Any public agency may exercise proprietary au-
9 thority over its information management system and provide elec-
10 tronic products and services under the provisions of this act.

11 (b) Any public agency may establish a jointly owned and managed
12 database, geographic information system, or other information man-
13 agement system and enter into contracts under which the partici-
14 pating public bodies share use, costs, system implementation and
15 data conversion and maintenance duties.

16 (c) Any public agency, ~~or consortium of public agencies~~ may
17 license rights to use and disseminate all or part of a database or for
18 the provision of electronic products and services ~~to a not-for-profit~~
19 ~~or for-profit corporation~~ and may enter into such contracts and tech-
20 nology licensing agreements as may be necessary to establish such
21 public enterprise relationships. ~~Exclusive licensing arrangements~~
22 ~~shall be entered into by a public agency in accordance with bidding~~
23 ~~and other applicable procurement laws and regulations and shall be~~
24 ~~limited to terms of not more than four years.~~

25 (d) Any public agency, ~~or consortium of public agencies~~ may
26 enforce copyrights in databases, electronic products or software, may
27 limit liability through warranty disclaimers or other appropriate con-
28 tract provisions with customers, and may enter into agreements for
29 data maintenance or other in-kind services in lieu of user fees.

30 (e) In order to obtain a copy of a database containing individual
31 names and addresses in computer readable format, a person must
32 agree ~~to not make unauthorized copies of the database and not to~~
33 ~~use the database for any commercial solicitation purposes targeting~~
34 ~~individuals, whether by phone or mail or through any other media,~~
35 ~~or for any purpose prohibited by K.S.A. 21-3914 and amendments~~
36 thereto.

37 New Sec. 4. (a) ~~Any public agency that elects to provide elec-~~
38 ~~tronic products and services independently, jointly or through li-~~
39 ~~censing arrangements with other service providers may establish user~~
40 fees for such electronic products and services subject to the following:

41 (1) User fees for electronic products and services ~~shall be estab-~~
42 ~~lished by publication of a fee schedule. The fee schedule shall be~~
43 ~~promulgated as a rule and regulation, in the case of the state or any~~

[(b) "Information management system" includes any system
utilizing a computer or computing time and capacity which is
owned by, leased or rented by, or used by, in whole or in
part, one or more public agencies, to perform the functions of
governmental information storage, manipulation, and retrieval
in connection with the agency's governmental function.

[either
[or through the Information Network of Kansas (INK).

[information management system, including a database or
[under K.S.A. 12-2901 et seq., and admendments thereto, to

[and K.S.A. 45-215, et seq.,

[local governmental entity

[Except to the extent that fees for copies or access
to data are established by statute,

[which are provided other than through INK

[for local government entities

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1 ~~agency thereof, or by resolution or ordinance, or other appropriate~~
2 ~~rule making activity subject to notice, public hearing, affirmative~~
3 ~~consideration of comments, and other public participation activities~~
4 ~~normal for such rule making activities.~~ [(A)

5 (2) User fees shall ~~be based on~~ the actual capital cost of the [take into consideration
6 information management system including (A) hardware, software,
7 communications, data conversion and other implementation costs;
8 and (B) operational costs, including the costs of staff, database main-
9 tenance, software licenses and hardware upgrades. User fees shall _____ [may
10 be adjusted based on the anticipated demand for products and serv-
11 ices and shall be reduced based on the estimated value of the use
12 of the information management system by the ~~public agencies owning~~ _____ [local governmental entity
13 and using the system. ~~User fees shall not exceed the actual incre-~~
14 ~~mental costs of providing the electronic products and services plus~~
15 ~~a reasonable portion of the capital and operational costs of the in-~~
16 ~~formation management system.~~ _____ [any local governmental entity

17 (3) User fees ~~may be reduced or waived by the public agency if~~ _____ [shall
18 the electronic products and services are to be used for a public
19 purpose, including public agency program support, not-for-profit ac-
20 tivities, journalism and academic research. Fee reductions and waiv-
21 ers shall be uniformly applied among persons and organizations which
22 are similarly situated.

23 (b) All fees collected by the public body for the provision of
24 electronic products and services and not disbursed or transferred to
25 another public agency or organization shall be used to support the
26 maintenance and enhancement of the information management sys-
27 tem used to generate the electronic products and services.

28 New Sec. 5. If any provision or clause of this act or application
29 thereof to any person or circumstances is held invalid, such invalidity
30 shall not affect other provisions or applications of the act which can
31 be given effect without the invalid provision or application, and to
32 this end the provisions of this act are declared to be severable.

33 ~~Sec. 6. K.S.A. 1992 Supp. 45-217 is hereby amended to read as~~
34 ~~follows: 45-217. As used in the open records act, unless the context~~
35 ~~otherwise requires:~~

36 ~~(a) "Business day" means any day other than a Saturday, Sunday~~
37 ~~or day designated as a holiday by the congress of the United States,~~
38 ~~by the legislature or governor of this state or by the respective~~
39 ~~political subdivision of this state.~~

40 ~~(b) "Criminal investigation records" means records of an inves-~~
41 ~~tigatory agency or criminal justice agency as defined by K.S.A. 22-~~
42 ~~4701 and amendments thereto, compiled in the process of prevent-~~
43 ~~ing, detecting or investigating violations of criminal law, but does~~

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~~1 not include police blotter entries, court records, rosters of inmates
2 of jails or other correctional or detention facilities or records per-
3 taining to violations of any traffic law other than vehicular homicide
4 as defined by K.S.A. 21-3405 and amendments thereto.~~

~~5 (c) "Custodian" means the official custodian or any person des-
6 ignated by the official custodian to carry out the duties of custodian
7 of this act.~~

~~8 (d) "Official custodian" means any officer or employee of a public
9 agency who is responsible for the maintenance of public records,
10 regardless of whether such records are in the officer's or employee's
11 actual personal custody and control.~~

~~12 (e) (1) "Public agency" means the state or any political or taxing
13 subdivision of the state or any office, officer, agency or instrumen-
14 tality thereof, or any other entity receiving or expending and sup-
15 ported in whole or in part by the public funds appropriated by the
16 state or by public funds of any political or taxing subdivision of the
17 state.~~

~~18 (2) "Public agency" shall not include:~~

~~19 (A) Any entity solely by reason of payment from public funds for
20 property, goods or services of such entity; (B) any municipal judge,
21 judge of the district court, judge of the court of appeals or justice
22 of the supreme court; or (C) any officer or employee of the state or
23 political or taxing subdivision of the state if the state or political or
24 taxing subdivision does not provide the officer or employee with an
25 office which is open to the public at least 35 hours a week.~~

~~26 (f) (1) "Public record" means any identifiable and recorded in-
27 formation related to the performance, activities and decisions of
28 public officials or the formation of public policy, regardless of form
29 or characteristics, which is made, maintained or kept by or is in the
30 possession of any public agency including, but not limited to, an
31 agreement in settlement of litigation involving the Kansas public
32 employees retirement system and the investment of moneys of the
33 fund.~~

~~34 (2) "Public record" shall not include records which are owned
35 by a private person or entity and are not related to functions, ac-
36 tivities, programs or operations funded by public funds or records
37 which are made, maintained or kept by an individual who is a
38 member of the legislature or of the governing body of any political
39 or taxing subdivision of the state.~~

~~40 (g) "Undercover agent" means an employee of a public agency
41 responsible for criminal law enforcement who is engaged in the
42 detection or investigation of violations of criminal law in a capacity
43 where such employee's identity or employment by the public agency~~

1 ~~is secret.~~

2 ~~Sec. 7.~~ K.S.A. 45-219 is hereby amended to read as follows: 45- [Sec. 6

3 219. (a) Any person may make abstracts or obtain copies of any [Except as provided in sections 2 through 5,

4 public record to which such person has access under this act. If

5 copies are requested, the public agency may require a written re-

6 quest and advance payment of the prescribed fee. A public agency

7 shall not be required to provide copies of radio or recording tapes

8 or discs, video tapes or films, pictures, slides, graphics, illustrations

9 or similar audio or visual items or devices, unless such items or

10 devices were shown or played to a public meeting of the governing

11 body thereof, but the public agency shall be required to provide ~~NOT~~

12 such items or devices which are copyrighted by a person other than

13 the public agency. *In the case of public records that are digitally*

14 *stored in computer systems, access to operational or application*

15 *software necessary to access such public records for noncommercial*

16 *purposes shall be granted by the public agency. Nothing in the public* [sections 2 through 5 or K.S.A. 45-215 et seq., and

17 ~~records act shall require a public agency to provide or allow the~~ amendments thereto

18 ~~copying and delivery of an entire database for commercial purposes~~

19 ~~or for any purpose prohibited by K.S.A. 21-3914 and amendments~~

20 ~~thereto.~~

21 (b) Copies of public records shall be made while the records are

22 in the possession, custody and control of the custodian or a person

23 designated by the custodian and shall be made under the supervision

24 of such custodian or person. When practical, copies shall be made

25 in the place where the records are kept. If it is impractical to do

26 so, the custodian shall allow arrangements to be made for use of

27 other facilities. If it is necessary to use other facilities for copying,

28 the cost thereof shall be paid by the person desiring a copy of the

29 records. In addition, the public agency may charge the same fee for

30 the services rendered in supervising the copying as for furnishing

31 copies under subsection (c) and may establish a reasonable schedule

32 of times for making copies at other facilities.

33 (c) Except as provided by subsection (f) or where fees for in-

34 spection or for copies of a public record are prescribed by statute,

35 each public agency may prescribe reasonable fees for providing access

36 to or furnishing copies of public records, subject to the following:

37 (1) In the case of fees for copies of records, the fees shall not

38 exceed the actual cost of furnishing copies, including the cost of staff

39 time required to make the information available.

40 (2) In the case of fees for providing access to records maintained

41 on computer facilities, the fees shall include only the cost of any

42 computer services, including staff time required.

43 (3) Fees for access to or copies of public records of public agencies

1 within the legislative branch of the state government shall be es-
2 tablished in accordance with K.S.A. 46-1207a and amendments
3 thereto.

4 (4) Fees for access to or copies of public records of public agencies
5 within the judicial branch of the state government shall be estab-
6 lished in accordance with rules of the supreme court.

7 (5) Fees for access to or copies of public records of a public
8 agency within the executive branch of the state government shall
9 be subject to approval by the director of accounts and reports.

10 (d) Except as otherwise authorized pursuant to K.S.A. 75-4215
11 and amendments thereto, each public agency within the executive
12 branch of the state government shall remit all moneys received by
13 or for it from fees charged pursuant to this section to the state
14 treasurer in accordance with K.S.A. 75-4215 and amendments
15 thereto. Unless otherwise specifically provided by law, the state
16 treasurer shall deposit the entire amount thereof in the state treasury
17 and credit the same to the state general fund, except that the cost
18 of charges for the services of the division of computer services may
19 be credited to the fee fund of the agency to defray such cost.

20 (e) Each public agency of a political or taxing subdivision shall
21 remit all moneys received by or for it from fees charged pursuant
22 to this act to the treasurer of such political or taxing subdivision at
23 least monthly. Upon receipt of any such moneys, such treasurer shall
24 deposit the entire amount thereof in the treasury of the political or
25 taxing subdivision and credit the same to the general fund thereof,
26 unless otherwise specifically provided by law.

27 (f) Any person who is a certified shorthand reporter may charge
28 fees for transcripts of such person's notes of judicial or administrative
29 proceedings in accordance with rates established pursuant to rules
30 of the Kansas supreme court.

31 ~~Sec. 8.~~ K.S.A. 45-219 and K.S.A. 1992 Supp. 45-217 are hereby _____ [Sec. 7
32 repealed.

33 ~~Sec. 9.~~ This act shall take effect and be in force from and after _____ [Sec. 8
34 its publication in the statute book.

Saline County
Planning and Zoning Department
David Gurss, Director
March 9, 1993

SENATE BILL NO. 268

**STATE AND LOCAL GOVERNMENT COMPUTER TECHNOLOGY
AND DATA MANAGEMENT ACT**

Saline County has recently acquired and assembled a Geographic Information System (GIS) that will have the capability to access vast quantities of information and then produce maps for any specific location in the County. The amount of money spent for this system is currently over \$100,000.

We envision that the GIS will eventually be able to access many different types of geographic data and records, including appraisal, tax assessment, soils, rights-of-ways, public safety, public facilities, zoning, fire and water district boundaries, voting precincts, school bus routing, disaster relief, census, and delivery of public health services.

GIS technology allows traditional databases made up of text and numbers to be linked with computer maps (or graphic data), allowing for powerful and useful information management applications. Unfortunately, the Kansas Open Records Act (K.S.A. 45-215 through 45-223) does not adequately address the significant legal and policy issues raised by the GIS. The Act does not make a distinction between "records" and manipulation of those records by a computer. I support the proposed bill because it will allow local governments to make a distinction between "records" and "products and services."

The Saline County Code currently sets fees that staff can charge the public for copies of "open records in possession of the county". A problem arises, however, when a citizen asks for computer information in a special format or asks that computer information be placed on a computer disk. The County Appraiser has encountered this problem when he is requested to provide information from the Kansas Computer Assisted Mapping Appraisal (KSCAMA) system.

We anticipate that once the public discovers the capability of the GIS, the number of requests for manipulated information will increase significantly, especially requests from the commercial sector.

*G.O. Comm.
Attachment 2
3/9/93*

Saline County -- SB#268 -- March 9, 1993

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There is no question that is a City's or County's responsibility to provide access to records to any member of the public, without regard to status or interest. Access is necessary to assure the accountability of public officials and to assure citizen participation in public policy formation. The challenge, however, is to retain accountability without allowing taxpayer-financed data to be exploited by one group at the expense of the public at large.



SEDGWICK COUNTY, KANSAS

INTERGOVERNMENTAL RELATIONS

WILLIE MARTIN

COUNTY COURTHOUSE • 525 N. MAIN • SUITE 315 • WICHITA, KANSAS 67203 • TELEPHONE (316) 383-7552

TO: SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION
FROM: WILLIE MARTIN
DATE: MARCH 9, 1993
SUBJ: SENATE BILL 268

Mr. Chairman and members of the Committee, thank you for the opportunity to speak in support of Senate Bill 268. I am Willie Martin representing the Board of Sedgwick County Commissioners.

Traditionally local government's have been the collectors of public information and the caretakers of official records. The necessity to computerize information has created new problems -- and new opportunities

As the "information age" is thrust upon us, counties must keep sight of two key priorities:

- * provide fast and accurate access to public records, and
- * protect the taxpayers investment in collection, storing and maintenance of public record databases, which are assets developed at taxpayer expense.

Local government has a duty to provide individual taxpayers easy access to the information that affects them. Access is provided at a minimal charge, which in turn maintains necessary governmental accountability.

However, we must not lose sight of the profit value of information today. Daily, successful business management increases its reliance on information and the ability to use it. Because governmental organizations have a large investment in information technology and data, the opportunity to exploit taxpayer investment in information exists.

*G.O. Comm.
Attachment 3
3/9/93*

Private business recognizes that "information has value". Fiscal responsibility requires that government also be cognizant of this fact. Information gathered and processed at taxpayer expense has value, not only within government but to the business community.

As public servants, we are entrusted to manage the taxpayer's resources for the benefit of the taxpayer. In most areas, "giving away" taxpayer resources would be regarded as fiscally irresponsible if not criminal.

Unfortunately, this is not the case in the area of information or data. Current law permits companies to make specific demands of government for specific data, sometimes for entire databases. Local government can be asked to subsidize out-of-state mailing list firms and credit companies in the name of free enterprise by giving away, for the price of a floppy disk, valuable information that our taxpayers spent hundreds of thousands of dollars to compile.

County taxpayers collectively fund the construction and maintenance of county roads, streets, and highways. But when construction of streets, curbs, etc. will benefit certain individuals to a greater degree, they are required to pay for these additional benefits.

Government information is being used to profit a few individuals and prevents the taxpayer from obtaining a fair return on the investment made. SB 268 does not seek to prevent this profit, but to permit government and the taxpayer to share in the profit for the benefit of the taxpayer. By providing copyright and licensing protection, the responsible government can recoup some of its costs in gathering and processing the data.

Senate Bill 268 recognizes the value of information and allows elected officials the tools for fiscal responsibility, it is not intended to deny an individual citizen access to data. We respectfully request your support for the passage of Senate Bill 268.

Testimony by
Kansas Press Association
before
Senate Governmental Organization Committee
Tuesday, March 9, 1993

Mr. Chairman, members of the committee, my name is David Furnas and I am the executive director of the Kansas Press Association. KPA represents the more than 250 newspapers in Kansas.

I want to thank the chairman and the committee for allowing additional hearing on Senate Bill 268, which is a major piece of legislation that can establish a frame of reference on how government allows access to public information.

Information about government is fundamental in a democracy. Sometimes government officials don't like to let the public know about the public's business, but the fact remains that public information is just that -- the public's and not the exclusive preview of government employees.

The information -- and the employee's time and the equipment to gather and store that information -- has already been paid for by the taxpayers. The current laws of Kansas allow units of government to recover the direct costs of time or materials it would take to disseminate that information. There is no profit or allowable charges to recoup the original costs.

Senate Bill 268 would change that fundamental philosophy of government. That is a major policy issue.

Senate Bill 268 -- whether in its original form or as suggested in amendments -- would allow government to charge the average person on the street, developers, utility companies, the media and other units of government an access fee which would offset the initial hardware and software costs.

Offers to allow government employees to waive or reduce fees is a ruse -- designed either to hoodwink this committee or establish methods to selectively give away public information.

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From the media's point-of-view, we see enough examples of attempts to hide public information and close public meetings. The press association sees nothing but problems with this proposed legislation. Members of the media probably will not seek the fancy charts and graphs that the planners want to protect. But in researching this issue, any good reporter will find out that the issue of charging beyond dissemination costs for this type of information is not without controversy within the ranks of planners themselves. Planners themselves are concerned about the ramifications of user access fees -- not the least of which is the liability assumed if the information is incorrect.

Despite the fear of getting too technical, the issue at hand in Senate Bill 268 is access to public information contained in geographic information systems. It is not the information that the planners want to protect, but the ability to conduct searches and overlay information from a variety of databases and generate new information. That new information has value.

The private sector -- and indeed the newspaper industry -- has recognized that fact. Now government is starting to recognize that fact.

If even the smallest newspaper in Kansas -- with a simple PC -- can take drivers license records and cross them against drunk driving records which have not been esponded by closed diversion records, then an interesting story can develop. Perhaps a school bus driver comes up on both databases.

If medical records are crossed with addresses near a major highway are compared, then an interesting medical story -- one important to the community but embarrassing to the Transportation Department can develop.

Even a simple computer search of 10,000 records in a small Kansas county can reveal that one criminal case number is missing from the sequence, only to find out that a prominent official's record has been pulled -- even without the secrecy of diversion agreements.

As you can see, this is not some simple little legislative endeavor by the local units of government. They know exactly what they are doing and they want the law established before most people and

companies who depend on this information understand the implications of this major policy change.

I have asked Davis Merritt, the editor of the Wichita Eagle, to comment briefly on this bill. His organization has an example of a blatant abuse of this kind of access fee legislation.

Before the Senate Government Organization Committee
March 9, 1993
Davis Merritt Jr.
Editor, The Wichita Eagle

Access to public records in Kansas is already much more limited than in most states. S.B. 268 would go miles further toward denying the public access to information about itself and its government.

The computer age seems to have complicated that access, though that certainly should not be the case. Computers, if caused to serve us well, can greatly improve access. It takes only the will to do it; or the express orders of the Legislature.

I suggest the latter is necessary, and this Legislature can start by setting aside this flawed bill. Then, perhaps next year, the issue of access can be approached from the positive side of improving it rather than the negative side of further limiting it.

I remind you that the records at issue are those that the Legislature, in its wisdom, requires governments to keep. The only possible purpose for maintaining such records is so that the public may have access to the information. Anything that limits access thereby runs directly counter to the Legislative intent of requiring that the record be kept in the first place.

S.B. 268 would clearly enable local and even state officials to, at best, pad their budgets by charging prohibitive prices for access to information already paid for once by taxpayers. At worst, it invites them to use it to cover up information they do not want the public to have.

Would such abuses occur?

They are now.

For instance, we are presently seeking access to driver's license information. We are interested in analyzing that data in various ways. We would be happy to pay what I believe the law contemplates -- enough to cover the reasonable cost of making a copy of the information on a computer tape.

However, when we sought the information, we were told:

- The cost of each record is \$2, by statute.
- We (the state) do not know how many there actually are.
- Therefore, send us \$10,000 for starters and we will compile the records and let you know how much more to send.

The total cost would clearly be well over a million dollars.

We apparently will be forced to take the state to court to obtain the release of this public information.

That's a true story. A horror story. And it's about state government.

Imagine, if you will, all county clerks and registrars having the discretion this bill would allow. Would the public's business be truly the public's business, or would the information

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be available only to those favored by the local officials?

What use can such information as driver's license data be to the public? Last year, a newspaper in Kentucky asked for the data. It was following up on a tragic accident in which a couple of dozen school kids died. The driver of that school bus had a long record of traffic violations, including drunken driving. The newspaper, using its computers, compared the state information with a list of professional school bus drivers. The result was scary -- dozens of clearly dangerous people driving hundreds of school kids every day.

I understand that some thought has been given to exempting ``the media'' from the cost provisions of the bill. I appreciate the intent of such thinking, but suggest that defining ``the media'' is a very difficult job. The federal Freedom of Information Act has attempted that and not succeeded very well. Moreover, these are public records and trying to define special segments of the public as having different access than other segments is perilous business.

Broadly speaking, the primary problem with the bill is its underlying philosophy. Those of us with specific and permanent interest in access to public information find that too many custodians of records already feel that somehow those records are theirs; that they have ownership. This bill's underlying philosophy reinforces that notion by in fact giving governments a proprietary interest in what is, after all, the public's.

I urge you to defeat this bill.