

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:38 a.m. on January 27, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Laura Kelly- excused
Senator Derek Schmidt- excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Mark Knackendoffel, Kansas Judicial Council Probate Law Advisory Committee
Tania Groover, Assistant District Attorney, Sedgwick County
Tom Stanton, President, Kansas County and District Attorneys Association
Kathy Porter, Office of Judicial Administration

Others attending:

See attached list.

Bill Introductions

Senator Lynn introduced a bill addressing the issue of cockfighting. The bill was introduced without objection.

Whitney Damron requested the introduction of a bill to change K.S.A. 17-7207(b) limiting the number of stockholders in a close corporation to 35 bringing it into alignment with all other corporate code Kansas statutes.

The Chairman opened the hearing on **SB 70 - Trusts; unitrust conversion; uniform principal and income act.**

Mark Knackendoffel appeared as a proponent stating **SB 70** is the recommendation of the Kansas Judicial Council Probate Law Advisory Committee. It allows a trustee to release power and convert a trust into a unitrust so that distributions to income beneficiaries are determined by a unitrust distribution formula. This allows the objectives of the income and remainder beneficiaries to be unified and motivated by the total return of the portfolio. (Attachment 1)

There being no further conferees, the hearing on **SB 70** was closed.

The Chairman opened the hearing on **SB 67 - Creating the crime of endangering a dependent adult; amending mistreatment of a dependent adult.**

Tania Groover testified in support stating enactment of **SB 67** will protect vulnerable dependent adults who are easily exploited. Increased penalties, clarifying language, and the new crime of endangering a dependant adult are key to the protection of Kansas citizens. (Attachment 2)

Written testimony in support of **SB 67** was submitted by:

Joann E. Corpstein, Chief Counsel, Kansas Department on Aging (Attachment 3)

There being no further conferees, the hearing on **SB 67** was closed.

The Chairman opened the hearing on **SB 68 - Docket fees; prosecuting attorneys' training fund.** Jason Thompson, staff revisor, reviewed the bill.

Tom Stanton spoke in favor stating the existing fee which allows for the continuing education of prosecutors

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:38 a.m. on January 27, 2009, in Room 545-N of the Capitol.

is insufficient. **SB 67** will double the funds available for prosecutors across the state and ultimately benefit the citizens of Kansas. (Attachment 4)

Kathy Porter appeared in opposition indicating that as written the additional money is “taken off the top” of the current amount collected for each docket fee. This has the effect of shortchanging every fund specified in K.S.A. 2008 Supp. 20-367 including the State General Fund. Ms. Porter recommended the funds may be obtained from diversion agreements authorized under K.S.A. 22-2909. (Attachment 5)

There being no further conferees, the hearing on **SB 68** was closed.

The next meeting is scheduled for January 28, 2009.

The meeting was adjourned at 10:28 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-27-09

NAME	REPRESENTING
Hannah Baird	Harmony Middle School
Jim Baird	" " "
Tania Groover	District Attorney, 18 th Judicial District
Joanne Cozzetta	KDOT
Dick Stopfer	Hy-Vee
Karen Beckerman	SRS
Joe Ewert	KAASA
SEAN MILLER	CAPITOL STRATEGIES
Kathryn Utgen	KAC
Doug Smith	Pregan, Smith & Associates
Ed Kwinn	KACP & KPCA
Kathy Parks	Judicial Branch
TOM STANTON	KEDAA
Richard Smalley	Kenney & Assoc.



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Kansas Judicial Center
301 S.W. Tenth Street, Suite 140
Topeka, Kansas 66612-1507

Telephone (785) 296-2498
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us
www.kansasjudicialcouncil.org

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MEMORANDUM

TO: Senate Judiciary Committee

FROM: Kansas Judicial Council

DATE: January 27, 2009

RE: Judicial Council Testimony on 2009 SB 70
Relating to Unitrust Conversion Statute

For many years, trusts have been drafted that direct the trustee to distribute the income to a beneficiary for a certain period of time (frequently the life of the beneficiary). This income generally consists of interest and dividends and is often identified as the "accounting" income. At the death of the beneficiary, the remaining principal, which usually includes capital gains obtained during the duration of the trust, would be distributable to another beneficiary or beneficiaries or the trust would continue for them.

Traditionally, trustees have attempted to invest trust assets to produce enough income to meet the current beneficiary's needs. However, at one extreme a trustee might invest all of the trust's assets in stocks that paid no dividends and generated no current income, particularly if the beneficiary had little or no need for current income. At the other extreme, a trustee might invest all trust assets in high yield bonds and generate 8% or 9% interest income. The first example would benefit the remainder beneficiaries at the expense of current income beneficiaries. The second example is the opposite situation. Thus, trustees often face the dilemma of investing a portfolio with conflicting objectives: enhancing the value of the principal assets for the remainder beneficiaries or producing income for current beneficiaries.

Most U.S. jurisdictions (including Kansas) have replaced the "prudent man rule" with the "prudent investor rule" for guiding and assessing a trustee's investment decisions. Under the prudent investor rule, the trustee's investment decisions and results are evaluated based on their role and impact with respect to the entire portfolio rather than on an asset-by-asset basis, which was the

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Attachment 1

test under the prudent man rule. The strategy under the prudent investor rule is to consider the interests of both income and remainder beneficiaries, ensure that the entire portfolio is adequately diversified and assess the performance and risk of the portfolio as a whole rather than the performance and risk of individual assets.

In recent years the emphasis on equities and the lower interest rates provided by fixed investments have reduced the total dividend and interest income to beneficiaries. Thus, in order to provide an ever-increasing stream of accounting income, a larger allocation of the portfolio must be invested in fixed income investments, which sacrifices total investment return for the whole portfolio, and particularly the remainder beneficiaries.

There are several solutions to the problem, such as distribution of principal, allocation of principal to income, modification of the trust instrument and possible statutory changes. One of the evolving statutory responses to this dilemma is the adoption of "unitrust conversion statutes."

Twenty-six states have adopted unitrust conversion statutes. Under these statutes, when a trust agreement directs the trustee to distribute income, the trustee is granted the authority to "convert" or redefine "income" so that distributions to income beneficiaries are determined by a unitrust distribution formula. Under this formula, the trustee distributes a fixed percentage of the assets to the beneficiary each year as "income." As the portfolio grows or falls in value, the income percentage as applied to the value of the trust will adjust the amount of income distributed. Thus, the objectives of the income and remainder beneficiaries are unified so that they are both motivated by the total return of the portfolio. This removes, or at least lessens, the inherent conflict between the objectives of current income beneficiaries and the remainder beneficiaries. It also facilitates the trustee abiding by the principles of the prudent investor rule.

The Probate Law Advisory Committee proposes the following statute be adopted and become a part of the Uniform Principal and Income Act as new section 58-9-105.



316-660-3600
1-800-432-6878

Nola Foulston
District Attorney

Office of the District Attorney
Eighteenth Judicial District of Kansas
at the Sedgwick County Courthouse
535 North Main
Wichita, Kansas 67203

January 26, 2009

Testimony in Support of SB 67
Submitted by Tania Groover, Assistant District Attorney
On Behalf of Nola Tedesco Foulston, District Attorney
Eighteenth Judicial District
And
On Behalf of the Kansas County and District Attorneys Association

Honorable Chairman Owens and Members of the Senate Committee on Judiciary:

Thank you for the opportunity to address the Senate Judiciary Committee regarding Senate Bill 67. On behalf of Nola Tedesco Foulston, District Attorney, Eighteenth Judicial District and the Kansas County and District Attorney Association, I am here today to express our support of Senate Bill 67.

Senate Bill 67 seeks to amend K.S.A. § 21-3437, relating to the mistreatment of a dependent adult by (1) equalizing penalties for violations of existing portions of the statute at severity level five; (2) changing minor language to clarify that the statute applies not only to caregivers but to all persons; and (3) outlawing the infliction of unreasonable punishment rather than outlawing cruel punishment as the current statute does. Additionally, the bill creates the crime of endangering a dependent adult.

Senate Bill 67 is necessary to protect a group of Kansas' most vulnerable citizens. The natural consequences of the aging process or other impairments of dependent adults may include infirmities because of advanced age, frailty, mental deterioration or physical and mental emotional dysfunction. These conditions may leave an adult defenseless and more vulnerable to any power or control asserted against them by others. Many dependent adults lack assistance from competent financial caretakers. In some instances, because of lack of medical treatment, or because of medications they may be required to take, they become confused or depressed. Dependent adults are often subject to intimidation by others who prey on their fear of loneliness and rejection by making demands and threats to abandon them.

Elder citizens and dependent adults are particularly vulnerable and often are willing to put their trust in people that show them attention and affection. Often this trust is misplaced and to the detriment of the dependent adult. Dependent adults are more easily exploited because of their

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implicit trust. As such, laws are necessary to protect these vulnerable citizens.

In Sedgwick County, prosecutors have been working with Triad of South Central Kansas (“Triad”), an organization comprised of volunteers in law enforcement, social services and seniors to increase awareness in quality of life issues for seniors. In addition, prosecutors have been working with the Financial Abuse Specialist Team (“F.A.S.T.”). F.A.S.T. is a group of professionals who volunteer to work together to help prevent financial abuse of vulnerable adults and to assure that victims receive adequate support, advocacy and attention from the legal and human services.

The work of Triad and F.A.S.T. have shown that additional legislative efforts are necessary to assist a group of our most vulnerable citizens in our community by crafting appropriate legislative enactments. Senate Bill 67 provides that penalties for violation of existing portions of the statute, especially as it relates to financial crimes, should be enhanced. The current statute provides a ladder of penalties from a person misdemeanor to a level 6 person felony, depending on the type of mistreatment. Under the current statute, unless an offender has a significant criminal history, the sentence will most likely be probation. Senate Bill 67 provides that all mistreatment violations are a severity level 5 person felony. No form of mistreatment of persons dependent on others for their mental, physical and financial health and well-being should be considered less severe than another. Grading the severity level of a crime of this nature by economic loss does not necessarily reflect the impact of the crime. For example, the theft of a hundred dollars from a dependent of limited means can be just as damaging as stealing \$100,000 from a wealthy dependent. A uniform severity level for all forms of mistreatment makes clear that as a matter of public policy, Kansans want dependent adults protected from those who would harm them, no matter the mechanism of the harm. A severity level 5 designation will allow the court to sentence an offender to either probation or imprisonment, assuming a limited criminal history, ensuring appropriate accountability for the crime based on the facts of each case.

In addition, Senate Bill 67 omits language that could be interpreted as limiting the statute to only caretakers. By clarifying that the criminal behavior applies to all persons and not just caretakers, the bill will eliminate an unreasonable defense to the crime, preventing persons charged with mistreatment from claiming they were not a caretaker and thus, their behavior was not criminal.

Senate Bill 67 also provides for the creation of a new crime, endangering a dependent adult. The crime of endangering a dependent adult is modeled after the crime of endangering a child and will criminalize behavior not currently addressed by any State statute. The new crime of endangering a dependent adult is necessary to safeguard dependent adults and stop behavior before it rises to the level of mistreatment of a dependent adult. Endangering a dependent adult would be a class A person misdemeanor, as is the crime of endangering a child.

It is critical the people of the State of Kansas be provided with laws to protect a group of our most vulnerable citizens. We urge you to adopt Senate Bill 67 to increase the penalties for mistreatment of a dependent adult and to create a new crime of endangering a dependent adult.

Respectfully submitted,

Tania D. Groover
Assistant District Attorney
Eighteenth Judicial District

Senate Bill 67
Before the Committee on Judiciary
By Joann E. Corpstein, Chief Counsel
Kansas Department on Aging
January 27, 2009

Chairman Owen and Members of the Committee,

The Kansas Department on Aging thanks you for this opportunity to comment on Senate Bill 67. Senate Bill 67 simplifies and increases the penalty for mistreatment of a dependent adult. In addition, it creates the crime of endangering a dependant adult.

The Department on Aging supports the proposed amendments to K.S.A. 21-3437. Strengthening the penalty for mistreatment of a dependent adult to a severity level 5 person felony sends a clear message that mistreating a dependent adult is a very serious matter and will be prosecuted and punished accordingly. Hopefully, this will have the effect of deterring those who might otherwise prey on the vulnerable and punish those who do.

We also support the recognition that intentionally and unreasonably placing a dependent adult in a situation in which the dependent adult could reasonably be injured or endangered should likewise be considered a criminal act. This amendment will provide law enforcement and prosecutors with the ability to intervene in certain situations where a dependent adult could be injured.

We suggest however, that the use of the terms "life, body or health" in line 16 on page 1 be modified to "physical or mental health". This is the same language found in Section 2 at line 40, on page 1 of SB 67. These terms are more easily understood and would keep the language in the statute consistent. We also suggest changing the phrase "may be" as used in line 16, page 1 to "is likely to be." "May be" is overly broad.



Kansas County & District Attorneys Association

1200 SW 10th Avenue
Topeka, KS 66604
(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

TO: The Honorable Senators of the Judiciary Committee

FROM: Thomas R. Stanton
Deputy Reno County District Attorney
President, Kansas County and District Attorneys Association

RE: Senate Bill 68

Chairman Owens and Members of the Committee:

Thank you for allowing me to submit testimony regarding Senate Bill 68. As many of you probably know, a portion of the docket fee paid in certain cases is placed into a prosecutor's training fund pursuant to K.S.A. 20-362 and K.S.A. 28-172a for the training of prosecutors throughout the State of Kansas. The elected prosecutor in each county may use the funds available from that docket fee for continuing legal education of the attorneys in his or her office. Members of the Kansas County and District Attorneys Association (KCDAA) assign a portion of those funds to the Kansas Prosecutor Training and Assistance Institute, a 501(c)(3) not-for-profit corporation affiliated with the KCDAA, to provide training for prosecutors across the State. The KCDAA presents this training via two conferences per year. The pooling of these funds allows for high quality education for Kansas prosecutors. Centralization of training allows for consistent, state-specific education on issues of interest to all Kansas prosecutors.

Prosecutors are held to extremely high standards of professional responsibility, and the people of this State deserve a high level of legal proficiency in their elected prosecutors. Since 1987, the docket fee paid to the prosecuting attorneys' training fund has been \$1 per case. The cost of providing high-quality legal training for prosecutors has risen significantly in the years since 1987, and the amount of training funds available through the \$1 docket fee is now insufficient to keep up with that cost. We are now requesting that this body raise the portion of the docket fee placed into the prosecutor's training fund in order to insure continued high-quality legal education for Kansas prosecutors.

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Attachment 4

Senate Bill 68 will raise the amount paid into the prosecuting attorneys' training fund from appropriate, statutory docket fees from \$1 to \$2. This would double the amount of training funds available to train Kansas prosecutors. The increase would come from an additional dollar added to the court costs of those convicted of violating the law, and would not require this body to increase any current tax from any source. This would not effect the funding available to any other government entity. The citizens of this state will benefit from the training made available by the passage of Senate Bill 68.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stanton', with a long horizontal flourish extending to the right.

Thomas R. Stanton



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

Senate Judiciary Committee

Testimony in Opposition to SB 68

Kathy Porter

SB 68 would increase from \$1 to \$2 the amount deducted from docket fees in specified cases to be credited to the Prosecuting Attorneys' Training Fund (PATF). These cases include both misdemeanor and felony criminal cases, child in need of care cases, juvenile offender cases, and mental illness, drug abuse, or alcoholism treatment actions.

One argument for the increase would be that prosecuting attorneys play a vital role in the justice system, and that ensuring they receive adequate training is important. This issue is not disputed. However, there are several additional issues that must be considered.

The first issue is that, as the bill is drafted, the additional dollar is taken "off the top" of the **current** amount paid for each specified docket fee. The docket fee itself is not increased. This has the effect of short-changing every fund specified in K.S.A. 2008 Supp. 20-367, a copy of which is included as Attachment A. The percentage splits attributed to each of those funds is noted in the fiscal note included as Attachment B, which also illustrates that point that 47.71% of the balance is credited to the State General Fund. In FY 2008, approximately \$186,239 was deposited into the PATF. Because the bill would give the PATF an additional \$1 per docket fee without raising the docket fee, therefore cutting into the amounts distributed to other funds, in the aggregate these funds would lose approximately \$186,239, and the State General Fund would lose approximately \$88,855 of that total.

As illustrated in Attachment B, through the years the Legislature has credited a portion of the docket fee to a variety of funds, each of which made a compelling argument for that funding. However, there also has been legislative recognition that docket fee funding may not be appropriate for a majority of these funds. In 2005, the Interim Special Committee on Judiciary concluded that "other entities outside the judicial system that receive docket fees should go through the regular appropriations process as do other agencies for funding purposes." In 2006, the Interim Special Committee on Judiciary recommended the introduction of legislation that would delete all funds then receiving docket fee funding, with the exception of the Access to Justice Fund, the Judicial Branch Nonjudicial Salary Initiative Fund, the Judicial Branch Education Fund, the Judicial Technology Fund, the Dispute Resolution Fund, the Judicial Council Fund, and the Judicial Performance Fund. A copy of both interim reports is included as Attachment C.

Senate Judiciary

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Attachment 5

It is obvious to everyone in this room that this is a year in which cuts have been or will be made to every state budget. The Judicial Branch has had a hiring freeze in place since the beginning of the fiscal year, has eliminated funding for a significant portion of temporary help, has eliminated funding for retired judges, and has made a variety of other cuts. If these cuts are not sufficient to meet the budget cuts that will be mandated by the 2009 Legislature, and I suspect they will not be, the Judicial Branch, with a budget that is almost 98% salaries and wages, will have no choice other than to shut down the court system by furloughing its employees. In addition to numerous other duties, clerks of the district court collect, receipt, subject to accounting, and direct docket fees and numerous other fines and fees to the appropriate funds. As was concluded by the Interim Special Committees on Judiciary in 2005 and 2006, docket fees should be used to address needs that directly impact the courts, rather than for other related uses.

Prosecuting attorneys would seem to have at least one other significant source of revenue that is authorized, but not limited, by statute. K.S.A. 22-2909 provides that county and district attorneys may enter into diversion agreements in lieu of prosecution, and provides for "diversion costs." From the diversion fee paid, the amount of the docket fee should be paid to the clerk of the district court, but the fine amount and any additional "diversion costs" (which are unlimited by statute) are retained by the county or the county or district attorney. Because this funding is paid to the county and district attorneys, rather than to the clerks of the district court, we do not know how much is collected annually. However, we know anecdotally that these amounts are significant. I know of no reason why diversion costs could not be used to provide training funds.

Thank you for the opportunity to testify on SB 68, and I would be happy to stand for any questions.

- (3) 2.31% to the juvenile detention facilities fund;
 - (4) 1.78% to the judicial branch education fund;
 - (5) .47% to the crime victims assistance fund;
 - (6) 2.27% to the protection from abuse fund;
 - (7) 3.60% to the judiciary technology fund;
 - (8) .29% to the dispute resolution fund;
 - (9) 1.05% to the Kansas juvenile delinquency prevention trust fund;
 - (10) .18% to the permanent families account in the family and children investment fund;
 - (11) 1.25% to the trauma fund;
 - (12) .94% to the judicial council fund;
 - (13) .57% to the child exchange and visitation centers fund;
 - (14) 15.29% to the judicial branch nonjudicial salary adjustment fund;
 - (15) 15.12% to the judicial branch nonjudicial salary initiative fund; and
 - (16) the balance to the state general fund.
- (b) On and after July 1, 2010, of the remittance of the balance of docket fees received by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit:
- (1) 4.30% to the access to justice fund;
 - (2) 2.38% to the juvenile detention facilities fund;
 - (3) 1.83% to the judicial branch education fund;
 - (4) .48% to the crime victims assistance fund;
 - (5) 2.34% to the protection from abuse fund;
 - (6) 3.71% to the judiciary technology fund;
 - (7) .30% to the dispute resolution fund;
 - (8) 1.08% to the Kansas juvenile delinquency prevention trust fund;
 - (9) .19% to the the permanent families account in the family and children investment fund;
 - (10) 1.29% to the trauma fund;
 - (11) .97% to the judicial council fund;
 - (12) .59% to the child exchange and visitation centers fund;
 - (13) 15.75% to the judicial branch nonjudicial salary adjustment fund;
 - (14) 15.57% to the judicial branch nonjudicial salary incentive fund; and
 - (15) the balance to the state general fund.

History: L. 1992, ch. 315, § 2; L. 1994, ch. 335, § 4; L. 1996, ch. 234, § 3; L. 1996, ch. 234, § 4; L. 1999, ch. 127, § 10; L. 2000, ch. 177, § 4; L. 2001, ch. 5, § 78; L. 2002, ch. 51, § 1; L. 2003,

ch. 101, § 8; L. 2004, ch. 95, § 1; L. 2006, ch. 195, § 8; L. 2008, ch. 95, § 5; July 1.

Attorney General's Opinions:

Statute prohibiting disclosure of judicial survey data of elected judges violates first amendment. 2007-27.

20-367. Disposition of docket fees. (a) On and after July 1, 2008 through June 30, 2010, of the remittance of the balance of docket fees received by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit:

- (1) 3.00% to the judicial performance fund;
- (2) 4.17% to the access to justice fund;



State of Kansas


Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

January 26, 2009

To: Duane Goossen
Director of the Budget

From: Jerry Sloan 
Budget & Fiscal Officer

Re: SB 68

Senate Bill 68 would increase the amount from each docket fee that is deposited into the local prosecuting attorneys' training fund from \$1 to \$2.

The bill does not propose an increase in docket fees to fund this initiative resulting in a decrease to all funds receiving a portion of the docket fees. Last fiscal year, approximately \$186,239 was deposited into the prosecuting attorneys' training funds from docket fees. Since SB 68 would double the amount deposited, we are estimating a total of \$372,478 would be deposited into the fund.

The following table contains the funds that currently receive a portion of docket fees and the percentage of fees deposited into the fund as well as the estimated decrease in receipts.

Judicial Performance Fund	3.00%	-\$5,587
Access to Justice Fund	4.17%	-\$7,766
Juvenile Detention Facilities Fund	2.31%	-\$4,302
Judicial Branch Education Fund	1.78%	-\$3,315
Crime Victims Assistance Fund	0.47%	-\$875
Protection from Abuse Fund	2.27%	-\$4,228
Judiciary Technology Fund	3.60%	-\$6,705
Dispute Resolution Fund	0.29%	-\$540
Kansas Juvenile Delinquency Prevention Trust Fund	1.05%	-\$1,955
Permanent Families Acct in the Family & Children's Investment Fund	0.18%	-\$335
Trauma Fund	1.25%	-\$2,328
Judicial Council Fund	0.94%	-\$1,751
Child Exchange and Visitation Centers Fund	0.57%	-\$1,062
Judicial Branch Nonjudicial Salary Adjustment Fund	15.29%	-\$28,476
Judicial Branch Nonjudicial Salary Initiative Fund	15.12%	-\$28,159
State General Fund	47.71%	-\$88,855

Should SB 68 be enacted the above funds would see a decrease in revenue should filings remain consistent.

JS:mr

5-4

Special Committee on Judiciary

COURT DOCKET FEES

CONCLUSIONS AND RECOMMENDATIONS

The Committee reviewed the various aspects of the court docket fees issue and agreed to introduce a bill that would delete certain funds from district court docket fees as follows:

- Indigents' Defense Services Fund;
- Crime Victims Assistance Fund;
- Protection from Abuse Fund;
- Kansas Juvenile Delinquency Prevention Trust Fund;
- Permanent Families Account in the Family and Children Investment Fund;
- Child Exchange and Visitation Centers Fund;
- Juvenile Detention Facilities Fund;
- Trauma Fund; and
- Law Enforcement Training Center Fund.

Those funds that would continue to be funded by docket fees include the funds that are related to the functioning of the courts as follows:

- Access to Justice Fund;
- Judicial Branch Nonjudicial Salary Initiative Fund;
- Judicial Branch Education Fund;
- Judicial Technology Fund;
- Dispute Resolution Fund;
- Judicial Council Fund; and
- Judicial Performance Fund.

Proposed Legislation: The Committee recommends one bill to be introduced in the Senate.

BACKGROUND

The Special Committee on Judiciary was charged to review the amount of each docket fee; how Kansas docket fees compare to those of other states; the impact on litigants and our judicial system of increasing or decreasing docket fees; whether docket fee revenue should be used solely for funding the Judicial Branch; whether non-judicial recipients of docket fee revenue should be required to annually justify their receipt of that revenue; and the impact on non-judicial docket fee recipients of submitting their annual revenue request to the appropriations process.

COMMITTEE ACTIVITIES

The Committee held a hearing on the issue of docket fees on November 16, 2006. Conferees included Alicia Lange, Grants Administrator, Attorney General's Office; Randy Hearrell, Judicial Council; Richard Hayse, Kansas Bar Association; Don Jordan, Commissioner, Juvenile Justice Authority; Lee Woodard, Sedgwick County Law Library; John Pickett, Johnson County Law Library; Dick Morrissey, Deputy Director, Kansas Department of Health and Environment; Joyce Grover and Dodie Wellshear, Kansas Coalition Against Sexual and Domestic Violence; and Marilyn Harp, Kansas Legal Services.

Carolyn Rampey, Kansas Legislative Research Department, provided an overview of the disposition of district court docket fees along with the distribution breakdown of which funds receive docket fees, the percentage they receive and the dollar amounts they will receive in FY 2007.

Alicia Lange addressed the mechanisms of the five funds that the Attorney General's Office oversees. The conferee stated that individuals from each of the funds has to reapply every year for a grant. The Attorney General holds a percentage of docket fee funds out each month to make sure there are enough funds to last throughout the year.

Randy Hearrell explained the mechanism of the Judicial Council's funding process. Part of the Judicial Council's operating expenses come from the sale of its publications. In addition, the Judicial Council does receive some State General Funds.

Rich Hayse supported uniform docket fees but stated a belief that only court related activities should receive docket fee funding.

Don Jordan stated that, whatever the source, juvenile justice programs need to be adequately funded. In addition, written testimony was provided by J. Russell Dennings regarding funding for regional juvenile detention centers.

Lee Woodard and John Pickett addressed the funding of their respective county law libraries. Each library charges a registration fee to attorneys.

Joyce Grover focused on funding for sexual and domestic battery programs that are funded through the Attorney General's Office. Application for funding needs to be made each year.

Dick Morrissey explained the need for funding to establish and maintain the infrastructure for a statewide trauma system.

Marilyn Harp supported continuation of docket fee funds for the Access to Justice Fund and the need for certain legal services to be available for those who cannot afford it.

The Kansas Trial Lawyers Association submitted written testimony encouraging the Legislature to require programs that receive docket fees to go through the budget process.

J. Russell Jennings provided written testimony and advocated continued funding for the Juvenile Detention Facilities Fund.

CONCLUSIONS AND RECOMMENDATIONS

The Committee reviewed the various aspects of the court docket fees issue and agreed to introduce a bill that would delete certain funds from district court docket fees as follows:

- Indigents' Defense Services Fund;
- Crime Victims Assistance Fund;
- Protection from Abuse Fund;
- Kansas Juvenile Delinquency Prevention Trust Fund;
- Permanent Families Account in the Family and Children Investment Fund;
- Child Exchange and Visitation Centers Fund;
- Juvenile Detention Facilities Fund; and
- Trauma Fund.

Those funds that would continue to be funded by docket fees include the funds that are related to the functioning of the courts as follows:

- Access to Justice Fund;
- Judicial Branch Nonjudicial Salary Initiative Fund;
- Judicial Branch Education Fund;
- Judicial Technology Fund;
- Dispute Resolution Fund;
- Judicial Council Fund; and
- Judicial Performance Fund.

Special Committee on Judiciary

DOCKET FEES IN KANSAS

CONCLUSIONS AND RECOMMENDATIONS

In discussion on the topic of docket fees and increases in the fees, the Committee indicated disappointment regarding the lack in the number of conferees whose programs are partially financed by docket fees. The Committee concluded that other entities outside the judicial system that receive docket fees should go through the regular appropriations process as do other agencies for funding purposes.

Further discussion reflected the fact that the training of law enforcement officers at the Kansas Law Enforcement Training Center (KLETC) is financed by the state. The Committee encouraged KLETC to charge a user fee to help fund expenses.

The Committee made two recommendations on these matters as follows:

- Increase docket fees, as proposed by the District Court Judges Association, to provide for an additional \$9,000 for district court judges and district magistrate judges salaries; and
- Increase by \$2.00 the motor vehicle registration fee to be used for KLETC purposes and to recommend that KLETC be granted authority to promulgate rules and regulations to impose a user fee.

Proposed Legislation: The Committee recommends the introduction of two bills.

BACKGROUND

The charge to the Committee included the study of the current status of docket fees in Kansas. In addition, a review of 2005 HB 2491, which proposes to finance a 10 percent increase for judicial salaries through increased docket fees and review a docket fee proposal for funding of the continued operation of KLETC was presented. The fiscal note on HB 2491, as proposed, would be neutral. The bill was introduced by the House Appropriations Committee and then was referred to that Committee.

2005 SB 296 also dealt with an increase in docket fees. It was introduced by the Senate Ways and Means Committee and was referred to that Committee where the bill had a hearing and eventually passed out of the Committee. The bill was then amended

by the Senate Committee of the Whole by adjusting the increase in salaries of judges downward. The change still resulted in a proposed overall increase in judicial salaries. SB 296 was then referred to the House Appropriations Committee. As introduced, the two bills, HB 2491 and SB 296, were identical.

COMMITTEE ACTIVITIES

Staff presented a memorandum dealing with how docket fees are collected from district courts and distributed among various state and local entities.

Proponents of the measure to increase docket fees for judicial salaries included District Court Judge Meryl Wilson, 21st judicial district; Chief District Court Judge

Richard Smith of the 6th judicial district, with both judges testifying on behalf of the Kansas District Judges Association; and District Magistrate Judge Timarie Walters on behalf of the Kansas District Magistrate Judges Association. Ed Pavey from KLETC also supported an increase in docket fees, as well as an increase in the vehicle registration fee of \$2.00. Jim Clark with the Kansas Bar Association and Doug Smith, Kansas Credit Attorneys Association also spoke in favor of an increase in docket fees for judicial purposes. Connie Sanchez, Child Exchange Visitation, YMCA, spoke on behalf of a \$25 fee assessment for all marriage dissolution filings in Kansas.

The Committee proceeded to discuss whether the use of docket fees for other purposes than those related to the operation of the judicial system was appropriate.

CONCLUSIONS AND RECOMMENDATIONS

In discussion on the topic of docket fees and increases in the fees, the Committee indicated disappointment regarding the lack in the number of conferees whose programs

are partially financed by docket fees. The Committee concluded that other entities outside the judicial system that receive docket fees should go through the regular appropriations process as do other agencies for funding purposes.

Further discussion reflected the fact that the training of law enforcement officers at KLETC is financed by the state. The Committee encouraged KLETC to charge a user fee to help fund expenses.

The Committee made two recommendations on these matters as follows:

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