

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 86

As Amended by Senate Committee of the Whole

Brief*

SB 86 as amended, would amend the Kansas Open Records Act (KORA) regarding fees charged for public records, who may request and inspect public records in Kansas, the format of minutes kept at meetings of state legislative and administrative bodies and agencies, and the exemption for criminal investigation records in KORA.

Fees Charged for Public Records

The bill would establish the following fees for public records and copies:

- Black and white standard size pages – no more than \$0.25 per page:
 - “Standard size” would be defined as 8½ x 11 inches, or 21.59 x 27.94 centimeters;
- All other records – no more than the cost to the public agency to provide the records to the requester; and
- Staff time for providing records – the lowest hourly rate of the person qualified to provide the records.

The bill would include language specifying the requirements listed above would not apply to fees assessed when individuals who are not Kansas citizens request records.

*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 also remove language related to fees that may be charged by public agencies responding to records requests.

Who May Request Records in Kansas

The bill would specify public records would be open for inspection by any citizen of the State of Kansas. Additionally, the bill would include language requiring any records requests made by individuals who were not Kansas citizens must be made on behalf of a Kansas citizen and include the name, legal address, and signature of a Kansas citizen supporting the request. The bill would also include language stating a custodian of records would be allowed to require an individual requesting records to provide his or her name and legal address.

Current law allows inspection of records by any person and does not limit requests for records to Kansas citizens.

Minutes Requirements

The bill would require the presiding officer at meetings of legislative and administrative bodies and agencies to:

- Ensure minutes are kept at each meeting; and
- Determine the format of the minutes.

Exception for Criminal Records

The bill would exclude certain criminal investigation records from the exemption for criminal investigation records in KORA.

The bill would amend the definition of “criminal investigation records” to specify the term does not include those criminal investigation records for missing person investigations when the person has been missing for more

than 25 years and the records were collected 15 or more years ago. This exclusion would not apply to the identity of any confidential source or undercover agent.

The bill would specify that the records described above would not be part of the criminal investigation records exception in current law. Any time a request for such records is made, the public agency receiving the request would be required to provide copies within 30 days of receiving the request. No fee could be charged for copies if the request for such records is made by a parent, child, sibling, or grandparent of the person whom the records concern.

Background

The Senate Committee of the Whole added the provisions of SB 200 as amended by the Senate Committee to the provisions of SB 86 as amended by the Senate Committee on Federal and State Affairs. Background information for both bills is provided below.

SB 86

The bill was introduced in the Senate Committee on Federal and State Affairs at the request of Senator LaTurner. In the Senate Committee hearing, representatives of the Kansas Press Association, the Kansas Sunshine Coalition for Open Government, and the Kansas Policy Institute appeared in support of the bill. They stated their belief that the bill provides reasonable limits on fees charged for public records, creating more transparency and government accountability. Written-only testimony in support of the bill was provided by the Kansas Association of Broadcasters and The Garden City Telegram.

Representatives of the League of Kansas Municipalities and the Kansas Association of Counties appeared in opposition to the bill. They stated the bill limits the ability of

cities to charge accurate costs for fulfilling records requests and does not reflect the varying costs of providing records encountered by different entities. They also expressed concern over the provision of the bill requiring minutes to be taken at every meeting of every body falling under the Kansas Open Meetings Act, which would include very small entities. Written-only testimony in opposition to the bill was provided by the City of Manhattan, the City of Shawnee, and the City of Overland Park.

The Senate Committee adopted an amendment adding language specifying records could be requested only on behalf of a Kansas citizen and records would be subject to inspection only by Kansas citizens.

The Senate Committee of the Whole amended the bill by adding the provisions of SB 200 as amended by the Senate Committee (excluding certain criminal investigation records from KORA exemption for criminal records).

According to the fiscal note prepared by the Division of the Budget on SB 86, as introduced, the Office of the Attorney General (Office) indicates it does not anticipate a change in revenues as its current fee schedule is similar to that proposed by the bill. However, the Office notes enactment of the bill could result in increases of requests for Attorney General's Opinions or KORA complaints. If the number of such requests or complaints increases significantly, additional staff could be required to handle the added workload. Additionally, an increase in the number of complaints could result in the collection of additional fines related to KORA. However, the Office states it is not possible to predict the number or complexity of requests or complaints, so a fiscal effect cannot be determined.

The Office of Judicial Administration indicates the bill would decrease revenues for the Judicial Branch by limiting per page and staff time charges, but is unable to estimate the fiscal effect.

Legislative Administrative Services (LAS) indicates the bill would have a negligible fiscal effect on its operations but notes the bill would require the Legislative Coordinating Council (LCC) to change its fee structure for copies of open records. LAS currently charges \$0.50 for the first page, \$0.15 for every subsequent page, and \$20 per hour for staff time with a minimum of \$10 for the first hour.

Other agencies indicate enactment of the bill would have either a negligible effect or no fiscal effect on complying with open records requests. The Department of Administration indicates its current fee structure would be allowed to continue under the bill.

Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.

SB 200

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Holland. In the Senate Committee hearing, Senator Holland, a representative from the Kansas Press Association, and three private citizens appeared in support of the bill.

Written-only opponent testimony was provided by the Kansas Association of Chiefs of Police, Kansas Sheriffs' Association, Kansas Peace Officers Association, the Kansas Bureau of Investigation, and the Leavenworth County Sheriff's Office.

The Senate Committee amended the bill by requiring the records described in the bill be provided to immediate family members at no cost, requiring such records be provided within 30 days of the request, making the bill effective upon publication in the *Kansas Register*, and changing the term "criminal investigative records" to "criminal investigation records."

The Senate Committee of the Whole inserted the provisions of SB 200 as amended by the Senate Committee into SB 86 as amended by the Senate Committee.

According to the fiscal note provided by the Division of the Budget, the Attorney General has indicated enactment of SB 200, as introduced, could result in more requests to issue opinions on KORA and the number of complaints could increase. If the number of opinion requests or complaints increases, additional staff attorneys and investigators may be needed. Additionally, if a court case were to be brought over the bill's provisions, the agency would be involved. Without knowing the number of opinion requests or complaints, the agency cannot estimate a fiscal effect.

The Kansas Bureau of Investigation has indicated enactment of the bill could result in more staff time and resources being devoted to open records requests; however, without knowing the number of open records requests, the agency cannot estimate a fiscal effect. Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.