

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 2338**

As Amended by Senate Committee of the Whole

**Brief\***

Senate Sub. for HB 2338 would appropriate \$2.0 million in additional State General funds for the Judicial Branch in FY 2015, increase docket fee revenue to the Judicial Branch, and modify statutes governing Judicial Branch operations concerning budgeting, the election of chief judges, and allowing for a delay in filling judicial vacancies for up to 120 days. The bill also would delete the statutory requirement for the payment of longevity to Judicial Branch non-judicial staff. The provisions of the bill would be non-severable.

***Appropriations***

The bill would appropriate an additional \$2.0 million, all from the State General Fund, for the Judicial Branch. The additional appropriation would provide a State General Fund budget of \$97,783,948 for FY 2015. The funding would be intended to offset lower than anticipated revenue to the Judicial Branch Surcharge Fund and the Judicial Branch Docket Fee Fund. Judicial Branch clerk's fees have been declining an average of 6.0 percent per year over the past four years.

***Docket Fees***

The bill would create statutory filing fees for appeals to the Court of Appeals or the Supreme Court in the amount of \$145 and grant the Supreme Court the authority to impose an

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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>

additional charge of up to \$10 from July 1, 2014, through July 1, 2015, to fund the costs of non-judicial personnel. (Appellate court filing fees currently are set at \$125 by Supreme Court rule.) A motion for summary judgment filing fee of \$195 would be created, as well as a garnishment request fee of \$7.50. The Supreme Court would be authorized to impose an additional charge of up to \$12.50 for garnishment requests to fund the costs of non-judicial personnel. The summary judgment filing fee would not apply in limited actions cases under Chapter 61, and the State of Kansas and its municipalities would be exempt from payment of this fee, as well as the appellate filing fees and garnishment request fee. Each of these new fees would go into effect on July 1, 2014, and for each a poverty affidavit would be allowed in lieu of the fee.

The bill would increase existing docket fees as follows:

- For a petition for expungement of conviction or related arrest records, from \$100 to \$176 for the period July 1, 2013, through July 1, 2015;
- For a petition for expungement of an arrest record, from \$100 to \$176;
- In a traffic, cigarette or tobacco, or fish and game violation case, from \$74 to \$86 beginning July 1, 2014;
- For a petition for expungement of juvenile records or files, from \$100 to \$176 for the period July 1, 2013, through July 1, 2015;
- For the filing of an out-of-state probate decree, from \$108.50 to \$173, beginning July 1, 2014; and
- For cases under KSA Chapter 60, from \$154 to \$173, beginning July 1, 2014.

The bill also would extend the time for the Supreme Court to impose an additional fee in juvenile and conviction expungement cases and Chapter 60 cases to fund non-judicial personnel to July 1, 2015.

The bill would reduce the docket fees in small claims cases from \$37 to \$35 (claims under \$500) and from \$57 to \$55 (claims over \$500) beginning July 1, 2014.

The bill would create the Electronic Filing and Centralized Case Management Fund and direct expenditures from the fund be used to create, implement, and manage an electronic filing and centralized case management system for the state court system.

For FY 2015, 2016, and 2017, the bill would direct the first \$3.1 million of the balance of docket fees received by the state treasurer from clerks of the district court to the fund created by the bill. Beginning in FY 2018, the first \$1.0 million of the docket fees received would be directed to the new fund.

Finally, the bill would update agency references to reflect current agency authority and responsibilities.

***Judicial Branch Budgeting Procedure***

The bill would enact new law to allow, for the fiscal year ending June 30, 2016, and each subsequent fiscal year, the chief judge in a judicial district to elect to be responsible for preparing and submitting a budget for the judicial district to the Chief Justice of the Kansas Supreme Court. A chief judge electing this responsibility would be required to notify the Chief Justice of this decision by August 1 of the preceding fiscal year, and the chief judge would be required to submit, on or before June 30 of each fiscal year, the budget for the ensuing fiscal year based upon the dollar amount allocated to the district by the Chief Justice for such fiscal year.

Subject to appropriations, the Chief Justice would have the final authority over the annual amount allocated to each judicial district budget. After the Legislature makes Judicial Branch appropriations each year, the Chief Justice would determine the budgeted amount for each judicial district and notify each chief judge of that amount. Once the amount of each judicial district budget is established by the Chief Justice, the chief judge of each district would have control of the expenditures under the budget, except for salaries mandated by law, and all lawful claims by a chief judge within the limits of the district budget would be approved by the judicial administrator. The chief judge of each district would determine the compensation of personnel in the district and would have the authority to hire, promote, suspend, demote, and dismiss personnel as necessary to carry out the functions and duties of the district.

If it appears the resources of any Judicial Branch special revenue fund are likely to be insufficient to cover the appropriations made against such fund for the fiscal year, the Chief Justice would be responsible for determining any allotment system to assure expenditures would not exceed available resources of any such fund for the fiscal year, and chief judges who have elected the responsibility for the district budget would be required to follow this allotment system.

Existing law would be amended to remove from the Supreme Court's judicial personnel classification system any nonjudicial personnel who would be subject to the authority of a chief judge who has elected responsibility for the district budget, and the bill would state that the classification system is not to infringe upon the authority of a chief judge who has elected budget responsibility.

The bill would amend a provision related to departmental justices to clarify that a departmental justice would not have the authority to make or change any budget decisions made by the chief judge of a district court.

The bill would amend statutes relating to judicial departments, district court rules, district court clerks, district court nonjudicial personnel, court services officers, county budgets for court operations, court reporters, and state employee compensation philosophy to be consistent with the new budget process and authority established by the bill.

Certain provisions (related to the judicial personnel classification system and compensation, probation and parole officer, and district court employees) tied to specific dates in 1978 and 1979 would be removed, and references to certain agencies and boards would be updated to reflect reorganization.

### ***Chief Judge Elections***

The substitute bill would establish that the district court judges in each judicial district would elect a district judge to serve as chief judge and would determine the procedure for such election. Similarly, the judges of the Court of Appeals would elect a judge of the Court of Appeals to serve as chief judge. The Court of Appeals would determine the procedure for such election. Under current law, the Kansas Supreme Court designates a judge in each judicial district and a judge of the Court of Appeals to serve as chief judge of the judicial district or the Court of Appeals, respectively. The bill would provide that each chief judge designated by the Supreme Court on July 1, 2014, would be allowed to serve as chief judge through January 1, 2016.

### ***Judicial Vacancies***

The substitute bill would amend the law concerning the filling of judicial vacancies. The bill would require the Chief Justice of the Supreme Court to provide notice of a vacancy in the office of district court judge or district magistrate court judge to the chairperson of the district judicial nominating commission in such district not later than 120 days following the date the vacancy occurs or will occur. Current law

requires such notice be given “promptly.” Once the nominating commission has submitted the required number of nominations to the Governor, the bill would increase from 30 to 60 the number of days within which the Governor must make an appointment. Similarly, the bill would increase from 30 to 60 the number of days within which the Chief Justice must make an appointment if the Governor fails to make an appointment within the allotted time.

In judicial districts where judges are elected, the bill would require the Clerk of the Supreme Court to provide notice of a vacancy in the office of district court judge to the Governor not later than 120 days following the date the vacancy occurs or will occur. Further, the bill would increase from 60 to 90 the number of days within which the Governor must make an appointment following receipt of such notice.

## **Background**

**HB 2338**, as passed by the House, would have amended the distribution of clerk’s fees in the Judicial Branch. The Senate Committee on Ways and Means deleted these contents and replaced them with the modified contents of **SB 324**, which would have appropriated \$8.2 million in additional State General funds to the Judicial Branch in FY 2015. The Committee also inserted the contents of SB 313 (docket fees), SB 364 (Judicial Branch budgeting procedure), SB 365 (chief judge elections), and SB 377 (filling judicial vacancies) without amendment into SB 324 prior to the insertion of the contents of SB 324 into HB 2338.

The Senate Committee of the Whole amended Senate Sub. for HB 2338 to exempt the State of Kansas and its municipalities from the appellate filing fees and the garnishment request fee. The amendment also added a provision to the statute containing state employee compensation philosophy statements to acknowledge the new budget process and authority established by the bill.

**SB 313**, on docket fees, was introduced by the Senate Judiciary Committee at the request of Senator King, who explained the bill was derived from recommendations made in the 2012 report by the Kansas Supreme Court's Blue Ribbon Commission. The Blue Ribbon Commission was formed in late 2010 and was charged with reviewing the operations of Kansas courts to determine how to improve their efficiency while maintaining access to justice for all Kansans.

In the Senate Committee hearing, representatives of the Kansas District Judges Association testified in support of the bill. Written testimony supporting the bill was received from a member of the Blue Ribbon Commission and representatives of the Kansas Credit Attorneys Association and the Office of Judicial Administration (OJA). The OJA testimony included language for a proposed amendment clarifying the name and purpose of the fund created by the bill.

Court of Appeals Judge Patrick McAnany, Chair of the Blue Ribbon Commission, and another representative of OJA provided neutral testimony. A representative of the Kansas Department of Corrections also provided neutral testimony and requested an amendment to exempt the state of Kansas and its municipalities from the motion for summary judgment filing fee.

The Senate Committee adopted an amendment removing a new garnishment fee in limited actions under Chapter 61 and clarifying the motion for summary judgment filing fee is not to apply to such actions. Staff stated this amendment would allow the bill to reflect the intent of the parties requesting the bill. The Committee also adopted the amendments proposed by the OJA and the Department of Corrections.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the OJA indicates the fees created or amended by the bill would increase Judicial Branch revenues by \$5.9 million in FY 2015. The first \$3.1

million of this amount would be directed to the new fund created by the bill, with \$2,772,280 distributed to the Judicial Branch Docket Fee Fund and \$27,720 distributed to the Judicial Council Fund.

In FY 2016 and FY 2017, the first \$3.1 million would be credited to the fund created by the bill, and the remaining \$2.8 million would be distributed to a variety of other funds based on percentages established in current law.

Beginning in FY 2018, the first \$1.0 million would be credited to the fund created by the bill, and the remaining amount generated would be distributed to a variety of other funds based on percentages established in current law.

The Department of Revenue estimates SB 313, as introduced, would increase expenditures by approximately \$4.9 million in FY 2015: \$20,000 in new garnishment fees; \$53,685 for a full-time equivalent position to handle work related to the new garnishment fees; \$4.8 million in civil docket fee increases related to tax warrant cases; \$68,250 in summary judgment fees; and \$1,933 in increased appellate fees.

The Attorney General indicated enactment could be challenged in court, increasing expenses under the Kansas Tort Claim Act, but those costs cannot be determined.

The Judicial Branch submitted revised fiscal information in anticipation of the adoption of the amendment removing the Chapter 61 provisions from the bill, indicating the bill would increase Judicial Branch revenues by \$4,594,005 in FY 2015.

**SB 364**, on Judicial Branch budgeting procedure, was introduced by the Senate Committee on Ways and Means.

In the hearing of the Senate Committee on Judiciary, a district court judge from the Eighteenth Judicial District testified in support of the bill. Written testimony supporting the



bill was received from two additional judges of the Eighteenth Judicial District.

The chief judge from the Fifth Judicial District and representatives of the Kansas District Judges Association, Kansas Association of Defense Counsel, and OJA testified in opposition to the bill. Written testimony opposing the bill was received from Kansas Chief Justice Lawton Nuss and representatives of the Kansas Association for Justice and Kansas Bar Association.

The Senate Committee amended the bill to make the new budget process and authority optional at the election of the chief judge of a judicial district.

According to the fiscal note prepared by the Division of the Budget on SB 364, as introduced, the OJA indicates the bill would require 13 judicial districts to establish a court administrator, resulting in \$1,032,174 in increased expenditures from the State General Fund in FY 2016 and each subsequent year. OJA estimated an additional \$1,251,774 would be required from the SGF in FY 2016 and each subsequent year to add court program analysts in 18 judicial districts requiring additional assistance. OJA anticipates continued dependence on its office for payroll management and personnel processes, but a precise fiscal effect cannot be provided until the provisions of the bill are in place.

**SB 365**, on chief judge elections, was introduced by the Senate Committee on Ways and Means.

In the Senate Committee on Judiciary hearing, two district judges from the Eighteenth Judicial District spoke in favor of the bill. Two judges from the same district submitted written testimony supporting the bill. A representative of the Kansas Supreme Court testified in opposition to the bill. The chief judge of the Eighth Judicial District and a representative of the Kansas Bar Association submitted written testimony opposing the bill.

The fiscal note prepared by the Division of the Budget on the bill indicates SB 365 would have no fiscal effect on the expenditures or revenues of the Judicial Branch.

**SB 377**, on judicial vacancies, was introduced by the Senate Committee on Judiciary at the request of the Kansas Supreme Court. In the Senate Committee, Kansas Court of Appeals Judge Karen Arnold-Burger, Chairperson of the Court Budget Advisory Council, testified in support of the bill. There was no neutral or opponent testimony.

The fiscal note prepared by the Division of the Budget indicates passage could reduce Judicial Branch expenditures by allowing a longer period of time to fill judicial vacancies than is allowed under current law. The Court Budget Advisory Council made certain presumptions and found this proposal would be a cost-saving measure. Vacancies are sporadic, however, and an average vacancy rate is not indicative of actual vacancies that might occur in any given year.

Additionally, the OJA indicates counties might incur additional expenses for temporary judges if cases are delayed or cannot be heard by other judges.