

SB 386 Proponent Testimony – written only
Sales Tax on Utilities
Senate Committee on Transparency and Ethics
Dave Trabert – CEO
February 14, 2022



Madam Chair and Members of the Committee,

We appreciate this opportunity to provide testimony in support of SB 386, which places more reasonable parameters on fees that can be charged to obtain public records.

Citizens' ability to access public records is becoming increasingly difficult, and cost is often the greatest barrier. Kansas Policy Institute has had a lot of good experiences working with some cities, counties, and school districts, but others are making efforts to discourage requests under the Kansas Open Records Act.

One provision of SB 386 prohibits charges for determining whether requested documents exist. In one such example, a university asked us to pay \$9,600 in advance to determine whether they had any employment contracts.

It is fairly common to be charged far more than is allowed in statute. Using a high-paid employee to conduct simple searches that could be done by a lower paid employee is one such method. SB 386 would prohibit that practice.

There is one section of the bill that we believe that could have unintended consequences.

Section (c)(8) says "*The custodian may exercise discretion to waive or reduce any fee described in this section if the waiver or reduction of the fee would be in the public interest because disclosure of the requested records is: (A) Likely to contribute significantly to public understanding of the operations or activities of the government; and (B) not primarily in the commercial interest of the person requesting the records.*"

Our experience tells us that some local officials will use this as an excuse to not waive fees, claiming the law only allows them to waive fees in the specified circumstances. The law already allows fees to be waived, however.

We suggest the following:

Section (c)(8) says "*The custodian **shall** ~~may~~ exercise discretion to waive or reduce any fee described in this section, **especially** if the waiver or reduction of the fee would be in the public interest because disclosure of the requested records is: (A) Likely to contribute significantly to public understanding of the operations or activities of the government; and (B) not primarily in the commercial interest of the person requesting the records.*"

We encourage the Committee to recommend SB 386 for passage with our suggested amendment and we thank you for your consideration.