



**Oral Opponent Testimony on
SB 242, Contingent fee contracts for legal services
Senate Judiciary Committee**

**By
Shannon Kimball
Government Relations Specialist**

**Kansas Association of School Boards
skimball@kasb.org**

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Chair Warren and Members of the Committee,

Thank you for the opportunity to submit this testimony in opposition to SB 242. Local control of school district governance and management decisions is a foundational principle throughout KASB's member-adopted permanent and annual legislative policies:

Local Control of Public Schools

In addition, Article 6, Section 5 states, "Local public schools under the general supervision of the state board of education shall be maintained, developed and operated under locally elected boards."

- We support management of public schools under locally elected boards of education, including setting curriculum, staffing, financial management and policies, so that such schools can progress and meet State Board standards.

School Board Authority and Accountability

As the constitutional authority charged with the management of local schools, the school board is accountable to district patrons through the electoral process and must be the final authority on local management decisions for expenditures, personnel, facilities, and programs.

School Board Powers

The State constitution requires that public schools be operated, managed and developed by locally elected school boards. KASB supports providing school boards with the general authority to act in the best interest of the district, unless such action is prohibited by law.

SB 242 would remove decision-making authority from local boards of education regarding how best to meet districts' needs for legal services, giving veto power over these local decisions to the state Attorney General. Such veto power is an unwarranted overreach from the state level into the work of local elected officials.

K.S.A. 72-1131 describes the powers and duties of boards of education to include the ability to "sue and be sued, execute contracts and hold such real and personal property as it may acquire. Every unified school district shall possess the usual powers of a corporation for public purposes." It is generally understood that one of the powers of a corporate board is to protect the legal rights and interests of the entity it governs. The same is true for the local elected officials who govern our school districts.

K.S.A. 72-1138 further provides that a board of education "may transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop and operate local public schools." Again, determining whether a district has a legal claim, and selecting the board's counsel of choice to pursue any such claim, falls squarely within the powers appropriately exercised by boards of education.

In addition to the policy overreach that the bill represents, the bill's process to gain approval from the Attorney General for a proposed contingency fee contract is both duplicative and impractical. School districts are already required under the law to approve contracts for services, which very clearly include contingency fee contracts for legal services, in open, public meetings by a majority vote of the board upon a properly made and seconded motion, and after the opportunity for discussion by the board. Then, once a board of education completes this approval process, the board would have to wait as long as 3 months for the Attorney General's final decision on a request for approval of the contract. Further, the proposed bill provides no avenue to request reconsideration or to appeal a decision by the Attorney General overturning the reasoned judgment of a local board of education on these matters.

Moreover, the information required to be publicly disclosed as part of this process threatens the attorney-client privilege with respect to contingent fee contracts. Boards of education likely would seek advice of board counsel on such a proposed contract; such advice is protected by the attorney-client privilege and would also be protected from public disclosure pursuant to the attorney-client exception to the Kansas Open Meetings Act. The list of required disclosures in the bill is so broad that it likely requires disclosure of the content of such privileged communications to gain the Attorney General's approval. Such mandatory disclosure of privileged communications flies in the face of the privilege and KOMA exceptions and infringes on the attorney-client relationship between boards of education and their chosen counsel.

For the reasons shared above, SB 242 amounts to an unnecessary power grab by the Attorney General's office over the governance and management decisions of local boards of education. KASB respectfully requests that committee members vote no on the bill.

Thank you.

KASB is a non-profit service organization built on an abiding belief in Kansas public schools. We have put the needs of students and K-12 leaders first since 1917.