

SENATE BILL No. 444

By Committee on Judiciary

2-14

1 AN ACT enacting the public litigation coordination act; relating to
2 contracts by public entities for legal services on a contingent fee basis;
3 restrictions; powers and duties of the attorney general.
4

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

6 Section 1. (a) Sections 1 through 3, and amendments thereto, shall be
7 known and may be cited as the public litigation coordination act.

8 (b) On and after the effective date of this act, a state entity shall not
9 enter into a contract for legal services on a contingent fee basis unless the
10 attorney general approves such contract. By approving any such contract,
11 the attorney general does not waive or limit any authority granted by
12 statutory or common law to the attorney general, including, but not limited to,
13 the authority provided by K.S.A. 75-702, and amendments thereto.

14 (c) (1) On and after the effective date of this act, a municipal entity
15 shall give written notice to the attorney general of such entity's intention to
16 enter into a contract for legal services on a contingent fee basis not later
17 than 120 days before such entity may enter into any such contract.

18 (2) The written notice required by this subsection shall be
19 accompanied by a detailed statement describing:

20 (A) The subject matter of the proposed litigation;

21 (B) the objective of the proposed litigation;

22 (C) the reasons why the municipal entity finds it necessary to retain
23 private legal counsel to represent the municipal entity in the proposed
24 litigation;

25 (D) the reasons why the municipal entity finds it necessary to pay a
26 contingent fee to pursue such litigation;

27 (E) the particulars of the contingent fee arrangement to be included in
28 any such contract, including how the fee is to be calculated, the amount of
29 the fee and the manner in which litigation expenses will be paid; and

30 (F) such other information as the attorney general determines to be
31 reasonably necessary to carry out the requirements of sections 1 through 3,
32 and amendments thereto.

33 (3) The attorney general may adopt rules and regulations prescribing
34 the procedure for providing the notice required by this subsection and shall
35 make available information describing such procedure on the official
36 website of the office of the attorney general.

1 (d) (1) (A) Upon receiving a notice required by subsection (c), the
2 attorney general shall review the notice to determine whether the litigation
3 the municipal entity proposes to finance through a contingent fee
4 arrangement is in the public interest and whether such litigation and fee
5 arrangement may tend to impede any interest of any other public entity.

6 (B) To assist in such review, the attorney general may consult with
7 the municipal entity, or with any other public entity, and each such public
8 entity shall cooperate with the attorney general in the review.

9 (C) Based upon such review, the attorney general may make
10 recommendations to the municipal entity regarding: (i) Whether to proceed
11 with the proposed contract for legal services on a contingent fee basis; (ii)
12 the structure and amount of the proposed contingent fee arrangement; and
13 (iii) any other matter the attorney general believes would serve the public
14 interest or would assist the municipal entity in addressing the subject
15 matter of the proposed litigation.

16 (D) The municipal entity shall, in good faith, give due consideration
17 to any recommendations provided by the attorney general.

18 (2) (A) The attorney general may take action as described in
19 subsection (d)(2)(B) if the attorney general determines that the matter that
20 is the subject of the notice required by subsection (c): (i) Presents one or
21 more questions of law or fact that are in common with a matter the state
22 has already addressed or is pursuing; and (ii) pursuit of the matter by the
23 municipal entity through a contract for legal services on a contingent fee
24 basis will not promote the just and efficient resolution of the matter or may
25 impede interests of the state or of any other public entity.

26 (B) If the attorney general makes a determination described in
27 subsection (b)(2)(A), not later than 120 days after receiving the notice
28 required by subsection (c), the attorney general may in writing: (i) Request
29 that the municipal entity not proceed with the contract for legal services on
30 a contingent fee basis, setting forth in detail the reasons for such request;
31 or (ii) notify the municipal entity that the attorney general reserves the
32 right to intervene and substitute the state for the municipal entity in any
33 litigation filed pursuant to any such contract for legal services on a
34 contingent fee basis as provided by subsection (d)(2)(C).

35 (C) If, after receiving a request or notification from the attorney
36 general pursuant to subsection (d)(2)(B), the municipal entity proceeds to
37 enter into such contract for legal services on a contingent fee basis, and if
38 any action is filed in state or federal court pursuant to that contract, then
39 such action shall be served on the attorney general at the time of filing in
40 the manner provided by the code of civil procedure. If the attorney
41 general, pursuant to subsection (d)(2)(B), has notified the municipal entity
42 that the attorney general has reserved the right to intervene, then the
43 attorney general, in the name of the state, as a matter of right, may

1 intervene in any such action and supercede the municipal entity by
2 substituting the state for the municipal entity as a party in the litigation,
3 and the attorney general shall then control the prosecution and disposition
4 of such action without limitation as if the action was filed by the attorney
5 general.

6 (D) Every contract by a municipal entity for legal services on a
7 contingent fee basis shall incorporate this subsection and shall be subject
8 to the provisions of this subsection.

9 (e) A municipal entity entering a contract for legal services on a
10 contingent fee basis shall satisfy the requirements of K.S.A. 75-4301a et
11 seq., and amendments thereto. In determining whether any provision of
12 K.S.A. 75-4301a et seq., and amendments thereto, is satisfied, the attorney
13 general, the municipal entity or both, may request the opinion of the state
14 governmental ethics commission pursuant to K.S.A. 75-4303a, and
15 amendments thereto, and such request shall toll the 120-day time period
16 set forth in subsection (d) while such request is pending.

17 (f) A contract for legal services on a contingent fee basis involving a
18 public entity shall either be: (1) Issued pursuant to K.S.A. 75-37,135, and
19 amendments thereto; or (2) let only after competitive bidding that has been
20 advertised for by published notice.

21 (g) A valid contract to provide legal services to a public entity that is
22 in effect prior to the effective date of this act shall remain valid and
23 enforceable, but on and after the effective date of this act, such contract
24 shall not be extended or renewed, nor shall parties be added, except with
25 the written consent of the attorney general.

26 (h) A contract for legal services on a contingent fee basis in violation
27 of this section is void and unenforceable.

28 Sec. 2. Whenever it appears to the attorney general that the state, the
29 citizens of Kansas or any municipal entity has been injured or damaged by
30 any matter in violation of law, whether or not such matter has been the
31 subject of a notice under section 1, and amendments thereto, the attorney
32 general shall have the authority to:

33 (a) Institute and prosecute in the name of the state any appropriate
34 actions or proceedings to protect the interests of the state, the citizens of
35 Kansas or any municipal entity;

36 (b) intervene in the name of the state to protect the interests of the
37 state, the citizens of Kansas or any municipal entity in any such actions or
38 proceedings;

39 (c) recover damages on behalf of the state, the citizens of Kansas or
40 any municipal entity;

41 (d) consult with any municipal entity to coordinate efforts to protect
42 the interests of such entity; and

43 (e) exercise any other authority provided by law to protect the

1 interests of the state, the citizens of Kansas or any municipal entity.

2 Sec. 3. As used in sections 1 through 3, and amendments thereto:

3 (a) "Contract for legal services on a contingent fee basis" means any
4 contract to which a public entity is a party through which a public entity
5 obtains legal services to be compensated through a contingent fee.

6 (b) "Contingent fee" means a fee or other compensation contingent on
7 the outcome of the matter for which the legal service is rendered.

8 (c) (1) "Legal services" means:

9 (A) All services performed by, or under authority of, a law firm or
10 attorney in the private practice of law, whether or not admitted to practice
11 law in Kansas; and

12 (B) all services that constitute the practice of law in Kansas.

13 (2) "Legal services" does not include services performed:

14 (A) By bond counsel;

15 (B) pursuant to a collections contract;

16 (C) in response to a subrogation claim;

17 (D) in connection with the sale of real property;

18 (E) in connection with filing a claim in response to a notice of
19 eligibility to participate in a class action settlement or declining to opt out
20 of a class action settlement after receiving a notice of eligibility; or

21 (F) in connection with an action pursuant to the Kansas standard asset
22 seizure and forfeiture act, K.S.A. 60-4101 et seq., and amendments
23 thereto.

24 (d) "Municipal entity" means any municipality as defined in K.S.A.
25 10-1101, and amendments thereto, and any officer, agent or employee of
26 such municipality acting in an official capacity.

27 (e) "Public entity" means a municipal entity or state entity.

28 (f) "State entity" means the state as defined in K.S.A. 75-6102, and
29 amendments thereto, and any officer, agent or employee of the state acting
30 in an official capacity.

31 Sec. 4. This act shall take effect and be in force from and after its
32 publication in the Kansas register.