

SESSION OF 2009

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE BILL NO. 66**

As Agreed to April 1, 2009

**Brief\***

SB 66 would amend current law regarding:

- The transmittal of documents when venue is changed in care and treatment cases for mentally ill persons and in care and treatment cases for persons with an alcohol or substance abuse problem;
- The Judicial Branch authority to issue a surcharge;
- The district court docket fee credited to the Prosecuting Attorneys' Training Fund;
- The authority of the Kansas Judicial Council to use its fee fund to pay for the Kansas Criminal Code Recodification for another year and would remove the requirement to evaluate retired judges who work on a part-time basis; and
- The delay of the continued expansion of the Court of Appeals until January 1, 2011.

**Change of Venue**

The bill would authorize the district court issuing the order to change venue in care and treatment cases for mentally ill persons and in care and treatment cases for persons with an alcohol or substance abuse problem to:

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\*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>

- Send an electronic copy of the entire file of the case to the receiving district court;
- Send an electronic copy of the order transferring venue to the treatment facility where the patient is being detained, evaluated, or treated; or
- Send a facsimile or electronic copy of the entire case file to the proposed patient's county of residence, if the county of residence is not the receiving county.

The bill also would authorize the receiving district court to send a facsimile or electronic copy of the entire case file to the proposed patient's county of residence, if the county of residence is not the receiving district court.

In addition, the transferring district court could send an entire original file by mail to the receiving district court, upon request of the receiving district court or upon an order of the court transferring venue.

### **Judicial Branch Surcharge**

The bill would amend current law to allow the Kansas Supreme Court to establish a surcharge of up to \$10 per fee (for a series of fees) for costs for non-judicial personnel. This surcharge would be the only surcharge that the Kansas Supreme Court could charge during the time period from July 1, 2009, through June 30, 2010. Garnishments, hearings in aid, executions, and expungements would be proceedings that would be subject to the surcharge.

The bill would clarify that moneys collected from the surcharge would be deposited in the state treasury and credited to the newly created Judicial Branch Surcharge Fund.

### **Prosecutor's Training Fund**

The bill would increase the amount of the district court docket fee credited to the Prosecuting Attorneys' Training Fund from \$1.00 to \$2.00 for each docket fee assessed in a criminal case and \$1.00 for each docket fee assessed in a civil case. The bill also would increase the docket fee in criminal and civil cases by \$1.00.

### **Kansas Criminal Code Recodification Commission and Retired Judges**

The bill would amend current law to authorize the Kansas Judicial Council to use its fee funds to pay for the Kansas Criminal Code Recodification Commission for another year. The bill also would remove the requirement that the Commission on Judicial Performance evaluate the performance of retired senior judges who are employed on a part-time basis by the Supreme Court.

### **Kansas Court of Appeals**

The bill would delay the continued expansion of the Court of Appeals until January 1, 2011.

### **Conference Committee Action**

The Conference Committee adopted the House amendments to the bill with the following changes:

- Add the provisions of SB 134 relating to the Judicial Branch surcharge as passed by the House Committee of the Whole, with the following changes:
  - Add garnishments, hearings in aid, executions, and expungements as proceedings that would be subject to the surcharge;

- Change the effective date to publication in the statute book; and
  - Clarify that moneys collected from the surcharge authorized by this bill would be deposited in the state treasury and credited to the newly created Judicial Branch Surcharge Fund.
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- Add the provisions of SB 68 relating to the district court docket fee credited to the Prosecuting Attorneys' Training Fund as passed by the House Committee of the Whole;
  - Add the provisions of SB 277 relating to the authorization of the Kansas Judicial Council to use its fee funds to pay for the Kansas Criminal Code Recodification Commission for another year and to the removal of the requirement that the Commission on Judicial Performance evaluate the performance of retired senior judges who are employed on a part-time basis by the Supreme Court; and
  - Add the provisions of SB 282 relating to delaying the continued expansion of the Court of Appeals until January 1, 2011.

## **Background**

**Change of Venue:** The proponent of the bill who presented testimony in the Senate Committee hearing was Sandy McCurdy, Clerk of the Johnson County District Court.

There was no testimony in opposition to the bill.

The House Judiciary Committee amended the bill by inserting the provision which would allow the original file to be sent by mail.

The fiscal note indicated the passage of the bill would result in a workload decrease for district court clerks who

regularly deal with change of venue in care and treatment cases. This would allow clerks to reallocate their time. A precise fiscal effect on the Judicial Branch cannot be determined.

**Judicial Branch Surcharge (formerly SB 134):** In addition to statutorily-set docket fees, the Kansas Supreme Court imposed a surcharge on district court docket fees from April 1, 2002, to June 30, 2006. The first surcharge was imposed from April 1, 2002, to June 30, 2003, for the purpose of generating additional revenues to operate the Judicial Branch. The surcharge was extended three times to generate additional funding for FY 2004 and FY 2005. At the time of the surcharge's imposition, Attorney General Carla Stovall opined that "The Kansas Supreme Court has inherent authority to take action necessary to insure that it is adequately funded to carry out its judicial functions. As long as the Court has made the necessary findings of urgency and necessity, its order . . . is a proper exercise of this inherent power." (Attorney General's Opinion No. 2002-17.) The opinion was in response to a request from a legislator who asked whether the Chief Justice had the authority to impose a surcharge on court costs and whether the Chief Justice's actions usurped the authority of the Legislature to make appropriations. With the exception of the surcharge, all other docket fees are set statutorily.

In response to the surcharge, the Legislature passed 2006 House Sub. for SB 180 which provides that fees shall only be established by an act of the Legislature and that no other authority is established by law or otherwise to collect a fee for court procedures. Court procedures includes docket fees, filing fees, or other fees related to access to court procedures.

The proponents of the bill who presented testimony at the Senate Committee hearing were Jerry Sloan, Judicial Branch Budget and Fiscal Officer; Chief Judge Stephen Tatum, 10th Judicial District (Johnson); Chief Judge James Fleetwood, 18th Judicial District (Sedgwick); and Chief Judge Richard Smith, on behalf of the Kansas District Judges Association.

The opponent of the bill who presented testimony at the Senate Committee hearing was Doug Smith, on behalf of the Kansas Credit Attorneys Association and the Kansas Collectors Association.

The Senate Committee on Judiciary amended the bill to change the effective date of the bill to publication in the *Kansas Register*.

The House Committee on Judiciary changed the Senate provisions to allow the Kansas Supreme Court to impose a surcharge and inserted the provisions to allow for the imposition of a series of fees for one year, from July 1, 2009, to June 30, 2010.

The fiscal note states that if SB 134 is enacted, it would permit the Judiciary to use the dollars generated by the fees or "emergency surcharge" to replace (sic) State General Fund monies in FY 2010. The actual amount of the fees the Court would impose has not been determined. Any fiscal effect resulting from the passage of this bill would be in addition to amounts included in *The FY 2010 Governor's Report*.

**Prosecutor's Training Fund (formerly SB 68):** The law provides that certain state and local entities will receive a specified portion of district court docket fees "off the top" and that the balance will be credited to the State Treasury. Funds that receive a portion of the district court docket fee "off the top" are: the County General Fund, County Law Library Fund, Prosecuting Attorneys' Training Fund, Indigents' Defense Services Fund, and the Law Enforcement Training Center Fund.

Docket fee revenues that remain following the distribution of fees to the "off the top" funds are credited to the State Treasury from which the revenue is allocated based on the percentages set out in statute. Those funds are: Access to Justice Fund, Judicial Branch Nonjudicial Salary Initiative Fund, Judicial Branch Education Fund, Judicial Technology Fund, Dispute Resolution Fund, Judicial Council Fund, Judicial

Performance Fund, Crime Victims Assistance Fund, 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, Child Exchange and Visitation Center Fund, and the State General Fund.

The proponent of the bill, as introduced, who presented testimony in the Senate Committee hearing was Tom Stanton, Reno County District Attorney and President of the Kansas County and District Attorneys Association.

The opponent of the bill, as introduced, who presented testimony in the Senate Committee hearing was Kathy Porter, Office of Judicial Administration.

The Senate Committee of the Whole amended the bill to:

- Credit the prosecuting attorneys' training fund \$1.00 for each docket fee assessed in a civil case; and
- Increase the criminal and civil docket fee by \$1.00.

The House Committee on Judiciary amended the bill to delete the effective date of publication in the *Kansas Register* and inserted the effective date of publication in the statute book.

The fiscal note states that SB 68, as introduced, would increase the amount deposited in the Prosecuting Attorneys' Training Fund from \$1 to \$2 for each docket fee. According to the Office of Judicial Administration, for FY 2008 the Prosecuting Attorneys' Training Fund received approximately \$186,239 from district court docket fees. Based on the FY 2008 amount, the fund would receive \$372,478 ( $\$186,239 \times 2$ ) in FY 2010.

Because the bill reduces the amount deposited into the state treasury by \$1 for each district court docket fee, SB 68 has the potential to decrease revenues to several state agency

funds and the State General Fund. The agencies that could be affected by reduced revenues include the Office of Judicial Administration, Juvenile Justice Authority, Attorney General, Social and Rehabilitation Services, Health and Environment, and Judicial Council. Each of these agencies receives a different percentage of the funds available from the docket fees. Since the Prosecuting Attorneys' Training Fund is estimated to receive \$186,239 more in FY 2010, the state treasury would receive \$186,239 less from the district court docket fees in FY 2010. Based on this amount, the State General Fund would receive \$88,855 less and the remaining state agencies would receive \$97,384 less in FY 2010. Because the bill would take effect in FY 2009, it is estimated the reduction in revenues would be one-fourth of a full-year's reduction, or \$22,214 from the State General Fund or \$46,560 from all state funds. The actual fiscal effect would depend on the bill's effective date. Any fiscal effect associated with SB 68 is not reflected in *The FY 2010 Governor's Budget Report*.

**Kansas Criminal Code Recodification Commission and Retired Judges (formerly SB 277):** The proponents of the bill, as introduced, who presented testimony in the Senate Committee hearing were Randy Hearrell, Executive Director, Kansas Judicial Council; and Senator John Vratil.

There was no testimony in opposition to the bill in the Senate Committee hearing.

According to the fiscal note on the bill, as introduced, SB 277 would allow the final year, FY 2010, of the Kansas Criminal Code Recodification Commission to be funded from the Judicial Council's fee funds. Based on the Judicial Council's budget request, *The FY 2010 Governor's Budget Report* recommended \$147,000 for the Commission. The Commission's recent estimate is that it will require only \$87,000. The elimination of the requirement for the Commission on Judicial Performance to evaluate retired senior judges would eliminate expenditures of \$20,000 per year from the Council's Judicial Performance Fund.

**Kansas Court of Appeals (formerly SB 282):** The



proponent of the bill, as introduced, who presented testimony in the Senate Committee hearing was Jerry Sloan, Budget and Fiscal Officer, Office of Judicial Administration. There was no testimony in opposition to the bill in the Senate Committee hearing.

According to the fiscal note on the bill, as introduced, the passage of SB 282 would save \$155,955 from the State General Fund in FY 2010 by moving the appointment of the 14th Court of Appeals Judge to FY 2011. The cost includes half of a year's salaries and benefits for the judge, research attorney, executive assistant and the associated operating expenses. Any fiscal effect resulting from the passage of this bill is not accounted for in *The FY 2010 Governor's Budget Report*.

Judicial Branch surcharge; change of venue; prosecutor's training fund; Kansas Court of Appeals; Kansas Criminal Code Recodification Commission and retired judges