

SESSION OF 2024

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2599**

As Amended by House Committee on Judiciary

**Brief\***

HB 2599, as amended, would amend the Kansas Open Records Act (KORA) to lower or eliminate certain costs that may be charged to fulfill public records requests by public agencies.

***Initial Records Search***

Under the bill, no fee could be charged for the initial search by a public agency (excluding agencies under the legislative or judicial branches) to determine whether any records that are responsive to the request exist. For any reasonably necessary employee or administrator review or time spent to provide access to or furnish copies of public records, the costs would not exceed the lowest hourly rate of an employee qualified to produce those records, with a maximum of \$30 per hour that could be charged to the requester.

[*Note:* The term “public agency” is defined under continuing law to mean the State or any political or taxing subdivision of the State or any office, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the State or by public funds of any political or taxing subdivision of the State. The term does not include any entity solely because it receives public funds for property, goods, or services; or any municipal judge, district court judge, judge of the Kansas Court of Appeals, or Supreme Court Justice.]

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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>

### ***Threshold to Charge Fees***

For printed copies of public records, the bill would require public agencies to establish a fee schedule that charges 25 cents or less per page and would prohibit public agencies from charging a fee for electronic copies of records.

Furthermore, the bill would not allow a public agency to charge a fee for fulfilling a KORA request, if the total cost charged would be \$100 or less.

### ***Out-of-State KORA Requests***

If a person making a KORA request does not reside in Kansas, or is not registered with the Secretary of State and authorized to do business in Kansas, a public agency could charge a fee that reflects the full cost to the agency for providing the records. The agency would be allowed to request verification that the requesting person lives in Kansas or is an entity registered and authorized to do business in Kansas.

### ***Technical Amendments***

The bill would also makes technical amendments.

### **Background**

The bill was introduced by the House Committee on K-12 Education Budget at the request of Representative Thomas.

### ***House Committee on Judiciary***

In the House Committee hearing, **proponent** testimony was provided by representatives of the Kansas Policy Institute and KSNW-TV. The proponents stated the bill would

ensure private citizens are not overcharged for public records requests. Additionally, the proponents stated that in some instances, the cost for a public agency to review and redact records may cost more than copying fees of the records. Written-only proponent testimony was provided by two representatives of the Kansas Press Association and three private citizens.

Neutral testimony was provided by a representative of the Kansas League of Municipalities who stated public agencies are limited to charging actual costs for providing records, and there may be penalties for agencies who overcharge. The conferee also stated that addressing open records requests takes staff away from other duties. Written-only neutral testimony was provided by representatives of the the Kansas Association of School Boards, Office of Secretary of State, and two private citizens.

**Opponent** testimony was provided by a representative of the City of Topeka and the Kansas Association of Counties, who stated their concern of shifting public records access costs to municipalities, if the bill were enacted. Written-only opponent testimony was provided by two representatives of the City of Overland Park.

The House Committee amended the bill to:

- Specify a threshold for total costs that may be charged;
- Modify provisions concerning costs for agency review, provision of access, and copying of records;
- Specify how charges may be made for out-of-state requests; and
- Specify the bill applies to public agencies as defined in law.

## **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Bureau of Investigation (KBI) indicates that while it does not charge for preliminary inquiries to determine whether there may be records available for a particular request, it does charge to recall records kept in off-site storage, as well as for reviewing those records to determine whether they are subject to release under KORA. The agency states it is required to pay \$28 for the first file box, and \$3 for each subsequent box held by a third-party off-site vendor. The agency cites a particular records recall in FY 2023 that totaled \$2,400 to recall 32 boxes and 25 hours of staff time to review and redact records. The agency handled approximately 100 KORA requests in FY 2023 with nearly half of the requests being abandoned by the requester due to estimated fulfillment costs.

The KBI also notes that many of its records are stored on physical media, requiring recall of an entire file box to review or copy that media. The agency further indicated that if administrative time to review records cannot be assessed for a fee, then it anticipates a significant increase in the quantity of KORA requests and additional resources would be required. The KBI estimates it would need \$136,455 from the State General Fund (SGF) beginning in FY 2025 for 2.0 FTE positions to ensure proper processing of KORA requests in a timely manner. Additionally, the agency indicates additional training for staff would be necessary to address a larger quantity of anticipated requests and that the 2.0 FTE positions would ensure timely responses as required by KORA.

The Office of Attorney General (OAG) indicates that most KORA requests it receives involve electronic copies and that significant staff time is spent finding and reviewing records for confidential information. The OAG further indicated an additional 2.0 attorney FTE positions and 2.0 administrative assistant FTE positions would be required if

the bill were enacted due to the inability to deny KORA requests for non-payment. These positions are estimated at a cost of \$400,000 from the SGF in FY 2025 (\$125,000 for each attorney and \$75,000 for each administrative assistant). For FY 2026, the OAG estimated a cost of \$420,000 from the SGF for those additional FTE positions. Additionally, the OAG indicates records production fees it normally collects would be reduced by approximately \$1,000 each year because of the inability under the bill to charge for attorney time for processing some aspects of these requests.

The Office of the Governor indicates enactment of the bill could require additional resources and FTE positions in its Legal Division to handle an increased number and scope of KORA requests. However, the additional workload cannot be estimated and a fiscal effect cannot be determined.

The Department of Health and Environment indicates enactment of the bill would have a negligible fiscal effect that could be absorbed within existing resources. It further indicates that it does not normally charge fees for copies of public records and regularly waives costs for information when the page count is under 100 pages, either printed or electronic.

The Department of Corrections indicates that enactment of the bill may have a fiscal effect on the agency, but the effect cannot be determined. Enactment of the bill may result in an increased amount of staff time dedicated to KORA requests due to the need to review and redact certain information and that additional requests may result in less staff availability for regular duties.

The Department for Children and Families (DCF) indicates enactment of the bill would have a negligible fiscal effect that would be handled within existing resources. Current agency policy limits any fees to the actual costs to prepare copies of the requested information, but the policy would need to be amended to comply with the fee limits created by the bill. However, DCF has not collected KORA request fees for several years.

The Department for Aging and Disability Services (KDADS) indicates enactment of the bill would not have a fiscal effect on the agency. The agency stated it rarely provides paper copies due to the availability of electronic copies. However, KDADS indicates it provides 100 pages of paper copies free of charge and assess a fee of \$0.25 per page for each additional page. The agency also charges \$50 for cost reports, which would fall under the limitations of the bill.

The Office of Secretary of State indicates enactment of the bill could result in the need for additional funding and staff if KORA requests extend beyond its current capacity. However, a precise fiscal effect cannot be determined because that additional amount and scope cannot be determined. The agency notes that fulfilling requests during certain events, such as elections, may be problematic and that certain large scope requests can take months or years to complete. The agency further notes that specialized staff who can redact specific information can be costly and that certain large scope requests for electronic or digital data may produce substantial costs to the agency which could not be recovered by the requester.

The Department of Labor indicates it rarely charges fees for KORA requests and enactment of the bill would have no fiscal effect on the agency.

The Governmental Ethics Commission indicates it does not charge for KORA requests, but reserves the right to do so for larger requests. However, sizable KORA requests are not typical for the agency and enactment of the bill would not have a fiscal effect on the agency.

The Department of Administration and the Department of Revenue indicate enactment of the bill would have no fiscal effect. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Public records; Kansas Open Records Act; costs