



# Kansas Attorney General

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## Derek Schmidt

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### WRITTEN TESTIMONY FOR HOUSE JUDICIARY COMMITTEE

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**TO: MEMBERS OF THE HOUSE JUDICIARY COMMITTEE**  
**FROM: JEFFREY A. CHANAY, DEPUTY ATTORNEY GENERAL, CIVIL LITIGATION DIVISION**  
**DATE: FEBRUARY 27, 2012**  
**RE: HOUSE BILL 2553**

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Chairman Kinzer and Members of the Committee:

On behalf of the Office of Attorney General Derek Schmidt, I offer the following written testimony on House Bill 2553.

House Bill 2553 carves out a single case exception to the Kansas Tort Claims Act to require the Office of Attorney General to provide a KTCA defense to the Nemaha-Brown Watershed Joint District No. 7 for the litigation captioned *Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas v. Michael Black, et al.*, in the United States District Court for the District of Kansas, Case No. 06-CV-2248-CM/DJW.

Under the Kansas Tort Claims Act, K.S.A. 75-6101, *et seq.*, a “governmental entity” is liable for damages caused by the negligent or wrongful act or omission of its employees while acting within the scope of their employment. K.S.A. 2010 Supp. 75-6103(a). By definition, “governmental entity” means the state or a municipality. K.S.A. 2010 Supp. 75-6102(c). “State” is defined to mean “the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.” K.S.A. 2010 Supp. 75-6102(a). “Municipality” is defined to mean “any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.” K.S.A. 2010 Supp. 75-6102(b). While the KTCA applies to governmental entities, only claims against the state or employees of the state are covered by the Tort Claims Fund. See K.S.A. 2010 Supp. 75-6117(a).

Between 2006 and 2011, the Nemaha-Brown Watershed Joint District No. 7 was provided a Kansas Tort Claims Act defense for this litigation. The cost of this defense to the State of Kansas, through the Tort Claims Fund, was approximately \$550,000.00 through September 2011. Shortly after taking office, Attorney General Schmidt ordered a review of all outsourced KTCA legal work. After this review was completed, it was determined by the Attorney General that the original 2006 decision to provide KTCA funding was erroneous as a Watershed District is not an instrumentality of the State of Kansas for KTCA purposes. Consequently, the Office of Attorney General officially discontinued KTCA funding to the Watershed District in September, 2011.

Prior to making its decision, the Office of Attorney General discussed the matter in detail with representatives for the Watershed District and the District was given the opportunity to present its views and legal arguments. When the decision was finalized, the Watershed District was provided notice of its right to appeal under the Kansas Judicial Review Act, but the District did not avail itself of that right. Since that time, the Watershed District has paid for its own defense costs as does any municipality under the Act.

If this legislation passes, we have estimated that there will be between \$150,000 and \$300,000 in legal fees and costs that will be paid through the Tort Claims Fund. This is based on an estimated range of attorneys' fees and expenses that will be required to defend the Watershed District through the trial and appeal stages of the case. There will also be some staff costs in the Office of Attorney General associated with the monitoring and management of the KTCA agreement with outside counsel.

Thank you for the opportunity to offer these comments on House Bill 2553.