



State of Kansas

Office of Judicial Administration

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

(785) 296-2256

January 14, 2016

House Appropriations Committee

Testimony in Support of HB 2449
Stephanie Bunten, Budget and Fiscal Officer

Chairman Ryckman and Members of the Committee:

Thank you, Chairman Ryckman, and the members of this committee for the opportunity to present testimony on House Bill 2449. We appreciate your efforts in keeping the approved appropriations for the Judicial Branch intact for fiscal years 2016 and 2017. Barring substantial cuts by the Legislature or Governor or decreases in projected docket fees, the Judicial Branch base budget for fiscal years 2016 and 2017, as contained in the September 15, 2015, budget submission, should allow the Judicial Branch to continue operations without the risk of court closures.

We remain grateful to you for the efforts to keep the Judicial Branch budget intact. However, we have several budget concerns about the technical operation of House Bill 2449. While House Bill 2449 would repeal the nonseverability clause in 2015 HB 2005, we seriously question whether House Bill 2449 would also repeal the 2014 nonseverability clause that affects the Judicial Branch budget.

This question is important because the 2014 nonseverability clause, as contained in 2014 HB 2338, is tied to other revenue provisions that continue into FY 2016 and future years. Specifically, 2014 HB 2338 contains the following provisions that provide revenues to the Judicial Branch:

- Increased docket fees for certain criminal violations and other judicial filings. The estimated additional Judicial Branch revenues from these provisions are approximately \$2.3 million each year for FY 2016 and FY 2017.
- Changed portion of revenues remitted from district court docket fees to 99.01% to the Judicial Branch Docket Fee Fund. (Previously, other non-Judicial Branch funds received a portion of the docket fees. See Attachment.) The estimated additional Judicial Branch revenues are approximately \$1.5 million for FY 2016 and FY 2017.

If these items are eliminated by the 2014 nonseverability clause, there would be a substantial revenue shortfall in the Judicial Branch budget. The docket fee fund is used to fund Judicial Branch salaries, and this shortfall of approximately \$3.8 million (\$2.3 million plus \$1.5 million) in a fiscal year clearly would require court closures.

Although 2014 HB 2338 contained other funding provisions, such as an additional \$2 million appropriation to partially fund initiatives approved by the Legislature, those provisions were limited to funding in FY 2015 – which has ended. The concerns raised in this testimony are only with those provisions in 2014 HB 2338 that would affect Judicial Branch funding in FY 2016 and future years.

To eliminate any doubt about the continuing application of the funding provisions in 2014 HB 2338, we ask that you consider making clear that these funding provisions are still in effect so that the funding outlined above would unquestionably be in place. Thank you for the opportunity to testify on HB 2449.

SESSION OF 2014

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2338**

As Agreed to March 25, 2014

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.

The bill also would designate that docket fees previously deposited in various special revenue funds would be deposited in the Judicial Branch Docket Fee Fund from FY 2016 forward, making permanent a budget proviso effective for FY 2014 and FY 2015.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

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 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 20, 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 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 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.

Conference Committee Action

The second Conference Committee amended the bill to designate that docket fees previously deposited in the funds listed below be deposited in the Judicial Branch Docket Fee Fund from FY 2016 forward. This amendments codifies the appropriations proviso language from the 2013 Legislative Session. The Judicial Council Fund would continue to receive 0.99 percent of docket fees under the amendment.

Funds Previously Designated to Receive Docket Fund Revenue

- Access to Justice Fund
- Judicial Branch Nonjudicial Salary Initiative Fund
- Judicial Branch Education Fund

- Judicial Technology Fund
- Dispute Resolution Fund
- Crime Victims Assistance Fund - Child Abuse Grants
- Crime Victims Assistance Fund - Child Exchange and Visitation Centers
- Protection from Abuse Fund
- Kansas Juvenile Delinquency Prevention Trust Fund
- Juvenile Detention Facilities Fund
- Trauma Fund
- Permanent Families Account in the Family and Children Investment Fund
- Judicial Branch Nonjudicial Salary Adjustment Fund
- Indigents' Defense Services Fund; and
- State General Fund

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.

judicial branch budget; docket fees; Judicial Branch budget procedure and authority;
chief judge elections; judicial vacancies

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STATE TREASURER REIMBURSEMENT
K.S.A. 75-4215 (Revised 07/01/2013)

REPORT LINE ITEM	AMT	K.S.A.	APPLIED TO
A. Fines, Penalties and Forfeitures	X	20-362 74-7336 20-2801	10.94% Crime Victims Compensation Fund 2.24% Crime Victims Assistance Fund 2.75% Comm. Alcoholism & Intoxication Programs Fund 7.65% Dept of Corr. Alcohol & Drug Abuse Treatment Fund 0.16% Boating Fee Fund 0.11% Children's Advocacy Center Fund 2.28% EMS Revolving Fund 2.28% Trauma Fund 2.28% Traffic Records Enhancement Fund 2.91% Criminal Justice Information System Line Fund 66.4% State General Fund
B. Interest on Moneys Held	X	20-350	State General Fund
C. Clerks' Fees: Docket Fees	X	20-367	4.37% Access to Justice Fund 2.42% Juvenile Detention Facilities Fund 1.87% Judicial Branch Education Fund .50% Crime Victims Assistance Fund 2.38% Protection From Abuse Fund 3.78% Judiciary Technology Fund .30% Dispute Resolution Fund 1.10% Kansas Juvenile Delinquency Prevention Trust Fund .19% Permanent Families Account 1.31% Trauma Fund ** .99% Judicial Council Fund .60% Child Exchange and Visitation Centers Fund 16.03% Judicial Branch Nonjudicial Salary Adjustment Fund 15.85% Judicial Branch Nonjudicial Salary Initiative Fund 48.31% State General Fund ** Fund remains the same Funds become judicial branch docket fee fund
D. State General Fund: (WP Reinstatement/K.S.A. 28-170 Fees):	X	28-170 32-1049a	State General Fund
E. LETC Fund	\$15.00	20-362	Law Enforcement Training Center Fund
F. Indigent Defense Services Fund: Docket Fees	\$.50	20-362 28-172b	Indigents' Defense Services Fund
G. Indigent Defense Services Fund: Application Fee	\$100.00	22-4529	Indigents' Defense Services Fund
H. Indigent Defense Services Fund: Bond Forfeiture	60% of total forfeit.	20-350	50% Indigents' Defense Services Fund 50% State General Fund
I. Marriage License Fees	\$59.00	23-108a	38.98% Protection From Abuse Fund 15.19% Family and Children Trust Account 16.95% Crime Victims Assistance Fund 15.25% Judicial Branch Nonjudicial Salary Adjustment Fund 13.63% State General Fund
J. DL Reinstatement Fees	\$59.00	8-2110	42.37% Division of Vehicles Operating Fund 31.78% Comm. Alcoholism & Intoxication Programs Fund 10.59% Juvenile Detention Facilities Fund 15.26% Judicial Branch Nonjudicial Salary Adjustment Fund
K. Children's Advocacy Center Fund: Crimes where Minor is Victim	\$400.00	20-370	Children's Advocacy Center Fund
K. Children's Advocacy Center Fund: No Child Restraint/Seat Belt	\$40.00	8-1345	Children's Advocacy Center Fund
L. Bar Discipline Fee Fund	\$100.00	20-1a01	Bar Discipline Fee Fund
M. KBI DNA Database Fee Fund	\$200.00	75-724	DNA Database Fund
N. Probation/Correctional Supervision Fee	\$60 or \$120	21-4610a	41.67% State General Fund 58.33% Correctional Supervision Fund
O. Judicial Branch Surcharge Fund	\$10-\$21	2013 HB 2204	Judicial Branch Surcharge Fund
P. Comm. Corrections Supervision Fee Fund (DUI Fine)	\$250.00	8-2,144	Community Corrections Supervision Fee Fund
Q. Human Trafficking Assistance Fund (Human Trafficking Fine)	\$2,500.00 \$5,000.00	HB 2034	Human Trafficking Assistance Fund

STATE TREASURER REIMBURSEMENT
K.S.A. 75-4215 (Revised 7/1/2015)

REPORT LINE ITEM	AMT	K.S.A.	APPLIED TO
Fines, Penalties and Forfeitures	X	20-362 74-7336 20-2801	10.94% Crime Victims Compensation Fund 2.24% Crime Victims Assistance Fund 2.75% Comm. Alcoholism & Intoxication Programs Fund 7.65% Dept of Corr. Alcohol & Drug Abuse Treatment Fund 0.16% Boating Fee Fund 0.11% Children's Advocacy Center Fund 2.28% EMS Revolving Fund 2.28% Trauma Fund 2.28% Traffic Records Enhancement Fund 4.4% Criminal Justice Information System Line Fund 64.91 State General Fund
B. Interest on Moneys Held	X	20-350	State General Fund
C. Clerks' Fees: Docket Fees	X	20-362	Electronic Filing and Management Fund balance <=\$3.1 million .99% Judicial Council Fund 99.01% electronic filing and management fund Electronic Filing and Management Fund balance >\$3.1 million .99% Judicial Council Fund 99.01% Judicial Branch Docket Fee Fund
D. LETC Fund	\$15.00	20-362	Law Enforcement Training Center Fund
E. Indigent Defense Services Fund: Docket Fees	\$0.00	2014 HB 2338	Indigents' Defense Services Fund
F. Indigent Defense Services Fund: Application Fee	\$100.00	22-4529	Indigents' Defense Services Fund
G. Indigent Defense Services Fund: Bond Forfeiture	60% of total forfeit.	20-350	50% Indigents' Defense Services Fund 50% State General Fund
H. Marriage License Fees	\$59.00	23-2510	38.98% Protection From Abuse Fund 15.19% Family and Children Trust Account 16.95% Crime Victims Assistance Fund 15.25% Judicial Branch Nonjudicial Salary Adjustment Fund 13.63% State General Fund
DL Reinstatement Fees	\$59.00	8-2110	42.37% Division of Vehicles Operating Fund 31.78% Comm. Alcoholism & Intoxication Programs Fund 10.59% Juvenile Detention Facilities Fund 15.26% Judicial Branch Nonjudicial Salary Adjustment Fund
J. Children's Advocacy Center Fund: Crimes where Minor is Victim	\$400.00	20-370	Children's Advocacy Center Fund
J. Children's Advocacy Center Fund: No Child Restraint/Seat Belt	\$40.00	8-1345	Children's Advocacy Center Fund
K. Bar Discipline Fee Fund	\$100.00	20-1a01	Bar Discipline Fee Fund
L. KBI DNA Database Fee Fund	\$200.00	75-724	DNA Database Fund
M. Probation/Correctional Supervision Fee	\$60 or \$120	21-4610a	41.67% State General Fund 58.33% Correctional Supervision Fund
N. Judicial Branch Surcharge Fund	\$10-\$22	2013 HB 2204	Judicial Branch Surcharge Fund
O. Comm. Corrections Supervision Fee Fund (DUI Fine)	\$250.00	8-2,144	Community Corrections Supervision Fee Fund
P. Human Trafficking Assistance Fund (Human Trafficking Fine)	\$2,500.00 \$5,000.00	HB 2034	Human Trafficking Assistance Fund
Q. State General Fund: (WP Reinstatement/K.S.A. 28-170 Fees):	X	28-170 32-1049a	State General Fund
R. Attorney General's Open Government Fund	X	2015 HB 2256	Attorney General's Open Government Fund