

## 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.