



MEMORANDUM

Legislative Post Audit

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To: Senate Transparency and Ethics Committee
From: Justin Stowe, Legislative Post Auditor
Date: February 24, 2021
Subject: Testimony Supporting Substitute for House Bill 2049

I appreciate the opportunity to testify in support of Substitute for House Bill 2049.

This bill is identical to Senate Bill 17 after it was amended by this committee last week. It prohibits public agencies from charging our agency a fee for copies of or access to records being requested for an audit.

Background

The Kansas Open Records Act (K.S.A. 45-215) says information held or maintained by agencies is an open record. The statute also sets out the process for persons or entities outside the agency to access public data or get copies. The law allows agencies to charge for that data in some circumstances.

Legislative Post Audit staff evaluate government programs in other agencies under the authority of the Legislative Post Audit Act (K.S.A. 46-1101 et. seq.). The Post Audit Act gives us clear access to files, records, and documents of state and local governments when conducting an audit. This access includes confidential data and information that might not be subject to disclosure under an open records act request.

Occasionally, agencies question whether they can charge Legislative Post Audit for records requested during an audit under the Open Records Act (KORA).

Bill provisions

Substitute for House Bill 2049 prohibit agencies from charging LPA for records requested as part of an audit. It adds the following provision to the Legislative Post Audit Act (K.S.A. 46-1114):

(e) Notwithstanding any other provision of law, no public agency that is the subject of an audit pursuant to this section or any other law shall charge a fee for copies of or access to the records described in subsection (b).

This bill helps ensure state law aligns with our current agency policy of not paying agencies for records related to audits.

- We are not members of the press or the public. We are a statutorily created legislative oversight agency charged with evaluating state and local government at the direction of the bi-partisan legislative committee.

- Consequently, (like 19 other state audit offices we contacted) we don't pay for agency records or the staff time required to prepare them for the purpose of an audit as a matter of policy.

This bill would help resolve some confusion between us and audited agencies and would help ensure an audit isn't blocked in the future.

- Sub HB 2049 would save us and the audited agencies time by making it clear that we don't pay for access to audit records. This bill makes it clear that unlike records requested under KORA (which are sometimes subject to fees), public agencies cannot charge us for records requested under the Post Audit Act.
- Sub HB 2049 only applies to record requests made for the purpose of an audit. If we requested records for any other reason, we would pay any relevant fees specified in the Kansas Open Records Act like any other state agency.
- Sub HB 2049 helps ensure that fees can't be used to block our statutory access to agency records during an audit. Our agency doesn't set aside funds to pay agencies for data (for the reasons discussed above). This bill helps ensure fees can't be used as a means of stopping an audit from moving forward.