

Kautsch Law, L.L.C.

*Maxwell E. Kautsch, Attorney at Law
810 Pennsylvania Street, Suite 207
Lawrence, KS 66044
(785) 840-0077/FAX (785) 842-3039
maxk@kautschlaw.com
kautschlaw.com*

Feb. 2, 2017

To: Sen. Jacob LaTurner, chairman of the Senate Committee on Federal and State Affairs, and the members of the committee

From: Maxwell Kautsch, legal hotline attorney for the Kansas Press Association, the Kansas Association of Broadcasters, and the Kansas Sunshine Coalition for Open Government

RE: Testimony in support of KORA cost containment, SB 86

Chairman LaTurner and members of the committee:

I have read SB 86 and hereby respectfully offer my analysis of the bill as a proponent in the hope that it might be helpful to the committee.

The bill proposed by the Committee would correct a serious flaw in the Kansas Open Records Act (KORA) by reasonably limiting the costs public agencies are allowed to charge requestors.

KORA currently allows government agencies to charge a fee that “shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available.” K.S.A. 45-219(c)(1). While that provision sounds reasonable on its face, over the years, agencies have tended to take the position that their costs for staff time are increasing and so they charge ever higher fees to records requesters. The agencies can continue raising fees, because KORA does not define “cost of staff time” in a limiting way.

A high-profile example of the high cost of obtaining records was when the University of Kansas billed the requestor over \$1,800.00 in 2014 to respond to a particularly voluminous request. According to the *Lawrence Journal-World*, “KU’s itemized calculation of the cost of getting the records includes \$1,430 for 22 hours of manager time to retrieve and review at \$65 per hour; \$264 for 8 hours of staff time to retrieve, assemble for production; \$100 for two hours of specialized computer retrieval at \$50 per hour; and \$1.50 for the digital transmission or mailing fee. The total estimate is \$1,795.50.”

Although KU complied with KORA by charging only for its actual costs, the total fees illustrate that the costs of producing records can be so high as to discourage or even prevent

access to records.

SB 86 proposes a necessary revision to KORA that would reduce the likelihood that Kansans would face an unreasonably large fee to obtain the records they request. It would require that “Staff time would be charged at the lowest hourly rate of the person who is qualified to provide the public record.” Agencies thus would be allowed to charge for “staff time,” but at a level more likely to be affordable to citizens who want to learn how their government works.

Although public records laws in some states, such as Oklahoma and Missouri, go further than SB 86 would in giving relief from excessive fees, the bill represents a dramatic improvement on existing law.

I thank the Committee for this opportunity to support this bill.