

PROPOSED Substitute for HOUSE BILL NO. 2461

AN ACT enacting the public litigation coordination act; relating to contracts by public entities for legal services on a contingent fee basis; restrictions; powers and duties of the attorney general.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) Sections 1 through 3, and amendments thereto, shall be known and may be cited as the public litigation coordination act.

(b) On and after the effective date of this act, a state entity shall not enter into a contract for legal services on a contingent fee basis unless the attorney general approves such contract. By approving any such contract, the attorney general does not waive or limit any authority granted by statutory or common law to the attorney general, including, but not limited to, the authority provided by K.S.A. 75-702, and amendments thereto.

(c) (1) On and after the effective date of this act, a municipal entity shall give written notice to the attorney general of such entity's intention to enter into a contract for legal services on a contingent fee basis not later than 120 days before such entity may enter into any such contract.

(2) The written notice required by this subsection shall be accompanied by a detailed statement describing:

- (A) The subject matter of the proposed litigation;
- (B) the objective of the proposed litigation;
- (C) the reasons why the municipal entity finds it necessary to retain private legal counsel to represent the municipal entity in the proposed litigation;
- (D) the reasons why the municipal entity finds it necessary to pay a contingent fee to

pursue such litigation;

(E) the particulars of the contingent fee arrangement to be included in any such contract, including how the fee is to be calculated, the amount of the fee and the manner in which litigation expenses will be paid; and

(F) such other information as the attorney general determines to be reasonably necessary to carry out the requirements of sections 1 through 3, and amendments thereto.

(3) The attorney general may adopt rules and regulations prescribing the procedure for providing the notice required by this subsection and shall make available information describing such procedure on the official website of the office of the attorney general.

(d) (1) (A) Upon receiving a notice required by subsection (c), the attorney general shall review the notice to determine whether the litigation the municipal entity proposes to finance through a contingent fee arrangement is in the public interest and whether such litigation and fee arrangement may tend to impede any interest of any other public entity.

(B) To assist in such review, the attorney general may consult with the municipal entity, or with any other public entity, and each such public entity shall cooperate with the attorney general in the review.

(C) Based upon such review, the attorney general may make recommendations to the municipal entity regarding: (i) Whether to proceed with the proposed contract for legal services on a contingent fee basis; (ii) the structure and amount of the proposed contingent fee arrangement; and (iii) any other matter the attorney general believes would serve the public interest or would assist the municipal entity in addressing the subject matter of the proposed litigation. The municipal entity shall, in good faith, give due consideration to any

recommendations provided by the attorney general.

(2) (A) The attorney general may take action as described in subsection (d)(2)(B) if the attorney general determines that the matter that is the subject of the notice required by subsection (c): (i) Presents one or more questions of law or fact that are in common with a matter the state has already addressed or is pursuing; and (ii) pursuit of the matter by the municipal entity through a contract for legal services on a contingent fee basis will not promote the just and efficient resolution of the matter or may impede interests of the state or of any other public entity.

(B) If the attorney general makes a determination described in subsection (d)(2)(A), not later than 120 days after receiving the notice required by subsection (c), the attorney general may in writing: (i) Request that the municipal entity not proceed with the contract for legal services on a contingent fee basis, setting forth in detail the reasons for such request; or (ii) notify the municipal entity that the attorney general reserves the right to intervene and substitute the state for the municipal entity in any litigation filed pursuant to any such contract for legal services on a contingent fee basis as provided by subsection (d)(2)(C).

(C) If, after receiving a request or notification from the attorney general pursuant to subsection (d)(2)(B), the municipal entity proceeds to enter into such contract for legal services on a contingent fee basis, and if any action is filed in state or federal court pursuant to that contract, then such action shall be served on the attorney general at the time of filing in the manner provided by the code of civil procedure. If the attorney general, pursuant to subsection (d)(2)(B), has notified the municipal entity that the attorney general has reserved the right to intervene, then the attorney general, in the name of the state, as a matter of right, may intervene

in any such action and supercede the municipal entity by substituting the state for the municipal entity as a party in the litigation, and the attorney general shall then control the prosecution and disposition of such action without limitation as if the action was filed by the attorney general.

(D) Every contract by a municipal entity for legal services on a contingent fee basis shall incorporate this subsection and shall be subject to the provisions of this subsection.

(e) A municipal entity entering a contract for legal services on a contingent fee basis shall satisfy the requirements of K.S.A. 75-4301a et seq., and amendments thereto. In determining whether any provision of K.S.A. 75-4301a et seq., and amendments thereto, is satisfied, the attorney general, the municipal entity or both, may request the opinion of the state governmental ethics commission pursuant to K.S.A. 75-4303a, and amendments thereto, and such request shall toll the 120-day time period set forth in subsection (d) while such request is pending.

(f) A contract for legal services on a contingent fee basis involving a public entity shall either be: (1) Issued pursuant to K.S.A. 75-37,135, and amendments thereto; or (2) let for bid after advertisement by published notice.

(g) A valid contract to provide legal services to a public entity that is in effect prior to the effective date of this act shall remain valid and enforceable, but on and after the effective date of this act, such contract shall not be extended or renewed, nor shall parties be added, except with the written consent of the attorney general or in compliance with the procedures otherwise set forth in this section.

(h) A contract for legal services on a contingent fee basis in violation of this section is void and unenforceable.

Sec. 2. (a) Whenever it appears to the attorney general that the state, the citizens of Kansas or any municipal entity has been injured or damaged by any matter in violation of law, whether or not such matter has been the subject of a notice under section 1, and amendments thereto, the attorney general shall have the authority to:

(1) Institute and prosecute in the name of the state any appropriate actions or proceedings to protect the interests of the state, the citizens of Kansas or any municipal entity;

(2) intervene in the name of the state to protect the interests of the state, the citizens of Kansas or any municipal entity in any such actions or proceedings;

(3) recover damages on behalf of the state, the citizens of Kansas or any municipal entity;

(4) consult with any municipal entity to coordinate efforts to protect the interests of such entity; and

(5) exercise any other authority provided by law to protect the interests of the state, the citizens of Kansas or any municipal entity.

(b) Nothing in this section authorizes the attorney general to enforce any city or county ordinance or to bring or intervene in any action in the name of any municipal entity. A municipal entity may inform the attorney general in writing that such entity objects to the attorney general recovering damages on such entity's behalf under the authority of this section, and upon receipt of such objection, the attorney general shall not seek to recover damages on such entity's behalf.

Sec. 3. As used in sections 1 through 3, and amendments thereto:

(a) "Contract for legal services on a contingent fee basis" means any contract to which a public entity is a party through which a public entity obtains legal services to be compensated

through a contingent fee.

(b) "Contingent fee" means a fee or other compensation contingent on the outcome of the matter for which the legal service is rendered.

(c) (1) "Legal services" means:

(A) All services performed by, or under authority of, a law firm or attorney in the private practice of law, whether or not admitted to practice law in Kansas; and

(B) all services that constitute the practice of law in Kansas.

(2) "Legal services" does not include services performed:

(A) By bond counsel;

(B) pursuant to a collections contract;

(C) in response to a subrogation claim;

(D) in connection with the sale of real property;

(E) in connection with filing a claim in response to a notice of eligibility to participate in a class action settlement or declining to opt out of a class action settlement after receiving a notice of eligibility; or

(F) in connection with an action pursuant to the Kansas standard asset seizure and forfeiture act, K.S.A. 60-4101 et seq., and amendments thereto.

(d) "Municipal entity" means any municipality as defined in K.S.A. 10-1101, and amendments thereto, and any officer, agent or employee of such municipality acting in an official capacity.

(e) "Public entity" means a municipal entity or state entity.

(f) "State entity" means the state as defined in K.S.A. 75-6102, and amendments

thereto, and any officer, agent or employee of the state acting in an official capacity.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.