

M I N U T E S

LEGISLATIVE BUDGET COMMITTEE

August 7, 1975

The Legislative Budget Committee convened at 10:00 a.m. on August 7, 1975, in Room 510-S of the State House, at which time Speaker McGill and Representatives Bunten, Lady and Loux were present. Senator Steineger arrived after the discussion with the conferees on governmental immunity. Senator Doyen was present during the afternoon session of the meeting. Staff members in attendance were R. W. Ryan, Fred Carman, Arden Ensley, James Bibb, and Ed Ahrens.

Senator Tillotson sat in on part of the morning session and all of the afternoon session.

Morning Session

Minutes of Last Meeting

The minutes of the meeting held on July 10, 1975, were approved without change.

Governmental Immunity

Conferees were Fletcher Bell, Don Hoffman, and Herman Josefiak, of the Committee on Surety Bonds and Insurance; Larry Barry, Mike Mullen, Richard Brock, Ray Rathert, and Nancy Scherer of the Insurance Department; and James Tolbert of the Purchasing Division.

Mr. Bell, Commissioner of Insurance and Chairman of the Committee on Surety Bonds and Insurance (CSBI), presented a resolution adopted by the CSBI on August 6 to the effect that the CSBI, after negotiating for and comparing two proposed liability insurance contracts covering the state and its officers and employees, intends to purchase the policy submitted by the

Central National Insurance Company, subject to certain conditions. One of those conditions is, "Unless the (CSBI) is advised by the Secretary of Administration or other responsible state official that funds are not available for its purchase." (A copy of the resolution is in the Committee notebook.) Mr. Bell said that the CSBI had to notify the insurance company by August 15 as to whether the policy will be purchased, but later during the meeting he indicated that the date for a firm commitment to purchase might be extended if it appeared that the state definitely plans to purchase liability insurance coverage.

Mr. Bell also presented and discussed a memorandum which compares the premium, policy term, policy limits, coverage, basis of coverage, major exclusions, and cancellation provisions of the two negotiated insurance contracts. (A copy of the memorandum is in the Committee notebook.) The policy term of the Central National contract is for three years. The initial annual premium is approximately \$1.8 million, to be paid by the state in one payment. The premium for the second and third years would be negotiated and would be based on experience under the contract and other relevant factors.

One of the major exclusions is medical malpractice for clinical liability. In this connection, Mr. Bell said that Central National has agreed to submit a separate proposed contract covering clinical liability of state employees if the company receives adequate information which would enable it to prepare such a proposal. Both Mr. Bell and Mr. Hoffman said that liability for administrative action, *i.e.*, non-clinical services, at the Medical Center and the state hospitals is covered by the policy already submitted by Central National.

As to cancellation of the policy, the state may cancel at any time upon written notice to the company, but the company must give 90 days written notice if it wants to cancel or not renew the policy. Mr. Rathert said that if the state should cancel, it would be subject to a 10% penalty, *e.g.*, cancellation after six months would cost the state half of the annual premium plus 10% of the annual premium.

Speaker McGill referred to an opinion of the Attorney General which the Speaker had requested on August 4 and which was delivered shortly before the Committee convened. The synopsis of the opinion (No. 75-316) states that, "A specific appropriation for the purchase of liability insurance for the state, its officers and employees, is not required and may be assessed against FY 1976 agency appropriations under existing laws. State Finance Council action is not necessary to effectuate the coverage." (A copy of the opinion is in the Committee notebook.)

Mr. Hoffman, of the Attorney General's office, said he understands that assessment of the prorata share of the insurance premium would not be a problem insofar as most state agencies,

especially the larger ones, are concerned, but supplemental appropriations by the 1976 Legislature might be necessary in some cases. He further stated that, in spite of the law suit challenging the constitutionality of the Finance Council, it could act if necessary under existing statutes and appropriation acts because that suit will not be resolved for some time to come and because no action has been or will be taken by the Attorney General to restrain the Finance Council from acting under present laws. He said there would be no recrimination by the Attorney General if the Finance Council acts in connection with the proposed insurance contract.

Mr. Bibb indicated some concern over how the opinion of the Attorney General might be interpreted. He raised several questions relating to agencies over-spending their authorized FY 1976 budgets, to whether or not he would be obligated to impose the allotment system, and to the possible necessity of supplemental appropriations by the 1976 Legislature.

Mr. Bibb said the Division of the Budget has tested one possible method of assessing the cost of the liability insurance premium against all state agencies, based on the following assumptions: (1) the annual premium would be \$1.5 million, (2) the prorata assessment would be based on agency salaries and wages, (3) federal funds could be used for this purpose, (4) the judicial and legislative branches would be covered by the policy, and (5) the Finance Council could increase expenditure limitations and authorize transfers of funds within an agency under present laws. Based on those assumptions, the assessment rate would be roughly 4/10 of 1%. Bibb said that some agencies might not have sufficient balances or available funds to pay the assessment; some agencies would if the Finance Council could act, but others would not.

In reference to the resolution adopted by the CSBI, Representative Lady felt that "funds are not available" for the purchase of liability insurance because there was no specific appropriation therefor.

Speaker McGill distributed copies of a recent newspaper article written by Roger Myers in which the statement was made that the state liability insurance policy will return the power of legal representation of the state to the Attorney General's office through an "innocuous provision" in the draft policies under study which specifies the Attorney General must defend state officials and institutions sued for alleged acts of negligence or other wrongdoing. In response to questions of the Speaker, Mr. Hoffman said that the general tenor of the newspaper article is not accurate, that there is no such "innocuous provision" in the recommended insurance contract nor any specific provision designed to accomplish what the article alleges, and that the purpose of the contract is not to circumvent existing laws re representation of state agencies by legal counsel.

Mr. Bell read the following proposed amendatory endorsement to the contract with Central National:

"It is hereby agreed that, with respect to required notices of claims or occurrences, cancellation or non-renewal, subrogation, and requests for the company to defend suits against the insured, the term "insured" or "named insured" as used in this policy shall mean the Committee on Surety Bonds and Insurance or its successors."

That endorsement has not yet been approved by the CSBI or the insurance company, Bell said. Its purpose is to clarify certain administrative aspects of the proposed insurance program and is not designed to settle the question of representation of the state by the Attorney General or by other legal counsel of state agencies.

After the conferees departed, the Committee discussed various fiscal and legislative policy ramifications of the proposed insurance contract and the pros and cons of calling a special session for the purpose of appropriating funds for the purchase of liability insurance. Thereupon, Representative Lady made the following motion which was seconded by Representative Loux:

"It is recommended to the Legislative Coordinating Council that a one-day special session of the legislature be called, on a date determined by the Legislative Coordinating Council, for the purpose of appropriating moneys for the purchase of liability insurance coverage of the state and its employees, and that no unrelated legislation be considered at such session. Also, that the Legislative Coordinating Council request that, to the extent feasible, meetings of special committees be held on the day before and/or the day of the special session".

The motion received four affirmative votes (Lady, Loux, McGill, Bunten). Senator Steiniger passed.

Afternoon Session

The Committee reconvened at 3:25 p.m.

Architectural Services Advisory Committee

Robert McFeeters, of the Division of Architectural Services, met with the Committee to explain the change order dated

Plans for Next Meeting

The next meeting of the Committee is scheduled on September 4. It was decided that the agenda should include montly staff reports on Proposals No. 31 and 32, Proposal No. 33 - Administrative Rules and Regulations, Governmental Immunity - discussion of alternatives for legislation and County Equalization and Adjustment Fund - draft of final report.

Prepared by Richard Ryan

Approved by Committee on:

Sept. 4, 1975
(Date)