

HOUSE BILL No. 2185

By Committee on Local Government

2-7

1 AN ACT concerning openness in government; amending K.S.A. 45-223
2 and 75-4320a and K.S.A. 2010 Supp. 75-4320 and 75-4320b and
3 repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 45-223 is hereby amended to read as follows: 45-
7 223. (a) Any public agency subject to this act that knowingly violates any
8 of the provisions of this act or that intentionally fails to furnish
9 information as required by this act shall be liable for the payment of a
10 civil penalty in an action brought by *any person*, the attorney general or
11 county or district attorney, in a sum set by the court of not to exceed \$500
12 for each violation.

13 (b) Any civil penalty sued for and recovered hereunder by *any*
14 *person*, the attorney general shall be paid into the state general fund. Any
15 civil penalty sued for and recovered hereunder by a county or district
16 attorney shall be paid into the general fund of the county in which the
17 proceedings were instigated.

18 Sec. 2. K.S.A. 2010 Supp. 75-4320 is hereby amended to read as
19 follows: 75-4320. (a) Any member of a body or agency subject to this act
20 who knowingly violates any of the provisions of this act or who
21 intentionally fails to furnish information as required by subsection (b) of
22 K.S.A. 75-4318, and amendments thereto, shall be liable for the payment
23 of a civil penalty in an action brought by *any person*, the attorney general
24 or county or district attorney, in a sum set by the court of not to exceed
25 \$500 for each violation. In addition, any binding action which is taken at
26 a meeting not in substantial compliance with the provisions of this act
27 shall be voidable in any action brought by *any person*, the attorney
28 general or county or district attorney in the district court of the county in
29 which the meeting was held within 21 days of the meeting, and the court
30 shall have jurisdiction to issue injunctions or writs of mandamus to
31 enforce the provisions of this act.

32 (b) Civil penalties sued for and recovered hereunder by *any person*,
33 the attorney general shall be paid into the state general fund. Civil
34 penalties sued for and recovered hereunder by a county or district
35 attorney shall be paid into the general fund of the county where the
36 proceedings were instigated.

1 (c) No fine shall be imposed pursuant to subsection (a) for violations
2 of subsection (f) of K.S.A. 75-4318, and amendments thereto, which
3 occur prior to July 1, 2009.

4 Sec. 3. K.S.A. 75-4320a is hereby amended to read as follows: 75-
5 4320a. (a) The district court of any county in which a meeting is held
6 shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-
7 4319, and amendments thereto, with respect to such meeting, by
8 injunction, mandamus or other appropriate order, on application of any
9 person.

10 (b) In any action hereunder, the burden of proof shall be on the
11 public body or agency to sustain its action.

12 (c) In any action hereunder, the court ~~may~~shall award court costs
13 *and a reasonable sum as attorney fees for services rendered in such*
14 *action, including proceedings on appeal, to be recovered and collected as*
15 *part of the costs* to the person seeking to enforce the provisions of K.S.A.
16 75-4318 or 75-4319, and amendments thereto, if the court finds that the
17 provisions of those statutes were violated. The award shall be assessed
18 against the public agency or body responsible for the violation.

19 (d) In any action hereunder in which the defendant is the prevailing
20 party, the court may award to the defendant court costs if the court finds
21 that the plaintiff maintained the action frivolously, not in good faith or
22 without a reasonable basis in fact or law.

23 (e) Except as otherwise provided by law, proceedings arising under
24 this section shall take precedence over all other cases and shall be
25 assigned for hearing and trial at the earliest practicable date.

26 (f) As used in this section, "meeting" has the meaning provided by
27 K.S.A. 75-4317a, and amendments thereto.

28 Sec. 4. K.S.A. 2010 Supp. 75-4320b is hereby amended to read as
29 follows: 75-4320b. In investigating alleged violations of the Kansas open
30 meetings act, *any person*, the attorney general or county or district
31 attorney may:

32 (a) Subpoena witnesses, evidence, documents or other material;

33 (b) take testimony under oath;

34 (c) examine or cause to be examined any documentary material of
35 whatever nature relevant to such alleged violations;

36 (d) require attendance during such examination of documentary
37 material and take testimony under oath or acknowledgment in respect of
38 any such documentary material; and

39 (e) serve interrogatories.

40 Sec. 5. K.S.A. 45-223 and 75-4320a and K.S.A. 2010 Supp. 75-4320
41 and 75-4320b are hereby repealed.

42 Sec. 6. This act shall take effect and be in force from and after its
43 publication in the statute book.