~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 3, 2010

**H. 3161**

Introduced by Rep. Harrison

S. Printed 3/3/10--S. [SEC 3/4/10 1:54 PM]

Read the first time March 31, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3161) to amend Section 1‑23‑660, as amended, Code of Laws of South Carolina, 1976, relating to the Office of Motor Vehicle hearings within the Administrative Law Court, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 1‑23‑660(A) of the 1976 Code, as last amended by Act 279 of 2008, is further amended to read:

“(A) There is created within the Administrative Law Court the Office of Motor Vehicle Hearings. The Chief Judge of the Administrative Law Court shall serve as the Director of the Office of Motor Vehicle Hearings. The duties, functions, and responsibilities of all hearing officers and associated staff of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective January 1, 2006. The hearing officers and staff positions, together with the appropriations relating to these positions, are transferred to the Office of Motor Vehicle Hearings of the Administrative Law Court on January 1, 2006. The hearing officers and staff ~~shall~~must be appointed, hired, contracted, and supervised by the chief judge of the court and shall continue to exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge and shall perform such other functions and duties as the chief judge of the court prescribes. The Office of Motor Vehicle Hearings shall employ at least five hearing officers, an attorney to advise the hearing officers, and support staff in the performance of their duties, and other support and supervisory staff as deemed necessary by the chief judge. All employees of the office shall serve at the will of the chief judge. The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Motor Vehicle Hearings. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution.”

SECTION 2. Section 56‑5‑2952 of the 1976 Code, as last amended by Act 279 of 2008, is further amended to read:

“Section 56‑5‑2952. The filing fee to request ~~any~~a contested case hearing before the Office of Motor Vehicle Hearings of the Administrative Law Court is ~~one~~two hundred fifty dollars, or as otherwise prescribed by the rules of procedure for the ~~Administrative Law Court~~Office of the Motor Vehicle Hearings. Funds generated from the collection of this fee ~~shall~~must be retained by the Administrative Law Court, provided, however, that these funds first must be used to meet the expenses of the Office of Motor Vehicle Hearings, including the salaries of its employees, as directed by the Chief Judge of the Administrative Law Court.”

SECTION 3. (A) From the effective date of this act through June 30, 2012, Section 8‑21‑320 of the 1976 Code shall read:

“Section 8‑21‑320. There is assessed for every motion made in the court of common pleas and family court, not including motions made in family court juvenile delinquency proceedings, a fee of ~~twenty‑five~~ seventy‑five dollars. The fee must accompany each motion filed. The Supreme Court has authority to issue administrative rules to exempt from the motion fee certain family court matters involving rules to show cause in child and spousal support matters. The Supreme Court may waive the filing fees imposed by this section upon a proper showing of indigency. The revenue from this fee must be collected by the clerk of court in each court and remitted to the State Treasurer and credited to a separate judicial department support fund for the exclusive use of the judicial department.

The revenue collected pursuant to this section shall be distributed by the State Treasurer in the following manner:

(1) The first four hundred fifty thousand dollars of these funds must be transferred to the Prosecution Coordination Commission. The funds shall be distributed equally to the third, fourth, and eleventh judicial circuits to fund drug courts.

(2) Any remaining funds must be transferred to the Judicial Department for operating purposes.”

(B) On and after July 1, 2012, Section 8‑21‑320 shall read:

“Section 8‑21‑320. There is assessed for every motion made in the court of common pleas and family court, not including motions made in family court juvenile delinquency proceedings, a fee of twenty‑five dollars. The fee must accompany each motion filed. The Supreme Court has authority to issue administrative rules to exempt from the motion fee certain family court matters involving rules to show cause in child and spousal support matters. The Supreme Court may waive the filing fees imposed by this section upon a proper showing of indigency. The revenue from this fee must be collected by the clerk of court in each court and remitted to the State Treasurer and credited to a separate judicial department support fund for the exclusive use of the judicial department.

The revenue collected pursuant to this section shall be distributed by the State Treasurer in the following manner:

(1) The first four hundred fifty thousand dollars of these funds must be transferred to the Prosecution Coordination Commission. The funds shall be distributed equally to the third, fourth, and eleventh judicial circuits to fund drug courts.

(2) Any remaining funds must be transferred to the Judicial Department for operating purposes.”

SECTION 4. (A) From the effective date of this act through June 30, 2012, Section 14‑1‑204 of the 1976 Code shall read:

“Section 14-1-204.(A) The one hundred dollar filing fee for documents and actions described in Section 8‑21‑310(11)(a) must be remitted to the county in which the proceeding is instituted, and fifty‑six percent of these filing fee revenues must be delivered to the county treasurer to be remitted monthly by the fifteenth day of each month to the State Treasurer. When a payment is made to the county in installments, the state’s portion must be remitted to the State Treasurer by the county treasurer on a monthly basis.

The fifty‑six percent of the one hundred dollar fee prescribed in Section 8‑21‑310(11)(a) remitted to the State Treasurer must be deposited as follows:

(1) 31.52 percent to the state general fund;

(2) 7.23 percent to the Department of Mental Health to be used exclusively for the treatment and rehabilitation of drug addicts within the department’s addiction center facilities;

(3) 4.47 percent to the State Office of Victim Assistance under the South Carolina Victim’s Compensation Fund;

(4) 26.78 percent to the Defense of Indigents Per Capita Fund, administered by the Commission on Indigent Defense, which shall then distribute these funds on December thirty‑first and on June thirtieth of each year to South Carolina organizations that are grantees of the Legal Services Corporation, in amounts proportionate to each recipient’s share of the state’s poverty population; and

(5) 30.00 percent to the South Carolina Judicial Department.

(B)(1) There is added to the fee imposed pursuant to Section 8‑21‑310(11)(a) an additional fee equal to fifty dollars. One hundred percent of the revenue from this additional fee must be remitted to the State Treasurer on the monthly schedule provided in subsection (A). The revenues from this additional fee must be allocated in each fiscal year to the following agencies in the amounts specified:

(a) Judicial Department‑67.96 percent;

(b) Commission on Indigent Defense, Defense of Indigents per capita‑14.56 percent;

(c) Department of Probation, Parole and Pardon Services‑11.30 percent;

(d) Prosecution Coordination Commission‑4.37 percent; and

(e) Commission on Indigent Defense, Division of Appellate Defense‑1.81 percent.

(2) Fee revenues allocated pursuant to this subsection are to be retained, expended, and carried forward by the agencies specified.

(C)(1) In addition to the fees imposed pursuant to subsection (B) and Section 8‑21‑310(11)(a), there is a fee of one hundred fifty dollars. This one hundred fifty dollar fee must be delivered to the county treasurer to be remitted to the State Treasurer by the fifteenth day of each month for allocation and distribution to the Judicial Department in each fiscal year.”

(B) On and after July 1, 2012, Section 14‑1‑204 shall read:

“Section 14-1-204.(A) The one hundred dollar filing fee for documents and actions described in Section 8‑21‑310(11)(a) must be remitted to the county in which the proceeding is instituted, and fifty‑six percent of these filing fee revenues must be delivered to the county treasurer to be remitted monthly by the fifteenth day of each month to the State Treasurer. When a payment is made to the county in installments, the state’s portion must be remitted to the State Treasurer by the county treasurer on a monthly basis.

The fifty‑six percent of the one hundred dollar fee prescribed in Section 8‑21‑310(11)(a) remitted to the State Treasurer must be deposited as follows:

(1) 31.52 percent to the state general fund;

(2) 7.23 percent to the Department of Mental Health to be used exclusively for the treatment and rehabilitation of drug addicts within the department’s addiction center facilities;

(3) 4.47 percent to the State Office of Victim Assistance under the South Carolina Victim’s Compensation Fund;

(4) 26.78 percent to the Defense of Indigents Per Capita Fund, administered by the Commission on Indigent Defense, which shall then distribute these funds on December thirty‑first and on June thirtieth of each year to South Carolina organizations that are grantees of the Legal Services Corporation, in amounts proportionate to each recipient’s share of the state’s poverty population; and

(5) 30.00 percent to the South Carolina Judicial Department.

(B)(1) There is added to the fee imposed pursuant to Section 8‑21‑310(11)(a) an additional fee equal to fifty dollars. One hundred percent of the revenue from this additional fee must be remitted to the State Treasurer on the monthly schedule provided in subsection (A). The revenues from this additional fee must be allocated in each fiscal year to the following agencies in the amounts specified:

(a) Judicial Department-67.96 percent;

(b) Commission on Indigent Defense, Defense of Indigents per capita-14.56 percent;

(c) Department of Probation, Parole and Pardon Services-11.30 percent;

(d) Prosecution Coordination Commission-4.37 percent; and

(e) Commission on Indigent Defense, Division of Appellate Defense-1.81 percent.

(2) Fee revenues allocated pursuant to this subsection are to be retained, expended, and carried forward by the agencies specified.

SECTION 5. (A) From the effective date of this act through June 30, 2012, Section 22‑3‑340 of the 1976 Code shall read:

“Section 22‑3‑340. An assessment equal to ~~twenty‑five~~ fifty dollars is imposed on all summons and complaint filings in magistrates court and an assessment equal to ~~ten~~ twenty dollars is imposed on all other civil filings in magistrates court, except for restraining orders. The fees must be collected by the magistrates court and forwarded monthly to the county treasurer and remitted in turn by the county treasurer to the State Treasurer for allocation to the judicial department.”

(B) On and after July 1, 2012, Section 22‑3‑340 shall read:

“Section 22-3-340. An assessment equal to twenty‑five dollars is imposed on all summons and complaint filings in magistrates court and an assessment equal to ten dollars is imposed on all other civil filings in magistrates court, except for restraining orders. The fees must be collected by the magistrates court and forwarded monthly to the county treasurer and remitted in turn by the county treasurer to the State Treasurer for allocation to the judicial department.”

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

PAUL G. CAMPBELL, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

See Below

**EXPLANATION OF IMPACT:**

The Administrative Law Court indicates that this bill will have no fiscal impact on the state general fund. Any cost associated with staff for the Hearing Office will be covered by the revenue generated with the filing fee increase as outlined in the bill. Other funds expenditures would increase by the amount of the additional other funds revenue generated.

**SPECIAL NOTES:**

The Board of Economic Advisors is the appropriate entity to address any revenue impact associated with this bill. Sections 4 and 5 would increase other funds revenue that would be accrued to the Judicial Department.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 1‑23‑660, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE OFFICE OF MOTOR VEHICLE HEARINGS WITHIN THE ADMINISTRATIVE LAW COURT, SO AS TO REQUIRE THE OFFICE OF MOTOR VEHICLE HEARINGS TO EMPLOY CERTAIN PROFESSIONAL AND SUPPORT STAFF; AND TO AMEND SECTION 56‑5‑2952, AS AMENDED, RELATING TO THE FILING FEE TO REQUEST AN ADMINISTRATIVE HEARING, SO AS TO INCREASE THE FILING FEE FROM ONE HUNDRED FIFTY TO TWO HUNDRED FIFTY DOLLARS AND PROVIDE FOR THE DISTRIBUTION OF THE FILING FEE FUNDS COLLECTED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 1‑23‑660(A) of the 1976 Code, as last amended by Act 279 of 2008, is further amended to read:

“(A) There is created within the Administrative Law Court the Office of Motor Vehicle Hearings. The Chief Judge of the Administrative Law Court shall serve as the Director of the Office of Motor Vehicle Hearings. The duties, functions, and responsibilities of all hearing officers and associated staff of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective January 1, 2006. The hearing officers and staff positions, together with the appropriations relating to these positions, are transferred to the Office of Motor Vehicle Hearings of the Administrative Law Court on January 1, 2006. The hearing officers and staff ~~shall~~must be appointed, hired, contracted, and supervised by the chief judge of the court and shall continue to exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge and shall perform such other functions and duties as the chief judge of the court prescribes. The Office of Motor Vehicle Hearings shall employ at least five hearing officers, an attorney to advise the hearing officers and support staff in the performance of their duties, and other support and supervisory staff as deemed necessary by the chief judge. All employees of the office shall serve at the will of the chief judge. The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Motor Vehicle Hearings. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution.”

SECTION 2. Section 56‑5‑2952 of the 1976 Code, as last amended by Act 279 of 2008, is further amended to read:

“Section 56‑5‑2952. The filing fee to request ~~any~~a contested case hearing before the Office of Motor Vehicle Hearings of the Administrative Law Court is ~~one~~two hundred fifty dollars, or as otherwise prescribed by the rules of procedure for the ~~Administrative Law Court~~Office of the Motor Vehicle Hearings. Funds generated from the collection of this fee ~~shall~~must be retained by the Administrative Law Court, provided, however, that these funds first must be used to meet the expenses of the Office of Motor Vehicle Hearings, including the salaries of its employees, as directed by the Chief Judge of the Administrative Law Court.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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