

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 320

As Recommended by Senate Committee on
Judiciary

Brief*

SB 320 would repeal the non-severability provisions of 2015 HB 2005 and enact a severability clause declaring that, if any provision of HB 2005 is held invalid or unconstitutional, then the remainder of the provisions of HB 2005 shall remain in effect.

The bill would be in effect upon publication in the *Kansas Register*.

Background

The 2015 Legislature, in HB 2005, appropriated \$131.2 million, including \$101.9 million from the State General Fund in FY 2016, and \$138.5 million, including \$105.7 million from the State General Fund, in FY 2017 for Judicial Branch operations. The bill also extended for two years, until June 30, 2017, the Judicial Branch surcharge and directed the first \$3.1 million collected in docket fee revenues to the Electronic Filing and Management Fund through FY 2017. HB 2005 also created a dispositive motion filing fee of \$195 to be applied to any motion seeking any dispositive motion, regardless of the title of the motion.

In addition to these provisions, HB 2005 included a non-severability clause stating that the provisions of the bill are non-severable internally and non-severable from the provisions of 2014 Senate Sub. for HB 2338, unless the

*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>

appropriations to the Judicial Branch for FY 2016 or FY 2017 are reduced below the amounts appropriated in the bill by another act of the 2015 or 2016 regular session of the Legislature.

The 2014 legislation (Senate Sub. for HB 2338) appropriated \$2.0 million in additional State General funds for the Judicial Branch in FY 2015, increased docket fee revenue to the Judicial Branch, and modified 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 deleted the statutory requirement for longevity payments to Judicial Branch non-judicial staff. The provisions of the bill also were non-severable.

In September 2015, in the case *Solomon v. State*, the Shawnee County District Court held that the provision of 2014 HB 2338 regarding chief judge elections was a significant violation of the general administrative authority of the Supreme Court over the courts of the State granted under Article 3, Sec. 1 of the *Kansas Constitution*. In December 2015, the Kansas Supreme Court upheld the District Court's decision in *Solomon*. The Supreme Court noted the operation of the non-severability clause in 2014 HB 2338 could affect the Judicial Branch budget, but did not address the issue of the 2015 HB 2005 non-severability clause.

Also in September 2015, in the case *State v. Shipman*, the Neosho County District Court granted the Attorney General's request for a temporary injunction against the operations of the non-severability clause in 2015 HB 2005 until March 15, 2016. Due to the *Solomon* decision and the operation of the non-severability clause in HB 2005, a failure to repeal the non-severability clause in HB 2005 would likely result (once the *Shipman* stay is lifted) in the lapse of the FY 2016 and FY 2017 Judicial Branch funding appropriations as well as the other policy provisions within the bill.

In the Senate Committee on Judiciary, representatives of the Kansas District Judges Association and the Office of Judicial Administration testified in support of the bill, stating it would ensure that Judicial Branch appropriations for FY 2016 and FY 2017 contained in 2015 HB 2005 remain unaffected by the court decisions discussed above. The conferees expressed concerns the operation of the non-severability clause in 2014 HB 2338 could still affect the Judicial Branch budget even if this bill were to pass. There was no neutral or opponent testimony.

The Senate Committee recommended the bill be placed on the Consent Calendar.

At the time of the Senate Committee's deliberation, no fiscal note had been submitted on SB 320.