

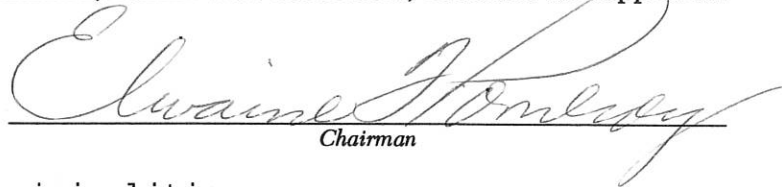
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 9:40 a. m./p. m., on April 25, 19 78.

All members were present except: Senators Steineger, Berman, Gaar, Gaines and Hess

The next meeting of the Committee will be held at _____ a. m./p. m., on _____, 19____.

~~These minutes of the meeting held on _____, 19____ were considered, corrected and approved.~~


Chairman

The conferees appearing before the Committee were:

Ernie Mosher - League of Kansas Municipalities

Staff present:

Art Griggs - Revisor of Statutes

Jerry Stephens-- Legislative Research Department

Senate Bill No. 972 - Providing a one year moratorium on governmental immunity for local units of government. Mr. Griggs reviewed the action of the committee yesterday concerning the bill. Committee discussion followed. Senator Everett moved to amend the bill to make provision for the payment of compromise settlements against the state be presented to the chairpersons of the Ways and Means Committees of the Legislature; Senator Mulich seconded the motion, and the motion carried.

Mr. Mosher testified that he was concerned about some aspects of the bill, particularly with regard to financing. He presented a proposed amendment to the substitute bill; copies of the proposed amendment are attached hereto. Committee discussion with him followed.

Senator Burke moved to amend the substitute bill to make the definition conform to that contained in HB 2684 of the 1976 session; Senator Parrish seconded the motion, and the motion carried. Senator Everett moved to amend the substitute bill to include the proposed amendment suggested by Mr. Mosher; Senator Mulich seconded the motion, and the motion carried. Senator Parrish moved to strike the words "whether or not" in section 3 of subsection b, and inserting "unless". Following further committee discussion, Senator Parrish withdrew his original motion and moved that the bill be amended to expire on July 1, 1979. That motion died for lack of a second. Senator Everett moved to change the 90 day provisions in the bill to six months, and to strike section 11; Senator Allegrucci seconded the motion, and the motion carried. Senator Parrish moved to change the six months to 180 days; and to reinsert section 11; Senator Mulich

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.

SB 972 continued -

seconded the motion, and the motion carried. Senator Hein moved to provide that the filing of a claim with the state would be with the Secretary of State, with notice being given to the Attorney General's office; Senator Allegrucci seconded the motion, and the motion carried with Senator Simpson being recorded as voting "No." Senator Everett moved to report the substitute bill favorably as amended; Senator Allegrucci seconded the motion, and the motion carried.

The meeting adjourned.

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

Session of 1976

HOUSE BILL No. 2684

By Legislative Budget Committee

Re Proposal No. 68

(Without Recommendation)

12-8

AN ACT relating to claims against the state and municipalities as defined therein; concerning the liability of the state and municipalities for certain tortious acts of their employees; providing for the recovery of damages arising from such tortious acts; and prescribing the procedure therefor.

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

1 Section 1. This act shall be known and may be cited as the
2 Kansas tort claims act.

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

6 (a) "State" means the state of Kansas or any office, depart-
7 ment, agency, authority, bureau, commission, board, institution,
8 hospital, college, university or other instrumentality thereof.

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

11 (c) "Governmental entity" means and includes state and mu-
12 nicipality as hereinbefore defined.

13 (d) "Employee" means any officer, employee or servant or any
14 member of a board, commission or council of a governmental en-
15 tity, including elected or appointed officials and persons acting on
16 behalf or in service of a governmental entity in any official capacity,

1 whether with or without compensation, but such term shall not
2 include an independent contractor under contract with a govern-
3 mental entity.

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

12 (b) A governmental entity or employee acting within the scope
13 of his or her office or employment shall not be liable for any claim
14 based upon an act or omission of an employee, exercising due care,
15 in the execution of a statute or regulation, whether or not such
16 statute, or regulation be valid, or based upon the exercise or per-
17 formance or the failure to exercise or perform a discretionary func-
18 tion or duty on the part of a governmental entity or employee,
19 whether or not the discretion be abused.

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

23 (1) Interest prior to the date of any judgment imposing lia-
24 bility or for punitive damages;

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

28 (3) any claim for damages caused by the imposition of a quar-
29 antine of persons or property by a governmental entity;

30 (4) any claim arising from the performance of a governmental
31 function; or

1 (5) any claim based on activities of the Kansas national guard,
2 when such claim is cognizable under the national guard tort claims
3 act of the United States, 32 USCA 715, or when such claim ac-
4 crues as a result of active federal service or state service at the call
5 of the governor.

6 (d) A governmental entity shall not be liable for any claim aris-
7 ing out of assault, battery, false imprisonment, false arrests, malicious
8 prosecution, abuse of process, libel, slander, misrepresentation, de-
9 ceit or interference with contract rights.

10 Sec. 4. (a) All claims against the state or employee subject
11 to the provisions of this act shall be presented to and filed with
12 the attorney general within ninety (90) days from the date the
13 claim arose or reasonably should have been discovered whichever
14 is later.

15 (b) All claims against a municipality or employee subject to
16 the provisions of this act shall be presented to and filed with the
17 clerk or secretary of the municipality within ninety (90) days
18 of the date the claim arose or reasonably should have been dis-
19 covered whichever is later.

20 (c) All claims against a governmental entity or employee sub-
21 ject to the provisions of this act shall be in writing and shall ac-
22 curately describe the conduct and circumstances which brought
23 about the injury or damage, describe the injury or damage, state
24 the time and place the injury or damage occurred, state the name
25 of all persons involved, if known, and shall state the amount of
26 damages claimed. If the claimant is incapacitated from presenting
27 and filing his or her claim within the time prescribed or if the
28 claimant is a minor or is absent from the state during the time
29 within which his or her claim is required to be filed, the claim
30 may be presented and filed on behalf of the claimant by a relative,
31 attorney or agent representing claimant. A claim filed under the

1 provisions of this section shall not be held invalid or insufficient
2 by reason of an inaccuracy in stating the time, place, nature or
3 cause of the claim, or otherwise, unless it is shown that the gov-
4 ernmental entity or employee was in fact misled to its or his or
5 her injury thereby.

6 Sec. 5. (a) An action shall not be instituted upon a claim
7 against a governmental entity or employee for money damages
8 for injury or loss of property or personal injury or death caused
9 by the negligent or wrongful act or omission of any employee
10 while acting within the scope of his or her office or employment,
11 unless the claimant shall have first presented to claim in the man-
12 ner prescribed in section 4 and such claim shall have been finally
13 denied in writing and sent to such claimant by restricted mail,
14 as defined by K. S. A. 1975 Supp. 60-103.

15 If the claim is against the state or an employee acting within
16 the scope of his or her office or employment, such claim may be
17 denied by the attorney general with the approval of the head
18 of the state agency or agencies involved. If the claim is against
19 a municipality or an employee acting within the scope of his or
20 her office or employment, such claim may be denied by the clerk
21 or secretary of such municipality when so directed by the govern-
22 ing body of such municipality. The failure of a governmental en-
23 tity to make final disposition of a claim within one hundred eighty
24 (180) days after it is filed, at the option of the claimant at any time
25 time thereafter, shall be deemed a final denial of the claim for
26 purposes of this section. The provisions of this subsection shall
27 not apply to such claims as may be asserted under the code of civil
28 procedure by third party complaint, cross-claim or counterclaim.

29 (b) An action subject to the provisions of this act shall not be
30 instituted for any sum in excess of the amount of the claim presented,
31 except where the increased amount is based upon newly discovered

1 evidence not reasonably discoverable at the time of presenting the
2 claim, or upon allegation and proof of intervening facts, relating
3 to the amount of the claim.

4 (c) Disposition of any claim by settlement shall not be com-
5 petent evidence of liability or amount of damages in any action.

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

12 Sec. 7. (a) Every claim permitted against a governmental en-
13 tity or employee pursuant to this act shall be forever barred, un-
14 less such action is begun within two (2) years after such claim
15 accrues, or within one hundred eighty (180) days after the date
16 of mailing, by restricted mail, of notice of final denial of the
17 claim whichever is later.

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

26 Sec. 8. The authority of any governmental entity to sue and
27 be sued in its own name shall not be construed to authorize
28 suits against such governmental entity which are cognizable un-
29 der this act, and the remedies and procedures prescribed by this
30 act in such cases shall be exclusive.

31 Sec. 9. (a) The judgment in an action subject to the provisions

1 of this act against a governmental entity shall constitute a com-
2 plete bar to any action by the claimant, by reason of the same sub-
3 ject matter, against the employee whose act or omission gave rise
4 to the claim.

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

9 Sec. 10. (a) Subject to the terms of an insurance contract, if
10 any, a claim against the state or employee acting within the scope
11 of his or her office or employment may be compromised or settled
12 for and on behalf of the state and any such employee by the
13 attorney general, with the concurrence of the head of the affected
14 department, agency, board, commission, institute, hospital, college,
15 university or other instrumentality thereof.

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

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

27 Sec. 11. (a) A governmental entity shall pay any compromise,
28 settlement or final judgment authorized by this act in the manner
29 provided in this section.

30 (b) To the extent that payment cannot be made from insurance
31 coverage obtained therefor, and current funds of the governmental

1 entity are available for such purpose the governmental entity shall
2 pay any compromise, settlement or final judgment from such funds.

3 (c) To the extent that payment cannot be made from insurance
4 coverage obtained therefor or from current funds of the state
5 available for such purpose the state shall appropriate sufficient
6 moneys therefor in the next ensuing fiscal year or years. Such
7 appropriation for payment of all judgments, compromises and settle-
8 ments in any one year shall not exceed an amount equal to three
9 percent (3%) of all general fund appropriations of the state.

10 Sec. 12. This act shall take effect and be in force from and after
11 its publication in the official state paper.

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PROPOSED AMENDMENTS TO HB 2684 and ~~HB 2685~~

Proposed by League of Kansas Municipalities

Add new sections to ~~both bills~~ substantially as follows:

Sec. ___ (a) Any municipality is authorized to pay the costs of liability under the provisions of this act from any funds that may be available to it and, if authorized by law to levy ad valorem taxes for any other purpose, may levy annually at the time of its levy of taxes an additional tax therefor. Such tax shall not be subject to any tax levy limit prescribed by article 19 of chapter 79 of the 1975 Supplement to the Kansas Statutes Annotated. Taxes levied by counties, ^{and} cities and community junior college districts under the authority of this act shall be exempt from the aggregate tax levy limitations imposed under the provisions of article 50 of chapter 79 of the 1975 Supplement to the Kansas Statutes Annotated.

(b) For the purposes of this section, the term "costs of liability" includes the cost of insurance premiums; any compromise, settlement or final judgment; amounts set aside as a reserve to pay future claims; the costs of processing claims and liability suits including attorney fees and court costs; and such other direct and indirect expenditures of public funds resulting from the implementation of this act.

(c) Any municipality which has for the year 1978 failed to budget sufficient money to pay premiums for the purchase of liability insurance under the provisions of this act is hereby authorized to expend any uncommitted moneys which may be available to it, notwithstanding the provisions of K.S.A. 79-2935. In the absence of such uncommitted money a municipality may issue no-fund warrants therefore in accordance with the procedures set forth in K.S.A. 79-2938 but the approval of the state board of tax appeals as to the issuance of such no-fund warrants shall not be required.