

HOUSE BILL No. 2591

By Committee on Energy, Utilities and Telecommunications

Requested by Representative Delperdang

1-24

1 AN ACT concerning the state corporation commission; exempting the
2 commission from the open meetings act with respect to matters relating
3 to docketed proceedings before the commission; prohibiting ex parte
4 communications in all docketed commission proceedings; amending
5 K.S.A. 75-4318 and 77-545 and repealing the existing sections.
6

7 WHEREAS, The state corporation commission is subject to the public
8 utility act, which makes full provision for proceedings conducted before
9 the commission, including the manner of public notice and hearing
10 requirements; and

11 WHEREAS, The state corporation commission primarily conducts
12 proceedings pursuant to the Kansas administrative procedure act, which
13 further establishes specific notice and hearing requirements for
14 proceedings conducted before the commission; and

15 WHEREAS, The state corporation commission complies with the
16 general policy of the Kansas open meeting act by conducting its affairs and
17 transacting governmental business in a manner that is open to the public;
18 and

19 WHEREAS, Every order of the state corporation commission is
20 required to contain a specific statement of the relevant law and basic facts
21 that the commission relied on in reaching its decision and identify the
22 commissioners that participated in the order; and

23 WHEREAS, The state corporation commission is subject to the Kansas
24 judicial review act and the state governmental ethics law.

25 Now, therefore:

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

27 Section 1. K.S.A. 75-4318 is hereby amended to read as follows: 75-
28 4318. (a) Subject to the provisions of subsection (g), all meetings for the
29 conduct of the affairs of, and the transaction of business by, all legislative
30 and administrative bodies and agencies of the state and political and taxing
31 subdivisions thereof, including boards, commissions, authorities, councils,
32 committees, subcommittees and other subordinate groups thereof,
33 receiving or expending and supported in whole or in part by public funds
34 shall be open to the public and no binding action by such public bodies or
35 agencies shall be by secret ballot. Meetings of task forces, advisory

1 committees or subcommittees of advisory committees created pursuant to
2 a governor's executive order shall be open to the public in accordance with
3 this act.

4 (b) Notice of the date, time and place of any regular or special
5 meeting of a public body or agency designated in subsection (a) shall be
6 furnished to any person requesting such notice, except that:

7 (1) If notice is requested by petition, the petition shall designate one
8 person to receive notice on behalf of all persons named in the petition, and
9 notice to such person shall constitute notice to all persons named in the
10 petition;

11 (2) if notice is furnished to an executive officer of an employees'
12 organization or trade association, such notice shall be deemed to have been
13 furnished to the entire membership of such organization or association;
14 and

15 (3) the public body or agency may require that a request to receive
16 notice must be submitted again to the public body or agency prior to the
17 commencement of any subsequent fiscal year of the public body or agency
18 during which the person wishes to continue receiving notice, but, prior to
19 discontinuing notice to any person, the public body or agency must notify
20 the person that notice will be discontinued unless the person resubmits a
21 request to receive notice.

22 (c) It shall be the duty of the presiding officer or other person calling
23 the meeting, if the meeting is not called by the presiding officer, to furnish
24 the notice required by subsection (b).

25 (d) Prior to any meeting mentioned by subsection (a), any agenda
26 relating to the business to be transacted at such meeting shall be made
27 available to any person requesting the agenda.

28 (e) The use of cameras, photographic lights and recording devices
29 shall not be prohibited at any meeting mentioned by subsection (a), but
30 such use shall be subject to reasonable rules designed to insure the orderly
31 conduct of the proceedings at such meeting.

32 (f) Except as provided by section 22 of article 2 of the constitution of
33 the state of Kansas, interactive communications in a series shall be open if
34 they collectively involve a majority of the membership of the public body
35 or agency, share a common topic of discussion concerning the business or
36 affairs of the public body or agency, and are intended by any or all of the
37 participants to reach agreement on a matter that would require binding
38 action to be taken by the public body or agency.

39 (g) The provisions of the open meetings law shall not apply:

40 (1) To any administrative body that is authorized by law to exercise
41 quasi-judicial functions when such body is deliberating matters relating to
42 a decision involving such quasi-judicial functions;

43 (2) to the prisoner review board when conducting parole hearings or

1 parole violation hearings held at a correctional institution;

2 (3) to any impeachment inquiry or other impeachment matter referred
3 to any committee of the house of representatives prior to the report of such
4 committee to the full house of representatives; ~~and~~

5 (4) if otherwise provided by state or federal law or by rules of the
6 Kansas senate or house of representatives; *and*

7 (5) *to the state corporation commission with respect to matters*
8 *relating to docketed proceedings before the commission.*

9 Sec. 2. K.S.A. 77-545 is hereby amended to read as follows: 77-545.

10 (a) This section applies to ~~adjudicative~~ *all docketed* proceedings before the
11 state corporation commission, *including adjudicative proceedings.*

12 (b) (1) After the commission has determined and announced that a
13 hearing should be held, and prior to the issuance of a final order, no parties
14 to the proceeding, or their counsel, shall ~~discuss the merits of the matter or~~
15 ~~proceeding~~ *engage in any ex parte communication with any commissioner*
16 *or the presiding officer unless reasonable notice is given to all parties who*
17 *have appeared to enable the parties to be present at the conference.*

18 (2) After the commission has determined and announced that a
19 hearing should be held, prior to the issuance of a final order, copies of any
20 written *ex parte* communications from any party regarding the proceeding
21 that are directed to *any commissioner or* the presiding officer shall be
22 served upon all parties of record and proof of service shall be furnished to
23 the commission. Communications requested by members of the
24 commission staff from any party and any written communications received
25 by members of the commission staff from any party shall be made a part of
26 the file and the docket and shall be made available to all persons who
27 desire to use them, provided that all commission requests for information
28 from a party shall be served upon all parties of record.

29 (3) The person or persons to whom any *ex parte* communication has
30 been made shall promptly and fully inform the full commission of the
31 substance of the communication, and the circumstances thereof, to enable
32 the commission to take appropriate action.

33 (c) For purposes of this section, no member of the ~~technical~~
34 ~~commission's~~ staff, *including technical staff and the office of general*
35 *counsel*, shall be considered a party to any proceeding before the
36 commission, regardless of participation in staff investigations with respect
37 to the proceeding or of participation in the proceeding as a witness. Since
38 the purpose of the staff is to aid the commission in the proper discharge of
39 commission duties, the *commissioners and* presiding officers shall be free
40 at all times to confer with any staff member with respect to any
41 proceeding. However, no facts that are outside the record, and that
42 reasonably could be expected to influence the decision in any matter
43 pending before the commission, shall be furnished to any *commissioner or*

1 *the* presiding officer unless all parties to the proceeding are likewise
2 informed and afforded a reasonable opportunity to respond. ~~Subsection (b)~~
3 ~~shall apply to staff counsel in regard to any adjudicatory proceeding before~~
4 ~~the commission.~~

5 (d) All letters and written communications that are received by *any*
6 *commissioner* or the presiding officer from members of the general public,
7 and that are in the nature of ex parte communications, shall be made a part
8 of the file in the docket and shall be made available to all persons who
9 desire to see them. The deposit of such written communications and letters
10 in the file shall not make them a part of the official record of the case.

11 (e) *As used in this section, "ex parte communication" means a*
12 *written, oral or other communication that pertains to the merits of a*
13 *docketed proceeding before the state corporation commission and that is*
14 *made to a commissioner or the presiding officer by a party to the*
15 *proceeding, or such party's counsel, when another party to the proceeding,*
16 *or such party's counsel, is not present.*

17 Sec. 3. K.S.A. 75-4318 and 77-545 are hereby repealed.

18 Sec. 4. This act shall take effect and be in force from and after its
19 publication in the statute book.