

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 9, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Marvin Kleeb- excused
Representative Kevin Yoder- excused

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Jerry Sloan, Judicial Branch Budget and Fiscal Officer, Kansas Judicial Branch
Chief Judge Stephen Tatum, 10th Judicial District, Johnson County
Chief Judge James Fleetwood, 18th Judicial District, Sedgwick County
Kari Schmidt, Wichita Bar Association
Chief Judge Richard Smith, 6th Judicial District, Bourbon, Linn, and Miami Counties
Doug Smith, Kansas Credit Attorney's Association
Judge Steve Leben, Judicial Council-Administrative Procedure Advisory Committee
Joann Corpstein, Legal Counsel-Department of Aging
Sherry Diel, Kansas Real Estate Commission
Ted Smith, Attorney with the Office of the Director of Vehicles, Department of Revenue
Pat Barnes, Kansas Automobile Dealers Association

Others attending:

See attached list.

The hearing on **SB 134 - Court fees and costs; authorizing supreme court to establish additional charges for court procedures** was opened.

Chairman Kinzer provided the Committee with a copy of a published writing by G. Gregg Webb and Keith E. Whittington entitled "Judicial Independence, the power of the Purse, and inherent Judicial Powers", *Judicature*, Volume 88, Number 1 July-August 2004. This article is about the use of judicial powers to make up budget shortfalls, fundamental questions about judicial independence and the nature of the separation of powers which also talks specifically about the Kansas Supreme Court ordering an across-the-board increase in court fees in the state on March 14, 2002.

Jill Wolters, Staff Revisor, presented an overview of the bill. This bill authorizes the Kansas Supreme Court to establish additional charges for court procedures. Fees currently being collected include docket fees; reinstatement fees, bond, lien or judgement fees and marriage license fees. On March 19th, 2002, the Kansas Supreme Court, beginning April 1, 2002, implemented the Judicial Branch Surcharge. The surcharge continued until July 1, 2006, when a bill enacted by the Legislature took effect, prohibiting the Court from collecting any additional fees. [See KSA 2008 Supp.28-177. Page 9, lines 24 through 30]. (Attachment 1)

Proponents:

Jerry Sloan, Judicial Branch Budget and Fiscal Officer, Kansas Judicial Branch spoke as a proponent. He explained the bill would remove the prohibition of the Supreme Court establishing a surcharge if funding were reduced to the extent that the Judicial Branch could no longer perform its constitutional and statutory responsibilities. He provided the committee with explanations how salaries and operating expenses are structured in the Judicial Branch. Given the current fiscal crisis the state is experiencing, he stated re-institution of a surcharge would allow the Legislature to use funds that otherwise would be appropriated to the Judicial Branch for other necessary expenditures while keeping the courts open and functioning. The Supreme Court initiated the Emergency Surcharge in order to help fund the budget from April 1, 2002 to June 30, 2006. This bill would allow a similar response if the need arises. (Attachment 2)

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Chief Judge Stephen Tatum, 10th Judicial District, Johnson County appeared before the committee as a proponent. He explained how the current budget cuts have effected the Judicial Branch employees in Johnson County and the unique position they are in by having its personnel funded through the State of Kansas, but its operations funded by county government. He also testified to the fact that in prior years by implementing the surcharge, it proved to be a very effective approach to the fiscal crisis. He also stated, in a time when the economy is down and persons are experiencing tough times, the courts see increases in cases due to failed businesses, foreclosures, and other legal issues and the courts are essential in resolving these legal issues fairly for its citizens. ([Attachment 3](#))

Chief Judge James Fleetwood, 18th Judicial District, Sedgwick County spoke on behalf of his district in favor of this bill and attested to the need of the surcharge to protect the court form further degradation of its ability to serve the community. He stated this surcharge would not deter individuals from accessing the courts and confirmed the judges would retain the ability to take into consideration the financial circumstances of the individual and waive the charges if appropriate. ([Attachment 4](#))

Kari Schmidt, Vice President of the Wichita Bar Association testified strongly in favor of the bill. She stated that justice demands that we adequately fund our courts in order to prevent court closings and reduced hours; protect the services provided by our judicial branch; preserve constitutionally mandated access to our courts; and, this issue is not about the courts, it is about our citizens who have the right to rely on them. ([Attachment 5](#))

Chief Judge Richard Smith, 6th Judicial District, Bourbon, Linn, and Miami Counties presented written testimony in support of restoring the Supreme Court's ability to consider a docket fee surcharge in times of financial emergency. ([Attachment 6](#))

Opponent:

Doug Smith appeared as an opponent on behalf of the Kansas Credit Attorney's Association and the Kansas Collectors Association. He explained while they are not against the bill itself, they are concerned about the wide-ranging authority and lack of limitations on its scope. He stated the following concerns:

- 1) If the Court language is adopted there will be no requirement for review by the public or the Legislature.
- 2) There is no limit on how the money can be used by the Court once collected.
- 3) There is no limit on the amount of money that can be raised.
- 4) There is no time limit on how long this surcharge will be in place.

He suggested consideration of a compromise that would remove the 2006 language prohibiting an emergency surcharge, and replace it with expressed authority being granted to the Court, by the legislature, to enact surcharges in these extraordinary fiscal circumstances to allow the Court to meet their statutory and constitutional obligations; funding should be limited to the amounts authorized and approved in the Court's budget for the fiscal year, which will not be attained due to unanticipated revenue shortfalls, and, the authority should lapse when budget funding returns to adequate levels. ([Attachment 7](#))

After some discussion, the hearing on **SB 134** was closed.

The hearing on **SB 87 - Agencies; disclosure of certain records; administrative procedure; judicial review** was opened.

Melissa Doeblin, Staff Revisor, gave the Committee an overview of the bill.

Proponent:

Judge Steve Leben, a member of the Administrative Procedure Advisory Committee spoke on behalf of the Kansas Judicial Council in support of this bill. The task assigned to this Committee was to study the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501 *et seq.* and the Kansas Act for judicial Review and Civil Enforcement of Agency Actions (KJRA), K.S.A. 77-601 *et seq.* This bill was recommended by this Committee after a lengthy study. ([Attachment 8](#))

The Senate added an amendment that would significantly limit the use of summary orders under K.S.A. 77-

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537 and the Advisory Committee is concerned this may have unintended consequences. The Judiciary Council presented a Balloon Amendment. ([Attachment 9](#))

Opponent:

Joann Corpstein, Chief Legal Counsel for the Kansas Department of Aging , appeared as an opponent to the bill because of concerns regarding the amendments to K.S.A. 77-537, section 20 and specifically the amendment at lines 18 thru 29 and offered substitute language. ([Attachment 10](#))

Sherry Diel, Executive Director of the Kansas Real Estate Commission also appeared as an opponent. She stated they support SB 87 and did not testify in opposition to the legislation on the Senate side. Unfortunately, an amendment was added by the Senate Committee without the benefit of having any testimony on the subject. They now have the same concerns as the other opponents regarding the summary orders. ([Attachment 11](#))

Ted Smith, Attorney with the Office of the Director of Vehicles, Department of Revenue appeared as an opponent. He urged the committee to remove Sections 26 and 27 from this bill prior to any vote. He provided detailed testimony to support this request. ([Attachment 12](#))

Kansas Coalition Against Sexual and Domestic Violence provided written testimony in opposition. ([Attachment 13](#))

Pat Barnes, General Counsel of the Kansas Automobile Dealers Association appeared as neutral in his testimony. He testified to some of their issues that have become problematic in the way the current system was redesigned. He pointed out specific concerns regarding Section 14, 16, 23 and 28, and offered to participate in any way to improve the context of this bill. ([Attachment 14](#))

The hearing on **SB 87** was closed.

The hearing on **SB 68** - Docket fees; prosecuting attorneys' training fund was postponed until March 12, 2009 due to time constraints.

The next meeting is scheduled for March 10, 2009.

The meeting was adjourned at 5:40 p.m.