

SESSION OF 2016

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 440**

As Recommended by Senate Committee on
Judiciary

Brief*

Sub. for SB 440 would amend, revive and amend, revive and repeal, or repeal various statutes related to Kansas court administration. It also would create new law related to grounds for impeachment of Supreme Court justices and discipline, suspension, or removal for cause of appointed district court judges.

Court Administration

The bill would amend the statute regarding the Supreme Court's administrative authority to remove the phrase "and the supreme court and each justice thereof shall have such specific powers and duties in exercising said administrative authority as may be prescribed by law."

The statute directing court fees to the state general revenue fund would be amended to state that all fees and charges collected by the court system shall be remitted as provided by law.

The statute regarding the state law librarian's duties would be amended to remove certain duties.

The statute regarding reproduction and preservation of court records would be amended to replace specific standards with a provision allowing the Supreme Court to

*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>

provide for the appropriate minimum standards for preservation, reproduction, digital storage, and retrieval of official court records.

A statute requiring the establishment of a judicial personnel classification system would be revived and amended to remove all provisions except amended provisions prohibiting a county from supplementing the compensation of personnel included in any personnel classification system adopted by the Supreme Court and excluding certain personnel from any such classification system.

A statute establishing a judicial department and the position of judicial administrator would be revived and amended to strike all provisions (including the establishment of the department and the administrator) except amended provisions directing expenditures from appropriations for district court operations to be paid by the state to be made on vouchers approved by the chief justice or designee, who also would certify all claims for salaries, wages, or other compensation for district court operations.

A statute regarding court supervision and court services officers would be revived and amended to remove a provision related to retirement benefits of certain persons terminated from the Department of Corrections due to the transfer of duties to the district courts.

The statute regarding the location of courthouses would be amended to replace a reference to the chief judge of the judicial district with a reference to the chief justice or designee.

A statute regarding compensation of certain district court personnel would be revived and amended to remove provisions regarding certain employees who were employed as of December 31, 1978, and requiring the Supreme Court to establish a formal pay plan for court reporters.

Statutes regarding the giving of notice of vacancies in the offices of judge of the district court and district magistrate judge would be revived and amended to change the timing requirement for the chief justice to give notice of such vacancy from “promptly” to “not later than 120 days following the date the vacancy occurs or will occur.”

Statutes regarding the filling of a vacancy in the office of judge of the district court would be revived and amended to extend the time for the governor to make an appointment from 30 to 60 days; or for a vacancy in an elected judge position, the time would be extended from 60 days following the vacancy to 90 days following receipt of notice of the vacancy.

The statute regarding duties of the clerks of the district court would be amended to charge the clerks with the duties required of them by the Supreme Court, rather than “by law or the rules and practice of the courts.”

The statutes setting the salaries of district judges and judges of the Court of Appeals would be amended to provide that such salaries shall be determined by the Supreme Court.

A statute regarding longevity bonus payments would be revived and amended to remove references to nonjudicial employees in the judicial branch.

A statute regarding the state compensation program would be revived and amended to strike a reference to “delegated authority to the Office of Judicial Administration.”

The bill would revive and repeal statutes:

- Regarding duties of departmental justices;
- Requiring the Supreme Court to designate a chief judge in every judicial district;

- Allowing promulgation of district court administrative rules;
- Directing the appointment of a clerk of the district court in each judicial district;
- Providing for the appointment of various district court personnel;
- Making the chief judge in each district responsible for preparation of the budget to be submitted to the board of county commissioners; and
- Requiring the Supreme Court to designate a judge of the Court of Appeals as chief judge of such court.

The bill would repeal various statutes regarding:

- District court chief judge responsibilities for restitution payments and annual reports of property crime compensation funds;
- Supreme Court records and papers, clerk, case syllabus, written opinions, and supplies;
- The Judicial Study Advisory Committee;
- Supreme Court establishment of pay plan;
- The official station for Supreme Court justices and Court of Appeals judges;
- The seal of justice for Supreme Court courtroom;
- The 2014 nonseverability provision;
- The Reporter of the Supreme Court and preparation, distribution, and sale of Supreme Court Reports;

- District court appointment of judges *pro tem*, temporary judges, and disqualification of judge;
- Duties of the Chief Justice, rules and regulations, and other provisions related to the judicial department and judicial administrator;
- Reproduction and preservation of court records;
- Judicial district budgets and the responsibilities of the chief judge;
- Specialized divisions of district courts;
- The official court reporter;
- Law clerks, stenographers, and other court personnel;
- Clerk of the Supreme Court as *ex officio* clerk of the Court of Appeals;
- Filing of motions with judges residing in 18th or 29th judicial districts; and
- Time limits for court decisions.

Grounds for Impeachment, Discipline, Suspension, or Removal

The bill would create new law establishing, for the purposes of sections 27 and 28 of Article 2 and section 15 of Article 3 of the *Kansas Constitution*, in an impeachment proceeding against a Supreme Court justice or in a proceeding for discipline, suspension, or removal for cause against an appointed judge of the district court, the grounds for such impeachment, discipline, suspension, or removal would include, but not be limited to:

- Treason;

- Bribery;
- Other indictable criminal offenses;
- Breach of the public trust;
- Breach of judicial ethics;
- Failure to perform adequately the duties of office;
- Attempting to subvert fundamental laws and introduce arbitrary power;
- Attempting to usurp the power of the legislative or executive branch;
- Discourteous conduct toward certain persons;
- Wanton or reckless judicial conduct;
- Personal misbehavior or misconduct;
- Failure to properly supervise, administer, or discipline judicial personnel; or
- Such other actions which, in accordance with the constitutional provisions cited above, may constitute grounds for impeachment or discipline, suspension, or removal for cause.

Background

The 2014 Legislature enacted Senate Sub. for HB 2338 [HB 2338], which 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 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*. The district court noted the nonseverability clause in HB 2338 required striking the legislation in its entirety. In December 2015, the Kansas Supreme Court upheld the District Court's decision, holding the chief judge elections provision was unconstitutional as a violation of the separation of powers. The Supreme Court also noted the district court's striking of the legislation in its entirety was not challenged on appeal and could have practical adverse consequences to the judiciary budget.

2016 SB 440 was introduced by Senator King, who stated it was intended to address the separation of powers issues raised in the *Solomon* opinion and concurring opinion and restore certain changes made in 2014 Senate Sub. for HB 2338. No conferees appeared in the hearing before the Senate Committee on Judiciary. The Judicial Administrator and representatives of the Kansas District Judges Association submitted written neutral testimony.

The Senate Committee recommended a substitute bill containing the language of SB 440 and adding the language of SB 439, regarding grounds for impeachment. No hearing or other action had been taken on SB 439.

According to the fiscal note prepared by the Division of the Budget on SB 440, as introduced, the Office of Judicial Administration indicates the bill would result in significant changes in law, but the fiscal effect cannot be reasonably estimated until further study is given.

According to the fiscal note for SB 439, the Office of Judicial Administration indicates that if impeachment

proceedings were brought against a justice or a disciplinary proceeding against a judge is held, the Judicial Branch could incur costs to provide other judges to handle the judge's or justice's work throughout the proceedings, and to sit with the court if the action is successful and a new judge or justice is appointed. However, an estimate of the fiscal effect on expenditures of the Judicial Branch cannot be determined.