

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on February 22, 1994 in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Julian Efird, Legislative Research Department
Fred Carman, Revisor of Statutes
Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee: Gerry Ray, Johnson County Commissioners
Barry Hokanson, Director of Planning, Johnson Co.
Harry Herington, League of Kansas Municipalities
Pat O'Rourke, President, O'Rourke Title Co.
Karen France, Kansas Association of Realtors
Senator Oleen
Marc Johnson, Interim Dean of Agriculture, KSU

Others attending: See attached list

Chairman Ramirez called the meeting to order and stated the first order of business was **SB 747**--relating to public records and information.

Gerry Ray, Johnson County Commissioners, led the conferees with a few comments. Ms. Ray stated she was hopeful something will get through this year. They did meet with the press association and worked out an agreement with them and they helped draft the bill.

Barry Hokanson, Director of Planning, Johnson County, was present to give the comparison of the new bill, **SB 747**, to the old bill SB 268. (Attachment 1) The five points contained in Mr. Hokanson's testimony were: 1) Is Restricted to local government; 2) Guarantees access to computerized information; 3) Requires formal ratemaking procedures; 4) Requires all user fee revenue to be used for system development and enhancement; 5) Requires that fees be based on a cost model reflecting proportions of system use.

Mr. Hokanson stated that one of the major improvements is that the bill is now shorter and more to the point.

Harry Herington, League of Kansas Municipalities, was next to appear on the bill. (Attachment 2) Mr. Herington stated that the traditional way of collecting information is no longer the case. The increase in personal computers has forced local governments to dramatically change the methods of storage, management and retrieval of public data. They are overwhelmed with data requests requiring computerized manipulation. Local governments are restricted in the amount charged for these requests under the current Open Records Act. Private businesses are profiting from the use of publicly acquired information and are straining the equipment and manpower it takes to maintain this information. This bill would allow local governments to charge appropriate fees without adversely affecting the Open Records Act. The League recommends that the bill be reported favorably.

The Chairman asked if there were any questions for the proponents.

Mr. Hokanson responded to a question with regard to the charging of fees by stating there would be no significant other part of the data base besides the GIS system.

The Chairman called on Mr. Pat O'Rourke, O'Rourke Title Company, to speak as the first conferee in opposition to **SB 747**. Mr. O'Rourke distributed copies of his testimony along with a pamphlet which are labeled (Attachment 3 and Attachment 3a) Mr. O'Rourke's testimony stated that the purported purpose of the bill is to establish a procedure for the charging of equitable user fees and expanding the use of government owned computer technology and databases. Mr. O'Rourke saw problems with special groups and the fee structure. His testimony also state the philosophical issue where the objection to the legislation is that government is established to serve the public in a manner provided by the elected representatives of the people.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, Room 531-N Statehouse, at 1:30 p.m. on February 22, 1994.

John Lewis, publisher of The Legal Record and The Kansas Lawyer, spoke next in opposition to **SB747**. His testimony is labeled (Attachment 4) Mr. Lewis stated the reason the whole idea is so difficult to resolve is that it is inherently against the fundamental doctrine of open government. This legislation is an example of privatization in reverse. Public records belong only to the public. Only the citizens have the right to make use of those records. Government's only proper role is to maintain records, not to try to sell them.

Karen France, Kansas Association of Realtors, distributed copies of her testimony in opposition to **SB 747**. (Attachment 5). Ms. France expressed two concerns with the legislation. The bill proposes to amend the Open Records Act without ever mentioning the Open Records Act. The second concern is with licensure. Attached to Ms. France's testimony were two articles which she stated explained the problem with information systems when it becomes the exclusive method for government in general to public access records.

The Chairman thanked the conferees and stated testimony had been received from:

Janet Stubbs, Kansas Building Industry Association, Inc. in opposition to **SB 747**. (Attachment 6)
Tom Throne, editor and publisher of the McPherson Sentinel in opposition to **SB 747**. (Attachment 7)
Karl Peterjohn, Executive Director, Kansas Taxpayers Network, in opposition to **SB 747**. (Attachment 8).
Jim Reardon, Kansas Association of Counties, in support of **SB 747**. (Attachment 9)

The hearing on **SB 747** was concluded. The committee turned to **SB 678**, agricultural experiment stations.

Senator Lana Oleen, bill sponsor, stated the bill was requested by Kansas State University. The bill is merely to change the name of the research centers and introduced Interim Dean Marc Johnson, present to speak in support of **SB 678**.

Dean Johnson distributed copies of his testimony (Attachment 10) The purpose of the Kansas Agricultural Experiment Station is to provide research related to agricultural production, marketing and product utilization, as well as research on policy, rural families, and rural communities. This research is needed on a continuous basis to assure a competitive agriculture in Kansas. Dean Johnson referred to the Chart on page 3 of his testimony entitled "Kansas State University Statewide Agricultural Research Services", which showed the branch stations and experiment fields.

Dean Johnson commented that unfortunately in the construction of **SB678**, to make these name changes, several wording changes were included that he thought inappropriate. The request is merely to change the name of the research centers. There is no requested change in the name of the Experiment Station entity.

It was pointed out that there were other changes in the bill. Page 6, line 22 was referred to as an example.

The Chairman stated the hearing on **SB 678** was concluded.

Senator Bogina moved a substitute for **SB 678**. The Revisor can redraft a clean bill with the necessary provisions. Senator Lee seconded the motion. The motion carried.

Senator Lee moved to pass Substitute for **SB 678** favorably. Senator Reynolds seconded the motion. The motion carried.

The committee turned to **SB 609** shared leave. Senator Feleciano moved to amend **SB 609** on line 13 deleting the comma and all wording to the period. Senator Lee seconded the motion. The motion carried.

Senator Feleciano moved to pass **SB 609** favorably as amended. Senator Papay seconded the motion. The motion carried.

The minutes of February 15, February 16 and February 17 were approved on a motion by Senator Bogina, seconded by Senator Gooch.

The meeting was adjourned.

The next meeting is scheduled for February 23, 1994.

GUEST LIST

COMMITTEE : SENATE GOVERNMENTAL ORGANIZATION

DATE: Feb. 22, 1994

[illegible]

Major Features:
Local Government Computer Technology and Data Management Act

Comparison: SB 268 (old) to SB 747 (new)

1. Is Restricted to local government (excludes state agencies) **[new]**
2. Guarantees access to computerized information
 - local governments with user fees must also offer free terminal(s) for public use **[new]**
 - low fees for paper copies from database **[new]**
 - special guarantees and fee limits for intergovernmental, journalists, educational purposes
3. Requires formal ratemaking procedures (public hearing, published fees)
 - reduces potential for arbitrary charges
 - challenges can be directed to whole fee schedule, not separate ad hoc charges
 - provide for local appeal for mis-application of rates and fees
4. Requires all user fee revenue to be used for system development and enhancement
 - benefits users by reinvesting in better access, broader systems
 - prohibits high fees designed to defray cost of general governmental functions
5. Requires that fees be based on a cost model reflecting proportions of system use
 - assures fair allocation of costs among groups of users
 - fees must be based on *average annual* costs, not only the *initial* costs **[new]**

Senate Gov. Org.
Attachment I
2/22/94



**THE LEAGUE
OF KANSAS
MUNICIPALITIES**

**Municipal
Legislative
Testimony**

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

TO: Senate Governmental Organization Committee
FROM: Harry Herington, Associate General Counsel
DATE: February 22, 1994
RE: SB 747 - Local Government Computer Technology and Data Management Act.

I appreciate the opportunity to appear on behalf of the League of Kansas Municipalities to express our support for SB 747, the Local Government Computer Technology and Data Management Act. It is our belief that SB 747 is a necessary addition to the Kansas Open Records Act in order for local units of governments to develop and maintain necessary computerized information.

With the increase of personal computers in the past 10 years, local governments have been forced to dramatically change the methods they use to store, manage and retrieve public data. The type and scope of data requested of local governments have also changed dramatically. Although officials are still responding to traditional open record requests that involve the photocopying of specific public records, they are also being overwhelmed with data requests that require computerized manipulation and, in some cases, the development of specific computer programming. The more sophisticated information system that a local government acquires, the more complex data inquiries they receive. Under the current Open Records Act, local governments are restricted with the amount they may charge when responding to these requests. It is quickly becoming apparent the private business is not only profiting from the use of publicly acquired information, but they are also putting a strain on the equipment and manpower that is necessary to maintain the information. This places local officials in a no win situation. If they update their equipment, there will also be an increase in the workload of local staff due to the increase of complex data requests. Local staffs that are unable to handle the increased workloads are thus forced to work with outdated equipment and software in order avoid having access to information that would benefit both the public and private sectors.

*Senate Gov. Org.
Attachment 2
2/22/94*

SB 747 would allow local governments to charge appropriate fees necessary to help maintain and improve the required computerized technology, without adversely affecting the spirit of the Kansas Open Records Act. Private individuals would still have traditional access to public information at cost of reproduction and on-line access, through the use of public access terminals, to computerized information without charge. Local governments would be granted the authority to enter into agreements with other public and private agencies in order to share in the cost of the development of new computer and information technology. This would lessen the financial burden on local taxpayers. Thus, the situation changes from a no win situation to a win-win-win situation; with the local government, private sector and local taxpayers all benefiting.

RECOMMENDATION

The League of Kansas Municipalities would recommend that the Senate Governmental Organization Committee report SB 747 favorably.

O'ROURKE TITLE COMPANY

February 18, 1994

Dear Senator or Representative:

The proposed Bill was introduced in identical form in the House, as House Bill 3018 and assigned to the Local Government Committee chaired by Nancy Brown, and in the Senate as Senate Bill 747, assigned to the Governmental Organizations Committee chaired by Al Rameriz. The purported purpose of the Bill is to establish a procedure for the charging of equitable user fees and expanding the use of government owned computer technology and databases.

The problems I see with the Bill are as follows:

1. **Special Groups.** Section 4 subsection (c) allows a local agency or a consortium of agencies to establish exclusive licensing agreements with private parties not to exceed four year terms. Subsection (d) of that same section would allow these governmental agencies to obtain copyrights and software rights and to limit their liability with regard to any products they produce.

The problem that I perceive with this provision in the proposed legislation is that governmental agencies will take the public information which they currently have and reformat it into copyrighted information which will need to be purchased by the general public or by professional users, such as title companies. For example, the Register of Deeds information should be reformatted in an online basis and charged at a fee to title companies, Realtors, or appraisers who wish to use it. The county, a consortium of governmental entities, or a private company through an exclusive four year contract, could put together some large database and charge professional users fees for access. Any errors in the information provided through these arrangements would be of no consequence since the entity could limit its liability from any claims. I think the real estate, title industry and appraisal industry would have a serious problem with not being able to get free access to public records without going through a special on-line or charge type of structure.

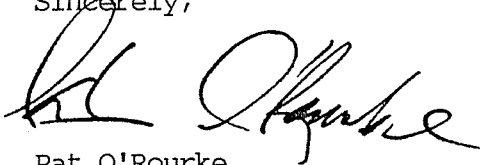
2. **Fee Structure.** Section 5 of the proposed act establishes a procedure for fees. Section A subsection (3) says "that user fees shall not exceed the actual incremental costs providing the electronic services and products plus a reasonable portion of the capital and operational costs of the information management system." In my opinion, this is a pretty open ended way in which to establish fees. Subsection (2) of that section provides for the governmental agency to establish a rule making procedure for the promulgation of a fee schedule, but neither provision allows for any appeal process if the fees are deemed by a private individual to be excessive or cost prohibitive. Subsection (4) of that section indicates that user fees

will be reduced or waived by the local agency for local agency programs, not-for-profit activities, journalism and public education, but makes no mention as to how they will be reduced or waived, and makes no provision for other professional organizations which may wish to utilize the information without a fee.

3. **Philosophical Issue.** My general objection to this type of legislation is that government is established to serve the public in a manner as provided by the elected representatives of the people. Taxation is the customary and usual procedure for paying for the services which government provides to the public, and taxation is only justified when there is a "public need". The proposed legislation in question would establish a profit format for the government to make money off of the information which it is collecting as part of the public trust. The use of these profits would appear only to perpetuate government and not to reduce taxes or otherwise benefit the public which government serves. Additionally, it is my belief that if anyone should make money off of information collected by public governmental agencies, it should be those persons clever enough, through the free enterprise system, who want to take the risk. Those persons who are willing to risk the capital and develop the programs and business strategies to utilize public information should be afforded the opportunity to make a profit, not the government.

Title companies and abstracters should not be fooled to think that the Free Access Abstracters Statute will protect them from this. "Free" only means random access in the statute and has nothing to do with cost. Currently the Open Records Act is adequate and this bill is disguised to make one think there is a need for some change because of the new electronic or computer capabilities. The Open Records Act already provides that if the information is not electronically programmed the way the person wants it to be, they can have it redone at their own expense. The county or state has no obligation to do this.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Pat O'Rourke', written in a cursive style.

Pat O'Rourke
President

PO/ljs

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Additional Comments:

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Attach 30
2/22/94

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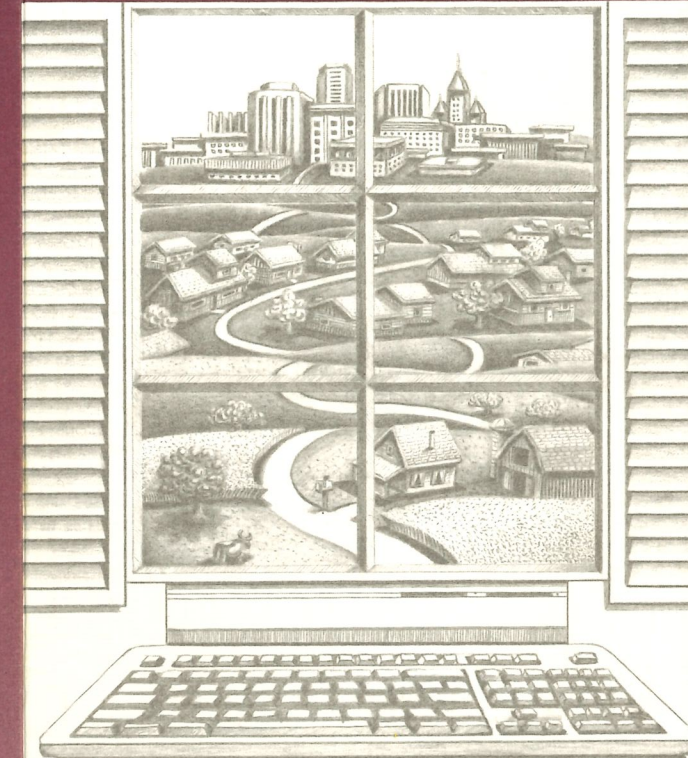
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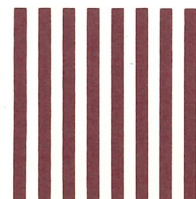
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37-2

**Additional Testimony of John Lewis
Regarding Government Sale of Public Records
February 22, 1994**

This additional testimony is provided to advise the committee of certain events that occurred following the November 7, 1993, hearing on the previous version of this legislation, and to address other inherent fundamental problems with the proposed legislation.

Were We "Punished" For Opposing This Legislation?

As the committee has been advised, I am the publisher of two weekly newspapers, *Kansas Lawyer* and *The Legal Record*, a Johnson County community newspaper that has been published since 1898. Among the information we publish, quite legally, are lists of public records, including court filings, bankruptcies, mortgage registrations, etc. Other newspapers in the state, such as *The Baldwin Ledger*, *The Topeka Metro News*, *The Record* (in Sedgwick County), *The Wichita Journal*, *The Wyandotte Echo* and *The Derby Daily Reporter*, just to name a few, provide the same type of information. Virtually every other newspaper also publishes public records. This information is published for the edification of the public and not for the purpose of violating any state laws, including the "anti-solicitation" law.

However, after many years of publishing this information, but just one month after the November hearing before this committee, our newspaper received a stern letter from the attorney general of this state commanding us to stop publishing certain public records. Also copied on this letter was Beverly Baker. We suppose this to be the same Beverly Baker who is the Johnson County Clerk.

Apparently, ~~that~~ the attorney general of this state was given false and misleading information that led him to conclude that our newspaper was violating the anti-solicitation law by publishing these public records. This, of course, was simply not true. However, based on this misinformation, the attorney general told the Johnson County Register of Deeds to cease providing these records to our newspaper.

Our attorney immediately met with the attorney general to demand that the records be re-opened to us. As a result, after the attorney general received accurate information about our publication, and after our attorney informed the attorney general that *The Legal Record* is a legitimate and established newspaper, his office immediately reversed its earlier instruction to the Register of Deeds and stated that we should be given access to the records once again.

The attorney general explained to us that someone had decided to file a "complaint" with his office, but as evidence had sent him a photocopy of just one page of our newspaper that had been reduced from its regular size to 8-1/2 by 11-inch on a copy machine. This manipulation of "evidence" initially gave the attorney general the false impression that our newspaper was an illegal "list service" instead of a legal newspaper.

Setting the record straight in this matter cost us nearly \$1,000 in attorney fees, which we intend to recover from the responsible parties if possible.

Why did this suddenly occur after all these years? Who is responsible for this waste of the taxpayers' time and money and our company's time and money?

Was this an act of retribution? We have no way of knowing, but we have strong suspicions. There is no question that my outspoken opposition to this legislation created vehement animosity towards me by local government officials. Was it merely coincidence that this all took place right after I testified against the earlier legislation? Was the complainant a person representing Johnson County, which is the primary proponent of this bill? Was the idea to intimidate us so that we wouldn't be around to testify the next time around? And why was the Johnson County Clerk copied on the first letter we received from the attorney general?

*Senate Gov. Org.
Attachment 4
2/22/94*

I cannot possibly prove anything. I will let everyone draw their own conclusions. But it does make one wonder what price a citizen must pay merely to exercise his constitutional right to speak out on an issue in a public forum.

Public Records and the Rights of Citizens

We ask, why is this bill even needed? If the argument is, "Well, we need to be able to charge to make more money," then what we've really got here is simply another tax. But if the reason is to simply "recover costs" of providing the records, then this legislation is superfluous because local governments can already do that under existing open records laws.

Public records, gathered and maintained at public expense, belong to the public. This information about citizens is not the property of the government. And any so-called "new products" based on information about citizens creates an invasion of privacy. He was about 10 years too early, but George Orwell was right – Big Brother appears to be well on his way with this proposed legislation.

The taxpayers own this information, and no one should have to pay more than the cost of locating and copying the information in order to get it. And that includes any so-called "new products" that are based on public records. If it's in the hands of the government, then it should be available to the people, who in this country are supposed to be the government.

Particularly troubling in this legislation is the provision that the government would be able to copyright the information. Again, why should the government, by itself or with a so-called "partner", have the right to copyright information that belongs to the public or is based on information that belongs to the public? It would seem that, at the very least, the government should have to purchase the information from the citizens first, before government should have the right to reshape it, increase the price and then resell it to the citizens.

This is a ridiculous scenario, but it's a truthful one. It demonstrates why this proposal has met with so many stumbling blocks. That's the way it is with ideas that are philosophically and ethically wrong. This whole idea is based on the government confiscating information that doesn't belong to it. We teach our children that it is wrong to take what doesn't belong to them. And we tell them it is made worse by using what doesn't belong to them. And no matter how much they may try to lightly excuse the behavior, it can never become okay because it is inherently wrong in the first place.

This bill is inherently wrong. The whole concept is inherently wrong. That is why its proponents, themselves, have run into countless roadblocks, even in their own deliberations.

It is discouraging that in this country one has to re-state such an elementary principle as this: If government doesn't want citizens to see the information it gathers, it should not gather the information. And although some government officials ignore the principle, it remains a premise in this country that laws are written to restrict government, not to give it greater power that effectively overrides the rights of citizens.



Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611-2098
Telephone 913/267-3610
Fax 913/267-1867

TO: SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: FEBRUARY 22, 1994

SUBJECT: SB 747, PUBLIC RECORDS AND INFORMATION, LOCAL GOVERNMENT
COMPUTER TECHNOLOGY AND MANAGEMENT

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today to oppose SB 747.

We oppose the bill because we believe it raises many questions which are not answered in the bill. Our first question is, if this bill is passed, do the provisions of this bill override the provisions of the Kansas Open Records Act (KORA)? If it does not, then which act takes precedence?

Since the KORA is not printed in the bill for you, I thought you might be interested in knowing what the KORA provisions are regarding these matters.

The KORA states, "It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy," at K.S.A. 45-216.

The definition of the term "public record" is found at K.S.A. 45-217 (f)(1) which states, "public record means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency including, but not limited to, an agreement in settlement of litigation involving the Kansas public employees retirement system and the investment of moneys of the fund."

The rules for charging for inspection or copies of a public record are found at K.S.A. 45-219, (c) which states in part, "Except as provided by subsection (f) or where fees for inspection or for copies of a public record are prescribed by statute, each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records, subject to the following: (1) In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available. (2) In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required.

*Senate Gov. Org.
Attachment 5
2/22/94*

Now, let us distinguish the KORA with the provisions of SB 747. Senate Bill 747 appears to be making up completely different rules for what is already defined to be a public record. With the exception of the item in (6) dealing with licensure, the "electronic products and services" defined in Section 3 clearly fall under the definition of public record which I read to you earlier. They are recorded information in the form of computerized data, which is made, maintained or kept by or is in the possession of a public agency. The bill appears to let cities and counties make up different procedures for access to these records and to set up a different fee structure than that permitted under the KORA.

As already stated above, the KORA provides that, "In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required." Senate Bill 747 states in Section 5 (3) "User fees shall not exceed the actual incremental costs of providing the electronic services and products plus a reasonable portion of the capital and the costs of the information management system." This is a much broader sweep of authority being granted to cities and counties than what was ever intended under the KORA.

Keep in mind that, with the exception of the licensure authority, all of the electronic products and services described under Section 3 of this bill are being accessed now under the terms of the KORA. Many of the people in this room can give you examples of how it is being handled under the KORA. This legislation proposes dramatic changes to the charges which would be legal under KORA and goes directly in contravention to the purpose of the KORA that, "It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy."

While this bill was brought to you as a better solution to the problem than what SB268 proposed, it essentially proposes the same solution only coming at it through a different door, without ever amending the KORA. We do not think this is good public policy.

This bill permits the cities and counties to charge taxpayers not just for access to public records, but also to charge taxpayers for the computer systems which they will be using. There is no indication that the "reasonable portion of the capital and operational costs of the information management system" are to be reduced by the overall benefit which a city or county enjoys by having the system in place for its own record management purposes.

What is missing from this bill is the acknowledgement that it is the duty of cities and counties to be the custodians of records for the citizens of this state. All citizens benefit by having current, accurate computerized information. All city and county citizens benefit by having efficient record keeping. Yet, under this legislation, the citizens who have the misfortune to want access to the records have to be the subsidizers for the custodial job already incumbent upon local governments. Paragraph (4) of Section 5 states that "Fee schedules may be reduced to reflect policy decisions to subsidize or partially subsidize use of and access to the particular information management system." It does not say "shall". Therefore, there is no requirement that the fee making structure reflect the city's or county's own benefit of having these systems in place. This is a very troublesome concept in light of the spirit of the KORA.

While the proponents here would argue that the KORA did not anticipate the advent of the computer boom, we would point out that it did anticipate computer access when the provision was put in the original legislation which specifically mentions that, "In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required."

Our remaining concerns center around the licensing authority which this bill proposes to provide to local units of government. While we are fully aware of the wonders of the information highway which are being promised to us, we are also concerned about what may happen to the custodial duties of public records in the name of preparation or participation in the information highway.

The bill appears to give local governments the ability to enter into exclusive licensing arrangements for the broad purpose of the ability to "use and disseminate all or part of a database for the provision of electronic products and services..." This ability was discussed many times throughout the meetings of the task force assigned to study this topic last summer. Many questions were asked, most of them were unanswered although there was general recognition that the answers to the questions probably involved amending the KORA. Yet, once again, we have no amendments to the KORA in this bill.

I draw your attention to two articles which I have attached to my testimony which point out the problems which this licensure concept pose. One of the key problems is, if local governments in fact grant licenses for the purpose of use and dissemination of public records, wouldn't they then have the power of delegating their custodial duties away, for a price. And, if this is true, who will pay the price? (Refer to articles.)

What concerns us here, is that the day will come when local governments find it more "cost effective" to contract away their custodial duties to say, a company like the Information Network of Kansas (INK), and no longer keep their own records, thus forcing the public to go to Kansas Inc. to get access. A company like the INK, is in business to make a profit, unlike government, which should not be in that business. Additionally, we have a concern about the ability given in Section 4 (d) to limit liability through warranty disclaimers or other appropriate contract provisions with customers." Couldn't the local governments contract away their liability for keeping inaccurate public records.

In general, we believe the proposals here concerning fee making structure and giving local government the power to enter into these exclusive agreements have severe impacts on the KORA. We ask you to consider these implications very seriously and that report the bill adversely.

Costly on-line services limit access to government data

By JUBE SHIVER JR.
Los Angeles Times

WASHINGTON — For a growing number of Americans, the vaunted information highway is already turning into a costly toll road.

The traffic in question is government data. Taxpayers pay for its collection, but private-sector middlemen have become its main purveyors through lucrative "on-line" services that can cost as much as \$300 an hour to use.

Congress, for example, has an on-line system that allows staffers to view the status and, in some cases, the full text of proposed legislation and other information. Computer users say this material could be made publicly available via computer relatively cheaply, but outsiders must pay \$1,900 a year and more to get the information from companies such as Legi-Slate Inc., an on-line service owned by

“People who criticize us for selling government information misunderstand what we are doing.”

Arnold Winkelman,
Legi-Slate on-line service

the Washington Post Co.

“People who criticize us for selling government information misunderstand what we are doing,” said Arnold Winkelman, who oversees Legi-Slate's marketing division. “What we are selling is a tool to get information in a timely and accurate fashion.”

There is little disagreement that the nation's emerging electronic information infrastruc-

ture will offer great public benefit, such as helping the government speed medical research to doctors or making the Library of Congress available to any scholar, anywhere, with a personal computer. Nor is there much quarrel with the right of information vendors to resell government information that's quickly and cheaply made available elsewhere.

The concern is that exclusive arrangements with costly private on-line services will create what Temple University's Nolan A. Bowie calls “an information underclass.” Critics also fault government agencies for charging as much as 50 times more for electronic versions of documents routinely available on paper.

“What we are building is society's nervous system for the next millennium — something that will change the way we think and affect the kind of society we want to become,” said Bowie, a communications professor.

Even a toll-free information highway is like-

ly to leave some people behind. The poorest of the poor, lacking the education, the computers and perhaps even the phone lines, are unlikely to begin scouring electronic Securities and Exchange Commission filings even if access is free.

But the high-priced system evolving now shuts out many of those otherwise equipped for the Information Age — including many libraries, where even the poorest might otherwise gain access. High-priced data could also curb research.

A Princeton University student ran into just such a roadblock in writing a senior thesis on federal banking regulations. The Federal Reserve used to give computer tapes to researchers for free. But on Feb. 1, 1991, it denied the student's request for 40 tapes, saying he could buy the tapes from the National Technical Information Service, a federal agency, for \$20,000.

5-4

Business

THE KANSAS CITY STAR

SATURDAY, October 23, 1993

Data link to SEC to be free

**Science grant will
pay for two-year trial
of computer service.**

From Star News Services

WASHINGTON — In a two-year trial project, the federal government will give Americans free, on-line computer access to corporate filings at the Securities and Exchange Commission.

Access to the filings at the SEC, which maintains one of the world's most valuable stockpiles of information on corporate activities, is being financed by a \$660,000 National Science Foundation grant.

The computer service will be provided by New York University's Stern School of Business and a non-profit organization called the Internet Multicasting Service. The information will be released over Internet, the global matrix of computer networks.

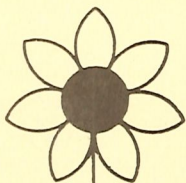
Carl Malamud, founder of the Internet Multicasting Service, said he hoped to have the new database service operating by the end of the year.

Although the project is a trial, it has broad implications for creating fast, inexpensive computer access to public records of all kinds. The precedent could threaten the huge industry that has grown up to sell financial records, court cases and other public documents over services such as Mead Data Central's Nexis and Lexis.

The decision to make the SEC's Electronic Data Gathering, Analysis and Retrieval system available comes amid mounting controversy.

Groups such as the Taxpayers Assets Project, a Washington public interest group affiliated with consumer activist Ralph Nader, have criticized arrangements where the government information bankrolled by taxpayers is exclusively offered through private on-line services that can cost as much as \$300 an hour to use.

5-5



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(formerly Home Builders Assn. of Ks., Inc.)

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SENATE GOVERNMENTAL ORGANIZATION COMMITTEE SB 747

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, presenting written testimony today in opposition to SB 747 for the Kansas Building Industry Association, formerly the Home Builders Association of Kansas.

Our Association is opposed to government entities, established to serve the public and with whom the public is required to file various information, having the ability to then "reformat" that data and make it available to the private sector at a profit. We view this as just another intrusion of government into the private sector at a time when there are numerous proposals to "privatize" and remove government from the business of competing with private enterprise.

Philosophically, it is our view that if anyone is to make money off disbursement of such information, it should be people who risk the capital, develop business strategies, and participate in the free enterprise system of this great country.

To deny real estate, title and appraisal companies free access to public records would only increase the cost of real estate purchases. Government was established to serve the people and to be supported by tax dollars. Fees are paid for the filing of information and these fees have been increased with inflation. Many counties make considerable dollars on the recording of real estate transactions, as an example. We do not feel they should then have the ability to "repackage" this information and further profit.

We urge the Committee to recommend that SB 747 "Be Not Passed" and continue to strive for separation of the public and private sectors.

*Senate Gov. Org.
Attachment 6
2/22/94*



Testimony before the
Senate Governmental Organization Committee
on Senate Bill 747
Tuesday, Feb. 22, 1994

Mr. Chairman and members of the committee, I am Tom Throne, editor and publisher of the McPherson Sentinel. In addition to my duties at the newspaper, I have served this past year as Chairman of the Kansas Press Association's Legislative Committee.

The newspaper association is as diverse as our membership, which sometimes makes it difficult to develop a consensus on some issues. I appear today representing those members of KPA who strongly oppose Senate bill 747, or what some of our members call SB 268 revisited.

It is my understanding this committee had studied this issue last session and during the summer session. Conferees who appeared in hearings on Senate Bill 268 worked diligently this summer to attempt to find a compromise. The association's executive director, David Furnas, I understand worked with city and county officials to try to find a way to help Johnson County.

To indicate how strongly some of our members feel on this issue, one of our publishers withdrew his membership from KPA because Mr. Furnas even met with the city and county officials.

*Senate Gov. Org.
Attachment 7
2/22/94*

Our organization is united in its policy position to oppose any steps that would remove openness in government. Senate Bill 747 appears to have elements that would restrict access to government records.

After reviewing some of the testimony of this committee's hearings this summer, it appears to me that the suggestion was made by the press association that geographic information systems or other "value-added" electronic databases could be developed using third-party agreements. It appears the local units of governments now have the capability to develop such entities. Through licensing agreements, the data developed and maintained by the third party entity would be outside the open records laws and therefore can have fees attached to them. Such an approach also protected the concerns of the newspaper industry and others to have access to base data, or currently available public records at a cost of reproduction only.

However, it appears Senate Bill 747 goes a little further and would allow local units of government to charge additional costs for access to basic electronic data. Government units may say that is not their intent, but this bill would allow them to do so.

The provisions of Section 5 of the bill do not offer much protection in my view. Having local units of government establish fees by using ordinances or resolutions only means that the people who want the money are setting the fee schedule. That is little protection.

Even the provision that user fees shall be reduced or waived for journalism does little to allay fears of those who realize that nominal reductions can still keep access prohibitive.

I realize there are those at KPA who believe efforts have been made to find a workable compromise on this issue. Despite those efforts, I and others believe this proposed legislation would be a bad law and would recommend the committee allow Senate Bill 747 die gracefully.

KANSAS TAXPAYERS NETWORK
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Testimony on SB 747 to
Senate Governmental Organization Committee
Kansas Taxpayers Network
Karl Peterjohn, Executive Director

Unfortunately, due to a previous commitment, I am unable to testify in person on SB 747 and express the concerns KTN has about expanding the ability of local governments to charge for public records. This written testimony on SB 747 is an attempt to express the growing difficulty taxpayers have concerning many public documents and oppose this specific bill.

Allowing government to begin charging, beyond the current limits allowed in the open records law, is opening a Pandora's box which will limit citizen participation, particularly to those who lack the resources to pay twice (once in taxes and once in "user fees") for public records. It is an effective tool to limit citizen input which is inconvenient or politically incorrect to city officials.

I personally have requested official information and was told that the specific data I sought did not exist. However, friends of the taxpayer working at city hall assured me this data did exist and should be available upon request. After delay this public document was made available, begrudgingly and belatedly.

I have been told by the city of Wichita that current copies of their capital improvement budget were available for public inspection at the city library, and then had to inform the city that this document was not in the library computer listing or in the library shelves where this document would normally be kept. Belatedly, one was eventually sent to the library.

As a participant in the negotiations last year concerning public records and attempts to begin charging fees, I must question the intent of the advocates for this legislation. It seems like this bill is an attempt by local governmental bodies to create a new revenue source which is currently being funded out of tax revenues. KTN views this bill as the reverse of a state "mandate" which is often lamented loudly by counties when additional charges or duties are imposed on the counties by state. Now a new funding source is being sought.

*Senate Gov. Org.
Attachment 8
2/22/94*



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Executive Director

John T. Torbert, CAE

TO: Senate Governmental Organization Committee
Senator Al Ramirez, Chairman

FROM: Jim Reardon, Director of Legal Services
Paul Flowers, Director of Research
Kansas Association of Counties

RE: SB 747/HB 3018

Electronic Data Management: From Yellow Brick Road to
Superhighway.

Testimony of February 22, 1993.

KAC supports the Local Government Computer Technology and Data Management Act. During previous hearings held by this committee, Chairman Ramirez asked that representatives of local government meet with members of the private sector to seek common ground on public policy issues relating to electronic data management. As a result, the Kansas Association of Counties and the League of Kansas Municipalities participated in three such meetings held in Topeka and Wichita.

We believe that this process brought about increased awareness of the perspectives of each participant. In effect, these meetings and hearings laid the groundwork for the creation of public data management policies which truly work for the good of Kansas citizens. **SB 747/ HB 3018** is the result of this process.

Several areas were identified as being particularly relevant during the meetings:

1. **The structuring of partnerships between government and private information users.** "Re-inventing government" requires looking to users of information for the purpose of finding resources for the maintenance and development of data and information systems. Currently there are no clearly defined guidelines regarding what is and what is not permissible. This is an important issue that is addressed in **SB 747/ HB 3018**.

*Senate Gov. Org.
Attachment 9
2/22/94*

2. **The status of manipulated records and software as public records.** records. There is a need for further clarification from the legislature regarding what exactly constitutes a public record when information is jointly developed. Counties are custodians of an enormous amount of personal data, that means that technology is required to keep public information public and private information private. **KAC supports the right to public access of public information. We urge extreme care in protecting private information.**
3. **The preservation of public access to public records.** Electronic information management is rapidly becoming the mode by which all levels of government are doing business. Although this trend is rapidly increasing the quantity of public records, at the same time it also introduces new problems in duplicating these records upon request, particularly when complex or very large numbers of records are involved.
4. **The cost of information technologies.** According to County News Magazine counties, last year funnelled \$23 billion into information technologies and related resources--**not including personnel costs.** Counties have invested steadily to build integrated technology systems that bring together computers, telephones, fax machines, video and audio tape, compact disks, cable, telephone wire, satellites, optical fiber transmissions lines, microwave nets, televisions, monitors, printers, etc. **Is it unreasonable to ask commercial users and co-developers to share the costs involved? KAC thinks that county governments need to anticipate the changes in the delivery of information and to manage the changes in a manner that will result in the greatest good for their respective communities.**

Early this year, President Clinton announced a new initiative, The National Information Infrastructure (NII), that proposes using technology to drive economic growth and job creation. He has invited local and state governments to develop an "Agenda for Action". The actions you as legislators take will determine how successful Kansas will be in developing our agenda for participating in this Information Infrastructure. Developing such a highway will require you to establish new standards, laws, regulations and intergovernmental relationships. **KAC urges you to provide our pioneers in these endeavors the widest latitude possible in order to develop this infrastructure.**

We urge your consideration and support for **SB 747/ HB 3018.** We wish to thank the committee and Chairman Ramirez for this opportunity to discuss this vital public issue.

Testimony Before
The Kansas Senate Committee
on Governmental Organization
February 22, 1994

Good afternoon. My name is Dr. Marc A. Johnson, Interim Dean of Agriculture and Interim Director of the Kansas Agricultural Experiment Station. I am here to comment on S.B. 678 concerning renaming regional research centers.

The purpose of the Kansas Agricultural Experiment Station is to provide research related to agricultural production, marketing, and product utilization, as well as research on policy, rural families, and rural communities. Agricultural research is needed continuously to assure a competitive agriculture in Kansas and the economic development spin-offs which agriculture creates. Kansas has diversity of soil types, rainfall, and altitude. Crops are sensitive to these geographically determined dimensions. Therefore, the Kansas Agricultural Experiment Station performs crop research on the K-State campus, four branch experiment stations, and eleven experiment fields (see attachment).

Several years ago, the branch experiment stations at Colby and Garden City were merged with area offices of the Kansas Cooperative Extension Service, located in the same towns. These merged units became known as the Northwest Research-Extension Center and the Southwest Research-Extension Center.

The Experiment Station has requested a name change for the Ft. Hays Branch Experiment Station to become "Kansas State University Agricultural Research Center -- Hays." The purpose of the name change is to remedy a mistaken identity of the Ft. Hays Branch Experiment Station with Fort Hays State University. The latest episode occurred when soliciting bids for metal buildings in which the bid form referred to the unit as "Fort Hays State University, Fort Hays Branch Experiment Station."

The Experiment Station also requests a name change for the Southeast Branch Experiment Station to become "Kansas State University Southeast Agricultural Research Center." The purpose of this name change is to bring the name of the remaining branch experiment stations into line with the other three, that is, the Kansas State University Agricultural Research Center--Hays, the Southwest Research-Extension Center, and the Northwest Research-Extension Center.

Unfortunately in the construction of S.B. 678, to make these name changes, several wording changes have been included which I consider inappropriate. In numerous instances within the bill, the "Agricultural Experiment Station" is replaced with "research centers and research-extension centers."

The central entity remains: The Kansas Agricultural Experiment Station within the Extension Systems and Agricultural Research Programs (ESARP) subagency of Kansas State University. The Experiment Station does research on the K-State Campus, on two research centers (Southeast Kansas and Hays), on two research-extension centers (Southwest Kansas and Northwest Kansas), and on eleven experiment fields. The Experiment Station is a unified agency which operates research centers and fields across the various climatic and soil type regions of the state.

*Senate Gov. Org.
Attachment 100
2/22/94*

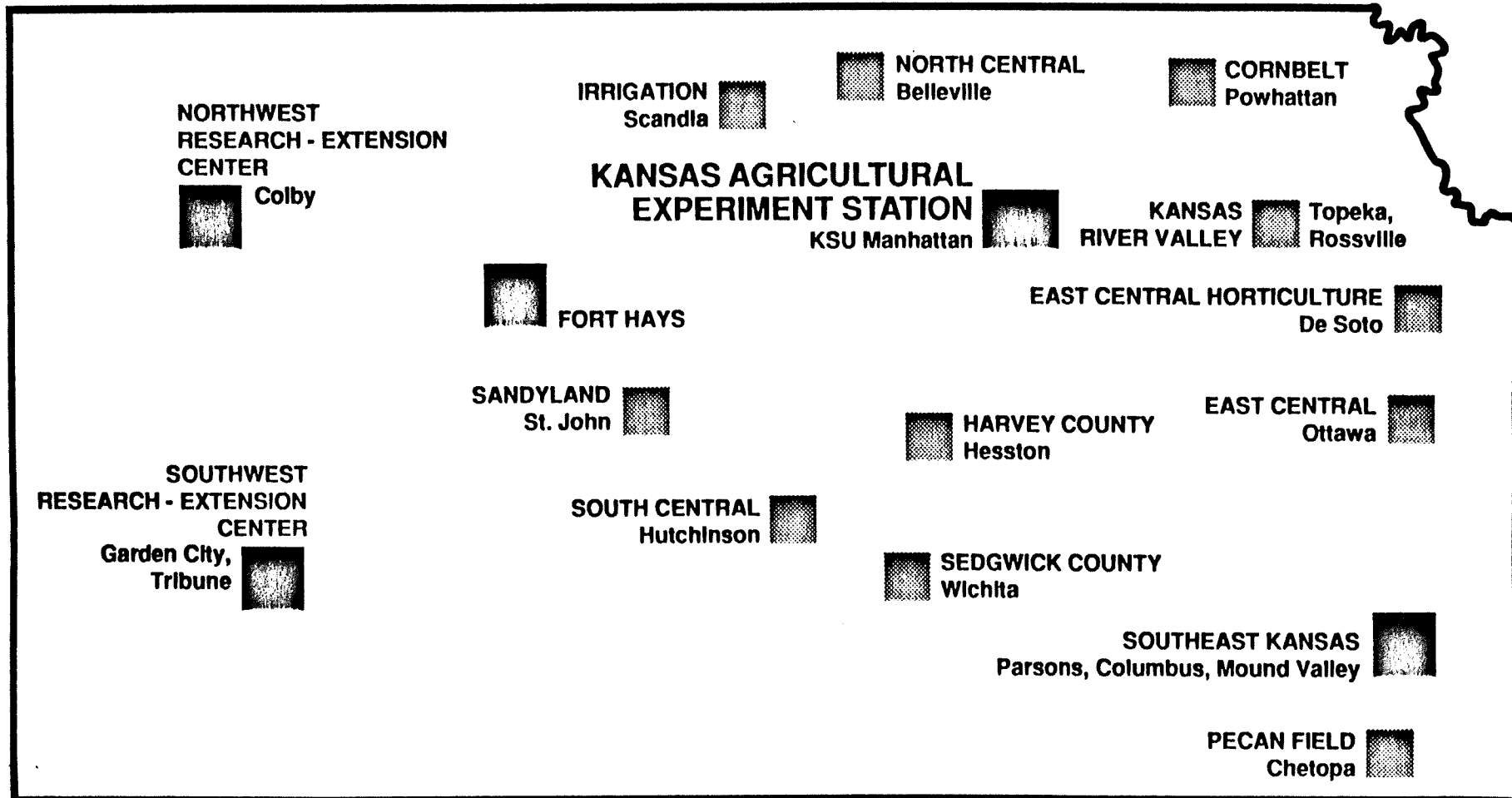
Our request merely was to change the name of the research centers. We have not requested a change in the name of the Experiment Station entity. Specific issues include:

1. Page 1, lines 18-19. No change is recommended except agricultural experiment station is singular. The fertilizer research fund is managed with an internal competitive grant procedure. Fertilizer experimentation is conducted at more than the four research centers. All money goes to the agricultural experiment station at Manhattan for further distribution to projects.
2. Page 1, lines 28-29. No change recommended except station should be singular.
3. Page 1, line 41. No change recommended.
4. Page 7, lines 25-26. No change recommended except station should be singular.
5. Page 9, lines 16-17. No change recommended except station should be singular.
6. Page 9, lines 42-43. No change recommended except station should be singular.
7. Page 10, lines 8-9. No change recommended except station should be singular.
8. Page 10, lines 14-15. No change recommended except station should be singular.
9. Page 11, line 35. No change recommended except station should be singular.
10. Page 13, lines 36-37. No change recommended except station should be singular.

We very much appreciate the Senators considering the name changes for our research and research-extension centers.

KANSAS STATE UNIVERSITY

STATEWIDE AGRICULTURAL RESEARCH SERVICES



BRANCH STATIONS



EXPERIMENT FIELDS