

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 475

AN ACT

To repeal section 105.716, RSMo, and to enact in lieu thereof two new sections relating to the intervention of the general assembly in certain civil actions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Section 105.716, RSMo, is repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 21.415  
3 and 105.716, to read as follows:

4 21.415. 1. The speaker of the house of representatives and  
5 the president pro tempore of the senate, as duly elected public  
6 officials and agents of the state of Missouri, shall jointly have  
7 standing to intervene on behalf of the general assembly as an  
8 interested party to be heard in any judicial, administrative, or  
9 other proceeding, in which the constitutionality of any provision  
10 of the Missouri Constitution, statute, rule, regulation, program,  
11 or policy is being challenged.

12 2. If the attorney general declines to defend or appeal a  
13 ruling regarding a challenged provision of the Missouri  
14 Constitution, statute, rule, regulation, program, or policy, or  
15 does so in a manner deemed inadequate by the general assembly,  
16 then the general assembly shall further have standing to defend  
17 the challenged statute or provision alongside the attorney  
18 general or in the attorney general's stead. Such standing shall  
19 be invoked on behalf of the general assembly by agreement of the

1 speaker of the house of representatives and the president pro  
2 tempore of the senate.

3 3. Whether the speaker of the house of representatives and  
4 the president pro tempore of the senate on behalf of the general  
5 assembly intervene in a judicial proceeding as an interested  
6 party, or whether they intervene with standing to defend the law  
7 and the Missouri Constitution, the general assembly shall act at  
8 all times as an agent of the people of Missouri.

9 4. Should the general assembly act to intervene in a  
10 judicial proceeding under this section, the respective committees  
11 of the house of representatives and the senate responsible for  
12 administration and accounts shall jointly approve the hiring of  
13 legal counsel to represent the general assembly. Any reasonable  
14 attorneys' fees, court costs, and related legal expenses the  
15 general assembly incurs as a result of intervention shall be paid  
16 from the state legal expense fund pursuant to subsection 5 of  
17 section 105.716.

18 105.716. 1. Any investigation, defense, negotiation, or  
19 compromise of any claim covered by sections 105.711 to 105.726  
20 shall be conducted by the attorney general; provided, that in the  
21 case of any claim against the department of conservation, the  
22 department of transportation or a public institution which awards  
23 baccalaureate degrees, or any officer or employee of such  
24 department or such institution, any investigation, defense,  
25 negotiation, or compromise of any claim covered by sections  
26 105.711 to 105.726 shall be conducted by legal counsel provided  
27 by the respective entity against which the claim is made or which  
28 employs the person against whom the claim is made.

1 In the case of any payment from the state legal expense fund  
2 based upon a claim or judgment against the department of  
3 conservation, the department of transportation or any officer or  
4 employee thereof, the department so affected shall immediately  
5 transfer to the state legal expense fund from the department  
6 funds a sum equal to the amount expended from the state legal  
7 expense fund on its behalf.

8 2. All persons and entities protected by the state legal  
9 expense fund shall cooperate with the attorneys conducting any  
10 investigation and preparing any defense under the provisions of  
11 sections 105.711 to 105.726 by assisting such attorneys in all  
12 respects, including the making of settlements, the securing and  
13 giving of evidence, and the attending and obtaining witness to  
14 attend hearings and trials. Funds in the state legal expense  
15 fund shall not be used to pay claims and judgments against those  
16 persons and entities who do not cooperate as required by this  
17 subsection.

18 3. The provisions of sections 105.711 to 105.726  
19 notwithstanding, the attorney general may investigate, defend,  
20 negotiate, or compromise any claim covered by sections 105.711 to  
21 105.726 against any public institution which awards baccalaureate  
22 degrees whose governing body has declared a state of financial  
23 exigency.

24 4. Notwithstanding the provisions of subsection 2 of  
25 section 105.711, funds in the state legal expense fund may be  
26 expended prior to the payment of any claim or any final judgment  
27 to pay costs of defense, including reasonable attorney's fees for  
28 retention of legal counsel, when the attorney general determines

1 that a conflict exists or particular expertise is required, and  
2 also to pay for related legal expenses including medical  
3 examination fees, expert witness fees, court reporter expenses,  
4 travel costs and ancillary legal expenses incurred prior to the  
5 payment of a claim or any final judgment.

6 5. Notwithstanding the provisions of subsection 2 of  
7 section 105.711, funds in the state legal expense fund may be  
8 expended to pay for the reasonable attorneys' fees, court costs,  
9 and related legal expenses incurred by the general assembly  
10 pursuant to section 21.415. Moneys in the state legal expense  
11 fund shall also be available for the payment of any claim or any  
12 amount required by any final judgment, including claims for  
13 attorneys' fees, rendered by a court of competent jurisdiction  
14 against the general assembly when the general assembly is a party  
15 to the proceeding pursuant to section 21.415.