

SESSION OF 2015

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2005**

As Agreed to May 19, 2015

**Brief\***

HB 2005 would appropriate \$131.2 million, including \$101.9 million from the State General Fund (SGF) in fiscal year (FY) 2016, and \$138.5 million, including \$105.7 million from the SGF, in FY 2017, all from the SGF, for Judicial Branch operations. Additionally, the bill would create or amend law related to docket fees, dispositive motion filing fees, and the Electronic Filing and Management Fund.

The provisions of the bill would be non-severable internally and non-severable from the provisions of 2014 Senate Substitute for House Bill 2338, unless the 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.

***Appropriations***

**FY 2016.** The bill would appropriate \$131.2 million, including \$101.9 million from the SGF (an SGF reduction of \$18.0 million, or 12.3 percent, from the FY 2016 Judicial Branch budget request). The bill would add \$5.2 million, all from the SGF, to the FY 2016 Governor's recommendation. The bill would extend the authority from FY 2015 into FY 2016 for the Chief Justice to transfer funds from the

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Electronic Filing and Management Fund to the Judicial Branch Docket Fee Fund with notice provided to the Director of Legislative Research.

*Major changes would include:*

- An increase of \$3.5 million, all from the SGF, for reduced docket fee and DUI Reinstatement Fee revenue in FY 2016;
- An increase of \$2.5 million, all from the SGF, for employer retirement contributions and other fringe benefit costs;
- An increase of \$156,000 for contractual services expenditures for in-state travel, training and Office of Information Technology Services (OITS) fees; and
- A reduction of \$1.1 million, including \$882,275 from the SGF, for implementation of SB 228 which reduces employer contributions for employee retirement.

**FY 2017.** The bill would appropriate \$138.5 million, including \$105.7 million from the SGF (an SGF reduction of \$20.9 million, or 13.1 percent, from the FY 2017 Judicial Branch budget request). The bill would add \$9.0 million, all from the SGF, to the FY 2017 Governor's recommendation.

*Major changes would include:*

- An increase of \$4.5 million, all from the SGF, for reduced docket fee and DUI Reinstatement Fee revenue;

- An increase of \$2.1 million, all from the SGF, for employer retirement contributions and other fringe benefit costs;
- An increase of \$4.1 million, all from the SGF, for expenditures related to the 27<sup>th</sup> payroll; and
- A reduction of \$2.1 million, including \$1.8 million from the SGF, for implementation of SB 228 which reduces employer contributions for employee retirement.

### ***Statutory Fee and Fund Provisions***

The bill would extend for two years, until June 30, 2017, the Judicial Branch surcharge the Legislature authorized in 2010 Senate Sub. for HB 2476 to fund non-judicial personnel.

The bill also would extend, from 2017 to 2018, a provision directing the first \$3.1 million collected in docket fee revenues to the Electronic Filing and Management Fund, and would delay, from 2018 until 2019, a provision reducing this amount to \$1.0 million.

The bill would create a dispositive motion filing fee of \$195 and would define “dispositive motion” to include a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment or partial summary judgment, or a motion for judgment as a matter of law. The fee would be applied to any motion seeking any of these dispositions, regardless of the title of the motion. The fee would not apply in limited actions under Chapter 61 (*Kansas Statutes Annotated*), and the State of Kansas and municipalities would be exempt from paying the fee. The fee would be allowed to be taxed as a cost, and a poverty affidavit would be allowed in lieu of the fee.

The bill would strike the current filing fee for motions for summary judgment.

(Note: The bill appears to raise the docket fee for a petition for expungement, but this change is current law, enacted by 2014 Senate Sub. for HB 2338 and included in this bill to reconcile different versions of the statutes in which the provision appears.)

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

### **Conference Committee Action**

The second Conference Committee agreed to modify the appropriations provisions to reflect the House appropriations position set forth in HB 2365, as amended by the House Committee on Appropriations. The Committee also agreed to adopt the House two-year Judicial Branch surcharge sunset extension. Finally, the Committee agreed to modify the non-severability clause to make it null and void if the appropriations to the Judicial Branch for FY 2016 or FY 2017 are reduced below the amounts appropriated by HB 2005 or by any other act of the 2015 or 2016 Legislature.

### **Background**

As introduced and recommended by the House Committee on Appropriations, HB 2005 would have established the OITS as a separate state agency for budgetary purposes.

In the House Committee, the Legislative Post Auditor testified neutrally to the bill. No proponents or opponents testified.

The Senate Committee on Ways and Means amended the bill by striking the original contents and inserting the provisions of SB 236 (Judicial Branch appropriations for FY 2016 and FY 2017). The Senate Committee also added the provisions of the following bills as recommended or amended

by the Senate Committee on Judiciary: SB 15 (creating a dispositive motion filing fee); SB 44 (regarding the Electronic Filing and Management Fund); and SB 51 (eliminating the Judicial Branch surcharge sunset date). Further background information regarding these bills is provided below.

### ***Background of SB 236***

In the Senate Committee on Ways and Means, Chief District Court Judge Creitz testified in opposition to the bill. The Judge indicated the bill fails to adequately fund Judicial Branch operations and indicated opposition to the inclusion of the Judicial Branch Budget in a separate bill. There was no other testimony.

### ***Background of SB 15***

SB 15 was introduced by the Senate Committee on Judiciary at the request of Senator King.

In the Senate Committee, representatives of the Kansas District Judges Association testified in support of the bill, stating it would broaden the motion for summary judgment filing fee created by 2014 Senate Sub. for HB 2338. A representative of the Kansas Supreme Court also testified in support of the bill and asked the Committee to consider amendments to clarify that the fee cannot be avoided by changing the title of a motion and that this fee could be assessed as costs on an adverse party when a state or municipality files such a motion and prevails.

The Senate Committee adopted the Supreme Court's proposed amendment applying the fee regardless of the title of the motion.

According to the fiscal note prepared by the Division of the Budget on SB 15, as introduced, the Office of Judicial Administration (OJA) estimates the bill would increase

revenues to the Judicial Branch by approximately \$574,000, although OJA notes the 2014 summary judgment filing fee generated 68 percent less revenue than expected, so an accurate estimate of the fiscal effect cannot be given.

Any fiscal effect associated with SB 15 is not reflected in *The FY 2016 Governor's Budget Report*.

#### ***Background of SB 44***

SB 44 was introduced by the Senate Committee on Judiciary at the request of the Kansas Supreme Court.

In the Senate Committee, proponents testifying on behalf of the bill included representatives of the Kansas Supreme Court, the Kansas District Judges Association, and the Kansas District Magistrate Judges Association. Written testimony in support of the bill was submitted by representatives of the Kansas Bar Association, the Kansas Association for Justice, and the Kansas Association of Defense Counsel. No opponent or neutral testimony was submitted to the Committee.

The Senate Committee adopted a technical amendment.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the OJA indicates SB 44 would not increase total expenditures for the Judicial Branch, but would result in more expenditures from the Docket Fee Fund and fewer expenditures from the Electronic Filing and Management Fund. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.

#### ***Background of SB 51***

The Senate Judiciary Committee introduced SB 51 at the request of the Kansas Judicial Branch. As introduced, the

bill would have extended the sunset provision on judicial surcharges on a number of docket fees through July 1, 2017.

In the Senate Judiciary Committee hearing, a representative of the Judicial Branch and a representative of the Kansas District Judges Association testified in support of the bill. The Kansas Bar Association, the Kansas Association for Justice, and the Kansas Association of Defense Counsel submitted written testimony in support of the bill. No neutral or opponent testimony was provided to the Senate Committee.

The Senate Committee amended the bill to remove the sunset provision, making the surcharges a permanent source of funding.

According to the fiscal note prepared by the Division of the Budget on SB 51, as introduced, the OJA indicates its budget would be reduced by \$9.5 million each fiscal year if the bill is not enacted.

Expenditures from the Judicial Branch surcharge are reflected in *The FY 2016 Governor's Budget Report* with estimated revenues to the Judicial Branch Docket Fee Fund of \$9.5 million in both FY 2016 and FY 2017.

Judicial Branch FY 2016 and FY 2017 appropriations; Judicial Branch surcharge extension; Electronic Filing and Management Fund; Docket Fee Fund; dispositive motion filing fee; summary judgment filing fee

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