

February 17, 2015

The Honorable Jeff King, Chairperson
Senate Committee on Judiciary
Statehouse, Room 341-E
Topeka, Kansas 66612

Dear Senator King:

SUBJECT: Fiscal Note for SB 206 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 206 is respectfully submitted to your committee.

SB 206 would establish a framework for graduated sanctions to permit the Attorney General to resolve Kansas Open Records Act (KORA) and the Kansas Open Meetings Act (KOMA) violations without the need for litigation by entering into a consent order or by issuing a finding of violation. After a reasonable opportunity for the public agency to cure the violation, the bill would provide an enforcement mechanism in the event that the public agency does not comply with the consent order or the finding of violation.

The bill would also allow the Attorney General or a county or district attorney to resolve a KORA or KOMA matter by accepting a consent judgment that is approved by the district court. Any breach of an approved consent judgment would be treated as a violation of a court order. A consent judgment could not include an award of reasonable expenses, investigation costs or attorney fees.

The bill would create the Attorney General's Open Government Fund. All civil penalties, expenses, costs and attorney fees awarded in an action brought by the Attorney General pursuant to KORA, KOMA or pursuant to a consent order or finding of violations would be credited to this fund.

SB 206 would require the Attorney General, subject to the availability of appropriations, to provide and coordinate training throughout the state to promote knowledge of, and compliance with KORA and KOMA. The Attorney General could establish computerized training and approve training programs to satisfy training requirements imposed by the district court or any other order.

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SB 206 would clarify that the district court could issue a declaratory judgment and would require a defendant to complete training approved by the Attorney General regarding KOMA or KORA requirements. The bill would also clarify that the burden of proof would be on the public agency to sustain its action. District courts would be permitted to award the Attorney General or a county or district attorney reasonable expenses, investigation costs and attorney fees, and would be required to award them if the court determines the violation was not in good faith and without a reasonable basis in fact or law.

The bill would also clarify the investigatory powers for the Attorney General and county or district attorneys pursuant to KOMA and KORA. An enforcement mechanism would be provided for non-compliance with a request for information, records or other materials, or failure to respond to interrogatories or obey a subpoena.

The Attorney General's Office states that it would be able to administer the provisions of SB 206 using existing resources and revenues generated by the bill. The expected revenues to the Open Government Fund would come from civil penalties, expenses, costs and attorneys' fees awarded to the Attorney General in enforcement actions. The revenues to this fund are expected to be small and would be used to offset expenses associated with enforcement of KOMA and KORA, including investigations and training. The precise costs and revenues are difficult to estimate because the number of open record violations that would occur under the provisions of the bill is unknown. Any fiscal effect associated with SB 206 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,
Director of the Budget

cc: Willie Prescott, Attorney General's Office