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Testimony in Support of the Underlying Provisions of Senate Bill 86

**Presented to the House Committee on Federal and State Affairs
By Assistant Attorney General Cheryl Whelan
Director, Open Government Training and Compliance**

April 6, 2017

Chairman Barker and Members of the Committee:

Thank you for the opportunity to provide this written testimony in support of Senate Bill 86. The attorney general supports the underlying bill and believes this will result in improvements to the Kansas open government laws. Its provisions will reaffirm that the purpose of Kansas open government laws is to benefit Kansans, which is constitutionally permissible. See *McBurney v. Young*, 133 S.Ct. 1709 (2013). We would offer the committee a few additional considerations as you deliberate on the bill. We would also note that the Senate Committee of the Whole inserted Senate Bill 200 into this bill. While our testimony today does not address those provisions of the bill, we would refer the committee to the testimony from the Kansas Bureau of Investigation for additional information on Senate Bill 200.

The Kansas Open Records Act (KORA), 45-215 et seq., states that any person may inspect public records unless otherwise provided. Among the changes in Senate Bill 86, K.S.A. 45-218(a) would be amended so that any "citizen of the state of Kansas" may inspect public records unless otherwise provided.

As the committee considers this bill, we recommend replacing the word "citizen" with the word "resident" so that any resident of the state of Kansas may inspect public records unless otherwise provided. The term "citizen" is not well defined by Kansas law. However, the term "resident" is the legal standard at the state level for many laws, and the term generally is understood as the act of establishing and maintaining a residence in the state of Kansas.

Regardless of whether the word "citizen" or "resident" is utilized, we recommend modifying other provisions of the KORA in order to conform to the proposed amendment of K.S.A. 45-218(a). The term "person" should be replaced with the term "citizen" or "resident" in K.S.A. 45-216, K.S.A. 45-218(b) and K.S.A. 2016 Supp. 45-219(a).

Additionally, we recommend amending K.S.A. 2016 Supp. 45-222(a) to allow any "requester," instead of any "person," to file an action to enforce the provisions of the KORA. The KORA uses the term "requester" to refer to an individual who has filed a KORA request. If a requester believes that a public agency has not complied with the KORA, it is that requester who should be able to file an enforcement action.

We have provided the Revisor's Office with these recommendations for clarifying amendments to prepare a balloon, should the committee choose to work the bill. Thank you for your consideration.