


Held in Room 519 S, at the Statehouse at 8:15 a. m./p. m., on April 27, 19 79

All members were present except: Senators Berman, Gaar, Hein and Mulich

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:

- Dick Brock - Kansas Insurance Department
- Dr. M. A. McGhehey - Kansas Association of School Boards
- Ernie Mosher - League of Kansas Municipalities
- Mark Bennett - American Insurance Association
- Robert Hayes - Kansas Insurance Department

Staff present:

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

Art Griggs explained the draft of the bill designed to finance the tort claims act, section by section. A copy of the bill is attached. He explained that he basically used the medical malpractice insurance act as a guide in preparing the draft. Committee discussion followed.

Dick Brock, from the Kansas Insurance Department, explained that in the medical malpractice act, determination of the rates to be charged self-insurers is based on the residual market rate. Mr. Brock testified that the concept of the bill is feasible. He said the tort claims act is new and there needs to be an education process to see how the act will operate. He reported there will be a seminar on May 8 for insurance companies and interested parties so they can learn about the tort claims act.

Mr. Griggs explained that the residual market was left out of this draft, although there is such a provision in the medical malpractice insurance act, since there had been no testimony that the availability of insurance appeared to be a problem under the tort claims act.

Mr. Brock stated he does not envision problems in acquiring \$25,000 coverage by local units of government. Senator Hess commented that this is a different situation than medical malpractice because here we are dealing with tax payers money; he asked Mr. Brock if he thought the legislature should monitor the tort claims act this year and come back next year to pass a bill if a bill is needed. Mr. Brock replied that it would be his recommendation that it would be better to monitor the situation so we can see just what problems there might be. Further committee discussion with Mr. Brock followed.

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

Mr. Hayes from the Kansas Insurance Department reported that a city would be rated similar to a commercial risk.

Dr. McGhehey testified that he would prefer that no legislation be passed this year, and that a monitoring of the tort claims act be conducted. He pointed out several problems, such as the selection of the legal counsel; he stated this draft is similar to the law in New Mexico. He stated that in New Mexico, school districts have been able to pool for liability insurance purposes. In answer to a question, Dr. McGhehey stated that he did not think that any school district in the state would have difficulty in getting insurance under the act. He stated that he has been monitoring school district insurance for many years, and has prepared a school district insurance handbook, which he is presently revising.

Ernie Mosher testified that there are approximately 3500 separate governmental units with varying budgets; he pointed out that the tort claims act provides a number of options for the local units, and because of its flexibility, he thinks local units can respond to the act during the coming year. He stated conceptually the League of Kansas Municipalities supports the concept embodied in this draft; but he feels that it should be monitored for the coming year. Committee discussion with him followed.

Mark Bennett testified that the insurance industry will agree with the statements made that this proposed legislation is major legislation. He stated he favors an interim study of the matter. He stated the insurance industry is interested in assisting the legislature in getting information for the interim study. Committee discussion with him followed.

Following committee discussion, Senator Hess moved that the bill be introduced by this committee, and that the interim study monitoring the tort claims act include in its study this bill; Senator Steineger seconded the motion, and the motion carried.

The meeting adjourned.

These minutes were read and approved
by the committee on 4-28-79.

PROPOSED SENATE BILL NO. _____

By Committee on Ways and Means

AN ACT relating to municipalities as herein defined; concerning insurance, appropriations and other financial arrangements for the coverage of the liability of municipalities pursuant to the Kansas tort claims act; establishing a tort claims fund.

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

New Section 1. As used in this act the following terms shall have the meanings respectively ascribed to them herein:

(a) "Applicant" means any municipality;

(b) "Basic coverage" means a policy of liability insurance required to be maintained by each municipality pursuant to the provisions of section 2;

(c) "Commissioner" means the commissioner of insurance;

(d) "Fiscal year" means the year commencing on the effective date of this act and each year, commencing on the first day of that month, thereafter;

(e) "Fund" means the tort claim fund established pursuant to section 3;

(f) "Insurer" means any corporation, association, reciprocal exchange, inter-insurer and any other legal entity authorized to write bodily injury or property damage liability insurance in this state, including workmen's compensation and automobile liability insurance, pursuant to the provisions of article 9, 11, 12 or 16 of chapter 40 of Kansas Statutes Annotated;

(g) "Liability insurance" means insurance providing coverage for legal liability of a municipality pursuant to the Kansas tort claims act and amendments thereto;

(h) "Municipality" means any county, township, city, school

district or other political or taxing subdivision of this state;

(i) "Rating organization" means a corporation, an unincorporated association, a partnership or an individual licensed pursuant to K.S.A. 40-930 or K.S.A. 40-1114, or both sections, to make rates for liability insurance;

(j) "Self-insurer" means a municipality that has qualified as a self-insurer pursuant to section 13.

New Sec. 2. A policy of liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than twenty-five thousand dollars (\$25,000) per occurrence, subject to not less than a seventy-five thousand dollar (\$75,000) annual aggregate for all claims made during the policy period, shall be maintained in effect by each municipality, unless such municipality is a self-insurer. Such policy shall provide as a minimum coverage for claims made during the term of the policy which were incurred during the term of such policy or during the prior term of a similar policy.

(a) Each insurer providing basic coverage shall within thirty (30) days after the premium for the basic coverage is received by the insurer or within thirty (30) days from the effective date of this act, whichever is later, notify the commissioner that such coverage is or will be in effect. Such notification shall be on a form approved by the commissioner and shall include information identifying the liability policy issued or to be issued, the name of the municipality policy, the amount of the annual premium, the inception and expiration dates of the coverage and such other information as the commissioner shall require. A copy of the notice required by this subsection shall be furnished the named insured.

(b) In the event of termination of basic coverage by cancellation, nonrenewal, expiration or otherwise by either the insurer or named insured, notice of such termination shall be furnished by the insurer to the commissioner. Such notice shall be provided no less than thirty (30) days prior to the effective

date of any termination initiated by the insurer or within ten (10) days after the date coverage is terminated at the request of the named insured and shall include the name of the municipality for whom basic coverage is terminated and the date basic coverage will cease to be in effect. No basic coverage shall be terminated by cancellation or failure to renew by the insurer unless such insurer provides a notice of termination as required by this subsection.

(c) Any liability insurance policy issued, delivered or in effect in this state on and after the effective date of this act shall contain or be endorsed to provide basic coverage as required by subsection (a) of this section. Notwithstanding any omitted or inconsistent language, any contract of liability insurance shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this act.

(d) Every municipality that is a self-insurer shall pay the surcharge levied by the commissioner pursuant to section 4 directly to the commissioner and shall furnish to the commissioner the information required in subsection (a) of this section.

New Sec. 3. (a) For the purpose of paying damages for personal injury, property damage or death for which a municipality is liable pursuant to the Kansas tort claims act, and amendments thereto, there is hereby established the tort claims fund. The fund shall be held in trust in a segregated fund in the state treasury. The commissioner shall administer the fund or contract for the administration of the fund with an insurance company authorized to do business in this state.

(b) The fund shall be liable to pay: (1) Any amount due from a judgment or settlement which is in excess of the basic coverage liability of all liable municipalities for any such injury or death recoverable pursuant to the Kansas tort claims act; (2) reasonable and necessary expenses for attorney's fees incurred in defending the fund against claims; (3) any amounts expended for reinsurance obtained to protect the best interests

of the fund purchased by the committee on surety bonds and insurance pursuant to K.S.A. 75-4101; and (4) reasonable and necessary actuarial expenses incurred in administering the act.

(c) All amounts for which the fund is liable pursuant to paragraph (1) of subsection (b) of this section shall be paid promptly and in full if less than one hundred fifty thousand dollars (\$150,000) or, if one hundred fifty thousand dollars (\$150,000) or more, by installment payments of one hundred fifty thousand dollars (\$150,000) per fiscal year, the first installment to be paid within sixty (60) days after the fund becomes liable and each subsequent installment to be paid annually on the same date of the year the first installment was paid, until the claim has been paid in full. Any attorney's fees payable from such installment shall be similarly prorated.

(d) A municipality shall be deemed to have qualified for coverage under the fund: (1) On and after the effective date of this act if basic coverage is then in effect; (2) subsequent to the effective date of this act, at such time as basic coverage becomes effective; or (3) upon qualifying as a self-insurer pursuant to section 13.

New Sec. 4. (a) The commissioner shall levy an annual premium surcharge on each municipality who has obtained basic coverage and upon each self-insurer for each fiscal year. Such premium surcharge shall be an amount equal to a percentage of the annual premium paid by the municipality for the basic coverage required to be maintained as a condition to coverage by the fund by section 2. The annual premium surcharge upon each self-insurer shall be an amount equal to a percentage of the amount such self-insurer would pay for basic coverage as calculated in accordance with rating procedures approved by the commissioner. The commissioner shall determine the applicable percentage, not to exceed sixty-five percent (65%), to be used in computing the premium surcharge in each fiscal year. Such determination shall be based upon actuarial principles and calculated to accumulate approximately ten million dollars (\$10,000,000) within a ten-year

period following the effective date of this act. Such premium surcharge shall not be less than forty percent (40%) of the annual basic coverage premium for any fiscal year until the fund accumulates five million dollars (\$5,000,000).

(b) In the case of a municipality who is not a self-insurer, the premium surcharge shall be collected in addition to the annual premium for the basic coverage by the insurer and shall not be subject to the provisions of K.S.A. 1978 Supp. 40-1113 and K.S.A. 40-2801 et seq. and K.S.A. 1978 Supp. 40-252. The amount of the premium surcharge shall be shown separately on the policy or an endorsement thereto and shall be specifically identified as such. Such premium surcharge shall be due and payable by the insurer to the commissioner within thirty (30) days after the annual premium for the basic coverage is received by the insurer, but in the event basic coverage is in effect at the time this act becomes effective, such surcharge shall be based upon the unearned premium until policy expiration and annually thereafter. Within fifteen (15) days immediately following the effective date of this act, the commissioner shall send to each insurer information necessary for their compliance with this subsection. The certificate of authority of any insurer who fails to comply with the provisions of this subsection shall be suspended pursuant to K.S.A. 1978 Supp. 40-222 until such insurer shall pay the annual premium surcharge due and payable to the commissioner. In the case of a self-insurer, the premium surcharge shall be collected in the manner prescribed in section 2.

(c) If the fund exceeds the sum of ten million dollars (\$10,000,000) at the end of any fiscal year after the payment of all claims and expenses, the commissioner shall reduce the surcharge in order to maintain the fund at an approximate level of ten million dollars (\$10,000,000).

New Sec. 5. Upon certification by the commissioner to the director of accounts and reports that the fund is insufficient to pay an amount for which the fund is liable, the director shall transfer an amount equal to such insufficiency from the state

general fund to the fund and the amount to be transferred is hereby appropriated for the fiscal year in which such amount is required to be transferred. Each amount transferred from the state general fund to the fund shall constitute a debt of the fund from the date transferred until repaid to the state general fund. An amount equal to such debt shall be transferred to the state general fund in the fiscal year following the fiscal year in which the transfer is made in amounts such that an insufficiency of the fund is not created, and if the full amount to be paid to the state general fund is not so transferred in one payment, the director of accounts and reports shall continue to transfer amounts not more frequently than one time per month until the full amount has been transferred to the state general fund. The commissioner shall levy the maximum premium surcharge authorized by section 4 in any fiscal year in which the fund is indebted to the state general fund.

The provisions of this section shall expire on July 1, 1984.

New Sec. 6. The pooled money investment board may invest and reinvest moneys in the fund in obligations of the United States of America or obligations the principal and interest of which are guaranteed by the United States of America or in interest bearing time deposits in any commercial bank or trust company located in Kansas, or, if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than thirty (30) days' duration with a Kansas bank for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof. Any income or interest earned by such investments shall be credited to the fund.

New Sec. 7. Except for investment purposes, all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner and, with respect to claim payments, accompanied by (1) a certified copy of a final judgment against a municipality for which the fund is liable; or (2) a certified copy of a court

approved settlement against a municipality for which the fund is liable. For investment purposes amounts shall be paid from the fund upon vouchers approved by the chairperson of the pooled money investment board.

New Sec. 8. The insurer of a municipality or self-insurer shall be liable only for the first twenty-five thousand dollars (\$25,000) of a claim for personal injury, property damage or death for which a municipality is liable pursuant to the Kansas tort claims act, subject to an annual aggregate of seventy-five thousand dollars (\$75,000) for all such claims against the municipality pursuant to the Kansas tort claims act. However, if any liability insurance in excess of such amounts is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act.

New Sec. 9. (a) (1) In any action filed in this state for personal injury, property damage or death for which a municipality may be liable pursuant to the Kansas tort claims act, the plaintiff shall serve a copy of the petition upon the commissioner by registered mail within ten (10) days from filing the same, and if such service is not made the fund shall not be liable for any amount due from a judgment or a settlement nor, in such case, shall the municipality or the municipality's insurer be liable for such amount that, if such service had been made, would have been paid by the fund; (2) in any such action filed outside of this state a municipality shall notify the commissioner, as soon as it is reasonably practicable, that such summons or petition has been filed.

(b) Such action shall be defended by the insurer or the self-insurer, but if the commissioner believes it to be in the best interests of the fund, the commissioner may employ independent counsel to represent the interests of the fund. The cost of employing such counsel shall be paid from the fund.

New Sec. 10. When the insurer of a municipality covered by

the fund has agreed to settle its liability on a claim against its insured or when the self-insurer has agreed to settle liability on a claim and the claimant's demand is in an amount in excess of such settlement, or where it would otherwise be in the best interest of the fund, the claimant and the commissioner may negotiate on an amount to be paid from the fund. The commissioner may employ independent counsel to represent the interest of the fund in any such negotiations. In the event the claimant and the commissioner agree upon an amount the following procedure shall be followed:

(a) A petition shall be filed by the claimant with the court in which the action is pending against the municipality, or if none is pending, in a court of appropriate jurisdiction, for approval of the agreement between the claimant and the commissioner.

(b) The court shall set such petition for hearing as soon as the court's calendar permits, and notice of the time, date and place of hearing shall be given to the claimant, the governing body of the municipality, and to the commissioner.

(c) At such hearing the court shall approve the proposed settlement if the court finds it to be valid, just and equitable.

(d) In the event the settlement is not approved, the procedure set forth in section 11 shall be followed.

New Sec. 11. (a) In any claim in which the insurer of a municipality covered by the fund has agreed to settle its liability on a claim against its insured or when the self-insurer has agreed to settle liability on a claim and the claimant's demand is in an amount in excess of such settlement, to which the commissioner does not agree, an action must be commenced by the claimant against the municipality in a court of appropriate jurisdiction for such damages as are reasonable in the premises. If an action is already pending against the municipality, the pending action shall be conducted in all respects as if the insurer or self-insurer had not agreed to settle.

(b) Any such action against a municipality covered by the

fund shall be defended by the insurer or self-insurer in all respects as if the insurer or self-insurer had not agreed to settle its liability. The insurer or self-insurer shall be reimbursed from the fund for the costs of such defense incurred after the settlement agreement was reached, including a reasonable attorney's fee; except that if the insurer or self-insurer settles the claim for an amount less than twenty-five thousand dollars (\$25,000), the insurer or self-insurer shall be responsible for all defense costs until the insurer's or self-insurer's total combined payments equal twenty-five thousand dollars (\$25,000) with respect to such claim, and neither the municipality, unless such municipality is a self-insurer, or the fund shall be obligated to pay the difference between such settlement and twenty-five thousand dollars (\$25,000). The commissioner is authorized to employ independent counsel in any such action against a municipality covered by the fund.

(c) In any such action the municipality against whom claim is made shall be obligated to attend hearings and trials, as necessary, and to give evidence.

(d) The costs of the action shall be assessed against the fund if the recovery is in excess of the amount offered by the commissioner to settle the case and against the claimant if the recovery is less than such amount.

New Sec. 12. (a) Any action for personal injury, property damage or death for which a municipality may be liable pursuant to the Kansas tort claims act shall be maintained against such municipality. No claimant shall have any right of action directly against the fund. No claimant shall have any right of action under this act directly against an insurer.

(b) Evidence that a portion of any verdict would be payable from insurance or the fund shall be inadmissible in any such action.

(c) Nothing herein shall be construed to impose any liability in the fund in excess of that specifically provided for

herein for negligent failure to settle a claim or for failure to settle a claim in good faith.

(d) The fund shall have no obligations whatsoever for payment for punitive damages.

(e) Any action for damages or for approval of a settlement as set forth in sections 9, 10 or 11 shall be brought in a court of appropriate jurisdiction and venue.

New Sec. 13. (a) Any municipality may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner. Upon application of any such municipality, on a form prescribed by the commissioner, the commissioner may issue a certificate of self-insurance if the commissioner is satisfied that the applicant is possessed and will continue to be possessed of ability to pay any judgment for which liability exists equal to the amount of basic coverage required of a municipality. In making such determination the commissioner shall consider (1) the financial condition of the applicant, (2) the procedures adopted and followed by the applicant to process and handle claims and potential claims, (3) the amount and liquidity of assets reserved for the settlement of claims or potential claims and (4) any other relevant factors. The certificate of self-insurance may contain reasonable conditions prescribed by the commissioner. Upon not less than five (5) days' notice and a hearing pursuant to such notice, the commissioner may cancel a certificate of self-insurance upon reasonable grounds therefor. Failure to pay any judgment for which the self-insurer is liable pursuant to the Kansas tort claims act, the failure to comply with any provision of this act or the failure to comply with any conditions contained in the certificate of self-insurance shall be reasonable grounds for the cancellation of such certificate of self-insurance.

(b) Any municipality who holds a certificate of self-insurance shall pay the applicable surcharge set forth in section 2.

New Sec. 14. The commissioner shall prescribe such rules

and regulations as may be deemed necessary to carry out the purposes of this act.

New Sec. 15. This act shall be known and may be cited as the tort claims coverage fund act.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.