

February 4, 2019

The Honorable Rick Wilborn, Chairperson
Senate Committee on Judiciary
Statehouse, Room 541-E
Topeka, Kansas 66612

Dear Senator Wilborn:

SUBJECT: Fiscal Note for SB 55 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 55 is respectfully submitted to your committee.

SB 55 would enact the Uniform Partition of Heirs Property Act. The bill would assist in the partition of property, which is owned as tenants in common and some portion was inherited or the co-tenants are relatives. SB 55 begins with a definitions section and defines “heirs property.” The bill proposes that in the case of “heirs property” the new Act would apply and supplement the current statutory provisions for partition.

The court would first decide whether a property is “heirs property.” If so, then the court would determine the fair market value of the property either by ordering an appraisal, adopting an agreement of the co-tenants, or conducting an evidentiary hearing. The evidentiary hearing would determine the fair market value of the property when the evidentiary value of an appraisal is outweighed by the cost of an appraisal. If the court orders an appraisal, it would also appoint an appraiser who would file the completed appraisal with the court. The court would be responsible for sending notice of the appraisal to each party. An evidentiary hearing would then determine the fair market value of the property based on the appraisal and any other evidence.

If the court determines that the property is “heirs property,” the plaintiff in a partition action would be held to strict notice requirements, including posting a sign on the property. Under the current partition law, courts may appoint commissioners. SB 55 would require the commissioners to be disinterested and impartial.

Under SB 55, if any co-tenant requests partition by sale, the court would notify the other co-tenants that this interest may be bought out within a certain period of time. If one co-tenant

would buy all of the interests of the co-tenants requesting partition by sale, the court would provide notice and set a date for payment. If more than one co-tenant would buy out the others, the court would allocate the right to buy the interests according to fractional ownership interests, provide notice, and set a date by which the parties would pay. If no co-tenant would be willing to buy out the others, then the court would provide notice. During the time between notifying the co-tenants of the decision and the payment date, the following rules would apply: if all co-tenants pay on time, the court would issue an order reallocating all of the interests and disburse the payment amounts; if no one pays on time, then the court would proceed as if no one offered to buy out any others; if some, but not all payments are on time the court, on motion, would give notice to the other co-tenants who paid that there is an interest remaining and the purchase price.

Once the co-tenants, who were bought out, receive notice of the remaining interest, they would have 20 days to respond to the court. If one of them buys the entire interest, the court would issue an order reallocating the remaining interest to that co-tenant, reallocate the interests of all other co-tenants, and disburse the payment. If no one buys the remaining interest, the court would resolve the partition, but if more than one of the co-tenants, who were bought out, buys the remaining interest, the court would reapportion the interests and disburse payments.

Also, if any of the co-tenants fail to appear during this process, a co-tenant requesting partition by sale may request an order from the court to authorize the sale of the defaulting co-tenant's interest. If the court determines that the sale of the interest would be fair and reasonable, then it may order the sale after all other purchase prices have been paid and the interests have been reallocated.

The remaining interests after the buyout would be partitioned by the court in-kind. The court may require some co-tenants to pay other co-tenants to make the value of the in-kind distributions just and proportionate. For co-tenants who did not appear, are unknown, or unlocatable, their interests would be combined and undivided, but would be part of the partition in-kind.

A court may also refuse to order a partition in-kind if the court determines it would result in manifest prejudice to the co-tenants as a group. In making this determination, the court may accept requests to aggregate individual interests and would consider a variety of factors related to practicability of division, potential economic waste, length of ownership, sentimental value, the use of the property, how the costs have been paid in the past, and other factors.

If a partition by sale is ordered, the court would appoint a real estate broker subject to certain criteria. If the broker does not receive an offer for the court determined value within a reasonable time, then the court would conduct a hearing and approve the highest outstanding offer, redetermine the value of the property and keep the property on the market, or order the property sold by sealed bids or at auction. The court would set the terms of the auction or sale.

If an offer for at least the court determined value is received, the broker would file a report with the court within seven days of receiving the offer and the sale would be completed.

The Office of Judicial Administration states enactment of SB 55 could have a significant fiscal effect upon the Judicial Branch because it creates many new requirements for the district courts regarding partition of property cases. Until the courts have had an opportunity to operate under the bill's provisions, a fiscal effect cannot be estimated. Any fiscal effect associated with SB 55 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "L. L. Campbell". The signature is fluid and cursive, with a large initial "L" and a smaller "L" followed by "Campbell".

Larry L. Campbell
Director of the Budget

cc: Janie Harris, Judiciary