

Open Meetings Requirement for Political Subdivisions Before Approving a Contingent Fee Contract for Legal Services; Senate Sub. for HB 2228

Senate Sub. for HB 2228 requires any political subdivision (subdivision), as defined in continuing law, to hold an open meeting before approving a contingent fee contract for legal services, and requires such contract to be approved by the Attorney General (AG) before becoming effective. The bill's provisions expire on July 1, 2029.

Open Meeting Notice

The bill requires the governing body of the subdivision to provide notice of an open meeting called for the purpose of considering a contingency fee contract for legal services. The notice could be provided in the subdivision's meeting agenda, and must include:

- Reasons for pursuing the legal matter and desired outcome;
- Qualifications, experience, and competence of the attorney or law firm selected or being considered;
- Nature of any relationship between the subdivision and attorney or law firm;
- Reasons the legal services cannot be performed by attorneys of the subdivision;
- Reasons legal representation cannot be attained for an hourly rate as opposed to a contingency fee; and
- Reasons the contract is in the best interest of the residents of the subdivision.

Subdivision Findings

Before a governing body may approve a contingent fee contract for legal services, the bill requires the subdivision to make a finding in writing that:

- It is in the best interest of the residents or there is a substantial need to enter into the contract for legal services;
- The legal services cannot be adequately performed by the attorneys and personnel of the subdivision; and
- The subdivision cannot reasonably obtain legal representation at an hourly rate due to the nature of the legal matter or because the subdivision does not have the funds necessary or would pay substantially more for legal services at an hourly rate.

The governing body of the subdivision can approve the contract in an open meeting only after discussion and consideration of the above findings.

AG Approval

Before an approved contingency fee contract could take effect, the bill requires the subdivision to receive the approval of the AG. For consideration by the AG, the subdivision must provide the AG with:

- A copy of the proposed contract;
- A description of the legal matter;
- A copy of the notice and agenda, including the date such notice was issued and a description of the method used for providing the notice; and
- A copy of the written findings made by the subdivision that the legal services are needed.

The bill also requires the AG to approve or refuse the contract within 45 days of receiving the above information. The bill requires the AG to approve the contract promptly if the request involves a matter of purely local concern that does not implicate any statewide interest.

The AG must provide written notice to the subdivision if a contract is refused for one of three reasons, as specified in the bill, and such notice must include a detailed explanation of the reason for refusal. Reasons for refusal include:

- The legal matter presents one or more questions of law or fact that are in common with litigation the State has already addressed or is pursuing;
- The legal matter involves claims or issues that are more appropriately within the scope of state enforcement, and the independent pursuit of the matter by the subdivision could lead to inconsistent legal outcomes or undermine the State's unified position; or
- The contract does not comply with the Kansas Rules of Professional Conduct.

If the AG has taken no action within 45 days, the contract would be deemed approved.

Dismissal or Intervention by Attorney General for Non-compliance

In any judicial or quasi-judicial proceeding in which a subdivision is represented by an attorney providing non-compliant contingent fee legal services, the bill allows the AG to appear and request dismissal or intervention and recovery of damages on behalf of the subdivision. Upon a finding that the contract is not in compliance, the court or quasi-judicial body is required to dismiss the matter without prejudice or to allow the AG to intervene on behalf of the subdivision.

Pre-existing Contingent Fee Contracts

The bill allows the AG to review contingency fee contracts entered into by subdivisions before the effective date of the bill. For contracts entered into between July 1, 2024, and July 1, 2025, the bill requires the subdivision to submit such contracts to the AG for approval on or before July 1, 2026. The AG has the discretion to review these contracts and approve or refuse pursuant to the provisions of the bill. Any judicial or quasi-judicial proceeding involving a contingent fee contract that is pending continues unless the AG appears in such a proceeding as described above.

Definitions

For purposes of the bill, “legal services” means all services that constitute the practice of law or services performed by or under authority of a law firm or attorney regardless of whether such services are performed by someone admitted to practice law in Kansas. The term does not include services performed by attorneys or other persons assisting a subdivision with:

- Services related to bonds, temporary notes, no-fund warrants, state infrastructure loans, or lease financing;
- Debt collection;
- Recouping costs and deductibles related to insurance liability;
- Property sales; or
- Enforcement of support orders.

The term “political subdivision” does not include water utilities as defined in continuing law concerning water supply and distribution districts.