

~~P R E L I M I N A R Y~~
M I N U T E S

LEGISLATIVE BUDGET COMMITTEE

November 20, 1975

The Legislative Budget Committee convened at 10:00 a.m. in Room 510-S of the State House. All members were present except Senator Steineger. Staff in attendance all or part of the time were R. W. Ryan, Walt Smiley, Fred Carman, Arden Ensley, Art Griggs, James Bibb and Ed Ahrens.

Minutes of Last Meeting

The minutes of the meeting held on November 6 were approved without change.

Proposal No. 68 - Governmental Immunity

Senator Donn Everett, chairman of the Special Committee on Governmental Immunity, which was created as an adjunct to the Legislative Budget Committee, presented a report of the Special Committee and two draft bills. One of the bills is a proposed Tort Claims Act and the other is a bill relating to defense of employees of the state and local units of government.

Tort Claims Act. Senator Everett said the proposed bill was generally patterned after the Federal Tort Claims Act. He noted that the bill does not contain specific listings of actions for which governmental entities would and would not be liable, as favored by the League of Kansas Municipalities. Also, he indicated that certain parts of the bill, especially Section 3, might be subject to revision after the Kansas Supreme Court hands down its opinion following rehearing of the case of Brown v. Wichita State University.

Mr. Ensley commented on the proposed bill in general terms and Mr. Griggs explained the bill section by section.

Carol McDowell, executive director of the Kansas Trial Lawyers Association, briefly commented on the bill. She said the KTLA generally endorsed the bill because it is based on the Federal Act under which there is a considerable body of case law which would

be beneficial, state and local governments would be treated alike, administration of claims would be centralized at both the state and local levels, and the bill is a good faith attempt to treat claimants fairly while protecting governmental interests.

A copy of suggested revisions favored by the KTLA was distributed. Carol McDowell said the two substantive problems are that (1) provisions re statute of limitations are not clear and perhaps are conflicting, thus potentially increasing the prospects of litigation and (2) Sections 3(b) and 3(c)(4) re exclusion from liability are confusing, and the latter should be deleted because it is redundant.

Most of the Committee discussion of the bill was on Section 10, re settlement of claims, and Section 11, re payments of settlements and final judgments. It was pointed out that the Special Committee had decided to leave the manner of financing settlements and judgments to the Legislative Budget Committee. Representative Lady expressed concern that the bill as drafted would obligate the state to pay for settlements agreed to by only one or two state officials without any approval by the legislature or any express appropriation therefor.

Senator Winter moved that Section 10(a) be amended to require approval of the Attorney General, as well as the department head, re settlements of claims of less than \$5,000, and that the bill be approved for introduction. Senator Doyen seconded the motion.

Speaker McGill made a substitute motion, seconded by Representative Lady, that Section 10(a) be amended as proposed by Senator Winter, but the bill be introduced "without recommendation." This motion carried.

In discussion of the impact of "without recommendation," the consensus seemed to be that the Committee did not want to detract from the work of the Special Committee or from the necessity of introducing a tort claims bill. However, a majority did not want to imply endorsement of all parts of the bill, particularly Sections 10 and 11, since time did not permit resolution of all policy and procedural considerations involved.

Defense of Employees Bill. Mr. Griggs explained the bill section by section. Following discussion, Representative Buntin moved that Section 3 be amended to require (instead of permit) assessment of attorney's fee against an unsuccessful plaintiff unless waived by the court. Representative Lady seconded the motion and it was adopted.

On motion of Representative Lady, seconded by Representative Buntin, the Committee agreed to add Sections 10 and 11 from the tort claims bill, with any necessary adaptations, and to introduce the defense of employees bill "without recommendation."

Proposal No. 35 - Recall of Public Officials

Mr. Carman explained the draft bill providing for recall of state and local elected officials and Mr. Ryan reviewed a tentative draft of a final Committee report.

Representative Carlin moved that the minimum percentage of signatures on a petition to recall a local governmental official be increased from 25% to 35%. The motion was seconded by Senator Doyen and adopted.

The bill and report were both approved, as amended (motion by Representative Lady, seconded by Senator Doyen).

Proposal No. 34 - Rules of the Legislature

Mr. Carman distributed and explained drafts of a Concurrent Resolution re joint rules, a Senate Resolution re Senate rules, a House Resolution re House rules, a bill re impeachment, and a bill re meetings of the House or Senate. The two bills were approved without change.

During discussion of the resolutions, Representative Carlin presented suggestions that Senator Steineger wanted brought to the Committee's attention. Following are amendments to the resolutions agreed upon by the Committee:

Concurrent Resolution. Re new material added to Joint Rule 1, provide that the resolution shall be mailed to legislators before a session convenes or, if not so mailed, shall not be considered until the second day.

Senate Resolution. Re Rule 21(d), provide that if a vacancy occurs in the office of minority leader, the assistant leader shall become the minority leader and shall appoint an assistant leader.

Re Rule 78, make the same amendment made to Joint Rule 1, above.

Re Rule 87, require a two-thirds vote to censure and delete the last paragraph.

House Resolution. Re Rule 13(c), make same change as made in Senate Rule 21(d) re vacancy in minority leader's office.

Re Rule 14(1), provide that a select committee appointed to consider any impeachment matter shall be bipartisan in proportion to party representation in the House.

Re Rule 44, make same amendment made to Joint Rule 1 and Senate Rule 78.

Re Rule 87, make same changes made in Senate Rule 87.

The Committee approved the three resolutions, as amended, for introduction.

Other Proposals

The Committee approved drafts of final reports on Proposal 31 - State General Fund, and Proposal 36 - Initiative.

During consideration of the final report on Proposal 32 - Investment of State Moneys, Speaker McGill moved that the Committee rescind its previous action approving a bill which would make counties subject to the general local government investment law by amendment of KSA 19-101a re county home rule. Representative Carlin seconded the motion and it was adopted. The final report, as amended by adoption of that motion, was then approved.

No Meeting in December

The Committee decided that it would not be necessary to schedule a meeting in December. The staff was requested to send to the Committee a memorandum summarizing the revised estimates of general fund receipts in FY 1976 and the new estimates for FY 1977 after the revenue estimating conference on December 10.

Prepared by Richard Ryan

Approved by Committee on:

Date