

SESSION OF 2017

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2128

As Amended by Senate Committee of the Whole

Brief*

HB 2128, as amended, would amend the Kansas Open Meetings Act (KOMA) with respect to closed or executive meetings. The bill would require any motion to recess for a closed or executive session to include a statement describing the subjects to be discussed during the closed or executive session and the justification for closing the meeting. Current law requires a statement of the justification for closing the meeting and the subjects to be discussed during the closed meeting. The bill would leave unchanged the requirement the motion contain the time and place at which the open meeting will resume.

The bill would require the complete motion be recorded in the minutes of the meeting.

Justifications for closing meetings would be limited to the circumstances listed in the bill. The justifications would be substantively similar to the list of subjects allowed to be discussed at closed or executive sessions under current law, with the following exceptions:

- The bill would amend language related to KSA 22a-243(j) to specify matters relating to the investigation of child deaths could be discussed;
 - Current law states matters related to district coroners could be discussed in executive session pursuant to the statute.

*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 specify what matters could be discussed pursuant to statute in the following instances:
 - Matters relating to parimutuel racing pursuant to KSA 74-8804 and amendments thereto;
 - Matters relating to the care of children pursuant to KSA 2016 Supp. 38-2212(d)(1) or 38-2213(e) and amendments thereto;
 - Matters relating to patients and providers pursuant to KSA 39-7,119(g) and amendments thereto;
 - Matters relating to maternity centers and child care facilities pursuant to KSA 65-525(d) and amendments thereto; and
 - Matters relating to the office of inspector general pursuant to KSA 2015 Supp. 75-7427 and amendments thereto;
- The bill would add a justification allowing the discussion of case reviews conducted by the Governor’s Domestic Violence Fatality Review Board (DVFRB) in closed or executive meetings; and
- The bill would strike language related to repealed statutes.

Background

HB 2128—Closed or Executive Meetings for DVFRB Case Reviews

HB 2128 was introduced in the House Committee on Judiciary at the request of the Governor’s Grants Program. As introduced, the bill would have amended KOMA to allow the DVFRB to conduct case reviews in closed or executive meetings.

In the House Committee hearing, a representative of the Governor's Grants Program and two members of the DVFRB testified in support of the bill. Written-only testimony in support of the bill was provided by two members of the DVFRB, an advisory member of the DVFRB, the Kansas County and District Attorneys Association (KCDAA), and the Kansas Coalition Against Sexual and Domestic Violence (KCSDV). Appearing before the Committee in opposition to the bill was the Kansas Press Association. No neutral testimony was provided.

In the Senate Committee on Judiciary hearing, a representative of the Governor's Grants program and a member of the DVFRB testified in support of the bill. Written-only proponent testimony was provided by the KCDAA, KCSDV, and the Family Peace Initiative. The Kansas Press Association submitted written-only testimony opposing the bill. No neutral testimony was provided.

The Senate Committee of the Whole amended the bill to add the contents of SB 70, as amended by the Senate Committee on Federal and State Affairs, regarding procedure and justifications for closed or executive meetings. Further background and fiscal information regarding SB 70 is presented below

According to the fiscal note prepared by the Division of the Budget on the bill, enactment of HB 2128, as introduced, would have no fiscal effect.

SB 70—Procedure and Justifications for Closed or Executive Meetings

SB 70 was requested by Senators Francisco and Baumgardner. In the Senate Federal and State Affairs Committee hearing, Senators Francisco and Baumgardner, as well as representatives from the Kansas Association of Counties, the Kansas Association of Broadcasters, the League of Women Voters of Kansas, the Kansas Press Association, and one citizen testified in favor of the bill. They

testified the problem with the current statute is that “justification” is undefined. The proponents stated, in conjunction with other bills passed in recent years, this bill is the next step in ensuring open accountability. Written testimony in support of the bill was provided by the Kansas Policy Institute, the Kansas Sunshine Coalition for Open Government, the Garden City Telegram, and the Oskaloosa Independent.

Neutral, written-only testimony in support of the bill was provided by the League of Kansas Municipalities and the State Child Death Review Board.

No opponent testimony was provided.

The Senate Committee amended the bill to specify the complete motion to recess for executive session, rather than the motion “in its entirety,” be recorded in the minutes. The Senate Committee also changed language in the list of justifications to allow discussion of the investigation of child deaths pursuant to statute, rather than matters relating to district coroners.

According to the fiscal note prepared by the Division of the Budget on SB 70, as introduced, the Office of the Attorney General indicates the changes proposed by the bill could cause new issues to arise that have not been litigated or for which an Attorney General’s Opinion has not been issued. If the number of opinion requests significantly increases, additional staff attorneys could be required to handle the added workload. If a court case were brought questioning the application of the new law, the Attorney General’s Office could be required to be involved to defend a state agency accused of violating the new provisions or to enforce violations of KOMA. The agency would be able to collect civil penalties for violations of KOMA. However, it is not possible to predict the number of opinion requests or court cases that would arise or how complex and time-consuming they would be. Therefore, a fiscal effect cannot be determined. Any fiscal

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