

**REPORT OF THE 1990-1991
TASK FORCE ON OPEN MEETINGS
AND OPEN RECORDS**

RESEARCH MEMORANDUM NO. 448

LEGISLATIVE RESEARCH COMMISSION

December, 1991



REPORT OF THE 1990-1991 TASK FORCE ON OPEN MEETINGS AND OPEN RECORDS

Representative Bill Donnermeyer, Chair

**Senator Walter Baker
Stephen Dooley
Representative Clayton Little
Stan MacDonald
Representative Raymond Overstreet**

**Senator Fred Bradley
Representative Albert Jones
Steve Lowery
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MEMORANDUM

TO: Members, Legislative Research Commission
FROM: Representative Bill Donnermeyer, Chairman
Task Force on Open Meetings and Open Records
SUBJECT: Task Force Findings and Recommendations
DATE: December 5, 1991

1990 House Concurrent Resolution 205 created the Task Force on Open Meetings and Open Records and authorized the Task Force to study the need for amendments to statutes pertaining to open meetings and open records of public agencies.

The Task Force has finished its business. The attached report and prefiled bills constitute the Task Force's findings and recommendations.

SJV: rkr
Attachments
(1364R)

**REPORT OF THE 1990-1991
TASK FORCE ON OPEN MEETINGS AND OPEN RECORDS**

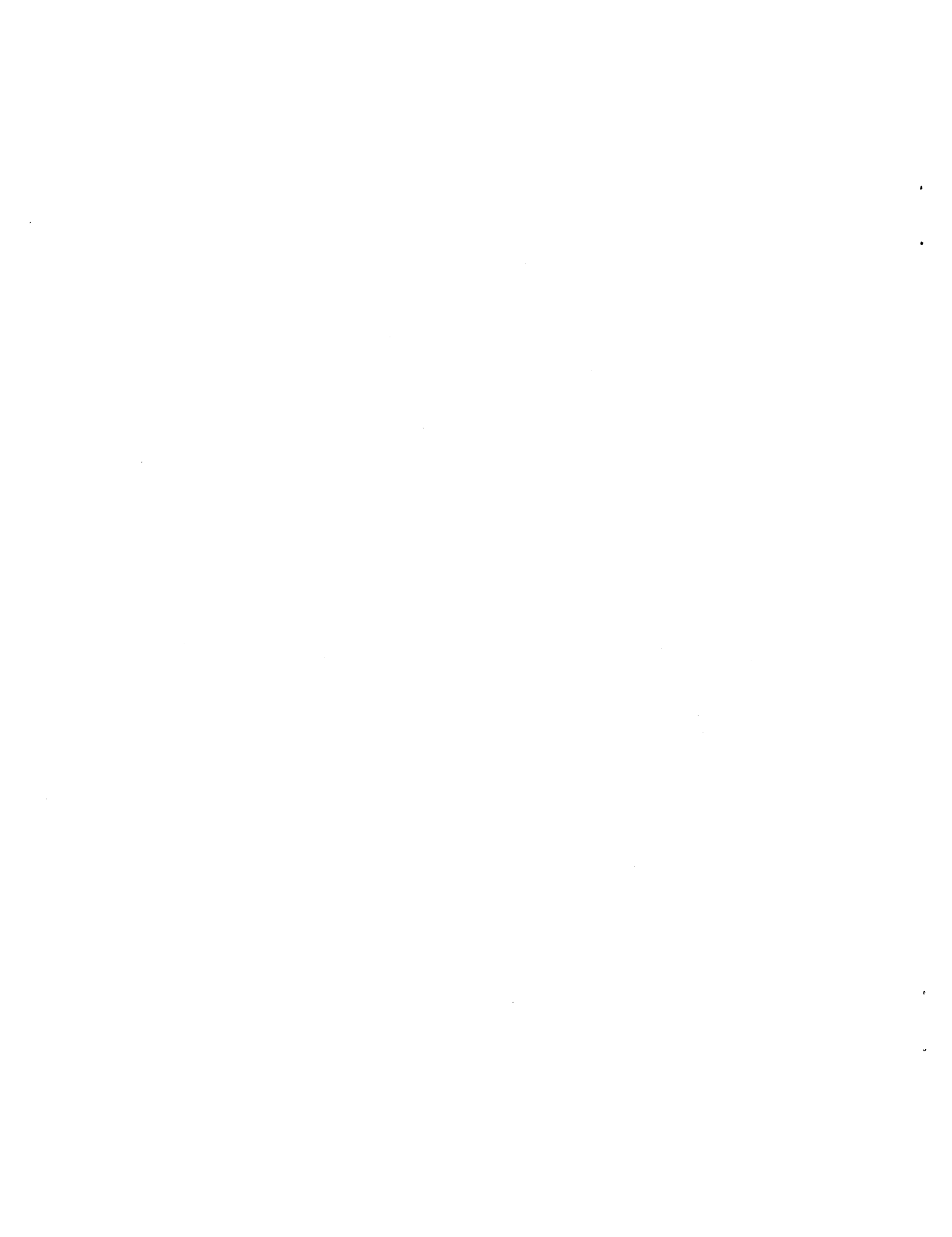
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**PRESENTED TO THE LEGISLATIVE RESEARCH COMMISSION
AND THE
1992 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY**



TASK FORCE ON OPEN MEETINGS AND OPEN RECORDS

TASK FORCE JURISDICTION: 1990 HCR 205 created the Task Force on Open Meetings and Open Records and authorized the task force to study the need for amendments to statutes pertaining to open meetings and open records of public agencies.

TASK FORCE ACTIVITY

The task force met thirteen times between October 11, 1990, and October 31, 1991. The task force will present its findings and recommendations to the Legislative Research Commission by the end of December, 1991.

Throughout the task force's activities, it sought ways to bring more openness to public agency meetings and records, while preserving the confidentiality necessary for public agencies to function. This balance is reflected in the two bills that the task force voted to prefile.

On October 9, 1991, the task force concluded its work on 92 BR 122, AN ACT relating to open meetings of public agencies, and voted to prefile the bill. If enacted, 92 BR 122 would:

- State the General Assembly's finding and declaration that "the formation of public policy is public business and shall not be conducted in secret . . . even though open meetings may cause inconvenience, embarrassment, or a loss of efficiency to public officials or others";
- Expand the types of entities which have to open their meetings pursuant to the Open Meetings Law. The bill would subject an entity to the Open Meetings Law when a majority of that entity's governing body is appointed by a public agency, is a member or employee of a public agency, a state or local officer, or any combination thereof;
- Refine the exception to the Open Meetings Law provided for deliberations of quasi-judicial bodies regarding individual adjudications;
- Require a public agency to open to the public a series of less than quorum meetings where the members attending one or more of the meetings collectively constitute at least a quorum of the members of the public agency;
- Require notice of special meetings in addition to that already provided for in the Open Meetings Law;
- Detail the elements of emergency special meetings;

- Grant a complaining party the option of enforcing the Open Meetings Law by taking his complaint before the Attorney General; and
- Establish court procedure to govern when a complaining party enforces the Open Meetings Law in the courts. The bill would allow a court the discretion to award costs to a complaining party who prevails against a public agency regarding a violation of the Open Meetings Law.

On October 31, 1991, the task force concluded its work on 92 BR 360, AN ACT relating to open records of public agencies and voted to prefile the bill. If enacted, 92 BR 360 would:

- State the General Assembly's finding and declaration that "free and open examination of public records is in the public interest... even though examination may cause inconvenience or embarrassment to public officials or others";
- Expand the types of entities which have to open their records pursuant to the Open Records Law. The bill would subject to the Open Records Law that part of an entity funded by state or local authority to carry out a governmental function. It would also subject to the Open Records Law any entity when the majority of its governing body is appointed by a public agency, is a member or employee of a public agency, a state or local officer, or any combination thereof;
- Permit a person to hand-deliver, mail, or fax to a public agency an application to inspect a public record;
- Permit a person to inspect a public record during the regular office hours of a public agency or by receiving a copy of the public record from a public agency through the mail, after precisely describing the public record which is readily available within the public agency;
- Establish the right of a public agency employee to inspect all public agency records which relate to him;
- Refine the procedure followed when a complaining party enforces the Open Records Law by taking his complaint before the Attorney General; and

- **Refine the procedure followed when a complaining party goes to court to enforce the Open Records Law. Under current law, a court is given the discretion to award costs to a prevailing complaining party only when a public agency has willfully withheld a public record. 92 BR 360 gives a court the discretion to award costs to a prevailing complaining party whether or not a public agency has willfully withheld a public record.**

**KENTUCKY
LEGISLATIVE RESEARCH COMMISSION**

1990-91 INTERIM

92 BR 122 - PREFILED

October 9, 1991

The following bill was prefiled for the Task Force on Open Meetings and Open Records: Representative William Donnermeyer.

AN ACT relating to open meetings of public agencies.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS
2 CREATED TO READ AS FOLLOWS:

3 The General Assembly finds and declares that the
4 basic policy of KRS 61.805 to 61.850 is that the formation
5 of public policy is public business and shall not be
6 conducted in secret and the exceptions provided for by
7 Section 3 of this Act or otherwise provided for by law
8 shall be strictly construed, even though open meetings may
9 cause inconvenience, embarrassment, or a loss of
10 efficiency to public officials or others.

11 Section 2. KRS 61.805 is amended to read as follows:

12 As used in KRS 61.805 to 61.850, unless the context
13 otherwise requires:

14 (1) "Meeting" means all gatherings of every kind,
15 regardless of where the meeting is held, and whether
16 regular or special and information or casual gatherings
17 held in anticipation of or in conjunction with a regular
18 or special meetings;

19 (2) "Public agency" means:

20 (a) Every state or local board, commission, and
21 authority;

1 (b) Every state or local legislative board,
2 commission, and committee;

3 (c) Every county and city governing body, council,
4 school district board, special district board, and
5 municipal corporation;

6 (d) Every entity created by state or local statute,
7 executive order, ordinance, resolution, or other
8 legislative act;

9 (e) Any body created by state or local authority in
10 the legislative or executive branch of government;

11 (f) Any entity when the majority of its governing
12 body is appointed by a "public agency" as defined in
13 paragraph (a), (b), (c), (d), (e), (g), or (h) of this
14 subsection, a member or employee of a "public agency," a
15 state or local officer, or any combination thereof;

16 (g) Any board, commission, committee, subcommittee,
17 ad hoc committee, advisory committee, council, or agency
18 established or created by a "public agency" as defined in
19 paragraph (a), (b), (c), (d), (e), (f), or (h) of this
20 subsection; and

21 (h) Any interagency body of two (2) or more public
22 agencies where each "public agency" is defined in
23 paragraph (a), (b), (c), (d), (e), (f), or (g) of this
24 subsection [any state legislative/ executive/
25 administrative or advisory board/ commission/ committee/
26 policy making board of an institution of education or

1 other state agency which is created by or pursuant to
 2 statute or executive order (other than judicial or
 3 quasi-judicial bodies); any county, city, school district,
 4 special purpose district boards, public commissions,
 5 councils, offices or other municipal corporation or
 6 political subdivision of the state; any committee, ad hoc
 7 committee, subcommittee, subagency or advisory body of a
 8 public agency which is created by or pursuant to statute,
 9 executive order, local ordinance or resolution or other
 10 legislative act, including but not limited to planning
 11 commissions, library or park boards and other boards,
 12 commissions and agencies];

13 (3) "Action taken" means a collective decision, a
 14 commitment or promise to make a positive or negative
 15 decision, or an actual vote by a majority of the members
 16 of the governmental body; and

17 (4) "Member" means a member of the governing body of
 18 the public agency and does not include employees or
 19 licensees of the agency.

20 Section 3. KRS 61.810 is amended to read as follows:

21 (1) All meetings of a quorum of the members of any
 22 public agency at which any public business is discussed or
 23 at which any action is taken by the [such] agency, shall
 24 [are declared to] be public meetings, open to the public
 25 at all times, except for the following:

26 (a)[(1)] Deliberations for decisions of the

1 Kentucky Parole Board:[]

2 (b)[(2)] Deliberations on the future acquisition
3 or sale of real property by a public agency, but only when
4 publicity would be likely to affect the value of a
5 specific piece of property to be acquired for public use
6 or sold by a public agency:[]

7 (c)[(3)] Discussions of proposed or pending
8 litigation against or on behalf of the public agency:[]

9 (d)[(4)] Grand and petit jury sessions:[]

10 (e)[(5)] Collective bargaining negotiations
11 between public employers and their employees or their
12 representatives:[]

13 (f)[(6)] Discussions or hearings which might lead
14 to the appointment, discipline, or dismissal of an
15 individual employee, member, or student without
16 restricting that employee's, member's, or student's right
17 to a public hearing if requested, [provided that] This
18 exception [is designed to protect the reputation of
19 individual persons and] shall not be interpreted to
20 permit discussion of general personnel matters in
21 secret:[]

22 (g)[(7)] Meetings between public agencies and
23 industrial prospects:[]

24 (h)[(8)] State cabinet meetings and executive
25 cabinet meetings:[]

26 (i)[(9)] Committees of the General Assembly other

1 than standing committees:[]

2 (j)[(10)] Deliberations of quasi-judicial bodies
 3 regarding individual adjudications, at which neither the
 4 person involved, his representatives, nor any other
 5 individual not a member of the agency's governing body or
 6 staff is present, but not including any meetings of
 7 planning commissions, zoning commissions, or boards of
 8 adjustment:

9 (k) Meetings which federal or state law specifically
 10 require to be conducted in privacy; and[]

11 (1)[(11)] Meetings which the Constitution provides
 12 shall be held in secret.

13 (2) Any series of less than quorum meetings, where
 14 the members attending one or more of the meetings
 15 collectively constitute at least a quorum of the members
 16 of the public agency and where the meetings are held for
 17 the purpose of avoiding the requirements of subsection (1)
 18 of this section, shall be subject to the requirements of
 19 subsection (1) of this section.

20 Section 4. KRS 61.815 is amended to read as follows:

21 (1) Except as provided in subsection (2) of this
 22 section [those public agencies excluded under KRS
 23 61/810(1), (3), (4), (6) but only so far as it relates to
 24 students, KRS 61/810(7), (8), (9), (10) and (11)], the
 25 following requirements shall be met as a condition for
 26 conducting closed sessions authorized by KRS 61.810:

1 (a)[(1)] Notice shall be given in regular open
 2 meeting of the general nature of the business to be
 3 discussed in closed session, [and] the reason for the
 4 closed session, and the specific provision of Section 3 of
 5 this Act authorizing the closed session;

6 (b)[(2)] Closed sessions may be held only after a
 7 motion is made and carried by a majority vote in open,
 8 public session;

9 (c)[(3)] No final action may be taken at a closed
 10 session; and

11 (d)[(4)] No matters may be discussed at a closed
 12 session other than those publicly announced prior to
 13 convening the closed session.

14 (2) Public agencies identified in paragraphs (a),
 15 (c), (d), (f) but only so far as (f) relates to students,
 16 (g), (h), (i), (j), (k), and (l) of subsection (1) of
 17 Section 3 of this Act shall be excluded from the
 18 requirements of subsection (1) of this section.

19 Section 5. KRS 61.820 is amended to read as follows:

20 All meetings of all public agencies of this state,
 21 and any committees or subcommittees thereof, shall be held
 22 at specified times and places which are convenient to the
 23 public, and all public agencies shall provide for a
 24 schedule of regular meetings by ordinance, resolution, by
 25 laws or by whatever other means may be required for the
 26 conduct of business of that public agency. [/ and] The

1 [~~said~~] schedule of regular meetings shall be made
2 available to the public.

3 SECTION 6. A NEW SECTION OF KRS CHAPTER 61.805 TO
4 61.850 IS CREATED TO READ AS FOLLOWS:

5 (1) Except as provided in subsection (5) of this
6 section, special meetings shall be held in accordance with
7 the provisions of subsections (2), (3), and (4) of this
8 section.

9 (2) The presiding officer or a majority of the
10 members of the public agency may call a special meeting.

11 (3) The public agency shall provide written notice
12 of the special meeting. The notice shall consist of the
13 date, time, and place of the special meeting and the
14 agenda. Discussions and action at the meeting shall be
15 limited to items listed on the agenda in the notice.

16 (4)(a) As soon as possible, written notice shall be
17 delivered personally or mailed to every member of the
18 public agency as well as each media organization which has
19 filed a written request, including a mailing address, to
20 receive notice of special meetings. The notice shall be
21 calculated so that it shall be received at least
22 twenty-four (24) hours before the special meeting. The
23 public agency may periodically, but no more often than
24 once in a calendar year, inform media organizations that
25 they will have to submit a new written request or no
26 longer receive written notice of special meetings until a

1 new written request is filed.

2 (b) As soon as possible, written notice shall also
3 be posted in a conspicuous place in the building where the
4 special meeting will take place and in one other
5 conspicuous place in the county where the meeting will
6 take place. The notice shall be calculated so that it
7 shall be posted at least twenty-four (24) hours before the
8 special meeting.

9 (5) In the case of an emergency which prevents
10 compliance with subsections (3) and (4) of this section,
11 this subsection shall govern a public agency's conduct of
12 a special meeting. The special meeting shall be called
13 pursuant to subsection (2) of this section. The public
14 agency shall make a reasonable effort, under emergency
15 circumstances, to notify the members of the agency, media
16 organizations which have filed a written request pursuant
17 to subsection (4)(a) of this section, and the public of
18 the emergency meeting. At the beginning of the emergency
19 meeting, the person chairing the meeting shall briefly
20 describe for the record the emergency circumstances
21 preventing compliance with subsections (3) and (4) of this
22 section. These comments shall appear in the minutes.
23 Discussions and action at the emergency meeting shall be
24 limited to the emergency for which the meeting is called.

25 SECTION 7. A NEW SECTION OF KRS 61.805 TO 61.850 IS
26 CREATED TO READ AS FOLLOWS:

1 (1) If a person enforces KRS 61.805 to 61.850
2 pursuant to this section, he shall begin enforcement under
3 this subsection before proceeding to enforcement under
4 subsection (2) of this section. The person shall submit a
5 written complaint to the presiding officer of the public
6 agency suspected of the violation of KRS 61.805 to 61.850.
7 The complaint shall state the circumstances which
8 constitute an alleged violation of KRS 61.805 to 61.850
9 and shall state what the public agency should do to remedy
10 the alleged violation. The public agency shall determine
11 within three (3) days, excepting Saturdays, Sundays, and
12 legal holidays, after the receipt of the complaint whether
13 to remedy the alleged violation pursuant to the complaint
14 and shall notify in writing the person making the
15 complaint, within the three (3) day period, of its
16 decision. If the public agency makes efforts to remedy the
17 alleged violation pursuant to the complaint, efforts to
18 remedy the alleged violation shall not be admissible as
19 evidence of wrongdoing in an administrative or judicial
20 proceeding. An agency's response denying, in whole or in
21 part, the complaint's requirements for remedying the
22 alleged violation shall include a statement of the
23 specific statute or statutes supporting the public
24 agency's denial and a brief explanation of how the statute
25 or statutes apply. The response shall be issued by the
26 presiding officer, or under his authority, and shall

1 constitute final agency action.

2 (2) If a complaining party wishes the Attorney
3 General to review a public agency's denial, the
4 complaining party shall forward to the Attorney General a
5 copy of the written request and a copy of the written
6 denial. If the public agency refuses to provide a written
7 denial, a complaining party shall provide a copy of the
8 written request. The Attorney General shall review the
9 request and denial and issue within ten (10) days,
10 excepting Saturdays, Sundays, and legal holidays, a
11 written decision which states whether the agency violated
12 the provisions of KRS 61.805 to 61.850. In arriving at the
13 decision, the Attorney General may request additional
14 documentation from the agency and the burden of proof in
15 sustaining the action complained of shall rest with the
16 agency. On the day that the Attorney General renders his
17 decision, he shall mail a copy to the agency and a copy to
18 the person who filed the complaint.

19 (3) (a) If a public agency agrees to remedy an
20 alleged violation pursuant to subsection (1) of this
21 section, and the person who submitted the written
22 complaint pursuant to subsection (1) of this section
23 believes that the agency's efforts in this regard are
24 inadequate, the person may complain to the Attorney
25 General.

26 (b) The person shall provide to the Attorney General:

- 1 1. The complaint submitted to the public agency;
- 2 2. The public agency's response; and
- 3 3. A written statement of how the public agency has
4 failed to remedy the alleged violation.

5 (c) The adjudicatory process set forth in subsection
6 (2) of this section shall govern as if the public agency
7 had denied the original complaint.

8 (4) (a) A party shall have ten (10) days from the
9 day that the Attorney General renders his decision to
10 appeal the decision. An appeal within the ten (10) day
11 time limit shall be treated as if it were an action
12 brought under Section 8 of this Act.

13 (b) If an appeal is not filed within the ten (10)
14 day time limit, the Attorney General's decision shall have
15 the force and effect of law and shall be enforceable in
16 the Circuit Court of the county where the public agency
17 has its principal place of business or where the alleged
18 violation occurred.

19 (5) A public agency shall notify the Attorney
20 General of any actions filed against that agency in
21 Circuit Court regarding enforcement of KRS 61.805 to
22 61.850.

23 SECTION 8. A NEW SECTION OF KRS CHAPTER 61.805 to
24 61.850 IS CREATED TO READ AS FOLLOWS:

25 (1) The Circuit Court of the county where the public
26 agency has its principal place of business or where the

1 alleged violation occurred shall have jurisdiction to
2 enforce the provisions of KRS 61.805 to 61.850, as they
3 pertain to that public agency, by injunction or other
4 appropriate order on application of any person.

5 (2) In order for the Circuit Courts of this
6 Commonwealth to exercise their jurisdiction to enforce the
7 provisions of KRS 61.805 to 61.850, it shall not be
8 necessary for a complaining party to have complied with
9 any of the provisions of Section 7 of this Act.

10 (3) In any such action, the court shall determine
11 the matter de novo, and the burden of proof shall be on
12 the public agency to sustain its action.

13 (4) Except as otherwise provided by law or rule of
14 court, proceedings arising under this section take
15 precedence on the docket over all other causes and shall
16 be assigned for hearing and trial at the earliest
17 practicable date.

18 (5) Any rule, resolution, regulation, ordinance, or
19 other formal action of a public agency without substantial
20 compliance with the requirements of KRS 61.810, 61.815,
21 61.820, and Section 6 of this Act shall be voidable by a
22 court of competent jurisdiction.

23 (6) Any person who prevails against any agency in
24 any action in the courts regarding a violation of KRS
25 61.805 to 61.850 may be awarded costs, including
26 reasonable attorneys' fees, incurred in connection with

1 the legal action. In addition, it shall be within the
2 discretion of the court to award the person an amount not
3 to exceed one hundred dollars (\$100.00) for each instance
4 in which the court finds a violation. Attorneys' fees,
5 costs, and awards under this subsection shall be paid by
6 the agency responsible for the violation.

7 Section 9. The following KRS sections are repealed:

8 61.825 Requirements for holding special meetings.

9 61.830 Action voidable for noncompliance.

61.845 Enforcement.

**KENTUCKY
LEGISLATIVE RESEARCH COMMISSION**

1990 - 91 INTERIM

92 BR 360 - PREFILED

October 31, 1991

The following bill was prefiled for the Task Force on Open Meetings and Open Records: Representatives William Donnermeyer and Albert Jones.

AN ACT relating to open records of public agencies.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS
2 CREATED TO READ AS FOLLOWS:

3 The General Assembly finds and declares that the
4 basic policy of KRS 61.870 to 61.884 is that free and open
5 examination of public records is in the public interest
6 and the exceptions provided for by Section 5 of this Act
7 or otherwise provided by law shall be strictly construed,
8 even though such examination may cause inconvenience or
9 embarrassment to public officials or others.

10 Section 2. KRS 61.870 is amended to read as follows:

11 As used in KRS 61.872 to 61.884, unless the context
12 requires otherwise:

13 (1) "Public agency" means:

14 (a) Every state or local officer;

15 (b) Every state or local department, division,
16 bureau, board, commission, and authority;

17 (c) Every state or local legislative board,
18 commission, committee, and officer;

19 (d) Every county and city governing body, council,
20 school district board, and municipal corporation;

21 (e) Every state or local court or judicial agency;

1 (f) Every entity created by state or local statute,
 2 executive order, ordinance, resolution, or other
 3 legislative act:

4 (g) Any body created by state or local authority in
 5 any branch of government:

6 (h) That part of an entity funded by state or local
 7 authority to carry out a governmental function:

8 (i) Any entity where the majority of its governing
 9 body is appointed by a public agency as defined in
 10 paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j) or
 11 (k) of this subsection; by a member or employee of such a
 12 public agency; or by any combination thereof.

13 (j) Any board, commission, committee, subcommittee,
 14 ad hoc committee, advisory committee, council, or agency
 15 established or created by a public agency as defined in
 16 paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or
 17 (k) of this subsection; and

18 (k) Any interagency body of two (2) or more public
 19 agencies where each public agency is defined in paragraph
 20 (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of
 21 this subsection [every state or local officer, state
 22 department, division, bureau, board, commission and
 23 authority, every legislative board, commission, committee
 24 and officer, every county and city governing body,
 25 council, school district board, special district board,
 26 municipal corporation, court or judicial agency, and any

1 board/ department/ commission/ committee/ subcommittee/
 2 ad hoc committee/ council of agency thereof/ and any other
 3 body which is created by state or local authority in any
 4 branch of government of which derives at least twenty-five
 5 percent (25%) of its funds from state or local authority];

6 (2) "Public record" means all books, papers, maps,
 7 photographs, cards, tapes, discs, diskettes, recordings or
 8 other documentary materials regardless of physical form or
 9 characteristics, which are prepared, owned, used, in the
 10 possession of or retained by a public agency. "Public
 11 record" shall not include any records owned or maintained
 12 by or for an entity referred to in subsection (1)(h) of
 13 this section [a private person or corporation] that are
 14 not related to the governmental function [functions/
 15 activities/ programs of operations] funded by state or
 16 local authority;

17 (3) "Official custodian" means the chief
 18 administrative officer or any other officer or employee of
 19 a public agency who is responsible for the maintenance,
 20 care and keeping of public records, regardless of whether
 21 such records are in his actual personal custody and
 22 control; and

23 (4) "Custodian" means the official custodian or any
 24 authorized person having personal custody and control of
 25 public records.

26 Section 3. KRS 61.872 is amended to read as follows:

1 (1) All public records shall be open for inspection
2 by any person, except as otherwise provided by KRS 61.870
3 to 61.884, and suitable facilities shall be made available
4 by each public agency for the exercise of this right. No
5 person shall remove original copies of public records from
6 the offices of any public agency without the written
7 permission of the official custodian of the record.

8 (2) Any person shall have the right to inspect
9 public records [~~during the regular office hours of the~~
10 ~~public agency~~]. The official custodian may require
11 written application describing the records to be
12 inspected. The application shall be hand delivered,
13 mailed, or sent via facsimile to the public agency.

14 (3) A person may inspect the public records:

15 (a) During the regular office hours of the public
16 agency; or

17 (b) By receiving copies of the public records from
18 the public agency through the mail. The public agency
19 shall mail copies of the public records to the person
20 after he precisely describes the public records which are
21 readily available within the public agency.

22 (4) If the person to whom the application is
23 directed does not have custody or control of the public
24 record requested, such person shall so notify the
25 applicant and shall furnish the name and location of the
26 custodian of the public record, if such facts are known to

1 him.

2 (5)[(4)] If the public record is in active use, in
3 storage or not otherwise available, the official custodian
4 shall immediately so notify the applicant and shall
5 designate a place, time and date, for inspection of the
6 public records, not to exceed three (3) days from receipt
7 of the application, unless a detailed explanation of the
8 cause is given for further delay and the place, time and
9 earliest date on which the public record will be available
10 for inspection.

11 (6)(5) If the application places an unreasonable
12 burden in producing voluminous public records or if the
13 custodian has reason to believe that repeated requests are
14 intended to disrupt other essential functions of the
15 public agency, the official custodian may refuse to permit
16 inspection of the public records or mail copies thereof.
17 However, refusal under this section shall [~~must~~] be
18 sustained by clear and convincing evidence.

19 Section 4. KRS 61.874 is amended to read as follows:

20 (1) Upon inspection, the applicant shall have the
21 right to make abstracts of the public records and
22 memoranda thereof, and to obtain copies of all written
23 public records. When copies are requested, the custodian
24 may require a written request and advance payment of the
25 prescribed fee, including postage where appropriate. If
26 the applicant desires copies of public records other than

1 written records, the custodian of the [such] records
 2 shall permit the applicant to duplicate the [such]
 3 records; [] however, the custodian may ensure that such
 4 duplication will not damage or alter the records.

5 (2) The public agency may prescribe a reasonable fee
 6 for making copies of public records which shall not exceed
 7 the actual cost [~~thereof~~] not including the cost of
 8 staff required.

9 Section 5. KRS 61.878 is amended to read as follows:

10 (1) The following public records are excluded from
 11 the application of KRS 61.870 to 61.884 and shall be
 12 subject to inspection only upon order of a court of
 13 competent jurisdiction:

14 (a) Public records containing information of a
 15 personal nature where the public disclosure thereof would
 16 constitute a clearly unwarranted invasion of personal
 17 privacy;

18 (b) Records confidentially disclosed to an agency
 19 and compiled and maintained for scientific research [] in
 20 conjunction with an application for a loan, the regulation
 21 of commercial enterprise, including mineral exploration
 22 records, unpatented, secret commercially valuable plans,
 23 appliances, formulae, or processes, which are used for the
 24 making, preparing, compounding, treating, or processing of
 25 articles or materials which are trade commodities obtained
 26 from a person and which are generally recognized as

1 confidential, or for the grant or review of a license to
 2 do business and if openly disclosed would permit an unfair
 3 advantage to competitors of the subject enterprise]. This
 4 exemption shall not, however, apply to records the
 5 disclosure or publication of which is directed by another
 6 statute;

7 (c) 1. Records confidentially disclosed to an
 8 agency, generally recognized as confidential, which if
 9 openly disclosed would permit an unfair commercial
 10 advantage to competitors of the entity that disclosed the
 11 records, and which are compiled and maintained:

12 a. In conjunction with an application for a loan:

13 b. In conjunction with the regulation of commercial
 14 enterprise, including mineral exploration records,
 15 unpatented, secret commercially valuable plans,
 16 appliances, formulae, or processes, which are used for the
 17 making, preparing, compounding, treating, or processing of
 18 articles or materials which are trade commodities obtained
 19 from a person; or

20 c. For the grant or review of a license to do
 21 business.

22 2. The exemptions provided for in subparagraph 1. of
 23 this paragraph shall not apply to records the disclosure
 24 or publication of which is directed by another statute;

25 (d) Public records pertaining to a prospective
 26 location of a business or industry where no previous

1 public disclosure has been made of the business' or
2 industry's interest in locating in, relocating within or
3 expanding within the Commonwealth. [~~Provided/ however/
4 that~~] This exemption shall not include those records
5 pertaining to application to agencies for permits or
6 licenses necessary to do business or to expand business
7 operations within the state, except as provided in
8 paragraph (c)~~[(b)]~~ of this subsection;

9 (e)~~[(d)]~~ The contents of real estate appraisals,
10 engineering or feasibility estimates and evaluations made
11 by or for a public agency relative to acquisition of
12 property, until such time as all of the property has been
13 acquired, ~~[[provided/ however/]]~~ The law of eminent
14 domain shall not be affected by this provision;

15 (f)~~[(e)]~~ Test questions, scoring keys and other
16 examination data used to administer a licensing
17 examination, examination for employment or academic
18 examination before the exam is given or if it is to be
19 given again;

20 (g)~~[(f)]~~ Records of law enforcement agencies or
21 agencies involved in administrative adjudication that were
22 compiled in the process of detecting and investigating
23 statutory or regulatory violations if the disclosure of
24 the information would harm the agency by revealing the
25 identity of informants not otherwise known or by premature
26 release of information to be used in a prospective law

1 enforcement action or administrative adjudication. Unless
2 exempted by other provisions of KRS 61.870 to 61.884,
3 public records exempted under this provision shall be open
4 after enforcement action is completed or a decision is
5 made to take no action. [~~Provided, however that~~] The
6 exemptions provided by this subsection shall not be used
7 by the custodian of the records to delay or impede the
8 exercise of rights granted by KRS 61.870 to 61.884;

9 (h)~~((g))~~ Preliminary drafts, notes, correspondence
10 with private individuals, other than correspondence which
11 is intended to give notice of final action of a public
12 agency;

13 (i)~~((h))~~ Preliminary recommendations, and
14 preliminary memoranda in which opinions are expressed or
15 policies formulated or recommended;

16 (j)~~((i))~~ All public records or information the
17 disclosure of which is prohibited by federal law or
18 regulation; and

19 (k)~~((j))~~ Public records or information the
20 disclosure of which is prohibited or restricted or
21 otherwise made confidential by enactment of the General
22 Assembly.

23 (2) No exemption in this section shall be construed
24 to prohibit disclosure of statistical information not
25 descriptive of any readily identifiable person.

26 (3) No exemption in this section shall be construed

1 to deny, abridge or impede the right of a public agency
2 [state] employee, including university employees, an
3 applicant for employment, or an eligible on a register to
4 inspect and to copy any record including preliminary and
5 other supporting documentation that relates to him. The
6 [such] records shall include, but not be limited to,
7 work plans, job performance, demotions, evaluations,
8 promotions, compensation, classification, reallocation,
9 transfers, layoffs, disciplinary actions, examination
10 scores and preliminary and other supporting documentation.
11 A public agency [state] employee, including university
12 employees, applicant or eligible shall not have the right
13 to inspect or to copy any examination or any documents
14 relating to ongoing criminal or administrative
15 investigations by an agency.

16 (4) If any public record contains material which is
17 not excepted under this section, the public agency shall
18 separate the excepted and make the nonexcepted material
19 available for examination.

20 (5) The provisions of this section shall in no way
21 prohibit or limit the exchange of public records or the
22 sharing of information between public agencies when the
23 exchange is serving a legitimate governmental need or is
24 necessary in the performance of a legitimate government
25 function.

26 Section 6. KRS 61.880 is amended to read as follows:

1 (1) If a person enforces KRS 61.870 to 61.884
2 pursuant to this section, he shall begin enforcement under
3 this subsection before proceeding to enforcement under
4 subsection (2) of this section. Each public agency, upon
5 any request for records made under KRS 61.870 to 61.884,
6 shall determine within three (3) days, ~~[[~~excepting
7 Saturdays, Sundays, and legal holidays,~~]]~~ after the
8 receipt of any such request whether to comply with the
9 request and shall notify in writing the person making the
10 request, within the three (3) day period, of its decision.
11 An agency response denying, in whole or in part,
12 inspection of any record shall include a statement of the
13 specific exception authorizing the withholding of the
14 record and a brief explanation of how the exception
15 applies to the record withheld. The response shall be
16 issued by the official custodian or under his authority,
17 and it shall constitute final agency action.

18 (2) If a complaining party wishes the Attorney
19 General to review a public agency's denial of a request to
20 inspect a public record, the complaining party shall
21 forward to the Attorney General a copy of the written
22 request and a copy of the written response denying
23 inspection. If the public agency refuses to provide a
24 written response, a complaining party shall provide a copy
25 of the written request. [A copy of the written response
26 denying inspection of a public record shall be forwarded

1 immediately by the agency to the Attorney General of the
2 Commonwealth of Kentucky/ If requested by the person
3 seeking inspection/] The Attorney General shall review
4 the request and denial and issue within ten (10) days,
5 [(]excepting Saturdays, Sundays and legal holidays,[]]
6 a written decision [opinion to the agency concerned/]
7 stating whether the agency violated [acted consistent
8 with] provisions of KRS 61.870 to 61.884. On the day that
9 the Attorney General renders his decision, he shall mail a
10 copy to the agency and a copy [of the opinion shall also
11 be sent by the Attorney General] to the person who
12 requested the record in question. The burden of proof in
13 sustaining the action shall rest with the agency, and the
14 Attorney General may request additional documentation from
15 the agency for substantiation. The Attorney General may
16 also request a copy of the records involved but they shall
17 not be disclosed.

18 (3) Each agency shall notify the Attorney General of
19 any actions filed against that agency in Circuit Court
20 regarding the enforcement of KRS 61.870 to 61.884.

21 (4) In the event a person feels the intent of KRS
22 61.870 to 61.884 is being subverted by an agency short of
23 denial of inspection, including but not limited to the
24 imposition of excessive fees or the misdirection of the
25 applicant, the person may complain in writing to the
26 Attorney General, and the complaint shall be subject to

1 the same adjudicatory process as if the record had been
2 denied.

3 (5) (a) A party shall have ten (10) days from the
4 day that the Attorney General renders his decision to
5 appeal the decision. An appeal within the ten (10) day
6 time limit shall be treated as if it were an action
7 brought under Section 7 of this Act.

8 (b) If an appeal is not filed within the ten (10)
9 day time limit, the Attorney General's decision shall have
10 the force and effect of law and shall be enforceable in
11 the Circuit Court of the county where the public agency
12 has its principal place of business or the Circuit Court
13 of the county where the public record is maintained [If
14 the Attorney General upholds, in whole or in part, the
15 request for inspection, the public agency involved may
16 institute proceedings within thirty (30) days for
17 injunctive or declaratory relief in the Circuit Court of
18 the district where the public record is maintained. If the
19 Attorney General disallows the request or if the public
20 agency continues to withhold the record notwithstanding
21 the opinion of the Attorney General, the person seeking
22 disclosure may institute such proceedings].

23 Section 7. KRS 61.882 is amended to read as follows:

24 (1) The Circuit Court of the county where the public
25 agency has its principal place of business or the Circuit
26 Court of the county where the public record is maintained

1 [The Circuit Courts of this state] shall have
2 jurisdiction to enforce the provisions [purposes] of KRS
3 61.870 to 61.884, by injunction or other appropriate order
4 on application of any person [citizen of this state].

5 (2) In order for the Circuit Courts of this state to
6 exercise their jurisdiction to enforce the provisions
7 [purposes] of KRS 61.870 to 61.884, it shall not be
8 necessary for a complaining party to have complied with
9 any of the provisions of Section 6 of this Act [to have
10 forwarded any request for the documents to the Attorney
11 General pursuant to KRS 61/880/ or for the Attorney
12 General to have acted in any manner upon a request for his
13 opinion].

14 (3) In any such action, the court shall determine
15 the matter de novo and the burden of proof shall be on the
16 public agency to sustain its action. The court on its own
17 motion, or on motion of either of the parties, may view
18 the records in controversy in camera before reaching a
19 decision. Any noncompliance with the order of the court
20 may be punished as contempt of court.

21 (4) [Courts shall take into consideration the basic
22 policy of KRS 61/870 to 61/884 that free and open
23 examination of public records is in the public interest
24 and the exceptions provided for by KRS 61/870 to 61/884 or
25 otherwise provided for by law shall be strictly construed/
26 even though such examination may cause inconvenience of

1 embarrassment to public officials or others.]) Except as
 2 otherwise provided by law or rule of court, proceedings
 3 arising under this section take precedence [precedent]
 4 on the docket over all other causes and shall be assigned
 5 for hearing and trial at the earliest practicable date.

6 (5) Any person who prevails against any [an]
 7 agency in any action in the courts regarding a violation
 8 of KRS 61.870 to 61.884 [seeking the right to inspect and
 9 copy any public record] may[; upon a finding that the
 10 records were wilfully withheld in violation of KRS 61/870
 11 to 61/884/] be awarded [all] costs, including
 12 reasonable attorney's [attorney] fees, incurred in
 13 connection with the [such] legal action. [If such
 14 person prevails in part, the court may in its discretion
 15 award him costs of an appropriate portion thereof.] In
 16 addition, it shall be within the discretion of the court
 17 to award the [such] person an amount not to exceed
 18 twenty-five dollars (\$25) for each day that he was denied
 19 the right to inspect or copy said public record.
 20 Attorney's fees, [The] costs, and awards under this
 21 subsection [or award] shall be paid by the [such person
 22 or] agency that [as] the court determines [shall
 23 determine] is responsible for the violation.

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