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Testimony in Support of Senate Bill 107

**Presented to the Senate Committee on Federal and State Affairs
By Kansas Attorney General Derek Schmidt**

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Mr. Chairman, members of the Committee, thank you for the opportunity to testify in support of Senate Bill 107.

Last week, I testified before the Ways and Means Legislative and Elected Officials Subcommittee on our agency's budget. In that testimony, I explained that the current State General Fund appropriation for our office remains less than the cost to the Office of the Attorney General of operating core legal functions that, by their nature, do not generate revenue. This bill is among the solutions we are taking to help close this gap so that we are not relying on sporadic litigation recoveries to subsidize these core functions.

The bill before you today, if enacted, would authorize the Office of the Attorney General to charge other state agencies for the ongoing, routine legal services we provide to them. Currently, we have about 30 agency clients that rely on our office for non-tort litigation services (usually administrative litigation) and for general counsel services. We are happy to provide these services (some of which are required by law but most of which are not), but there is a cost to providing them. Currently, other revenue sources, including the State General Fund or litigation recoveries from elsewhere in the Office of the Attorney General, subsidizes that cost.

Allowing us to charge the reasonable costs of these services to the agencies that benefit from them makes good fiscal and public policy sense. It also is consistent with Recommendation 5 from the Alvarez & Marshal study. That A&M recommendation noted:

“User fees are for services where specific entities or individuals benefit from a public service more than the general public, for example in the granting of licenses, permits and rights-of-way. Without these fees, these businesses and individuals are being subsidized by the rest of the public. While such fees are a relatively small percent of Kansas' total revenue budget, **making sure these fees are aligned with the cost of providing the service are an important part of an overall system of good financial management.**” (emphasis added).

I would also note that this bill would not affect legal services provided under authority of the Kansas Tort Claims Act, which directs the Office of the Attorney General to provide defense to state agencies or employees who are sued in connection with performing their duties. Our obligation to agencies, courts, universities and others who request a legal defense under the Tort Claims Act will not change with or without this bill.

What this bill will change, however, is the fiscal subsidy that the Attorney General's Office provides to many agencies, boards and commissions by providing, at no cost to the client, ongoing legal services. In a tight budget time, I cannot indefinitely justify providing free general-counsel or administrative-litigation legal services to state agencies that are able to pay for them, especially when the cost of doing so comes at the expense of, for example, having insufficient funds to add an additional criminal prosecutor to handle murders and child sex crimes cases from throughout the state. Yet, as matters currently stand, those two services – general legal services to agency-clients and criminal prosecution -- are in direct competition within our office for the same dollars.

Even without this legislation, we have begun discussing with our agency-clients the unsustainability of our providing them routine legal services free of charge. At least one agency client has agreed to begin paying for those services – even though it is under no legal obligation to do so. I am truly grateful for that agency's willingness to work with us, and this bill is intended to ensure that all agency-clients are treated the same in that regard.

Of course, we understand it never is pleasant to have to begin paying for a service that previously was provided free. But in a tight budget time, the days of free legal services from the attorney general's office will necessarily be limited. If we are not able to cause agency-clients to share in the cost of those services, we may have no choice but to stop providing those services to the extent they are discretionary. That would be a real shame – and a poor use of public resources since the only option then available to those agency-clients would be to hire private legal counsel, who are inevitably a more costly option than the attorney general's office.

While details vary significantly from state to state, many other states and territories have taken a similar approach to requiring state agencies to pay for general legal services provided by the attorney general's office. A non-exhaustive list includes: Arizona (Ariz. Rev. Stat. Ann. § 41-191.09); California (Cal. Gov't Code § 11044); Guam (5 G.C.A. § 30203); Idaho (Idaho Code Ann. § 67-1408); Maine (Me. Rev. Stat. tit. 5, § 203); Minnesota (Minn. Stat. Ann. § 8.15); New Mexico (N.M. Stat. Ann. § 8-5-2.1); Oklahoma (Okla. Stat. Ann. tit. 56, § 236); and Washington (Wash. Rev. Code Ann. § 43.10.150).

Passage of Senate Bill 107 is an important component to ensuring that the Office of the Attorney General will be able to continue providing stable, sustainable and affordable legal services to state agency-clients.

Thank you for this opportunity to testify. I would stand for questions.

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