



Testimony to the House Federal and State Affairs Committee  
on SB 86

April 6, 2017

Mr. Chairman and Members of the Committee:

KAC supports open government and we encourage and educate our counties to follow Kansas laws pertaining to open meetings and open records. We have had mixed views on SB 86 and appeared as an opponent on the Senate side and then agreed to be recorded as a neutral.

**Amendments to KOMA - Requirement for Minutes**

KAC is not opposed to the requirement that governing bodies take minutes, as required in new subsection (e) on page 16. When we teach parliamentary procedure to county commissioners we include discussion on taking minutes. The County Clerk is required to take minutes of the Board of County Commissioner meetings by statute already (KSA 19-305). We believe minutes are a valuable record for the public to determine what happened at a public meeting.

We would point out to the committee that SB 86 requires *any body* that falls under KOMA to take minutes, including the really small governmental units, like watershed districts, drainage districts, townships, etc. We question whether these small entities will learn of the new law and whether prosecutors will bother prosecuting them for violations. If they are ignorant of the new law and there is no enforcement, then there is little point to the law.

**Amendments to KORA – Fees for Service**

SB 86 requires a public agency that falls under KORA to provide copies for \$.25. While we think this fee is reasonable, we question whether a fee should ever be codified into law because an amendment to the law would be required to increase the fee to reflect actual costs. As currently written, KORA requires a fee that is the “actual costs of furnishing copies. . . .” (KSA 45-219). We believe the better language in law is the actual costs to produce the copy and not an arbitrary amount of \$.25. We also believe the person requesting the copies should pay for them and county citizens should not be expected to subsidize reduced-cost records.

If the state legislature decides to advance SB 86, we ask that the committee amend the various state statutes that call for much higher fees for state records. Vital statistic records are a good example of a common and frequent record request by the public (birth, marriage, death certificates), yet these records cost \$15 and SB 86 does nothing to reduce the cost of these records for the public. Copies from the Secretary of State’s Office are priced at \$1 per page. In

other words, if the legislature decides to lower the fees associated with county open records, we ask you apply the same standards to state records.

### **Senate Amendments**

After we testified on the bill, the Senate Federal and State Affairs Committee and the Senate Committee of the Whole both made amendments to the bill that have not had public discussion. The Senate Committee amended the bill to create two classes of record requestors; those from Kansas and those from outside of Kansas. Note that New Section 1(c) says that the \$.25 charge for copies does not apply to individuals other than Kansas citizens. Section 3 of the bill now says public records are open to any citizen of the state and that record requests made by out-of-state residents must be made through a Kansas citizen, and the request must include the Kansan's name, address and signature to support the records request. Perhaps counties should appreciate this citizen/noncitizen distinction because it will reduce requests from out-of-state individuals and allows us to charge them whatever fee we wish, but county officials do not believe this is good policy for the state. It also creates a burden on small offices to vet each person who requests copies to determine whether the requestor lives in the state or across the state line.

The Senate Committee of the Whole made a floor amendment relating to criminal investigation records, which concerns our sheriffs and county attorneys. We will defer to law enforcement and prosecutors to explain their concerns on those amendments, but we stand in agreement with them that the floor amendment raises valid concerns.

### **Conclusion**

We believe the real problem besmirching open government is lack of enforcement, which ultimately comes from lack of funding. We believe recent legislation that gives prosecutors and the Attorney General more authority in open government cases will help ensure reasonable costs. The current KORA requirement for copies is a fee that reflects "actual costs of furnishing copies" with the presumption of \$.25 as a reasonable fee for a copy. The current law is fair and reasonable to both sides; it just needs enforcement.

We appreciate the concerns raised about open government. We want to do our part to ensure open government, but we do not agree with the methods given in SB 86.

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