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**Testimony in Support of Senate Bill 213
Clarifying the Attorney General's Legal Representation Duties
related to the Kansas Open Meetings and Records Acts.**

**Presented to the Senate Committee on the Judiciary
By Kansas Attorney General Derek Schmidt**

March 19, 2019

Chairman Wilborn and Members of the Committee:

Thank you for the opportunity to provide this testimony in support of Senate Bill 213. This bill was introduced at my request by the Senate Committee on Federal and State Affairs.

In 2015, the Legislature passed House Bill 2256, which was the result of efforts by my office and others who have an interest in government transparency to provide more resources for the enforcement of the Kansas Open Meetings Act and Kansas Open Records Act. It also gave more “teeth” to the enforcement options available to the attorney general’s office. Prior to enactment of that law, the attorney general’s office had only two options when it came to enforcing KOMA or KORA – we could send a strongly worded letter encouraging voluntary compliance, or we could go to the District Court and file a lawsuit. The new law created a series of new, graduated enforcement options, including administrative findings and judicially enforceable consent agreements.

Since the passage of that bill in 2015, the volume of complaints to our office regarding KOMA and KORA violations has grown. In the course of this new enforcement regime we have found that these enforcement duties on occasion come into conflict with our duties under the Kansas Tort Claims Act to provide legal defense for those state agencies or employees who are accused of a KOMA or KORA violation.

This conflict means that in many such cases, our office is required to hire private, outside counsel for those state entities or employees, racking up thousands of dollars in legal bills for the State, when at the same time the maximum monetary penalty for violating KOMA or KORA is \$500. We think this makes little sense.

In most of these cases, we believe that if an individual or agency needs legal representation in a KOMA or KORA lawsuit, the staff attorneys who work for those agencies would be more than capable of handling the defense of that lawsuit at no added expense to Kansas taxpayers. In the

rare circumstance where this may not be the case, the attorney general would still have discretion to provide representation in cases where it may be warranted, but this bill would put that decision within the attorney general's discretion.

In short, this bill would allow our office to focus on the enforcement responsibilities for KOMA and KORA, and place the responsibility for defending actions that may be in violation of those Acts back on counsel for the agency involved.

Thank you for your attention to this matter.

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