


MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 1:00 ~~a.m.~~/p.m., on April 24, 19 78.

All members were present except: Senators Steineger, Gaar

The next meeting of the Committee will be held at 9:40 a.m./~~p.m.~~, on April 25, 19 78.

~~The minutes of the meeting held on XXXXXXXXXXXXXXXXXXXXXXXX, 19XX were considered, corrected and approved.~~

  
Chairman

The conferees appearing before the Committee were:

Staff present:

- Art Griggs - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Cynthia Burch - Legislative Research Department

Senate Bill No. 972 - Providing a one year moritorium on governmental immunity for local units of government. Committee discussion was had concerning the bill, during which time committee members expressed the point of view that it would be better to deal with the issue; the thought was also expressed that there should not be a one year moritorium on the supreme court decision taking effect. Senator Simpson moved to report the bill adversely; Senator Hess seconded the motion. Senator Everett discussed the interim committee study of 1975 which introduced the tort claims act applying to states and local units of government. He explained that it was an open end concept. He distributed copies of a proposed substitute bill. Senator Everett made a substitute motion to amend the bill by introducing the proposed substitute bill. Senator Burke seconded the motion, and the substitute motion carried. Senator Parrish moved to further amend the bill by striking subsection b; Senator Berman seconded the motion, and the motion carried.

The chairman announced that the next meeting of the committee would be held at the first recess tomorrow.

The meeting adjourned.

These minutes were read and approved by the committee on 4-26-78.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

\_\_\_\_\_ BILL NO. \_\_\_\_\_

By

AN ACT relating to claims against municipalities as defined therein; concerning the liability of municipalities for certain tortious acts of their officers or employees; providing for the recovery of damages arising from such tortious acts; and prescribing the procedure therefor; amending K.S.A. 12-105 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Sections 1 to 10 of this act shall be known and may be cited as the municipality tort claims act.

New Sec. 2. As used in this act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Municipality" means any county, township, city, school district or other taxing subdivision of the state.

(b) "Employee" means any officer, employee or servant or any member of a board, commission or council of a municipality, including elected or appointed officials and persons acting on behalf or in service of a municipality in any official capacity, whether with or without compensation, but such term shall not include an independent contractor under contract with a municipality.

New Sec. 3. Except as otherwise provided by law or this act: (a) No municipality shall be subject to liability for damage or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while such employee is acting within the scope of his or her office or employment, except under circumstances where the municipality if acting as a private person, would be liable under the laws of this state.

(b) A municipality or employee acting within the scope of his or her office or employment shall not be liable for any claim based upon an act or omission of an employee, exercising due care, in the execution of a statute or regulation, whether or not such state, or regulation be valid, or based upon the exercise of performance or the failure to exercise or perform a discretionary function or duty on the part of a municipality or employee, whether or not the discretion be abused.

(c) A municipality or employee acting within the scope of his or her office or employment, except when such employee is acting in a willful or wanton manner, shall not be liable for:

(1) Interest prior to the date of any judgment imposing liability or for punitive damages;

(2) any claim arising in respect to the assessment or collection of any tax, or the detention of any goods by any law enforcement officer except as otherwise specifically provided by law;

(3) any claim for damages caused by the imposition of a quarantine of persons or property by a municipality.

(d) A municipality shall not be liable for any claim arising out of assault, battery, false imprisonment, false arrests, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights.

New Sec. 4. (a) All claims against a municipality or employee subject to the provisions of this act shall be presented to and filed with the clerk or secretary of the municipality within ninety (90) days of the date the claim arose or reasonably should have been discovered whichever is later.

(b) All claims against a municipality or employee subject to the provisions of this act shall be in writing and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the name of all persons involved, if known, and shall state the amount of damages claimed. If the claimant is incapacitated from

presenting and filing his or her claim within the time prescribed or if the claimant is a minor or is absent from the state during the time within which his or her claim is required to be filed, the claim may be presented and filed on behalf of the claimant by a relative, attorney or agent representing claimant. A claim filed under the provisions of this section shall not be held invalid or insufficient by reason of an inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the municipality or employee was in fact misled to its or his or her injury thereby.

New Sec. 5. (a) An action shall not be instituted upon a claim against a municipality or employee for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his or her office or employment, unless the claimant shall have first presented to claim in the manner prescribed in section 4 and such claim shall have been finally denied in writing and sent to such claimant by restricted mail, as defined by K.S.A. 60-103.

Such claim may be denied by the clerk or secretary of such municipality when so directed by the governing body of such municipality. The failure of a municipality to make final disposition of a claim within one hundred eighty (180) days after it is filed, at the option of the claimant at any time thereafter, shall be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the code of civil procedure by third party complaint, cross-claim or counterclaim.

(b) An action subject to the provisions of this act shall not be instituted for any sum in excess of the amount of the claim presented, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by settlement shall not be competent evidence of liability or amount of damages in any action.

New Sec. 6. If a claim is denied as provided in section 5, a claimant may institute an action in the district court of this state against the municipality or employee in those circumstances where an action is permitted by this act. The code of civil procedure, insofar as such code is not inconsistent with this act, shall govern actions pursuant to this act.

New Sec. 7. (a) Every claim permitted against a municipality or employee pursuant to this act shall be forever barred, unless such action is commenced: (1) Within two (2) years after such claim accrues, and (2) if the claim was denied in writing, within one hundred eighty (180) days after the date of mailing, by restricted mail, of notice of final denial of the claim.

(b) For the purposes of this section a cause of action shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall the period be extended more than ten (10) years beyond the time of the act giving rise to the cause of action.

New Sec. 8. The authority of any municipality to sue and be sued in its own name shall not be construed to authorize suits against such municipality which are cognizable under this act, and the remedies and procedures prescribed by this act in such cases shall be exclusive.

New Sec. 9. (a) The judgment in an action subject to the provisions of this act against a municipality shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim.

(b) Any judgment against an employee whose act or omission gave rise to the claim shall constitute a complete bar to any action for injury by the claimant, by reason of the same subject matter, against a municipality.

New Sec. 10. (a) Subject to the terms of the insurance contract, if any, claims against a municipality or employee acting within the scope of his or her office or employment may be compromised or settled by the governing body of the municipality, or in such manner as such governing body may designate.

(b) The acceptance by a claimant of any such compromise, or settlement hereunder shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the municipality involved and against the employee whose act or omission gave rise to the claim, by reason of the same subject matter.

Sec. 11. K.S.A. 12-105 is hereby amended to read as follows: 12-105. (a) No action shall be maintained by any person or corporation against any city on account of injury to person or property unless the person or corporation injured shall within six (6) months thereafter and prior to the bringing of the suit file with the city clerk a written statement, giving the time and place of the happening of the accident or injury received, the circumstances relating thereto and a demand for settlement and payment of damages~~---Provided,--~~. Any cause of action arising under the provisions of article 7 of chapter 82a of the Kansas Statutes Annotated, or acts amendatory thereof or supplemental thereto, may be maintained by filing such statement with the city clerk within one (1) year after such cause of action shall have accrued. Such city shall have thirty (30) days from the time of the filing of such statement to make settlement with the person or corporation if it so desires. If a settlement is made or the demand is thereafter fixed by judgment, the person or corporation shall file a claim and the claim shall be allowed pursuant to the provisions of K.S.A. 12-105b.

(b) The provisions of this section shall not apply to

claims recoverable pursuant to the municipality tort claims act.

Sec. 12. K.S.A. 12-105 is hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the official state paper.