



Joe Norwood, Secretary

Sam Brownback, Governor

Testimony on SB 107  
To  
The Senate Federal and State Affairs Committee

By Joe Norwood  
Secretary  
Kansas Department of Corrections  
February 14, 2017

The Department of Corrections is neutral in regard to SB 107. However, the department does have a proposed amendment to SB 107.

SB 107 provides that the Attorney General may charge state agencies for legal services. Significantly, SB 107 precludes the Attorney General from charging for the cost of providing legal representation pursuant to the Kansas Tort Claims Act, K.S.A. 75-6101 et. seq. The department believes that exemption is appropriate since providing legal representation to state officials sued for allegedly committing a tort while performing their duties is an important feature necessary in negating a chilling effect upon public officials performing their duties due to the threat of vexing and harassing litigation at the personal expense of the official. Additionally, SB 107 recognizes that requiring an agency to forward appropriated funds to the Attorney General's office for that service only adds another layer of bureaucracy.

The department believes the same rationale for SB 107 excluding legal representation costs incurred in the defenses of litigation brought pursuant to the Kansas Tort Claims Act is applicable to litigation alleging a violation of federal or state civil rights. Like tort claim litigation brought pursuant to K.S.A. 75-6101 et. seq., litigation alleging that state officials violated federal or state civil rights is also defended by the Attorney General. The Attorney General, however, provides that legal representation pursuant to K.S.A. 75-6116 which is not part of the Tort Claims Act. Allegations of a violation of federal or state civil rights are commonly made against law enforcement officers and are the most common element in suits brought against the department's officials in federal court.

The department respectfully urges the Committee to amend SB 107 to also exclude litigation expenses arising out of lawsuits alleging violations of federal or state civil rights. A balloon setting out the proposed amend is attached.

*Session of 2017*

**SENATE BILL No. 107**

By Committee on Federal and State Affairs

1-31

AN ACT concerning the attorney general; relating to legal representation charges; legal services; creating the attorney general's state agency representation fund.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) The attorney general may determine, fix and establish a system of legal representation charges and collect such charges from any state agency to which the attorney general provides legal services. The attorney general may determine the amount of legal representation charges due from a state agency by use of a schedule of fees and costs for legal services published by the attorney general or by entering into an agreement with a state agency for payment by such agency for legal services.

(b) As used in this section:

(1) "State agency" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof;

(2) "legal representation charges" means any 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; and

(3) "legal services" means 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 any administrative law matter. "Legal services" includes legal services provided at the attorney general's discretion at the request of a state agency and legal services the attorney general is required by law to provide to a state agency. "Legal services" shall not include any representation provided pursuant to the Kansas tort claims act, K.S.A. 75-6101 et seq., and amendments thereto.

INSERT: "or the defense of civil rights claims pursuant to K.S.A. 75-6116"

(c) The amounts collected under this section shall be remitted by the attorney general to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the attorney general's state agency representation fund, which is hereby created. Moneys in the

attorney general's state agency representation fund shall be expended by the attorney general for operations of the office of the attorney general.

(d) Nothing in this section shall impose an obligation for the attorney general to provide legal services to any state agency.

(e) The attorney general may adopt rules and regulations as necessary to implement this section.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.