

March 18, 2019

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

Dear Senator Wilborn:

SUBJECT: Fiscal Note for SB 213 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 213 is respectfully submitted to your committee.

SB 213 would allow the Attorney General to refuse to represent or indemnify a public agency or employee or agent of a public agency in an action, proceeding or investigation involving an alleged violation of the Kansas Open Records Act (KORA) or the Kansas Open Meetings Act (KOMA).

The Office of the Attorney General (OAG) indicates that enactment of SB 213 would result in reduced expenditures beginning in FY 2020 because the agency would no longer be required to provide legal representation for KORA and KOMA violation cases. The agency notes that it must enforce KOMA and KORA, which creates a conflict of interest that requires the agency to hire outside counsel to provide the legal defense. The agency states that it is currently aware of two such cases that allege violations of KOMA and KORA, and it estimates the cost of providing legal defense of those cases to be approximately \$5,000 to \$10,000 per case. However, the fiscal effect cannot be estimated because the total number of cases that the OAG would no longer be required to defend is unknown.

The Office of Judicial Administration indicates that enactment of the bill would require additional expenditures of \$40,000 beginning in FY 2020. The agency states it would be required to hire outside counsel for approximately four employees each fiscal year at a cost of \$10,000 per case that would need legal representation due to alleged violations. The Office states that it would be required to hire outside counsel because it would be a conflict of interest for its own attorneys to appear before its own courts.

The League of Kansas Municipalities and the Kansas Association of Counties indicate that enactment of the bill could require local units of governments to provide legal representation for alleged violations of KOMA and KORA instead of such representation being provided by OAG, which could increase expenditures. However, the fiscal effect cannot be estimated because the number of cases that local units of government would be required to defend is unknown.

The Division of the Budget notes that enactment of the bill could require state agencies to either use its own legal counsel or seek outside counsel instead of requesting legal representation from the OAG, which could increase expenditures for legal costs for agencies. However, this fiscal effect cannot be estimated because the number of public agencies that would need legal representation due to an alleged violation of KORA or KOMA is unknown. Any fiscal effect associated with SB 213 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink that reads "L. L. Campbell". The signature is written in a cursive style with a large, stylized initial "L".

Larry L. Campbell
Director of the Budget

cc: Willie Prescott, Office of the Attorney General
Chardae Caine, League of Municipalities
Jay Hall, Association of Counties
Janie Harris, Judiciary