

REVISED
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SUPPLEMENTAL NOTE ON SENATE BILL NO. 149

As Amended by House Committee on Judiciary

Brief*

SB 149, as amended, would create law concerning criminal matters or postconviction cases in the Kansas Supreme Court or the Kansas Court of Appeals. The bill would require a copy of each brief to be served on the Kansas Attorney General and would prohibit briefs from being filed by or on behalf of the State or any officer or agent of the State unless the approval of the Attorney General or a member of the Attorney General's staff is endorsed on the brief.

The bill would also create law allowing the Attorney General to determine, fix, establish, and collect legal representation charges for legal services provided to state agencies, as defined by the bill. 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.

*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>

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 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 any department of state government, or any agency thereof, that collects fees for licensing, regulating, or certifying a person or profession.

Background

SB 149—Rules for Briefs

SB 149 was introduced at the request of the Office of the Attorney General. In the Senate and House Committees on Judiciary hearings, the Attorney General explained the bill

would codify current Supreme Court Rule 6.10, which has been in effect since at least the 1970s. Recently, however, the Supreme Court indicated it would repeal the rule, effective September 1, in an effort to “clean up” court rules. The Attorney General stated the rule helps to avoid briefs from the State on both sides of an issue and allows the Office of the Attorney General to refer briefs back to counties for modification, if needed. No other testimony was provided.

The Senate Committee recommended the bill be placed on the Consent Calendar.

The House Committee amended the bill by adding language modified from SB 107, as amended by Senate Committee, regarding legal representation charges by the Attorney General. Further background information regarding SB 107 is provided below.

According to the fiscal note prepared by the Division of the Budget, the Office of the Attorney General indicates enactment of SB 149 would have no fiscal effect as it would codify current practice.

SB 107—Legal Representation Charges by the Attorney General

SB 107 was introduced in the Senate Committee on Federal and State Affairs at the request of the Attorney General. In the Senate Committee hearing, 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.

As of the date of House Committee action on SB 149, SB 107 was below the line on General Orders in the Senate. The House Committee held an informational briefing on SB 107 at which the Attorney General provided testimony supporting the bill. The Secretary of Corrections provided neutral testimony.

The House Committee added the language of SB 107 to SB 149 after modifying it by limiting the definition of “state agency” to departments or agencies that collect fees for licensing, regulating, or certifying a person or profession. As introduced and amended by Senate Committee, SB 107 defined “state agency” to include the state, any department or branch of state government, or any agency, authority, institution, or other instrumentality of the State.

According to the fiscal note provided by the Division of the Budget on SB 107, 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 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 the State General Fund 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*.