

SESSION OF 2013

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 80**

As Amended by House Committee on Judiciary

**Brief\***

SB 80, as amended, would make various amendments to the grand jury statutes. Specifically, the bill would:

- Allow the district attorney or county attorney in such attorney's county to petition the chief judge or designee to summon a grand jury to consider any alleged felony violation;
- Add a requirement that the district court, if it finds the petition is in proper form and orders a grand jury to be summoned, issue such order within 15 days after receipt of the petition;
- Clarify that grand jury members must be "qualified" in the same manner as petit jurors;
- Clarify that grand juries impaneled by petition of a county attorney, district attorney, or the Attorney General may not employ special counsel;
- Specify the following duties of the prosecuting attorney to grand juries impaneled by such attorney's petition:
  - Attend all sessions and inform the grand jury of all offenses liable to indictment and evidence to be presented;
  - Present and examine witnesses on all matters to be considered; and

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Provide members of the grand jury with advice related to all questions as to the proper discharge of their duties;
- Revise the provision governing what matters a grand jury member, attorney, interpreter, reporter, or typist may disclose, to require a court order and permit disclosure only of:
  - Witness testimony to a defendant to determine consistency, only upon a showing of good cause;
  - Evidentiary materials presented to one grand jury to a succeeding grand jury; and
  - Grand jury testimony by a defendant to the defendant, but only in the criminal action resulting from such testimony;
- Allow a grand jury impaneled by petition of a prosecuting attorney to serve for a period of six months, which could be extended before expiration for another period of up to six months, for good cause shown by the grand jury; and
- Allow the court to order the amendment of an indictment with regard to non-substantive matters that would not prejudice the defendant on the merits, and allow the court to grant the defendant a continuance to prepare a defense upon such amendment.

Additionally, the bill would amend provisions concerning grand juries summoned by petition, commonly referred to as citizens grand juries. The bill would require a petition to summon a grand jury to state the name, address, and phone number of the person filing the petition, the subject matter of the prospective grand jury, a reasonably specific identification of areas for inquiry, and sufficient general allegations to

warrant a finding that such inquiry may lead to information which, if true, would warrant a true bill of indictment.

After a prosecutor has conducted an examination of the prospective grand jurors, the bill would require the court to approve and submit to the clerk of the county a list of all remaining legally qualified grand jurors for a second drawing of grand juror names. Upon receipt of the list, the clerk would draw for a second time 15 names of persons to serve as grand jurors from that list. If the county has an alternate method for securing jury panels directly from the computer, the clerk would be required to use the computer to generate 15 names of persons to serve as grand jurors from that list.

After a citizens grand jury is summoned, but before it begins its deliberations, the bill would require the judge or judges of the district court of the county in which the petition is presented to provide instructions to the grand jury regarding its conduct and deliberations. The bill lists those instructions that would be required to be presented, but states the instructions given would not be limited to the instructions listed in the bill.

The bill also would require the person filing the petition to be the first witness called by the grand jury for the purpose of presenting evidence and testimony as to the subject matter and allegations of the petition. The bill would allow the grand jury to investigate any concerns associated with the petition and to select any special counsel or investigator employed by the grand jury by majority vote after hearing testimony from the person filing the petition. The bill also would allow any person to file with the prosecuting attorney or with the foreman of the grand jury a written request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. The written request would include a summary of that person's written testimony.

Upon a majority vote of the grand jury, the bill would allow the grand jury to seek the removal of the assigned judge pursuant to existing law that provides for removal if a

party or party's attorney believe the judge to whom an action is assigned cannot afford that person a fair trial in the action.

Finally, the bill would make a variety of non-substantive, technical changes to update and restructure the statutes.

## **Background**

The bill was introduced by the Senate Judiciary Committee at the request of Shawnee County District Attorney Chad Taylor. As introduced, the bill contained the bulleted provisions in the above brief and various non-substantive, technical changes.

In the Senate Committee, District Attorney Taylor testified in support of the bill. No opponent testimony was presented. The Senate Committee amended the bill to authorize the Attorney General to petition for an order summoning a grand jury.

In the House Judiciary Committee, District Attorney Taylor testified in support of the bill. A private citizen submitted written testimony supporting the bill. No other testimony was received. The House Committee amended the bill to remove the provision authorizing the Attorney General to petition for an order summoning a grand jury and to add the contents of HB 2182, regarding citizens grand juries.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, indicates the bill could increase the time required of district courts for the summoning of grand juries and amending of indictments. However, the Office of Judicial Administration cannot provide a precise estimate of the fiscal effect. Local governments could see an increase in fees and mileage paid to grand jurors, if additional juries are impaneled. Any fiscal effect associated with the bill is not reflected in *The FY 2014 Governor's Budget Report*.

### ***Background of HB 2182***

In the House Judiciary Committee, Kansas Secretary of State Kris Kobach, representatives of the American Family Association and Kansans for Life, and private citizens appeared in support of HB 2182. The Kansas County and District Attorneys Association offered written testimony opposing the bill.

The House Committee amended the bill to require a judge provide instructions to the grand jury regarding its conduct and deliberations, revise provisions allowing a person to request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury, and replace language in the bill with a reference to an existing statute with substantially the same language.

After the House Committee took action on the bill, the bill was withdrawn from the calendar, referred to the House Committee on Appropriations, and rereferred to the House Committee on Judiciary, where the Committee further amended the bill. The Judiciary Committee added language requiring the petition to summon a grand jury to include the name, address, and phone number of the person filing the petition.

The fiscal note prepared by the Division of the Budget for HB 2182, as introduced, indicates passage could increase the amount of time spent by district courts and could increase costs for the judicial branch, but the precise impact cannot be determined.