

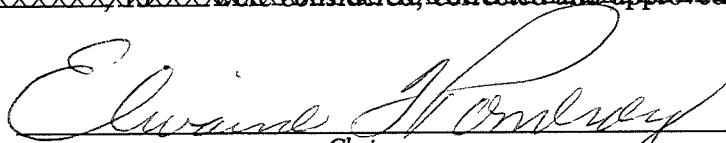
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 526 S, at the Statehouse at 10:00 a. m./~~p.m.~~, on January 10, 1979.

All members were present except: Senators Gaines and Hess

The next meeting of the Committee will be held at 10:00 a. m./~~p.m.~~, on January 11, 1979.

~~These minutes of the meeting held on XXXXXXXX XXXXXXXXXXXX 19XX were considered, corrected and approved~~



Chairman

The conferees appearing before the Committee were:

L. M. Cornish - Kansas Library Association

Staff present:

Art Griggs - Revisor of Statutes
Jerry Stephens - Legislative Research Department
Wayne Morris - Legislative Research Department

The chairman welcomed the members back and also welcomed the new member of the committee, Senator Werts. The chairman announced that one of the matters we were to deal with today was the consideration of introduction of committee bills.

The proposed Tort Claims Act was discussed, and it was pointed out that the subject had been studied by the Interim Judiciary Committee. The chairman explained some of the considerations of the interim committee; Mr. Griggs discussed some of the aspects of the bill. There was committee discussion concerning the issue of governmental immunity. Some members of the committee expressed concern concerning the financial impact on governmental entities if immunity was to be abolished. Following further committee discussion, Senator Simpson moved that the bill be introduced and referred back to the committee; Senator Parrish seconded the motion. Following further committee discussion, the motion carried. Staff was requested to obtain information from other states as to the financial impact of the passage of a Tort Claims Act in those states.

Senator Hein discussed a proposed bill dealing with the subject of severance of joint tenancy by an attachment or garnishment. Following committee discussion, Senator Hein moved that the bill be introduced and referred back to the committee; Senator Allegrucci seconded the motion, and the motion carried. The chairman appointed Senators Hein and Allegrucci as a subcommittee to study the bill and report back to the full committee, and staff was requested to study the recent Kansas Supreme Court decisions on the subject.

continued -

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.

CONTINUATION SHEET

Minutes of the Judiciary Committee on _____, January 10, 19 79

Senator Simpson indicated that he had received a letter from the Register of Deeds in Saline County concerning an attorney general's opinion with regard to mortgage registration fees. Following committee discussion, it was agreed that Senator Simpson would obtain additional information and bring the matter back to the attention of the committee at a future time.

The chairman introduced Bud Cornish, of the Kansas Library Association, who explained the Library Association is concerned about the obscenity statutes, and the fact that libraries do not have the same type of protection as schools, educational institutions, and even projectionists have. Following committee discussion, Senator Berman moved that the proposed bill be introduced and referred back to the committee; Senator Parrish seconded the motion, and the motion carried.

SB 4 - Probate code, social security benefits, refusal to grant letters of administration. Senator Hein explained this bill. the chairman announced that there would be a hearing on the bill tomorrow.

SB 22 - Juvenile code, issuance of warrants to take children into custody. Mr. Griggs explained the bill; there was committee discussion.

SB 43 - Crime of giving a worthless check, notice and service charges. The committee discussed the bill.

SB 55 - Administrative procedures act; establishing uniform procedures for licensure actions. Senator Hein explained the bill. Committee discussion followed. Senator Steineger indicated that he is interested in enacting a comprehensive Administrative Procedures Act. Committee discussion included the fact there had been an attorney general's opinion concerning past legislation. Senator Hein moved that the committee ask the chairman to draft a letter to the attorney general asking for a new opinion on the subject; Senator Steineger seconded the motion, and the motion carried. The chairman appointed Senators Hein and Berman as a subcommittee to draft the letter for his signature.

SB 65 - Appeals in small claims procedure actions. Senator Berman explained the bill; committee discussion followed.

The meeting adjourned.

These minutes were read and approved
by the committee on 1-15-79.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Paul Pincell	Topeka	Judicial Council
John Reardon	Dodge City	State Intern
Jon Kessler	Seaboard	Intern
L M Cornish	Topeka	Robbery Assn.
Bill Ebery	Topeka	Intern
Martin Hawon	"	State Capital
Osca Toche	11	Intern
Dan Byles	"	AP
J. Peterson	11	Boyle
Dan Close	Capital	Capital-Journal
Lana Scott		Star
John Braden		UPI
Marta Johnson		KTSB
Michael Swenson		KANU
James Hall		WREN

BILL NO. _____

By Special Committee on Judiciary

Re Proposal No. 11

AN ACT relating to claims against certain governmental entities and employees thereof; concerning the liability of the state and local units of government for certain acts or omissions of their officers and employees; providing a procedure for the recovery of certain damages and limitations thereon; providing for the financing and payment of certain costs by governmental entities; providing for the issuance of bonds and warrants and the levying of taxes under certain circumstances; amending K.S.A. 12-105a, 12-105b, 12-2904, 19-261, 19-3621, 46-903, 72-8404, 74-4702, 75-4109, 80-1423, 80-1502, 80-1923 and 82a-934 and K.S.A. 1978 Supp. 60-2202 and 60-2203a and repealing the existing sections; also repealing K.S.A. 12-105, 12-203, 12-204, 12-2601 to 12-2614, inclusive, 46-901, 68-301, 72-8405 to 72-8413, inclusive, 74-4708 to 74-4716, inclusive, 75-4356, 75-4357, 75-4357a, 75-4359 and 75-4361 and K.S.A. 1978 Supp. 46-902, 68-419, 68-2108 and 75-4358.

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

New Section 1. (a) Sections 1 to 15, inclusive, of this act shall be known and may be cited as the Kansas tort claims act.

(b) The Kansas tort claims act shall be applicable to claims arising from acts or omissions occurring on and after the effective date of this act.

New Sec. 2. As used in sections 1 to 16, inclusive, unless the context clearly requires otherwise, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "State" means the state of Kansas or any office, department, agency, authority, bureau, commission, board,

institution, hospital, college, university or other instrumentality thereof.

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

(c) "Governmental entity" means and includes state and municipality as hereinbefore defined.

(d) "Employee" means any officer, employee or servant or any member of a board, commission or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation, but such term shall not include an independent contractor under contract with a governmental entity. The term "employee" shall include former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity.

New Sec. 3. Subject to the limitations of this act, each governmental entity shall be liable: (a) For damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state, and (b) for damages recoverable pursuant to section 15. Except as otherwise provided in this act, the code of civil procedure shall be applicable to actions within the scope of this act.

New Sec. 4. A governmental entity or an employee acting within the scope of his or her employment shall not be liable for damages resulting from:

(a) Legislative functions, including, but not limited to, the adoption or failure to adopt any statute, regulation, ordinance or resolution;

(b) Judicial functions;

(c) Enforcement of or failure to enforce a law, whether valid or invalid, including, but not limited to, any statute, regulation, ordinance or resolution;

(d) Any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee, whether or not the discretion be abused;

(e) The assessment or collection of taxes or special assessments;

(f) Any claim by an employee of a governmental entity arising from the tortious conduct of another employee of the same governmental entity, if such claim is compensable pursuant to the Kansas workmen's compensation act;

(g) The malfunction, destruction or unauthorized removal of any traffic or road sign, signal or warning device unless the same is not corrected by the governmental entity responsible within a reasonable time after actual or constructive notice of such malfunction, destruction or removal. Nothing herein shall give rise to liability arising from the act or omission of any governmental entity in placing or removing any of the above signs, signals or warning devices when such placement or removal is the result of a discretionary act of the governmental entity;
or

(h) Any claim which is limited or barred by any other law or which is for injuries or property damage against an officer, employee or agent where the individual is immune from suit or damages.

New Sec. 5. (a) The liability of a governmental entity for claims within the scope of this act shall not exceed five hundred thousand dollars (\$500,000) for any number of claims arising out of a single occurrence or accident.

(b) When the amount awarded to or settled upon multiple claimants exceeds the limitations of this section, any party may apply to the district court which has jurisdiction of the cause to apportion to each claimant his or her proper share of the total amount limited herein. The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement made to him or her bears to the aggregate awards

and settlements for all claims arising out of the occurrence.

(c) A governmental entity shall not be liable for punitive damages or for interest prior to judgment. An employee acting within the scope of his or her employment shall not be liable for punitive damages or interest prior to judgment, except for any act or omission of an employee because of actual fraud or actual malice.

New Sec. 6. (a) Subject to the terms of an insurance contract, if any, a claim against the state or employee thereof acting within the scope of his or her office or employment may be compromised or settled for and on behalf of the state and any such employee by the attorney general, with the concurrence of the head of the affected department, agency, board, commission institute, hospital, college, university or other instrumentality thereof.

(b) Subject to the terms of the insurance contract, if any, claims against a municipality or employee thereof 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.

(c) 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 governmental entity involved and against the employee whose act or omission gave rise to the claim, by reason of the same subject matter.

New Sec. 7. (a) The judgment in an action subject to the provisions of this act against a governmental entity 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 governmental entity.

new Sec. 8. (a) Upon request of an employee in accordance with subsection (e), a governmental entity shall provide for the defense of any civil action or proceeding against such employee, in his or her official or individual capacity or both, on account of an act or omission in the scope of his or her employment as an employee of the governmental entity, except as provided in subsection (c).

(b) A governmental entity may provide for a defense by its own attorney or by employing other counsel for this purpose or by purchasing insurance which requires that the insurer provide the defense. A governmental entity has no right to recover such expenses from the employee defended, except as provided in section 9.

(c) Except as provided in K.S.A. 75-4360, a governmental entity may refuse to provide for the defense of an action against an employee if the governmental entity determines that:

(1) The act or omission was not within the scope of such employee's employment;

(2) such employee acted or failed to act because of actual fraud or actual malice;

(3) the defense of the action or proceeding by the governmental entity would create a conflict of interest between the governmental entity and the employee; or

(4) the request was not made in accordance with subsection (e).

(d) If after a timely request in accordance with subsection (e), a governmental entity fails or refuses to provide an employee with a defense and the employee retains his or her own counsel to defend the action or proceeding, such employee is entitled to recover from the governmental entity such reasonable attorney's fees, costs and expenses as are necessarily incurred in defending the action or proceeding if the action or proceeding arose out of an act or omission in the scope of employment as an employee of the governmental entity, but such employee is not entitled to such reimbursement if the trier of fact finds that

such employee acted or failed to act because of actual fraud or actual malice.

Nothing in this section shall be construed to deprive an employee of the right to petition a court of competent jurisdiction to compel the governmental entity or the governing body or an employee thereof to perform the duties imposed by this section.

(e) An employee's request for a governmental entity to provide for the defense of the employee shall be made in writing within fifteen (15) days after service of process upon the employee in the action. In actions involving employees of the state, such request shall be filed in the office of the attorney general. In actions involving employees of a municipality, such request shall be filed with the governing body thereof or as otherwise provided by such governing body. A governmental entity, in its discretion, may provide requested defense for any of its employees who failed to make a request within the time prescribed by this subsection.

New Sec. 9. Except as otherwise provided in this act, a governmental entity shall be liable, and shall indemnify its employees against damages, for injury or damage proximately caused by an act or omission of an employee while acting within the scope of his or her employment. A governmental entity shall not be liable under the provisions of this act for any punitive or exemplary damages against an employee, nor for payment of any costs, judgments or settlements which are paid through an applicable contract or policy of insurance. The governmental entity shall have the right to recover any payments made by it for any judgment, or portion thereof, and costs or fees incurred by or on behalf of an employee's defense if the employee fails to cooperate in good faith in the defense of the claim or action or if the trier of fact finds that the act or omission of the employee was because of such employee's actual fraud or actual malice.

New Sec. 10. (a) Payments by municipalities for the cost of

providing for its defense and the defense of employees pursuant to this act and for the payment of claims and other direct and indirect costs resulting from the implementation of this act may be paid from the general or other existing fund of such municipality or from a special liability expense fund established for such purpose pursuant to subsection (b).

(b) Whenever the governing body of any municipality shall determine that it is advisable to establish a special fund for the payment of such costs and to establish a reserve therefor, in lieu of paying the same out of the general or other existing fund of the municipality, such governing body may create and establish a special liability expense fund for the payment of such costs and may place therein any moneys received by the municipality from any source whatsoever which may be lawfully utilized for such purpose including the proceeds of tax levies hereinafter authorized and provided. Such fund shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and any acts amendatory thereof or supplemental thereto, except that in making the budget of such municipality, the amounts credited to and the amount on hand in such special fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of such municipality.

(c) Whenever the governing body of any municipality which is authorized by law to levy taxes upon property has established a special liability expense fund under the provisions of this section and shall determine that moneys from other sources will be insufficient to pay such costs, the governing body is hereby authorized to levy an annual tax upon all taxable tangible property within the municipality in an amount determined by the governing body to be necessary for such purpose. All such tax levies shall be exempt from the limitations imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive, and amendments thereto, and shall not be subject to or limited by any other tax levy limitation prescribed by law.

New Sec. 11. (a) A governmental entity may obtain and pay

the premiums on insurance to provide for (1) its defense and the defense of its employees, (2) for its liability for claims pursuant to this act, including liability for civil rights actions as provided in section 16 and (3) for medical payment insurance when purchased in conjunction with insurance authorized by (1) or (2) above. Any such insurance must be purchased from an insurance company or association authorized to transact insurance business in this state. In the case of municipalities any such insurance may be obtained by competitive bids or by negotiation. In the case of the state, any such insurance shall be purchased in the manner and subject to the limitations prescribed by K.S.A. 75-4114, and amendments thereto. With regard to claims pursuant to the Kansas tort claims act insurers of such claims may avail themselves of any defense that would be available to a governmental entity defending itself in an action within the scope of this act, except that the limitation on liability provided by subsection (a) of section 5 shall not be applicable where the contract of insurance provides for coverage in excess of such limitation in which case the limitation on liability shall be fixed at the amount for which insurance coverage has been purchased.

(b) Pursuant to the interlocal cooperation act, municipalities may enter into interlocal agreements providing for:

- (1) The purchase of insurance to provide for the defense of employees and for liability for claims pursuant to this act; or
- (2) pooling arrangements or other agreements to share and pay expenditures for judgments, settlements, defense costs and other direct or indirect expenses incurred as a result of implementation of this act including, but not limited to, the establishment of special funds to pay such expenses. With regard to establishing and maintaining such pooling arrangements or other agreements to share in expenditures incurred pursuant to this act, governmental entities and employees or agents thereof shall not be required to be licensed pursuant to the insurance

laws of this state.

(c) Any municipality which for the year 1979 has failed to budget sufficient money to pay premiums for the purchase of liability insurance under the provisions of this act, or to pay the cost of risk management and insurance consultant services or other direct and indirect costs of implementing this act during the year 1979, is hereby authorized to expend any uncommitted moneys which may be available to it which may be expended for such purpose, notwithstanding the provisions of K.S.A. 79-2935. If no such moneys are available to a municipality authorized by law to issue no-fund warrants, such a municipality may issue no-fund warrants therefor 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.

New Sec. 12. (a) Upon motion of a municipality against whom judgment has been rendered for a claim within the scope of this act, the court in accordance with subsection (b) may include in such judgment a requirement that the judgment be paid in whole or in part by periodic payments. Periodic payments may be ordered paid over any period of time not exceeding ten years. Any periodic payment upon becoming due and payable under the terms of the judgment shall constitute a separate judgment. Any judgment ordering any such payments shall specify the total amount awarded, the amount of each payment, the interval between payments and the number of payments to be paid under the judgment. Judgments paid pursuant to this section shall bear interest as provided in K.S.A. 16-204, and amendments thereto. For good cause shown, the court may modify such judgment with respect to the amount of such payments and the number of payments to be made or the interval between payments, but the total amount of damages awarded by such judgment shall not be subject to modification in any event and periodic payments shall not be ordered paid over a period in excess of ten (10) years.

(b) A court may order periodic payments only if the court

finds that:

(1) Payment of the judgment is not totally covered by insurance coverage obtained therefor; and

(2) funds for the current budget year and other funds of the municipality which lawfully may be utilized to pay judgments are insufficient to finance both the adopted budget of expenditures for the year and the payment of that portion of the judgment not covered by insurance obtained therefor.

New Sec. 13. Payment of any judgments, compromises or settlements for which a municipality is liable pursuant to this act may be made from any funds or moneys of the municipality which lawfully may be utilized for such purpose or if the municipality is authorized by law to levy taxes upon property such payment may be made from moneys received from the issuance of no-fund warrants or general obligation bonds. Such warrants may mature serially at such yearly dates as to be payable by not more than ten (10) tax levies. Bonds issued under the authority of this act shall be issued in accordance with the provisions of the general bond law and shall be in addition to and not subject to any bonded debt limitation prescribed by any other law of this state. Taxes levied for the payment of warrants or bonds shall be exempt from the limitations imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive, and amendments thereto and shall not be subject to or limited by any other tax levy limitation prescribed by law.

New Sec. 14. To the extent that payment cannot be made from insurance coverage obtained therefor, and current funds of the state are available for such purpose, the state shall pay any compromise, settlement or final judgment arising from a claim against the state or employee thereof, as authorized by this act, from such funds. To the extent that payment cannot be made from such insurance coverage or from current funds of the state available for such purpose, the claimant shall submit a claim therefor to the chairpersons of the house and senate ways and means committees for inclusion in appropriation acts of the

legislature.

New Sec. 15. (a) Except as provided in subsection (c), a city shall be liable in damages for injuries to persons or property caused by the action of a mob within the corporate limits of the city if the city police or other proper authorities of the city have not exercised reasonable care or diligence in the prevention or suppression of such a mob. The city shall have all of the defenses in such action that are available to parties in tort actions.

(b) Except as provided in subsection (c), a county shall be liable in damages for injuries to persons or property caused by the action of a mob within the county and outside the corporate limits of any city if the sheriff or other proper authorities of the county have not exercised reasonable care or diligence in the prevention or suppression of such a mob. The county shall have all of the defenses in such action that are available to parties in tort actions.

(c) In counties having a consolidated law enforcement agency as authorized by article 44 of chapter 19 of the Kansas Statutes Annotated or as hereafter authorized by law, such agency shall be liable in damages for injuries to persons or property caused by the action of a mob within the limits of such county if the law enforcement authorities of such agency have not exercised reasonable care or diligence in the prevention or suppression of such a mob. The agency shall have all of the defenses in such action that are available to parties in tort actions.

(d) As used in this section, the word "mob" shall mean an assemblage of ten (10) or more persons intent on unlawful violence either to persons or property.

(e) Sheriffs and their deputies shall not be liable upon their official bonds for damages recoverable pursuant to this section.

(f) Claims for damages recoverable pursuant to this section shall be made in accordance with, and subject to, the Kansas tort claims act.

new Sec. 16. If an employee of a governmental entity is or could be subject to personal civil liability for a loss occurring because of a noncriminal act or omission within the scope of his or her employment which violates the civil rights laws of the United States, and the act or omission was in good faith, and the employee reasonably cooperates in good faith in defense of the action, the governmental entity shall, subject to procedure requirements imposed by statute, ordinance, resolution or written policy, pay or cause to be paid any judgment or settlement of the claim or suit and all costs and fees incurred by the employee in defense thereof. A municipality may pay for the cost of providing defense, judgments and other costs involving actions for civil rights violations in the same manner as that provided in the Kansas tort claims act.

Sec. 17. K.S.A. 12-105a is hereby amended to read as follows: 12-105a. As used in this act and the act of which this section is amendatory, the following words and phrases shall have the meanings respectively ascribed to them herein, unless the context shall otherwise require:

(a) "Municipality" means and includes county, township, city, school district of whatever name or nature, community junior college, municipal university, drainage district, cemetery district, fire district, and other political subdivision or taxing unit, and including their boards, bureaus, commissions, committees and other agencies, such as, but not limited to, library board, park board, recreation commission, hospital board of trustees having power to create indebtedness and make payment of the same independently of the parent unit.

(b) "Governing body" means and includes the board of county commissioners, the governing body of a city, the township board (trustee, clerk and treasurer), board of education or other governing body of a school district, board of trustees of a community junior college, board of regents of a municipal university, the body of a special district (such as a drainage, cemetery, fire or other) which has the power to create

inspecter and is charged with the duty of paying the same, and the board, bureau, commission, committee or other body of an independent agency of a parent unit.

(c) "Claim" means the document relating to and stating an amount owing to the claimant by a municipality for material or service furnished to the municipality, or some action taken by or for the municipality and for which the municipality may or may not be responsible in a liquidated or an unliquidated amount. A claim is liquidated when the amount due or to become due is made certain by agreement of the parties or is fixed by law. ~~The term "claim" does not include a statement of demand filed pursuant to K.S.A. 12-105.~~

(d) "Warrant" means an instrument ordering the treasurer of a municipality to pay out of a designated fund a specified sum to a named person or party who or which has filed a claim against the municipality.

(e) "Check" means an ordinary check drawn on a depository bank of a municipality by the treasurer of such municipality and payable to the holder of a warrant or warrants issued by the municipality.

(f) "Warrant check" means a combination of warrant and check. It is a negotiable instrument which orders a depository bank to pay to the order of the payee therein named. A warrant check authorizes the bank upon which drawn to charge the municipality's account with the amount stated therein.

(g) For the purposes of this act the term "audit" shall be construed to mean to examine and render an opinion as to allowance or rejection in whole or in part.

Sec. 18. K.S.A. 12-105b is hereby amended to read as follows: 12-105b. All claims against a municipality must be presented in writing with a full account of the items, and no claim shall be allowed except in accordance with the provisions of this section. A claim may be the usual statement of account of the vendor or party rendering a service or other written statement showing the required information. Claims for salaries

or wages of officers or employees need not be signed by the officer or employee, if a payroll claim is certified to by the administrative head of a department or group of officers or employees or an authorized representative that the salaries or wages stated therein were contracted or incurred for the local government under authority of law, that the amounts claimed are correct, due and unpaid and that the amounts are due as salaries and wages for services performed by the person named. No costs shall be recovered against a municipality in any action brought against it for any claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with the interest due: ~~Provided, That no action shall be maintained against a city in exercising or failure to exercise any corporate power or authority in any case where such action would not lie against a private individual under like circumstances.~~ Subject to the terms of applicable insurance contracts, judgments and settlements obtained for claims recoverable pursuant to the Kansas tort claims act shall be presented for payment in accordance with this section or in such manner as the governing body may designate.

Before any liquidated claim is presented to the governing body it shall be audited by the clerk, secretary, manager, superintendent, finance committee or finance department or other officer or officers charged by law to approve claims affecting his, her or its area of government, and thereby approved in whole or in part as correct, due and unpaid.

Sec. 19. K.S.A. 12-2904 is hereby amended to read as follows: 12-2904. (a) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state relating to public improvements, public utilities, police protection, libraries, data processing services, educational services, building and related inspection services, flood control and storm water drainage, weather modification, sewage disposal, refuse disposal, park and recreational programs and facilities, ambulance service, or fire protection, the Kansas

tort claims act or claims for civil rights violations, may be exercised and enjoyed jointly with any other public agency of this state or with any private agency, and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public or private agency may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a public agency.

(b) Any public agency may enter into agreements with one or more public or private agencies for joint or cooperative action pursuant to the provisions of this act. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(c) Any such agreement shall specify the following: (1) Its duration.

(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.

(3) Its purpose or purposes.

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

(6) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (1), (3), (4), (5) and (6) enumerated in subdivision (c) hereof, contain the following:

(1-) Provision for an administrator or a joint board or one of the participating public agencies to be responsible for administering the joint or cooperative undertaking. In the case of a joint board public agencies party to the agreement shall be represented.

(2-) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

(e) No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility.

(f) Every agreement made hereunder shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state ~~Provided~~, except that agreements between two or more public agencies establishing a council or other organization of local governments for the study of common problems of an area or region and for the promotion of intergovernmental cooperation need not be so submitted. The attorney general shall approve any agreement submitted hereunder unless the attorney general shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public and private agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety (90) days of its submission shall constitute approval thereof.

Sec. 20. K.S.A. 19-261 is hereby amended to read as follows: 19-261. The board of county commissioners of any county may provide as a county function or may contract with any city, person, firm, or corporation for the furnishing of ambulance

services within all or any part of their respective counties upon such terms and conditions, and for such compensation as may be agreed upon which shall be payable from the county general fund+ ~~Provided, the county shall not be liable in any respect for the operations of the ambulance services other than as set forth in K.S.A. 19-67-Subp. 12-2608 and 12-2609+ provided, however, that,~~ No ambulance shall be operated pursuant to any contract unless its operation is covered by liability insurance of not less than twenty-five thousand dollars (\$25,000) because of bodily injury to, or death of, one person in any one accident and, subject to the said limit for one person, to a limit of not less than fifty thousand dollars (\$50,000) because of bodily injury to, or death of, two or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property to a limit of not less than five thousand dollars (\$5,000) because of injury to, or destruction of, property of others in any one accident. The board of county commissioners shall not provide ambulance service under the provisions of this act in any part of the county which receives adequate ambulance service, but the county shall reimburse any taxing district which provides ambulance services to such district with its proportionate share of the county general fund budgeted for ambulance services within the county. Such reimbursement shall be based on the amount that assessed tangible taxable valuation of the taxing district bears to the total taxable tangible valuation of the county, but in no event shall such district receive from the county more than the district's cost of furnishing such ambulance services.

Sec. 21. K.S.A. 19-3621 is hereby amended to read as follows: 19-3621. The governing body of the fire district may enter into contracts with cities and other fire districts, townships, or duly organized and incorporated volunteer fire departments whether within or without the county or state, for co-operation between fire departments of the respective cities, districts and townships, and may include in such contracts provisions by which the fire department of such cities, townships

or other districts or volunteer fire departments will furnish fire protection to a part of the fire district in question in consideration of cash payments or reciprocal services. The governing body of the fire district may also include in such contracts provisions to provide, furnish and pay for a bond in such amount as shall be agreed upon to indemnify any such city, fire district, or township against any loss which it may sustain as result of damage to property or injury to persons arising out of the furnishing of fire protection services to such districts. ~~Provided, that any such cities, townships, districts or volunteer fire departments shall not be liable in any way for failure of the district fire department to attend a fire, or to put out a fire, or for any other reason, but the district fire department, subject to the conditions of this act, shall make reasonable effort (road end weather conditions permitting) to attend outside fires. Provided further, That,~~

The supervision and control of the fire district fire department shall always be with the governing body of the fire district. ~~and provided further, That,~~ The fire chief or person in charge of the fire department shall have the right in every case, where a contract exists for reciprocal service, to determine whether or not the district can spare all or any portion of its fire equipment and firemen at that particular time.

~~The township and district and the officers and firemen of the district, fire department of any city or other fire district townships or volunteer fire departments which have agreed to furnish fire protection to all or any part of said fire district, and the officers and firemen of such other cities, townships and fire districts shall have all the privileges, immunities and exemptions conferred upon cities and townships and their fire departments by section 12-111 of the General Statutes of 1949.~~

Sec. 22. K.S.A. 46-903 is hereby amended to read as follows: 46-903. No money or funds shall be disbursed from the state treasury or any special fund of the state of Kansas in part or full satisfaction or payment of any claim or judgment based in

whole or in part on an implied contract, ~~negligence or any other tort unless:~~

~~(a) Such claim accrued on or after August 30, 1967, and before the effective date of this act, or~~

~~(b) such claim or judgment is based upon a specific statutory exception to the governmental immunity provided for in section 4 of this act, or~~

~~(c) the payment of such claim or judgment has been specifically authorized by act of the legislature, or~~

~~(d) such claim is based upon a judgment rendered prior to the effective date of this act.~~

Sec. 23. K.S.A. 1978 Supp. 60-2202 is hereby amended to read as follows: 60-2202. (a) Any judgment rendered in this state on or after January 10, 1977, by a court of the United States, or any judgment rendered by a district court of this state on or after such date in an action commenced pursuant to chapter 60 of the Kansas Statutes Annotated shall be a lien on the real estate of the debtor within the county in which judgment is rendered. Except as provided in subsection (c), the lien shall be effective from the time at which the petition stating the claim against the judgment debtor was filed but not to exceed four months prior to the entry of the judgment. An attested copy of the journal entry of any such judgment or any judgment rendered by a district court prior to January 10, 1977, together with a statement of the costs taxed against said debtor in the case, may be filed in the office of the clerk of the district court of any other county upon payment of the five-dollar fee prescribed by K.S.A. ~~1977~~ 1978 Supp. 28-170, and such judgment shall become a lien on the real estate of the debtor within that county from the date of filing such copy. The clerk shall enter such judgment on the appearance and judgment dockets in the same manner as if rendered in the court in which said clerk serves. Executions shall be issued only from the court in which the judgment is rendered.

(b) Any judgment rendered by a district court of this state

on or after January 10, 1977, in an action commenced pursuant to chapter 61 of the Kansas Statutes Annotated shall become a lien on the real property of a judgment debtor when the party in whose favor the judgment was rendered pays the fifteen dollar (\$15) fee as specified in K.S.A. ~~1977~~ 1978 Supp. 28-170 and the clerk of the district court enters the judgment in the judgment docket. Such lien shall become a lien only upon the debtor's real property that is located in the county in which the filing is made, but such a filing may be made in any county in which real property of the judgment debtor is located. Upon the filing of a journal entry of judgment and payment of the fee as hereinbefore provided, the clerk of the district court shall enter the same in the judgment docket. Such lien shall cease to be a lien on the real property of a judgment debtor at the time provided therefor in article 24 of this chapter.

(c) Notwithstanding the foregoing provisions of this section, the filing of a petition or other pleadings against an employee of the state or a municipality which alleges a negligent or wrongful act or omission of the employee while acting within the scope of his or her employment shall create no lien rights prior to judgment as against the property of the employee, regardless of whether or not it is alleged in the alternative that the employee was acting outside the scope of his or her employment. A judgment against an employee shall become a lien upon such employee's property when the judgment is rendered only if it is found that (1) the employee's negligent or wrongful act or omission occurred when the employee was acting outside the scope of his or her employment, or (2) the employee's conduct which gave rise to the judgment was because of actual fraud or actual malice of the employee; in such cases the lien shall not be effective prior to the date judgment was rendered. As used in this subsection (c), "employee" shall have the meaning ascribed to such term in section 2.

Sec. 24. K.S.A. 1978 Supp. 60-2203a is hereby amended to read as follows: 60-2203a. (a) After the commencement of any

action in any district court of this state, or the courts of the United States in the state of Kansas or in any action now pending heretofore commenced in said courts, which does not involve title to real estate, any party to said action may give notice in any other county of the state of the pendency of the action by filing for record with the clerk of the district court of such other county a verified statement setting forth the parties to the action, the nature of the action, the court in which it is pending, and the relief sought, which shall impart notice of the pendency of the action and shall result in the same lien rights as if the action were pending in that county. The lien shall be effective from the time the statement is filed, but not to exceed four (4) months prior to the entry of judgment except as provided in subsection (c). The party filing such notice shall within thirty (30) days after any satisfaction of the judgment entered in such action, or any other final disposition thereof, cause to be filed with such clerk of the district court a notice that all claims in such action are released; and if he or she fails or neglects to do so after reasonable demand by any party in interest, he or she shall be liable in damages in the same amounts and manner as is provided by law for failure of a mortgagee to enter satisfaction of a mortgage. Upon the filing of such a notice of the pendency of an action the clerk shall charge a fee of five dollars (\$5) and shall enter and index the action in the same manner as for the filing of an original action. Upon the filing of a notice of release, the notice shall likewise be entered on the docket.

(b) Any notice of the type provided for in subsection (a) which was filed on or after January 10, 1977, and prior to the effective date of this act shall be deemed to impart notice of the pendency of the action in the same manner as if the provisions of subsection (a) were in force and effect on and after January 10, 1977.

(c) Notwithstanding the foregoing provisions of this section, the filing of a notice of the pendency of an action

pursuant to subsection (a) shall create no lien rights against the property of an employee of the state or a municipality prior to the date judgment is rendered if the pleadings in the pending action allege a negligent or wrongful act or omission of the employee while acting within the scope of his or her employment, regardless of whether or not it is alleged in the alternative that the employee was acting outside of his or her employment. A judgment against an employee shall become a lien upon such employee's property in the county where notice is filed pursuant to subsection (a) when the judgment is rendered only if it is found that (1) the employee's negligent or wrongful act or omission occurred when the employee was acting outside the scope of his or her employment or (2) the employee's conduct which gave rise to the judgment was because of actual fraud or actual malice of the employee; in such cases the lien shall not be effective prior to the date judgment was rendered. As used in this subsection (c), "employee" shall have the meaning ascribed to such term in section 2.

Sec. 25. K.S.A. 72-8404 is hereby amended to read as follows: 72-8404. (a) The board of education of every school district or its contract carrier shall purchase motor vehicle liability insurance and medical payments insurance for the protection and benefit of the school district and the officers, agents and employees for the school district and the students, officers, agents and employees thereof who are transported in or operate school buses owned, operated, maintained or controlled by the school district and of persons while riding in or upon, entering or alighting from such vehicles. The medical payments insurance so purchased shall provide coverage to a limit of not less than two thousand dollars (\$2,000) for any one person in any one accident. The motor vehicle liability insurance policy so purchased shall provide coverage to a limit, exclusive of interests and costs, of not less than fifty thousand dollars (\$50,000) because of bodily injury to or the death of one person in any one accident and subject ~~of~~ to said limit for one person,

to a limit of not less than one hundred thousand dollars (\$100,000) because of bodily injury to, or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of property to a limit of not less than ten thousand dollars (\$10,000) because of injury to, or destruction of property of others in any one accident. ~~The school district shall not be liable in any respect because of providing or furnishing transportation other than as set forth in K.S.A. 1968-Supp. 12-2608, 12-2609, 12-2610 and 12-2612.~~

(b) Except as provided by subsection (c), insurance authorized to be obtained under authority of this act may be acquired by competitive bids or by negotiation in the discretion of the board of education. In the event competitive bids are taken, the board of education shall purchase insurance only after it has invited sealed proposals for such insurance by advertising once each week for two (2) consecutive weeks in a newspaper having general circulation in the school district. Such insurance shall be purchased from the lowest responsible bidder, but any or all bids may be rejected ~~+ Provided.~~

(c) The board of education of any school district, in which all or the greater part of the population of a city having a population of more than two hundred fifty thousand (250,000) is located, shall acquire insurance authorized to be obtained under authority of this act only by competitive bids and only after it has invited sealed proposals for such insurance by advertising once each week for two consecutive weeks in a newspaper having general circulation in the school district, ~~and~~. Such insurance shall be purchased from the lowest responsible bidder, but any or all bids may be rejected.

(d) The preceding provisions of this section shall not apply to transportation of students in privately owned motor vehicles with a capacity of less than eight (8) persons, and in lieu of the other provisions of this section the board of education of every school district shall provide by its rules and regulations for appropriate insurance coverages as a condition to

payment of transportation allowance for transportation of students in such privately owned motor vehicle.

Sec. 26. K.S.A. 74-4702 is hereby amended to read as follows: 74-4702. ~~On and after May 1, 1963,~~ No state agency shall purchase or carry insurance on any property owned by said state agency or the state except as expressly and specifically authorized by sections K.S.A. 74-4703 and 74-4705 of the General Statutes Supplement of 1961 and as required by ~~sections 2 to 7, both sections inclusive, of this act~~ K.S.A. 74-4707.

Sec. 27. K.S.A. 75-4109 is hereby amended to read as follows: 75-4109. The committee shall, not later than January 1, 1970, and at least every three (3) years thereafter, approve the property and casualty insurance coverages that shall be purchased by each state agency. (1) The committee shall require that each state agency purchase the insurance coverages prescribed by K.S.A. 74-4703 ~~and~~ 74-4705 to 74-4703, inclusive and 74-4707, and shall prescribe the terms, conditions and amounts of such coverage giving due regard to the operations and requirements of the agencies involved. (2) The committee shall, in addition to the coverages specified in (1) above, designate the insurance coverages to be purchased by each state agency that are deemed by the committee to be necessary to protect the state for property of others that may be in the possession or control of such state agencies. Such coverages as are specified in (1) and (2) above may also include coverages on property of the state that are deemed by the committee to be incidental to the basic coverages herein required and the committee shall prescribe the terms, conditions and amounts of all insurance coverages purchased pursuant to this section. Property of the state board of regents of any university or college which is referred to in (1) of this section may be self-insured as provided under this act.

Sec. 28. K.S.A. 80-1423 is hereby amended to read as follows: 80-1423. The township board of any township may establish and operate as a township function an ambulance service within or without such township or may contract with any city.

county, person, firm or corporation for the furnishing of ambulance services within all or any part of the township upon such terms and conditions, and for such compensation as may be agreed upon*~~---Provided,---The township shall not be liable in any respect for the operations of the ambulance services other than as set forth in K.S.A. 12-2608 and 12-2609*---provided, however,~~ That, No ambulance shall be operated pursuant to any contract unless its operation is covered by liability insurance of not less than fifty thousand dollars (\$50,000) because of bodily injury to, or death of, one person in any one accident and, subject to the said limit for one person, to a limit of not less than one hundred thousand dollars (\$100,000) because of bodily injury to, or death of, two or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property to a limit of not less than twenty thousand dollars (\$20,000) because of injury to, or destruction of, property of others in any one accident.

Sec. 29. K.S.A. 80-1502 is hereby amended to read as follows: 80-1502. (a) The governing body of any municipality may contract with any county, township or individual or group of individuals, firm or corporation whose property is situated outside the city limits, to furnish fire-fighting service to such county, township, individual, group of individuals, firm or corporation, upon such terms and for such compensation as may be agreed upon*~~---Provided,---That the municipality shall not be liable in any way for failure of the fire department to attend a fire, or to put out a fire or for any other reason, but the department, subject to the conditions of this act, shall make a reasonable effort (road and weather conditions permitting) to attend outside fires*---Provided,~~ The fire chief or person in charge of the fire department shall have the right in every case to determine whether or not the city can spare all or any portion of its fire equipment and firemen at that particular time*~~---Provided---further,~~ That.

(b) The compensation agreed upon in a contract pursuant to

subsection (a) shall always be at least sufficient to pay the city for the reasonable use of equipment and for the cost of material used on the run and fighting the fire, to pay the firemen and to enable the city to carry a sufficient amount of insurance to indemnify it for loss or damage to any fire-fighting equipment, or injury or damage to person or property (if the city be actually liable therefor)+~~Provided further:--That,~~ All such contracts shall be made by ordinance. The compensation agreed upon shall be a legal charge and collectible by the municipality rendering the service in any court of competent jurisdiction.

Sec. 30. K.S.A. 80-1923 is hereby amended to read as follows: 80-1923. (a) Any benefit district organized under the provisions of K.S.A. 80-1922 is hereby authorized to contract with the township board having control over any fire department created under the provisions of K.S.A. 80-1920 for the furnishing of fire-fighting service within said district by said township board, and such township board is hereby authorized to contract with the governing body of any such benefit district to furnish fire-fighting service to such district upon such terms and for such compensation as may be agreed upon+~~Provided,~~ Such township board may also contract with any individual or group of individuals, firm or corporation whose property is situated outside its township, to furnish fire-fighting services to such individual, group of individuals, firm or corporation upon such terms and for such compensation as may be agreed upon+~~Provided further,~~ ~~The township furnishing such fire-fighting service shall not be liable in any way for failure of its fire department to attend a fire, or to put out a fire or for any other reason, but the fire department, subject to the conditions of this act, shall make a reasonable effort (road and weather conditions permitting) to attend outside fires+Provided further,~~ A person in charge of the fire department shall have the right in every case to determine whether or not all or any portion of the fire equipment and volunteer members can be spared at any particular time+Provided further,

(b) The compensation agreed upon in a contract pursuant to subsection (a) shall always be at least sufficient to pay the township owning the equipment for the cost of material used on the run and fighting the fire and, if such township be actually liable therefor, to pay the firemen and to enable such township to carry a sufficient amount of insurance to indemnify it for loss or damage to any fire-fighting equipment, or injury or damage to person or property~~---Provided---further---~~. All such contracts shall be in writing and duly adopted by the township boards or township trustees concerned. The compensation agreed upon shall be a legal charge and collectible by the township rendering the service in any court of competent jurisdiction.

Sec. 31. K.S.A. 82a-934 is hereby amended to read as follows: 82a-934. ~~The provisions of K.S.A. 46-901 shall not apply to any agreement made under this section.~~ The Kansas water resources board, on behalf of the state, shall enter into negotiations and agreements with the federal government relative to the inclusion of, and the payment for, conservation storage features for water supply in any project that has been planned, authorized or constructed by the federal government when the board shall deem such negotiations and agreements to be necessary for the achievement of the policies of the state of Kansas relative to the water resources thereof~~---Provided, however---~~. Such agreements shall be binding upon the state to the extent that future appropriations are made in support thereof. Subject to the foregoing ~~proviso~~, any agreement made under this section may provide that a portion of the reimbursement cost shall include any payment made by the United States to third parties as a result of the finding of liability by a court of competent jurisdiction or by settlement arising out of the use of the water storage space and the release therefrom, except that no reimbursement shall be made to the extent that the liability arises from the sole fault of the United States.

Sec. 32. K.S.A. 12-105, 12-105a, 12-105b, 12-203, 12-204, 12-2601 to 12-2614, inclusive, 12-2904, 19-261, 19-3621, 46-901,

46-903, 68-301, 72-8404 to 72-8413, inclusive, 74-4702, 74-4703 to 74-4716, inclusive, 75-4109, 75-4356, 75-4357, 75-4357a, 75-4359, 75-4361, 80-1423, 80-1502, 80-1923 and 82a-934 and K.S.A. 1978 Supp. 46-902, 60-2202, 60-2203a, 68-419, 68-2108 and 75-4358 are hereby repealed.

Sec. 33. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. _____

By

AN ACT relating to property held in joint tenancy; amending K.S.A. 58-501 and repealing the existing section.

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

Section 1. K.S.A. 58-501 is hereby amended to read as follows: 58-501. Real or personal property granted or devised to two or more persons including a grant or devise to a husband and wife shall create in them a tenancy in common with respect to such property unless the language used in such grant or devise makes it clear that a joint tenancy was intended to be created: Except, That a grant or devise to executors or trustees, as such, shall create in them a joint tenancy unless the grant or devise expressly declares otherwise. Where joint tenancy is intended as above provided it may be created by:

- (a) Transfer to persons as joint tenants from an owner or a joint owner to himself or herself and one or more persons as joint tenants;
 - (b) from tenants in common to themselves as joint tenants;
- or
- (c) by coparceners in voluntary partition to themselves as joint tenant.

Where a deed, transfer or conveyance grants an estate in joint tenancy in the granting clause thereof and such deed, transfer, or conveyance has a habendum clause inconsistent therewith, the granting clause shall control. When a joint tenant dies, a certified copy of letters testamentary or of administration, or where the estate is not probated or administered a certificate establishing such death issued by the proper federal, state or local official authorized to issue such certificate, or an affidavit of death from some responsible person who knows the facts, shall constitute prima facie evidence

of such death and in cases where real property is involved such certificate or affidavit shall be recorded in the office of the register of deeds in the county where the land is situated. The provisions of this act shall apply to all estates in joint tenancy in either real or personal property heretofore or hereafter created and nothing herein contained shall prevent execution, levy and sale of the interest of a judgment debtor in such estates and such sale shall constitute a severance, except that a garnishment, attachment or the exercise of right of offset upon a bank account, savings and loan account, certificate of deposit or share interest in a credit union shall not constitute a severance. The levying creditor shall be subrogated to the rights of its debtor, under the contract between its debtor and the institution levied upon, and if such debtor is entitled to reach all funds on deposit under such contract, the levying creditor shall be entitled to reach all funds on deposit without regard to historical prior ownership or by whom deposited. The institution so levied upon shall have no liability to any joint tenant of the debtor for holding funds in an account bearing the name of the debtor.

Sec. 2. K.S.A. 58-501 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.