



**Before the House Committee on
Energy, Utilities, and Telecommunications
February 13, 2024**

House Bill 2591 – Neutral Testimony

**Submitted by Andrew J. French, Chairperson,
Kansas Corporation Commission**

Chair Delperdang, Vice Chair Turner, Ranking Minority Member Ohaebosim, and members of the Committee, thank you for the opportunity to provide testimony to your Committee today. I offer these comments in my official capacity as Chair of the Kansas Corporation Commission (KCC or Commission), and my comments represent the unified opinion of all three members of the Commission. This testimony was authorized by a vote of the Commission at a publicly-noticed open meeting on February 9, 2024.

I hope to offer a unique perspective based on my history with the KCC. I have worked in multiple staff attorney positions at the KCC and am very familiar with the agency’s mission and procedures. I also worked in private practice, where most of my focus was on energy and utility matters litigated at the KCC. I am now a Commissioner at the KCC, but I believe my perspective as both a former KCC employee and an outside stakeholder can aid the Committee.

HB 2591 makes two changes to Kansas law. First, it clarifies the Kansas Open Meetings Act (KOMA) does not apply to docketed proceedings before the Commission, allowing Commissioners to privately deliberate in those court-like proceedings. Second, the Bill expands and clarifies the prohibitions on *ex parte* communications in docketed KCC proceedings. While I am neutral on the Bill, it is my opinion that HB 2591 would aid the Commission in performing its statutory duties and does not, in any way, undermine the State’s interest in open and transparent government.

As a public agency, the KCC continually reviews KOMA to ensure compliance with the law. Currently, the applicability of KOMA and its exemptions to KCC processes is ambiguous. Even though the KCC fulfills many of its statutory duties through court-like procedures, Kansas courts have not provided clear direction on whether the existing KOMA exemption for “quasi-judicial” administrative deliberations is applicable to KCC dockets. Given the lack of clear direction from the Legislature and courts, Commissioners have opted to act with caution and do not engage in any discussions or deliberations of agency business, including most docketed matters, outside of a publicly-noticed meeting.

I am neutral on the Bill and am not advocating for its passage, because the KCC can effectively carry out its statutory duties with or without the proposed amendment to KOMA. However, I believe this bill would aid the Commission in performing its statutory duties. Based on my experience inside and outside the agency, I understand some stakeholders do not believe the current practice of no Commissioner to Commissioner communication serves the public interest. Some stakeholders believe the Commission could produce more well-reasoned and independent decisions if Commissioners have the ability to privately deliberate, in a fashion more akin to judicial proceedings. I also understand there is a perception that Commission staff may wield undue influence over KCC decisions when the Commissioners, themselves, cannot directly deliberate on their preferred outcome in a case.

Concerns regarding the Commissioners' inability to deliberate on pending matters may have merit, and this bill could result in a more efficient and thoughtful decision-making process. Further, the KCC is tasked with deciding complex and highly-technical matters. Commissioners may benefit from a private forum to candidly deliberate and explore those matters. Also, as I mentioned above, the applicability of KOMA to various KCC proceedings is currently ambiguous. This bill offers a very strong benefit of providing clarity to the agency regarding when and whether KOMA applies. The restriction of the KOMA exemption to "docketed proceedings" appears a reasonable and appropriate place to draw that line.

Finally, I feel strongly that the public policy rationale for the Kansas open meetings law is not undermined by the specific exemption contemplated in this Bill. The KCC is required by law to issue its decisions in writing, including the reasoning and evidence relied upon. And Commissioners must affix their signatures to their decisions – they cannot vote by secret ballot. Finally, because the KCC is subject to the Kansas Administrative Procedures Act and Kansas Judicial Review Act, its proceedings are truly judicial in nature, subject to due process protections and judicial review. The KCC cannot act arbitrarily or contrary to the evidence. We all believe our Courts benefit from the ability to privately and candidly deliberate matters before them, and the same rationale applies to docketed KCC proceedings.

Thank you for the opportunity to appear before your Committee and offer my perspective on the proposed bill.