

SESSION OF 2018

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 328**

As Amended by House Committee of the Whole

**Brief\***

SB 328, as amended, would create and amend law related to security operations of state correctional and juvenile correctional facilities, and would create law related to Department of Corrections (Department) participation in the Kansas Police and Firemen's Retirement System (KP&F) as an eligible employer for certain employees.

***Privatization or Outsourcing of Security Operations***

The bill would require prior legislative authorization for any state agency to enter into any agreement or take any action to outsource or privatize security operations of any correctional or juvenile correctional facility operated by a state agency. The bill would apply to security operations or job classifications and duties associated with a security operation of correctional or juvenile correctional facilities.

The bill would define "security operations" to include supervision of inmates in a correctional institution or juvenile correctional facility by a corrections officer or warden. The Secretary of Corrections (Secretary) would be granted rule and regulation authority to identify job classifications and duties to be considered part of security operations.

The bill would not prevent the Department from renewing such an agreement for services if the agreement is substantially similar to an agreement existing prior to January 1, 2018. The Department would also be permitted to enter

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\*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>

into such an agreement for services with a different provider, if the agreement is substantially similar to an agreement existing prior to January 1, 2018.

***Department Affiliation with KP&F and Benefits***

The bill would require the Department to affiliate as an eligible employer with the KP&F, beginning on January 1, 2019, for those positions classified as “security officer,” as that term would be defined by the bill. Currently, employees in Correctional Groups A and B pay contributions into the Kansas Public Employees Retirement System (KPERS or the Retirement System) equal to 6.0 percent of compensation. The bill would increase the employee contribution level to the KP&F rate of 7.15 percent.

For FY 2019, the Department’s employer contribution rate for the correctional groups is 13.21 percent, which is the same rate as for the KPERS State Group. Under the bill, the rate would increase to 18.82 percent in the second half of FY 2019.

For service time earned prior to January 1, 2019, security officers would keep the KPERS benefits they had earned. Security officers would be able to use their prior years of service for purposes of vesting and retirement eligibility in both plans. At retirement, members would receive a monthly benefit for their KPERS service and a monthly benefit for their KP&F service.

***Subject to Appropriations; Effective Date***

The provisions of the bill would be made subject to legislative appropriations. The bill would be in effect upon publication in the *Kansas Register*.

## **Background**

The bill, as amended, includes provisions of SB 328, as amended by the Senate Committee on Federal and State Affairs, and HB 2448, as amended by the Senate Committee on Financial Institutions and Insurance. Further background for SB 328 and HB 2448 is provided below.

### ***SB 328 (Privatization or Outsourcing of Security Operations)***

SB 328 was introduced by Senators Hensley and Denning. In the Senate Committee on Federal and State Affairs hearing, Senator Denning and Senator Hensley testified in support of the bill. They stated the bill and the amendment would avoid potential concerns associated with privatization while allowing the Department flexibility to manage existing contracts. No other testimony was provided.

The Senate Committee, on February 7, amended the bill to define “security operations” and specify job classifications and duties that could not be privatized. The Committee report was not read into the Senate Chamber.

On February 12, the Committee voted to reconsider its previous action on the bill. The Committee adopted an amendment similar to the February 7 amendment to:

- Define “security operations”;
- Allow the Secretary to adopt rules and regulations to identify job classifications and duties that are part of security operations; and
- Technical changes suggested by the Office of Revisor of Statutes.

The House Committee of the Whole amended the bill to include provisions relating to KP&F affiliation and benefits.

(These provisions are identical to those contained in HB 2448, as amended by the Senate Committee on Financial Institutions and Insurance).

According to the fiscal note prepared by the Division of the Budget on SB 328, as introduced, the Department states the bill would affect all aspects of the Department's facility operations, including support and ancillary services. The Department indicates language to require future contract renewals to be "substantially similar" to contracts entered into prior to January 1, 2018, would restrict the Department's ability to modify the scope of contracted services to account for changes in federal requirements, improvements in technology, changing correctional standards, and changes to inmate programs and health care. Any fiscal effect associated with enactment of SB 328 is not reflected in *The FY 2019 Governor's Budget Report*.

***HB 2448 (Department Affiliation with KP&F and Benefits)***

Representative Jennings introduced HB 2448, which was heard by the House Committee on Financial Institutions and Pensions on January 31. In the House Committee hearing, Representative Jennings spoke in favor of the bill, stating adult correctional and juvenile correctional officers experience the same exposure to danger and high stress that first responders experience. The bill would address the challenges to recruitment and retention.

Written-only testimony in support of the bill was provided by a representative of Teamsters Local Union 696, who observed the average turnover rate at state correctional facilities exceeds 32.0 percent and the starting wages for similar positions in certain urban counties are greater.

No opponent testimony was provided.

A representative of KPERS provided neutral testimony explaining the current pension plans for juvenile and adult

correctional positions. Employees in juvenile correctional positions are in the regular Retirement System. Employees in adult correctional positions are in either Corrections Group A (corrections officers) or Corrections Group B (other staff with direct inmate contact), commonly referred to as C55 or C60, respectively. C55 and C60 use the same benefit formula as the regular Retirement System (*i.e.*, final average salary multiplied by the number of years of service multiplied by 1.85 percent). Since 2009, C55 members are eligible for full retirement at age 55 with 10 years of service, and C60 members are eligible for full retirement at age 60 with 10 years of service. KPERS members are eligible for full retirement at age 65 with 5 years of service or at age 60 with 30 years of service.

The KPERS representative continued, stating many elements in the KP&F plan are different. The final average salary is calculated differently, and the multiplier is 2.5 percent instead of 1.85 percent. The vesting requirement is 15 years of service. Full KP&F retirement is at age 50 with 25 years of service, age 55 with 20 years of service, or age 60 with 15 years of service.

A representative of the Kansas Organization of State Employees (KOSE) provided written-only neutral testimony, observing the workplace for correctional officers is unique and dangerous. No other testimony was provided.

On February 5, the House Committee amended the bill to:

- Change the affiliation date for the Department from July 1, 2018, to January 1, 2019;
- Clarify the job positions specified in the definition for “security officer”; and
- Allow security officers, when vested in both retirement plans, to be eligible to receive benefits

from KPERS and KP&F at the time of normal retirement under KP&F.

The House Committee of the Whole amended the bill to clarify the number of paragraphs contained in the definition for “security officer.”

In the Senate Committee on Financial Institutions and Insurance hearing, Representative Jennings spoke in favor of the bill, stating adult correctional and juvenile correctional officers experience the same exposure to danger and high stress that first responders experience. The bill would address the challenges to recruitment and retention.

Representatives of the Fraternal Order of Police (FOP) Lodge 64, Teamsters Local Union 696, and KOSE spoke in support of the bill. Conferees stated the legislation would make state positions more competitive with similar positions in local government. The conferee representing FOP Lodge 64 suggested an amendment to explicitly include parole officers in the positions covered by the bill.

A representative of KPERS provided neutral testimony similar to that presented to the House Committee. No other testimony was provided.

The Senate Committee amended the bill to:

- Make the provisions subject to legislative appropriation; and
- Change the effective date from publication in the statute book to publication in the *Kansas Register*.

On March 6, the Division of the Budget provided a revised fiscal note on HB 2448, as amended by the House Committee of the Whole. The Division of the Budget estimates expenditures made by the Department would increase by \$2,496,482 from all funds, including \$2,678,959 from the State General Fund, for KP&F affiliation

commencing halfway through the fiscal year. Currently, the KP&F employer contribution rate is 20.05 percent; it is estimated the bill would decrease the rate to 18.82 percent. KPERS indicates the bill would not increase the unfunded actuarial liability (UAL) of KP&F, and the change would result in a decrease to the State Group's UAL by \$17.0 million. According to the actuarial valuation of December 31, 2016, the UAL for the State Group was \$922.0 million.