

SESSION OF 2022

SUPPLEMENTAL NOTE ON SENATE BILL NO. 386

As Amended by Senate Committee on
Transparency and Ethics

Brief*

SB 386, as amended, would amend Kansas Open Records Act (KORA) provisions regarding public agency charges for copying and staff time for providing requested records.

The bill would specify that a public agency may require a written request and advance payment for staff time required to provide access to or furnish copies of public records.

The bill would add public records maintained on computer facilities to the types of copies a public agency is required to provide. The bill would add a copy of a record must be provided if the public agency has the means to make copies.

The bill would specify a public agency would not be required to provide copies of items that were not disclosed at a public meeting and are subject to a KORA exception from disclosure.

The bill would specify fees for copies of records would be those for copying, rather than for furnishing copies, and would prohibit fees from being charged for copies of blank forms or of pages with all information redacted.

The bill would add provisions regarding fees for staff time to provide access to or furnish copies of public records. The bill would require public agencies to use in good faith the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

lowest-cost category of staff reasonably necessary to provide access to records or to furnish copies.

The bill would authorize the custodian of the records to exercise discretion to waive or reduce any fee for providing copies or for staff time.

Background

The bill was introduced by the Senate Committee on Ways and Means at the request of Senator McGinn.

Senate Committee on Transparency and Ethics

In the Senate Committee hearing on February 14, 2022, **proponent** testimony was provided by representatives of the Kansas Appleseed Center for Law and Justice, Kansas Press Association, and KSNW-TV, Wichita. Proponents stated that, without guidelines for what can be charged, some public agencies have charged excessive fees, and limiting fees would allow greater access to public documents. Written-only proponent testimony was provided by two private citizens and representatives of the Kansas Association of Broadcasters, Kansas Policy Institute, and SpotCrime. Proponents suggested several amendments.

Opponent testimony was provided by representatives of the City of Overland Park and the League of Kansas Municipalities. They stated portions of the bill as introduced would limit the ability of a public agency to recover costs incurred to respond to open records requests. They also suggested amendments.

Neutral testimony was provided representatives of the Kansas Association of Counties and the Office of the Secretary of State. They also suggested amendments.

The Senate Committee amended the bill to specify an agency would not be required to provide copies of items that are not disclosed at a public meeting and are subject to an exception from disclosure under KORA, to state fees for copying would not be charged for copies of blank forms or of pages with all information redacted, to require a public agency to base the cost for staff time on the lowest category of staff reasonably necessary to provide access to or furnish the copies, and to remove certain requirements related to the discretion of the custodian to waive or reduce fees for copies or staff time.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration states enactment of the bill could have a fiscal effect on Judicial Branch revenues because, as introduced, the bill would have restricted the rate charged to the lowest hourly rate of employee qualified to provide the requested records; however, the fiscal effect cannot be estimated until the Judicial Branch has an opportunity to operate under the bill's provisions.

The Office of the Attorney General estimates additional State General Fund expenditures of \$131,584 in FY 2023, including \$114,180 for salaries and wages and \$17,404 for other operating expenditures, and 1.5 full-time equivalent positions if the bill is enacted. The fiscal note states the Office of the Attorney General estimates an increase in the number of record requests if charges for searching for records were prohibited. [*Note:* The bill as amended would not prohibit charges for staff time to search for requested records.]

The fiscal note provides these additional responses from agencies:

- The Kansas Department of Transportation stated the only change for the agency would be in fees

charged if those fees are no longer based on the salary of whoever completed the request.

- The Kansas Department of Revenue indicated it cannot estimate a fiscal effect from enactment of the bill.
- The Kansas Department of Health and Environment, the Department of Administration, and the Department for Children and Families state enactment of the bill would not have a fiscal effect on the operations of those agencies.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Also according to the fiscal note, the League of Kansas Municipalities and the Kansas Association of Counties state enactment of the bill could have a fiscal effect on local governments, but a fiscal effect cannot be estimated.

Kansas Open Records Act; fees; public records