

SESSION OF 2025

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2228**

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for HB 2228 would require any political subdivision (subdivision), as defined in continuing law, to hold an open meeting before approving a contingent fee contract for legal services, and requiring such contract to be approved by the Attorney General (AG) before becoming effective. The bill's provisions would expire on July 1, 2029.

Open Meeting Notice

The bill would require the governing body of the subdivision to provide notice of an open meeting called for the purpose of considering a contingency fee contract for legal services. The notice could be provided in the subdivision's meeting agenda, and would be required to include:

- Reasons for pursuing the legal matter and desired outcome;
- Qualifications, experience, and competence of the attorney or law firm selected or being considered;
- Nature of any relationship between the subdivision and attorney or law firm;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <https://klrd.gov/>

- Reasons the legal services cannot be performed by attorneys within the subdivision;
- Reasons legal representation cannot be attained for an hourly rate as opposed to a contingency fee; and
- Reasons the contract is in the best interest of the residents of the subdivision.

Subdivision Findings

Before a governing body may approve a contingent fee contract for legal services, the bill would require the subdivision to make a finding in writing that:

- It is in the best interest of the residents or there is a substantial need to enter into the contract for legal services;
- The legal services cannot be adequately performed by the attorneys and personnel of the subdivision; and
- The subdivision cannot reasonably obtain legal representation at an hourly rate due to the nature of the legal matter or because the subdivision does not have the funds necessary or would pay substantially more for legal services at an hourly rate.

The governing body of the subdivision could approve the contract in an open meeting only after discussion and consideration of the above findings.

AG Approval

Before an approved contingency fee contract would be allowed to take effect, the bill would require the subdivision to

receive the approval of the AG. For consideration by the AG, the subdivision would be required to provide the AG with:

- A copy of the proposed contract;
- A description of the legal matter;
- A copy of the notice and agenda, including the date such notice was issued and a description of the method used for providing the notice; and
- A copy of the written findings made by the subdivision that the legal services are needed.

The bill would then require the AG to approve or refuse the contract within 45 days of receiving the above information. The bill would require the AG to approve the contract promptly if the request involves a matter of purely local concern that does not implicate any statewide interest.

The AG would be required to provide written notice to the subdivision if a contract is refused for one of three reasons, as specified in the bill, and such notice would be required to include a detailed explanation of the reason for refusal. Reasons for refusal would include:

- The legal matter presents one or more questions of law or fact that are in common with litigation the State has already addressed or is pursuing;
- The legal matter involved claims or issues that are more appropriately within the scope of State enforcement, and the independent pursuit of the matter by the subdivision could lead to inconsistent legal outcomes or undermine the State's unified position; or
- The contract does not comply with the Kansas Rules of Professional Conduct.

If the AG has taken no action within 45 days, the contract would be deemed approved.

Dismissal or Intervention by AG for Non-compliance

In any judicial or quasi-judicial proceeding in which a subdivision is represented by an attorney providing non-compliant contingent fee legal services, the bill would allow the AG to appear and request dismissal or intervention and recovery of damages on behalf of the subdivision. Upon a finding that the contract is not in compliance, the court or quasi-judicial body would be required to dismiss the matter without prejudice or to allow the AG to intervene on behalf of the subdivision.

Pre-existing Contingent Fee Contracts

The bill would allow the AG to review contingency fee contracts entered into by subdivisions before the effective date of the bill. For contracts entered into between July 1, 2024, and July 1, 2025, the bill would require the subdivision to submit such contracts to the AG for approval on or before July 1, 2026. The AG would have the discretion to review these contracts and approve or refuse pursuant to the provisions of the bill. Any judicial or quasi-judicial proceeding involving a contingent fee contract that is pending would continue unless the AG appears in such a proceeding as described above.

Definitions

For purposes of the bill, “legal services” would mean all services that constitute the practice of law or services performed by or under authority of a law firm or attorney whether or not such services are performed by someone admitted to practice law in Kansas. The term would not include services performed by attorneys or other persons assisting a subdivision with:

- Services related to bonds, temporary notes, no-fund warrants, state infrastructure loans, or lease financing;
- Debt collection;
- Recouping costs and deductibles related to insurance liability;
- Property sales; or
- Enforcement of support orders.

The term “political subdivision” would not include water utilities as defined in continuing law concerning water supply and distribution districts.

Background

The Senate Committee on Judiciary recommended a substitute bill incorporating provisions pertaining to the ability of political subdivisions to enter into a contingent fee contract for legal services (amended provisions of SB 242). The original provisions of the bill were removed.

[*Note:* HB 2228, as recommended by the House Committee on Corrections and Juvenile Justice and passed by the House, would have required the Secretary of Corrections to assist inmates with gathering identification documentation and providing records for inmates in preparation for the inmates release from custody.]

***SB 242 (Approval of Contingency Fee Contracts
Involving Political Subdivisions)***

Senate Committee on Judiciary

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the American Tort Reform Association; Kansas Chamber; Office of Attorney General (OAG); and the U.S. Chamber of Commerce Institute for Legal Reform. The proponents generally stated the bill would promote transparency for constituents to know what contracts are being entered into by political subdivisions and accountability to the State through the AG.

Neutral testimony was provided by representatives of the Kansas Creditor Attorney Association; Integrated Trustee Services; and the League of Kansas Municipalities. The neutral conferees generally stated concerns about the implementation of the bill and the increased workload it would impose on the OAG.

Opponent testimony was provided by a representative of Kansas Association of School Boards, who generally stated the bill is redundant, would override local control, and decrease accountability.

Written-only testimony was provided by representatives of the Kansas Association of Counties; Sedgwick County Board of County Commissioners; and the cities of Wichita, Overland Park, and Topeka.

No other testimony was provided.

The Senate Committee amended the bill to:

- Allow for notice to be given in the agenda of a political subdivision;

- Add a requirement of a finding that the legal services are in the best interest of the residents;
- Decrease the time allowed for the AG to approve or refuse the contract from 90 days to 45 days;
- Clarify that a contract must be approved promptly if the request involves a matter of local concern;
- Require the AG to provide an explanation in writing for any refusal to the political subdivision;
- Modify the reasons that the AG may cite for refusing a contract;
- Allow the AG to intervene and recover damages on behalf of a subdivision when a contract is non-compliant;
- Further define “legal services and political subdivision;” and
- Make technical changes.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 242, as introduced, the Office of the AG states that enactment of the bill would require \$5,000 from the State General Fund starting in FY 2026. The Office of Judicial Administration and League of Kansas Municipalities state that a precise fiscal effect cannot be estimated. Any fiscal effect associated with the bill is not reflected in *The FY 2026 Governor’s Budget Report*.

The Kansas Association of Counties states that enactment of the bill would have no fiscal effect on counties.

Judiciary; contingent fee contracts for legal services; political subdivision; Attorney General