

MINUTES

LEGISLATIVE BUDGET COMMITTEE

July 28, 1977

The Legislative Budget Committee convened at 9:00 a.m. on July 28, 1977, in Room 527 of the State House. All members were present except Senators Doyen and Winter. Staff in attendance all or part of the time were Phill Jones, Richard Ryan, and Marlin Rein of the Legislative Research Department; Arden Ensley and Norman Furse of the Revisor of Statutes Office; and E. A. Culbertson of the Budget Division. John Wilhm, aide to Speaker Carlin, attended all of the meeting.

Minutes of Last Meeting

The minutes of the meeting held on June 30 were approved without change.

Proposal No. 47 - State General Fund

Each member of the Committee received a written report on general fund receipts in FY 1977 compared with the estimates for that year and with receipts in FY 1976.

Proposal No. 53 - Tort Claims Act

Conferees were Don Hoffman and Phil Harley of the Attorney General's office; Senator Donn Everett; Ron Todd and Mike Mullen of the Insurance Department; Carol McDowell and Jerry Palmer of the Kansas Trial Lawyers Association; and Frank Bien of the League of Kansas Municipalities.

Mr. Hoffman reviewed briefly the various types of cases pending against the state and its agencies and employees. He noted that the Wichita State University case now in a state district court does not involve governmental immunity but breach of contract, and the state is not immune from such action. To his knowledge, there has been only one recovery against a state employee and that case concerned violation of civil rights under federal law (42 U.S. Code, Section 1983). A state tort claims law, he said, would not affect Section 1983 cases, and these are the most significant in terms of cost and time spent in defense of employees.

Many of the pending cases may appear to be frivolous, but Mr. Hoffman said the Attorney General's office must take them seriously and do all the work involved in preparation for defense. This is especially true in federal courts relating to Section 1983 cases. Mr. Harley suggested that placing a limit on attorneys fees might be effective in reducing the number of frivolous suits.

In response to a question by the Chairman, Mr. Hoffman stated that 1976 H.B. 2684 is solid and workable, although its enactment will cost the state money because the state no longer would have nearly absolute immunity. There is no way of telling how much the cost would be in any year, but he thought a provision could be added to the bill limiting the amount of recovery.

Next, Senator Donn Everett discussed the development of H.B. 2684, which was drafted by a special committee that he chaired. He said that committee, which met after the Supreme Court held KSA 46-901 invalid and before the Court reversed that decision, considered two basic approaches — to list specific situations in which immunity would not apply or to follow generally the federal tort claims law. The Committee chose the latter approach, with modifications.

Senator Everett expressed the opinion that, as a matter of social justice, it is time to do something about governmental immunity. Enactment of a tort claims bill would protect the rights of people injured by a governmental entity or its employees and would provide for consistency in the treatment of such people. He agreed that a limitation on the amount of recovery should be considered, but suggested that such a limit might have to be lower for local units, particularly small ones, than for the state because they have smaller resources from which to pay judgments. Another possible modification of HB 2684 proposed by Senator Everett would be to require arbitration of claims filed under the bill.

Being asked to respond to the matter of requiring arbitration, Mr. Hoffman said he thought it would be legal because, under the second Brown case, the legislature can do about anything it wants within limitations of due process and equal protection. Both Mr. Hoffman and Mr. Harley indicated that, in light of that case, state governmental immunity is firmly established and can be dealt with or ignored by the legislature. Hoffman noted, however, that insofar as employees are concerned a law suit can result in a crisis for the person sued, i.e., who will defend, what happens if money damages are awarded, etc.

On the subject of liability insurance, Mr. Todd presented a memorandum dated July 26, 1977, a copy of which is in the Committee notebook. The gist of the memo is that the market is depressed. Compared with the contract negotiated in 1975 (but not entered into), Mr. Todd thought that coverage would be less and the premium much higher than the \$1.8 million cost at that time.

Mr. Hoffman suggested that attempts might be made to obtain insurance covering selected agencies and their employees. He also said that the cost of insurance could be reduced if the policy contained a retention of risk or deductible provision.

It was noted by the staff that the Committee on Surety Bonds and Insurance has authority under present law (KSA 1976 Supp. 75-4114) to purchase liability insurance, within appropriations therefor, for the protection of the state and its officers and employees. Another statute (KSA 74-4716) provides that, upon purchase of such insurance, governmental immunity is waived to the extent of the insurance coverage.

Jerry Palmer's statement on behalf of the Kansas Trial Lawyer's Association is in the Committee notebook. With certain exceptions indicated in his statement, the KTLA favors enactment of a tort claims bill along the lines of 1976 HB 2684. Their position is that the present situation is unfair, i.e., the state can and does injure individuals but there is no certain method of remedy like there is if a person is similarly injured by a private party or business.

In response to questions, Mr. Palmer said he (1) does not favor a limitation on the amount of recovery because it would not treat injured persons fairly, although he would not oppose a provision for installment payments of judgments; (2) favors allowing trial by jury; (3) does not favor arbitration of claims as opposed to judicial or jury determination of a case, because the existing court system can and does handle tort cases and, therefore, there is no need to employ arbitrators or examiners; (4) does not think it advisable to allow only an appeal on the record; and (5) opposes a limitation on attorney fees, even though the federal tort claims law and the workmen's compensation law contain such a limitation.

Mr. Bien's presented a written statement of the position of the League of Kansas Municipalities. A copy is in the Committee notebook. If a tort claims bill is to be seriously considered, the LKM advocates a "closed-end" approach, i.e., a specific listing of situations in which immunity would not apply, as contained in 1973 SB 463. The "open-end" approach, as in 1976 HB 2684, would make it more difficult to obtain liability insurance, which is a problem now, and would make it more difficult for local governments to budget for possible judgments.

For the next meeting, the staff was requested to make a comparison of HB 2684 with the federal tort claims law and laws of other states which have taken different approaches to modification of governmental immunity, to prepare a list of options for consideration, to ask the Insurance Department to explore the effects on costs if a limitation were placed on the amount of recovery and if only selected state agencies and their employees were insured, and to suggest revisions of the law and procedures relating to the Joint Committee on Claims Against the State.

Proposal No. 49 - State Personnel System

Conferees were Keith Weltmer, Secretary of Administration; Lowell Long, Director of the Personnel Division; Norman Hanson, director of the 1976 "Study Group" on the personnel system; and Deborah High and Bill Kipp, staff assistants to Mr. Hanson.

In the Committee notebook is a 22-page memorandum relating to the policy issues involved in 1977 SB's 444 and 445. Mr. Furse and Mr. Hanson discussed the first five pages of the memorandum, all of which concern SB 444. The following amendments to the bill were approved by the Committee:

Page 1, line 031, make the director of personnel services an unclassified position as in the printed bill (the subcommittee of the Senate Ways and Means Committee had recommended retention of the position as classified);

Page 18, line 0637, "require" the director to develop effective personnel administration within all agencies in the state. . .;

Page 18, line 0661, provide that the annual report of the director be submitted to the governor and legislature;

Page 20, line 0727, after the word "agencies" add "when necessary to facilitate activities relating to civil service and personnel administration."

The Committee adopted a motion by Representative Lady that SB 444, as amended, be recommended for enactment in 1978. It was decided that the Committee's proposed amendments will be set forth and explained in its final report on Proposal No. 49 and that a new printing of SB 444 is not necessary.

During the discussion of SB 444, Mr. Long spoke for retaining his position in the classified service, while Mr. Weltmer thought the position should be unclassified. It was noted that of the division heads in the Department of Administration, one is unclassified, one is classified with a four-year term, and the others are classified. The question was raised as to why only the personnel director's position should be changed to unclassified. The answer was that SB 444 deals only with the Personnel Division and its director and the status of the other division heads can be reserved for future consideration by the legislature.

Concerning the planned assistance program (page 19, line 0690), Weltmer, Hanson, and Long all agreed that no additional employees would be required for this program as such. However, to implement health and safety programs (page 19, line 0687) probably would require at least one additional employee and there would be other costs associated therewith.

Questions were raised by the Committee about the reason for changing the name of the Division of Personnel to the Division of Personnel Services. Mr. Hanson said the purpose was to stress the service concept as opposed to the present regulatory image of the Division. Mr. Weltmer thought that the proposed change is important in that he is attempting to create a service attitude in all divisions of the Department of Administration.

Next, Mr. Long distributed a status report on the study of the state salary plan. A copy is in the Committee notebook. In reply to a question, he said the consultant's contract is for \$13,000 for which he helped design the study, will evaluate the data produced by the study, and assist in formulating recommendations. The study began in May and is scheduled for completion by October 1.

Proposal No. 52 - State Warrants Reconciliation

Conferees were Glen Deitcher, Assistant State Treasurer, and James Cobler, Director of the Division of Accounts and Reports. Mr. Deitcher submitted a written report on the progress of efforts that have been and will be made to reconcile state warrants. A copy is in the notebook.

Matters Referred to Committee by LCC

Two requests for interim study were referred to the Committee by the Legislative Coordinating Council. One, from the Superintendent of the Highway Patrol, related to security in the Capitol Area. In a letter to Senator Doyen dated July 11, 1977, the Superintendent in effect withdrew his request for a study.

The other request related to electronic direct deposit of state payroll items. It was the Committee's decision to delay action on this matter because it is a complex subject that would divert the Committee's time from other studies given a high priority, and because it was felt that state warrants reconciliation should be completed and potential new procedures implemented before considering electronic direct deposits.

Next Meeting

The next meeting of the Committee is scheduled on August 31 and September 1, beginning at 9:00 a.m. on both days.

Prepared by Richard Ryan

Approved by Committee on:

8-31-77

Date