

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 180

As Amended by Senate Committee on Judiciary

Brief*

SB 180 would create a process for disclosure of a law enforcement officer applicant's files if the candidate has been employed by another state or local law enforcement agency or governmental agency. For these purposes, "files" would be defined as all performance reviews or other files related to job performance, commendations, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions, internal investigation files, suspensions, investigation-related leave, documents concerning termination or other departure from employment, all complaints, and all early warning information. "Early warning information" would be defined as information from a data-based management tool designed to identify officers who may be exhibiting precursors of problems on the job that can result in providing those officers with counseling or training to divert them from conduct that may become a disciplinary matter. The bill also would define other key terms.

When interviewing an applicant who has been employed by another agency for a law enforcement officer position, hiring agencies would require such applicant to execute a written waiver that explicitly authorizes each agency that has employed the applicant to disclose the applicant's files to the hiring agency and releases the hiring agency and each agency that employed the applicant from any liability related to the use and disclosure of the files. An applicant who refuses to execute the waiver would not be considered by the hiring agency. A copy of the waiver would be provided to each agency along with the request for information.

*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>

The bill would require the agency to disclose the files to the hiring agency within 21 days of receiving the request either by providing copies to the hiring agency or allowing the hiring agency to review the files at the agency's office. The bill would establish an exception if the agency is prohibited from providing the files pursuant to a binding nondisclosure agreement executed before July 1, 2018, to which such agency is a party. Agencies would be required to disclose an applicant's files, however, if such files are subject to a binding nondisclosure agreement executed on or after July 1, 2018, but the bill would limit disclosure to only those files necessary to determine an applicant's qualifications and fitness for performance of a law enforcement officer's duties. Further, the bill would allow agencies to redact personally identifiable information of persons other than the applicant in files disclosed. The bill states an agency would not be liable for complying with the provisions of this section in good faith or participating in an official oral interview with an investigator regarding the applicant.

The bill would prohibit disclosure of the files except as necessary for such agency's internal hiring processes and states the files would constitute a record of the agency for the purposes of the Kansas Open Records Act (KORA) and would not be subject to discovery, subpoena, or other process directed toward the hiring agency. The bill would add a section to the KORA to specify a request for records defined by the bill as "files" that were submitted to an agency would be directed to the agency that made, maintained, or kept such files.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association. The bill first received a hearing before the Senate Committee on Judiciary in the 2017 Legislative Session. At that hearing, a representative of those

organizations and a representative of the Kansas Association of Counties appeared in support of the bill. A representative of the League of Kansas Municipalities provided neutral testimony and offered suggestions for amendments to the bill. No other testimony was provided.

The Senate Committee modified the language of SB 180 pursuant to an amendment agreed to by the conferees and added this modified language to HB 2069. The amendment would change “candidate” to “applicant,” add provisions applicable to files subject to a binding nondisclosure agreement executed on or after July 1, 2017, allow agencies to redact personally identifiable information of persons other than the applicant in files disclosed, modify the definition of “files” and “hiring agency,” add a definition for “early warning information,” and add a section to the KORA concerning requests for records defined under the bill as “files.”

HB 2069, as amended by the Senate Committee on Judiciary, was added to HB 2054 in Conference Committee but without the modified contents of SB 180.

During the 2018 Legislative Session, staff of the Office of Revisor of Statutes gave a briefing of the bill and its history to the Senate Committee on Judiciary and provided a copy of the amendment previously adopted with updated references to 2018 instead of 2017. The Kansas Association of Chiefs of Police, Kansas League of Municipalities, Kansas Peace Officers Association, and Kansas Sheriffs’ Association provided written testimony in support of the bill with the proposed amendment. Written testimony was also provided by the Kansas Press Association, Kansas Association of Broadcasters, and Kansas Sunshine Coalition for Open Government who were neutral on the bill with the proposed amendment, but opposed the section that would make the files obtained a record of the agency that made, maintained, or kept the files for the purposes of KORA.

The Senate Committee adopted the proposed amendment.

According to the fiscal note prepared by the Division of the Budget, the Attorney General and CPOST indicate enactment of the bill, as introduced, would have no fiscal effect.