

March 4, 2020

The Honorable Rick Wilborn, Chairperson
Senate Committee on Judiciary
Statehouse, Room 541C-E
Topeka, Kansas 66612

Dear Senator Wilborn:

SUBJECT: Fiscal Note for SB 444 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 444 is respectfully submitted to your committee.

SB 444 would create the Public Litigation Coordination Act. The bill would prohibit a state entity from entering into contracts for legal services on a contingent fee basis unless the Attorney General gives approval. A municipal entity would be required to give the Attorney General at least 120 days written notice before it intends to contract for legal services on a contingent fee basis. The Attorney General could adopt rules and regulation for providing the required notice and would make them available on its website. The Attorney General would review the notice and give recommendations to the municipality. The bill would allow the Attorney General in certain instances to request that the municipality not proceed with the contract or notify the municipality that the Attorney General reserves the right to intervene.

A contract for legal services on a contingent fee basis would be required to satisfy the governmental ethics laws applicable to local government subdivisions. To determine if the requirements are satisfied, the Attorney General or municipality could request the opinion of the Kansas Governmental Ethics Commission. A contract would either be required to satisfy the state contracting requirements for legal services where the amount of attorney fees could exceed \$1,000,000, or be let only after a competitive bidding process that has been advertised. The Act would not apply to contracts that are in effect prior to the Act becoming enacted. Contracts that are in violation of the Act would be void and unenforceable. The Attorney General would be allowed to institute and prosecute in the name of the state to protect the state, Kansas citizens, or any municipality and would also be allowed to recover damages.

According to the Attorney General, enactment of the bill could generate savings to the state, since it is likely to reduce the portions of recoveries paid to law firms through contingency fees because the bill authorizes the Attorney General to bring these actions and recover funds on behalf of the municipalities. Because the future recoveries from such litigation are unknown, a fiscal effect cannot be estimated. The Attorney General also states that any additional expenses created by this bill would be absorbed within existing resources.

The Kansas Association of Counties states that the bill would impose additional procedural steps on municipalities that wish to pursue legal action on a contingency basis. Because the bill would limit municipalities in obtaining legal services on a contingent basis, the municipalities could pay higher salaries and wages expenditures of its own counsel and administrative staff that would be associated with increased in-house litigation services, or the municipalities could pay an hourly rate for counsel instead of on a contingent basis. However, there is no way to estimate the fiscal effect of the bill.

The League of Kansas Municipalities states that enactment of the bill could adversely affect municipalities if the Attorney General decides to intercede in litigation and then municipalities struggle to find an attorney to take cases. The bill could also affect municipalities if the Attorney General recovers damages on behalf of the municipality. However, is it not possible to estimate the fiscal effect of the bill.

The Kansas Governmental Ethics Commission states that the bill would not have a fiscal effect because entities are already able to request opinions regarding these types of contracts. Any fiscal effect associated with SB 444 is not reflected in *The FY 2021 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink that reads "L. L. Campbell". The signature is fluid and cursive, with the first and last names being clearly legible.

Larry L. Campbell
Director of the Budget

cc: Willie Prescott, Office of the Attorney General
Trey Cocking, League of Municipalities
Jay Hall, Association of Counties
Mary Rinehart, Judiciary
Mark Skoglund, Governmental Ethics