

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 454

As Recommended by Senate Committee on
Judiciary

Brief*

SB 454 would create new law and amend, revive and amend, or repeal various statutes related to Kansas court docket fees.

The bill would create new law stating the Supreme Court shall determine the amount of any docket fees to be charged and collected by the court system and may prescribe additional fees and costs to be charged, which shall be reasonable and uniform throughout the state.

The bill also would create the Electronic Filing and Management Fund. All expenditures from this fund would be for purposes of creating, implementing, and managing an electronic filing and centralized case management system for the state court system.

Statutes setting specific docket, filing, or related fees would be amended to strike the specific fees and strike provisions that such fee shall be the only docket fee collected, fees may only be established by the Legislature, and the Supreme Court may impose an additional charge to fund the costs of non-judicial personnel. Language would be added specifying the docket fee amount is to be determined by the Supreme Court in accordance with the new law created by the bill. The statutes containing these amendments include (with notes indicating when not all of the above amendments are made in the statute):

*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>

- Appearance bond in traffic cases (but does not strike the existing fee or give Supreme Court authority to set fee);
- Court of Appeals and Supreme Court filing fees;
- Various expungement statutes;
- Marriage license fee (but does not strike the existing fee or give Supreme Court authority to set fee; an additional amendment changes that portion of distribution currently made to the Nonjudicial Salary Adjustment Fund to the Docket Fee Fund and adjusts the statutory reference accordingly);
- Court fees for other services;
- Docket fees in criminal proceedings (with an additional amendment stating statutory charges made pursuant to the disposition of docket fees statute are to be paid in addition to the docket fee);
- Reinstatement fee for Wildlife, Parks and Tourism citations (but does not strike the existing fee or give Supreme Court authority to set fee);
- Docket fees in cases under the Code for Care of Children;
- Docket fee for Juvenile Justice Code expungement (but existing law does not contain language regarding fee to be the only fee collected and established only by Legislature);
- Docket fees in proceedings under the Juvenile Justice Code;
- Docket fees under the Probate Code;
- Fees for orders of garnishment;

- Fees for civil cases;
- Dispositive motion fee (but existing law does not include the Supreme Court surcharge);
- Notice of pendency of certain actions (but does not strike the existing fee or give Supreme Court authority to set fee);
- Small claims docket fee;
- Limited civil actions docket fee; and
- Hospital lien filing fee (but does not strike the existing fee or give Supreme Court authority to set fee).

A statute regarding the remitting of moneys by the Clerk of the Supreme Court would be revived and amended to direct all remittances to the credit of the Judicial Branch Docket Fee Fund.

The statute creating the Access to Justice Fund would be revived and amended to remove a reference to the disposition of docket fees statute.

The disposition of docket fees statute would be amended to remove references to specific docket fee amounts that are removed elsewhere in the bill. The bill would amend the provision regarding the percentage credited to the Judicial Council Fund to specify it is to apply during the fiscal year ending June 30, 2017.

The statute establishing the Prosecuting Attorneys' Training Fund would be amended to specify the provided fee is to be charged in addition to the docket fee.

A statute establishing the Indigents' Defense Services Fund would be revived and amended to remove a provision

directing the charge of a \$.50 fee in various cases to be credited to this fund.

A statute governing court procedures and fees would be amended to strike provisions directing that fees established by Legislative enactment shall be the only fees collected for court procedures, allowing the Supreme Court to impose an additional charge to fund the costs of non-judicial personnel, directing the remittance of such additional charge, and limiting the use of the Judicial Branch Docket Fee Fund. Language would be added allowing expenditures to be made from the Docket Fee Fund for any purpose, as determined by the Supreme Court, consistent with Judicial Administration under section 1 of Article 3 of the *Kansas Constitution*.

Statutes regarding the Dispute Resolution Fund, Protection from Abuse Fund, Crime Victims Assistance Fund, and Kansas Juvenile Delinquency Prevention Trust Fund would be revived and amended to remove references to a disposition of docket fees statute repealed by the bill.

Finally, the bill would repeal several additional statutes, including those regarding:

- Disposition of docket fees (previously repealed in 2014 Senate Sub. for HB 2338);
- The Electronic Filing and Management Fund (previously created in 2014 Senate Sub. for HB 2338);
- The 2014 nonseverability clause;
- The Supreme Court surcharge; and
- A post-decree motion docket fee.

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 454 was introduced by the Senate Committee on Ways and Means. While providing an overview of the bill before the Senate Committee on Judiciary, the assistant revisor stated there was some question regarding the current status of docket fees following the *Solomon* decision. The Committee Chairperson stated the bill would be one way to address the uncertain status of docket fees. No conferees appeared in the hearing before the Senate Committee on Judiciary. A representative of Credit Management Services provided written testimony opposing the bill. The Judicial Administrator, representatives of the Kansas District Judges

Association, and a representative of the Kansas Credit Attorneys Association submitted written neutral testimony.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicates the bill could result in significant changes in law, but a fiscal effect cannot be estimated until further study is given.