

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 107

As Amended by Senate Committee on Federal
and State Affairs

Brief*

SB 107 would allow the Attorney General to determine, fix, establish, and collect legal representation charges for any legal services provided to state agencies. The Attorney General would be able to determine the charges to any agency based on a schedule of fees and costs published by the Attorney General or by agreement with the state agency. Any schedule of fees adopted by the Attorney General could not exceed the limits established in KSA 22-4507, which relates to compensation and reimbursement for legal services provided to indigent defendants.

The bill would create the Attorney General's State Agency Representation Fund (Fund) and would require charges collected under the provisions of the bill be placed in the Fund. Moneys in the Fund could be used by the Attorney General only for operations of the Office of the Attorney General.

The bill would specify that it would not obligate the Attorney General to provide legal services to any state agency. The Attorney General would be authorized to adopt rules and regulations as necessary to implement the provisions of the bill.

The bill would define several terms:

- "Legal representation charges" would mean costs, fees, expenses, or other financial liability incurred

*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 <http://www.kslegislature.org>

by the Attorney General, including, but not limited to, attorney fees, to provide legal services to a state agency;

- “Legal services” would mean any form of legal advice, representation, or counseling involving an attorney-client relationship, including, but not limited to, general counsel services, and representation of a state agency in an administrative law matter. It would include services provided at the discretion of the Attorney General and legal services required to be provided by the Attorney General. It would not include any representation provided pursuant to the Kansas Tort Claims Act or the defense of civil rights claims pursuant to KSA 75-6116; and
- “State agency” would mean the State of Kansas and any department or branch of state government, or any agency, authority, institution, or other instrumentality thereof.

The bill would become effective upon publication in the *Kansas Register*.

Background

The bill was introduced in the Senate Committee on Federal and State Affairs at the request of the Attorney General. At the hearing in the Senate Committee, the Attorney General appeared in support of the bill. A representative of the Kansas Department of Corrections appeared as neutral on the bill and suggested an amendment to the bill. There was no other testimony.

The Senate Committee adopted amendments:

- Specifying the defense of civil rights claims pursuant to KSA 75-6116 would not be included in the definition of “legal services”; and
- Specifying any schedule of fees adopted by the Attorney General could not exceed the limits established in KSA 22-4507, which relates to compensation and reimbursement for legal services provided to indigent defendants.

According to the fiscal note provided by the Division of the Budget on the bill as introduced, the bill would have a fiscal effect on the Office of the Attorney General (Office) and state agencies, boards, and commissions that use the Attorney General’s services. However, an exact fiscal effect is unknown until a schedule of fees is determined. The bill would allow the Office to receive additional revenue to fully offset expenditures from providing legal services to state agencies. Current law provides no mechanism for the Office to do this, so it must rely on State General Fund (SGF) appropriations or special revenue funds intended for other purposes. State agencies, boards, and commissions that currently use the Office’s services would incur additional expenditures; however, the total costs are not yet known. The Office of Judicial Administration states that, under current law, the Office has routinely accepted Judicial Branch cases including tort, *mandamus*, *habeas*, and federal civil cases. The Judicial Branch does not expect this practice would change as result of enactment of the bill. If the Office determines certain cases are outside of the Kansas Tort Claims Act and declines to offer representation in those cases, the Judicial Branch estimates it would need approximately \$61,000 from SGF to contract for outside representation. Any fiscal effect associated with enactment of the bill is not reflected in The *FY 2018 Governor’s Budget Report*.