

HOUSE BILL No. 2593

By Committee on Judiciary

Requested by Matt Bingesser on behalf of the Office of the Attorney General

1-29

1 AN ACT concerning contingent fee contracts for legal services; relating to
2 contracts entered into for legal services by a political subdivision;
3 requiring an open meeting before a political subdivision may approve
4 such a contract; requiring the attorney general to approve such contract
5 before such contract becomes effective.
6

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

8 Section 1. (a) A political subdivision may only enter into a contingent
9 fee contract for legal services if the governing body of the political
10 subdivision:

11 (1) Calls a meeting for the purpose of considering the contract and
12 provides, in the notice or agenda of the meeting issued pursuant to K.S.A.
13 75-4318, and amendments thereto, the:

14 (A) Reasons for pursuing the matter that is the subject of the legal
15 services of which the attorney or law firm would be retained and the
16 desired outcome of pursuing the matter;

17 (B) qualifications, experience and competence of the attorney or law
18 firm selected or considered for selection by the governing body;

19 (C) nature of any relationship, regardless of how short, between the
20 political subdivision or governing body and the attorney or law firm that is
21 a party to the contract;

22 (D) reasons the legal services cannot be adequately performed by the
23 attorneys and supporting personnel of the political subdivision;

24 (E) reasons the legal services cannot be reasonably obtained from
25 attorneys under a contract providing for an hourly rate payment structure
26 as opposed to a contingency fee structure; and

27 (F) reasons entering into a contingent fee contract for legal services is
28 in the best interest of the residents of the political subdivision;

29 (2) makes a finding, in writing, that:

30 (A) It is in the best interest of the residents of the political subdivision
31 to contract for the legal services or there is a substantial need for the legal
32 services that are the subject of the contingent fee contract;

33 (B) the legal services cannot be adequately performed by the
34 attorneys and supporting personnel of the political subdivision; and

35 (C) the legal services cannot reasonably be obtained from attorneys

1 under a contract providing for an hourly rate payment structure because
2 the nature of the legal matter that is the subject of the contract or the
3 political subdivision does not have the funds necessary or would pay
4 substantially more for the legal services provided under a contract
5 providing for an hourly rate payment structure; and

6 (3) approves the contract in an open meeting after discussion and
7 consideration of the items described in paragraph (1).

8 (b) (1) Before a contingency fee contract for legal services approved
9 by a political subdivision pursuant to subsection (a) is effective and
10 enforceable, the political subdivision shall obtain approval of the contract
11 by the attorney general. The political subdivision shall provide to the
12 attorney general:

13 (A) A copy of the proposed contract;

14 (B) a description of the legal matter that is the subject of the proposed
15 contract;

16 (C) a copy of the notice and agenda issued pursuant to subsection (a)
17 (1), the date such notice was issued and a description of the method for
18 providing such notice; and

19 (D) a copy of the written findings made pursuant to subsection (a)(2).

20 (2) Within 45 days after the political subdivision has provided the
21 attorney general with the information described in paragraph (1), the
22 attorney general shall:

23 (A) Approve the contract and, if the request involves a matter of
24 purely local concern that does not implicate any statewide interest, shall do
25 so promptly; or

26 (B) refuse to approve the contract for one of the following reasons:

27 (i) The legal matter that is the subject of the contract presents one or
28 more questions of law or fact that are in common with a lawsuit, demand
29 or settlement asserting or resolving claims that the state has already
30 addressed or is pursuing in court;

31 (ii) the legal matter involves claims or issues that are more
32 appropriately within the scope of state enforcement and the pursuit of the
33 matter independently by the political subdivision could lead to inconsistent
34 legal outcomes or undermine the state's unified position; or

35 (iii) the contract does not comply with the Kansas rules of
36 professional conduct for attorneys adopted by the Kansas supreme court.

37 (3) If the attorney general refuses to approve the contract, the attorney
38 general shall provide notice to the political subdivision in writing with a
39 detailed explanation of the reason for refusing to approve the contract. If
40 the attorney general has not taken action and provided the political
41 subdivision notice of such action on a contract pursuant to paragraph (2)
42 within 45 days after receipt of such notice, such contract shall be deemed
43 approved.

1 (4) All information and records made, maintained, kept, obtained or
2 received by the attorney general pursuant to subsection (b)(1)(B) shall be
3 confidential, except as required or authorized pursuant to this section. The
4 provisions of this paragraph shall expire on July 1, 2031, unless the
5 legislature reviews and reenacts such provisions in accordance with K.S.A.
6 45-229, and amendments thereto, prior to July 1, 2031.

7 (c) In any judicial or quasi-judicial proceeding in which a political
8 subdivision is represented by an attorney providing legal services under a
9 contingent fee contract for legal services that does not comply with the
10 provisions of this section, the attorney general may appear in such
11 proceeding and request that the proceeding be dismissed or intervene and
12 recover damages on behalf of the political subdivision. If the court or
13 quasi-judicial body concludes that the contract for legal services does not
14 comply with the provisions of this section, the court or quasi-judicial body
15 shall dismiss the matter without prejudice or allow the attorney general to
16 intervene on behalf of the political subdivision.

17 (d) As used in this section:

18 (1) "Contingent fee" means any fee that is contingent on the outcome
19 of the matter for which the service is rendered;

20 (2) (A) "legal services" means all services:

21 (i) Performed by or under authority of a law firm or attorney, whether
22 or not such services are performed by someone admitted to practice law in
23 Kansas; and

24 (ii) that constitute the practice of law in Kansas;

25 (B) "legal services" does not include services performed by:

26 (i) Bond counsel or other attorneys to assist a political subdivision
27 with services related to bonds, temporary notes, no-fund warrants, state
28 infrastructure loans or lease financing;

29 (ii) attorneys or other persons to assist a political subdivision in the
30 collection of unpaid debts, fees, fines, costs, restitution, taxes or utility
31 bills;

32 (iii) attorneys to recoup costs, including deductibles, from an at-fault
33 party's insurance company;

34 (iv) attorneys to assist with the sale of property; or

35 (v) court trustees to assist the enforcement of support orders pursuant
36 to K.S.A. 20-375 et seq., and amendments thereto; and

37 (3) (A) "political subdivision" means:

38 (i) A political or taxing subdivision of the state, including municipal
39 and quasi-municipal corporations, board, commissions, authorities,
40 councils, committees, subcommittees and other subordinate groups or
41 administrative units thereof, receiving or expending and supported, in
42 whole or in part, by public funds; and

43 (ii) any municipality as defined in K.S.A. 75-1117, and amendments

1 thereto; and

2 (B) "political subdivision" does not include water utilities as defined
3 in K.S.A. 19-3501, and amendments thereto.

4 Sec. 2. This act shall take effect and be in force from and after its
5 publication in the statute book.