

To: Senate Transparency and Ethics Committee

From: Erik Sartorius, Executive Director

Date: February 14, 2022

RE: Opposition Testimony on SB 386

I want to thank Chairwoman Bowers and the members of the Committee for affording the League of Kansas Municipalities the opportunity to provide opposition testimony today on SB 386.

The League and our member cities support the transparencies guaranteed by the Open Records Act. We are also not opposed to the ideas presented by SB 386 to aid in the containment of costs for requested records. That said, there are some provisions in the bill that need to be modified or clarified to make the bill more tenable for public agencies in the state of Kansas.

Section (a)(3) will serve to expand the requirement to provide certain digital, audio, and visual records, making these records available not just when used in a public meeting, but also when the agency has a means to make copies. The League would request that this section be further clarified that the ability to make a copy would not automatically make these records open. Public agencies should still be able to withhold these records if otherwise able to do so under an exception created in the Open Records Act.

In section (c)(1), the League would request that the bill retain the current language of “furnishing copies.” By amending that section to say “copying” it is possible that costs otherwise included in the production of records, like time spent by an attorney redacting private information, would be excluded from the costs that a public agency is allowed to pass on to the requester.

It is the League’s position that sections (c)(6) and (c)(7) should also be clarified to make them clearer for public agencies seeking to abide by the Act. While we understand the desire to limit costs for staff time, the limits need to be workable. There are times when a person may be qualified to fill a record request, but they do not have access to those records as part of their day-to-day tasks with the public agency. It should be clear that the rate charged includes a caveat that the person actually has regular access to the record as a function of their position. Further,

pertaining to (7), it should be made clear that public agencies can charge for search time when the search is needed to fill the request. I believe the goal of this section is to ensure that charges are not made when the search does not yield the requested record. This is a goal that we support, but we believe the language can be better drafted.

We are grateful for the opportunity to testify and stand ready to work with the proponents to make this a better bill for all parties involved.