

SESSION OF 2015

SUPPLEMENTAL NOTE ON SENATE BILL NO. 197

As Amended by Senate Committee of the Whole

Brief*

SB 197, as amended, would amend and create law related to the roster of Kansas attorneys, the selection of the chairperson and lawyer members of the Supreme Court Nominating Commission, selection of lawyer members of judicial district nominating commissions, and the applicability of the Kansas Open Meetings Act (KOMA) and Kansas Open Records Act (KORA), as follows.

The bill would require applicants for admission to practice law to provide the following information required of persons applying to register to vote: name, place of residence, date of birth, sex, and the last four digits of the person's social security number or the person's full driver's license or nondriver's license identification card number. A pending applicant would be required to notify the Clerk of the Supreme Court (Clerk) in writing of any change in name or address within ten days of such change. Any person whose application is pending as of the effective date of the bill would be required to provide the correct information required above to the Clerk within 60 days of the effective date of the bill. The Clerk would be required to send notice to all pending applicants of this requirement within 30 days of the effective date of the bill.

The bill would enact new law requiring the Clerk to maintain a roster of attorneys licensed to practice law in Kansas, including the information required above and the congressional and judicial districts of residence for each person. Any Kansas licensed attorney would be required to

*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>

notify the Clerk of any change in name or residential address within ten days of such change. Any Kansas licensed attorney whose information as required above is not correct on the roster as of the effective date of the bill would be required to provide the correct information within 60 days of the effective date of the bill. The Clerk would be required to send notice to all Kansas licensed attorneys of this requirement within 30 days of the effective date of the bill.

To be eligible to make nominations or receive and cast ballots for the chairperson or members of the Supreme Court Nominating Commission, attorneys would be required to be licensed and residing in Kansas (and, for Commission members, the appropriate congressional district) on or before the February 15 prior to the selection of such positions. The same requirement would apply with regard to elections of lawyer members of district judicial nominating commissions, except the relevant date would be November 15.

On or before the February 20 preceding the selection of the chairperson or members of the Supreme Court Nominating Commission, the Clerk would be required to transmit a certified copy of the roster of Kansas licensed attorneys to the Secretary of State, containing the voter information set forth above for those residing in Kansas (or within the relevant congressional district for a member election) as of February 15, in a format prescribed by the Secretary of State, who would then append the unique voter identification number for each person listed on the roster having such a number.

The same procedure would be required on or before the November 20 preceding the election of a lawyer member of a district judicial nominating commission, with the same voter information required for each person residing within the judicial district as of November 15.

The names, residential addresses, dates of birth, unique voter identification numbers, and dates of licensure to practice law in Kansas of all persons on such certified rosters

would be disclosed upon proper request to the Clerk or to the Secretary of State pursuant to KORA.

The statute governing voting procedures to select members of the Supreme Court Nominating Commission would be amended to require the Clerk to use the certified roster of attorneys as provided to the Secretary of State. Provisions would be added requiring the Clerk to preserve qualification certificates for five years and then destroy the certificates. Within 14 days after a selection is certified, the Clerk would be required to create a list containing the position and year of the selection and the names and residential addresses of all persons who returned a ballot with a signed certificate. The Clerk would be required to transmit a certified copy of this list to the Secretary of State, in a format prescribed by the Secretary of State. The certificates would be subject to a KORA request made to the Clerk, and the lists would be subject to a KORA request made to the Clerk or the Secretary of State. These provisions would apply to all selections of a chairperson or members of the Supreme Court Nominating Commission that have not been canvassed, regardless of whether the selections are scheduled, upcoming, or pending as of the effective date of the bill.

The bill would deem the Supreme Court Nominating Commission and district judicial nominating commissions to be public bodies subject to KOMA. Further, the Supreme Court Nominating Commission and district judicial nominating commissions would be prohibited from recessing for any closed or executive meeting except for the purpose of discussing sensitive financial information contained within the personal financial records or official background check of a judicial nomination candidate. These provisions would not supersede a nominating commission's discretion to close a record or portion of a record pursuant to any applicable KORA exception.

The bill would amend the provision for filling a vacancy of the office of chairperson of the Supreme Court Nominating Commission or any of the lawyer members from the

congressional districts to allow the vacancy to be filled by the Governor instead of the Chief Justice of the Kansas Supreme Court. The appointment would have to be made within ten days after notice of the vacancy, would have to be made without regard to political affiliation of the appointee, and would have to be an attorney who is a resident of and licensed in Kansas.

The canvassers for any election of the chairperson or members of the Supreme Court Nominating Commission or any election of lawyer members of a district judicial nominating commission would be changed to include the Secretary of State and the Attorney General, or their designees, instead of two or more members of the bar residing in Kansas designated by the Chief Justice. The Clerk would remain a canvasser.

The bill would require the Supreme Court Nominating Commission to make nominations of three persons to fill a vacancy in the Supreme Court and certify the names of the nominees to the Governor.

For elections of lawyer members of a district judicial nominating commission, the Clerk would be required to use the certified roster to ascertain eligibility for ballots or membership on the district judicial nominating commission. In such elections, a ballot not accompanied by the signed certificate of the voter would not be counted. The Clerk would be required to preserve the ballots for six months after the results are certified and to preserve the certificates for five years. Inspection of the ballots would be permitted only upon order by the Supreme Court. The Clerk would be required to destroy the ballots and certificates at the end of the preservation periods. For such elections, the Clerk would be required to provide the same list to the Secretary of State of persons returning a ballot with a signed certificate as for the Supreme Court Nominating Commission elections, and such lists and the certificates would be subject to KORA requests.

The bill would amend the statute governing the appointment of judges of the Court of Appeals to require the Governor (or the Chief Justice, if making an appointment because the Governor failed to make an appointment) to make each applicant's name and city of residence available to the public once applications are no longer accepted, but not less than 10 days before making the appointment.

The bill would include a severability provision.

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Lynn.

In the Senate Committee, the Executive Director of the Kansas Republican Party testified in support of the bill. The Secretary of State and a law professor submitted written proponent testimony. A Court of Appeals judge testified in opposition to the bill. Representatives of the Kansas Bar Association, Kansas Association for Justice, and Kansas Association of Defense Counsel submitted written testimony opposing the bill.

The Senate Committee amended the bill to clarify that the Secretary of State and the Attorney General may designate someone to serve as a canvasser and to specify that a person appointed to fill a chairperson or lawyer vacancy on the Supreme Court Nominating Commission must be an attorney licensed and living in Kansas.

The Senate Committee of the Whole adopted amendments limiting the purpose for which a nominating commission may recess for a closed or executive meeting, clarifying that the KOMA provisions do not supersede a nominating commission's discretion in closing a record or

portion of a record pursuant to any applicable KORA exception, and requiring the disclosure of the names and cities of residence of applicants for the Court of Appeals.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates the bill's provisions would increase annual Judicial Branch expenditures by a minimum of \$13,200 beginning in FY 2016. This cost could be somewhat reduced by the purchase of an online attorney registration system, but the Judicial Branch has not obtained current bids for such a system. Any fiscal effect is not reflected in *The FY 2016 Governor's Budget Report*.