

Approved 2-16-87
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Rep. Dale M. Sprague at
Chairperson

3:30 xx
a.m./p.m. on February 12, 1987 in room 531-N of the Capitol.

All members were present except:

Rep. Gross, Rep. King, Rep. Littlejohn, Rep. Turnquist, all
excused

Committee staff present:

Emalene Correll, Chris Courtwright, Research Department
Bill Edds, Revisor's Office
Deanna Willard, Committee Secretary

Conferees appearing before the committee: Assoc. of School Boards

The meeting was called to order by the Chairman.

The minutes of the February 4, 5, and 9 meetings were approved.

Hearing for proponents on: HB 2109 - School districts, area
vocational-technical schools, community colleges, pooling
arrangements

Staff presented a memo on the bill. (Att. 1.)

Currently school boards and municipalities are looking to the Interlocal Cooperation Act and to K.S.A. 44-581 (workers' compensation) for authority to form pools. The Tort Claims Act deals just with liability insurance; it is exempt from insurance department regulation. Twenty to thirty other states have or are moving towards pooling arrangements in response to the liability crisis.

Mr. Bill Curtis, KASB, presented testimony in support of this bill. (Att. 2.)

He said that Chapter 12 could be amended to allow pooling arrangements but that provisions relating to insurance companies would also apply. Chapter 44 requires a net worth figure. The association provided an outline to the revisor's office to help draft this bill. A copy of the sample contract for the association and the pool participants will be provided.

The authority for one school district to assume the risk of another is under the Tort Claims Act. The organization which will run the pool is the Kansas Association of School Boards Workers' Compensation Fund, Inc., a separate not-for-profit corporation on file with the Secretary of State. A copy of the bylaws will be provided.

Mr. Curtis cited examples of two states as to the anticipated savings. New Jersey distributed between \$300,000-400,000 in dividends at the end of last year; Texas doesn't buy excess insurance because of the large amount in reserves.

They will contract with an outside firm to administrate the fund, to act as an employee to handle claims, management, and loss

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 531-N, Statehouse, at 3:30 XX a.m./p.m. on February 12, 1987

control services. The plan now is just to set up a workers' compensation pool, but the bill would allow all lines.

Rates would be based on the National Council of Workers' Compensation, Inc. rates. Eventually experience ratings can be used. A big advantage for school boards is that they get to use the investment income; it will be returned in dividends or reflected in the rates.

He suggested that if the Committee felt the Insurance Department should have financial oversight that it be limited to that. The board of directors for the new corporation is the same as KASB for now.

The pool will be an alternative place to buy insurance. If the fund is dissolved, funds go back to districts. The third-party mediator is the board of directors. Cases can be taken to court just as with insurance companies. Some of the reforms passed will help ease the current situation; also, the market is softening. However, the cycle will be repeated again. The pool will help to level prices.

Discussion on: HB 2090 - Notice of termination and premium due on medicare supplement policies

Mr. Dick Brock suggested that to strike language beginning with the comma on Line 23 and ending with the comma on Line 27 would make it to apply to medicare supplementals only.

Rep. Neufeld made a motion to strike the language; Rep. Wells seconded the motion. The motion carried.

A memo was requested from staff to address discrepancies in the bill.

Final Committee Action on: HB 2111 - Health maintenance organizations; quality of care examinations

Rep. Neufeld made a motion to switch the words "review" and "organization" in Line 0044, to remove the word "succinctly" from Line 0045 and to pass the bill favorably as amended; Rep. Cribbs seconded the motion. The motion carried.

Final Committee Action on: HB 2112 - Nonprofit medical and hospital service corporations and HMO's; regulation of trade

Rep. Harper made a motion to pass the bill favorably; Rep. Brown seconded the motion. The motion carried.

Final Committee Action on: HB 2113 - Group life insurance; policy requirements

Rep. Brady made a motion to pass the bill favorably; Rep. Schauf seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 531-N, Statehouse, at 3:30 ~~a~~^xm./p.m. on February 12, 19 87

Final Committee Action on: HB 2128 - Group life insurance policy requirements

Rep. Brown made a motion to pass the bill favorably; Rep. Cribbs seconded the motion. The motion carried.

Final Committee Action on: HB 2129 - Insurance; regulation of risk retention and purchasing groups

Rep. Schauf made a motion to move the amendments requested by the Kansas Insurance Department. (See Attachment 3, February 9, 1987.) Rep. Brown seconded the motion. The motion carried.

Rep. Cribbs made a motion to pass the bill favorably as amended; Rep. Harper seconded the motion. The motion carried.

The meeting was adjourned at 5:15 p.m.

MEMORANDUM

February 12, 1987

TO: House Committee on Insurance
FROM: Kansas Legislative Research Department
RE: Alternative Insurance Mechanisms for School Boards
and Municipalities

In response to the availability and affordability problems arising out of the liability insurance crisis of the mid-1980s, many states in recent years have been exploring various alternative mechanisms to assure the continuation of coverage for local governmental entities. Some of these mechanisms include self-insurance, risk retention groups, mandated joint underwriting authorities and various pooling arrangements. This memorandum will analyze the extent to which some of these mechanisms are now available under Kansas law to school boards and municipalities, look at some of the proposals now before the Committee, and report on the experience of other states in dealing with these issues.

Interlocal Cooperation Agreements

K.S.A. 12-2901 et seq., authorizes public agencies, including school boards, to contract to provide needed services with other public or private agencies. Municipalities or school boards are empowered to contract for specifically-stated services under K.S.A. 1986 Supp. 12-2904(a), as well as other services not specifically defined. Presumably, self-funded insurance pools could be organized under the provisions of this section.

However, the Attorney General, under K.S.A. 1986 Supp. 12-2904(f), must approve all agreements before contracts can be enforced. It is possible that he might not approve pooling arrangements if he found that insurance policy is not within the statutory intent of the Interlocal Cooperation Act. One way to avoid such a contingency would be to amend K.S.A. 1986 Supp. 12-2904(a) to explicitly include insurance pools within the provisions of the act.

Another problem that some municipalities and school boards have with the interlocal agreements is that K.S.A. 12-2906 subjects agreements to the approval and review of the appropriate state officer or agency with jurisdiction in the area of the agreements. This means that all self-insurance pools organized under this act would be subject to the approval and review of the Commissioner. If the Commissioner felt that such arrangements were not sufficiently regulated, he could prevent their implementation. In order to get out from under the oversight granted to the Commissioner by K.S.A. 12-2906 (and enter into pools not limited to liability insurance) municipalities and school boards would have to seek specific exemptions from the definition of insurance companies in K.S.A. 40-201 and from the conditions under which insurance may be written in Kansas established by K.S.A. 40-214.

House Insurance Committee
Feb. 12, 1987
Att. 1

All pooling issues apply equally to municipalities and school boards with regard to the Interlocal Cooperation Act, since K.S.A. 12-2903(a) defines a public agency as "any county, township, city, town, village, school district, . . . or other municipal corporation."

Workers' Compensation Pools

K.S.A. 44-581 et seq., authorizes five or more employers who are members of the same bona fide trade or professional organization which has been in existence for a least five years to enter into a group-funded workers' compensation pool, provided that they are engaged in the same or similar type of business. School districts and municipalities can probably qualify to form such pools under this definition, although the legislative intent behind K.S.A. 44-581 was probably aimed more at the private sector.

Another provision that may have unclear applicability with regard to school boards and municipalities is the requirement in K.S.A. 44-582(f) that the combined net worth of all members of a pool must be not less than \$1 million. The concept of "net worth" for school boards and municipalities could be difficult to define or quantify.

These workers' compensation pools are treated somewhat like reciprocal insurance companies, in that they are regulated by the Commissioner under the provisions of K.S.A. 44-581 et seq., but are not specifically regulated by Chapter 40.

Another obvious limitation these pools would have for school boards or municipalities is that they could only pool liabilities for workers' compensation benefits.

Kansas Tort Claims Act

K.S.A. 1986 Supp. 75-6111(b) specifically enables municipalities, pursuant to the Interlocal Cooperation Act, to enter into liability insurance pooling arrangements where the governmental entities and employees or agents thereof are not required to be licensed or regulated pursuant to Chapter 40.

The definition of "municipality" in K.S.A. 75-6102 is broad enough to include school districts and school boards, as well. The Tort Claims Act allows such entities to enter into only liability insurance pools, however, and the agreements would still apparently be subject to the approval of the Attorney General under the Interlocal Cooperation Act.

Prohibition Against Fictitious Grouping of Risk

K.A.R. 1986 Supp. 40-3-6 prohibits insurers from writing fire, casualty, inland marine, or surety coverages based on any fictitious grouping or classification of risks. "Fictitious grouping of risks" is defined as those risks not conforming to the classification or grouping recognized by an

insurer's approved rate, those risks not possessing necessary homogenous characteristics for group rating, and those risks not complying with the provisions of the Kansas insurance code.

Risk Retention Groups

1986 S.B. 541 enacted statutes allowing risk retention pools established for the purpose of purchasing product liability coverage only. The original bill was a model act designed by the National Association of Insurance Commissioners to allow state insurance officials regulatory oversight over the pools to the extent such regulation was not prohibited by federal law.

1987 Proposals

H.B. 2109 seeks to allow boards of school districts, area vocational-technical schools, and community colleges to enter into insurance-pooling arrangements. Such arrangements could provide all types of insurance and would not be construed to fit the definition of an insurance company or be otherwise subject to the laws regulating insurance in Kansas. The school district insurance pools, explicitly authorized under Chapter 72, could provide a variety of coverage for the lowest possible premiums, proponents argued, since the pools would be rated based on Kansas, instead of nationwide experience. Opponents to the bill argued that the pools would amount to nothing more than assessable mutual or reciprocal insurance companies and, as such, should not be exempt from Kansas insurance laws.

H.B. 2129, introduced as a committee bill at the request of the Insurance Department, would permit the Commissioner to regulate risk retention groups and risk purchasing groups to the maximum extent possible under the Liability Risk Retention Act of 1986. A risk retention group, defined as any corporation or other limited liability association whose primary activity consists of assuming the liability exposure of its members, would be required to be chartered and licensed as a liability insurance company in one of the 50 states and subject to regulatory oversight by the Commissioner under new provisions in Chapter 40. Risk purchasing groups, defined as groups which have as one of their purposes the purchase of liability insurance on a group basis, would also be subject to the regulatory oversight of the Commissioner under Chapter 40.

Experience of Other States

While a number of states have been exploring various alternative insurance mechanisms, including pooling arrangements, the vast majority of states do not distinguish between school districts and municipalities when implementing or considering such mechanisms. The definition of "municipality" or "local governmental body" is written broadly enough in most states to encompass school boards and school districts. So to the extent that most states have allowed risk-pooling arrangements and regulated them outside of traditional insurance statutes, the provisions of the new laws generally have

been applied equally to school districts and municipalities, according to Brenda Trolin of the National Conference of State Legislatures. However, for various reasons, there have been some exceptions.

New Jersey in 1983 enacted a joint self-insurance statute, allowing school board insurance groups to form pools and enter into contracts of up to three years for the purchase of insurance, insurance consultant services, and risk management services. Any two or more school boards can form a school board insurance group, which does not constitute an insurance company or insurer under the laws of New Jersey and is not subject to the traditional insurance provisions. However, the New Jersey Insurance Commissioner is granted powers of review and approval within the education chapters of the state law.

New Jersey had previously allowed school boards to form workers' compensation pools, similar to the option that is probably available to Kansas school boards under K.S.A. 44-581 et seq. Self-insurance had also been authorized for school boards, but only large school districts were able to cost-effectively self-insure. The pooling statute extends the self-insurance option to smaller school boards, according to a statement of legislative intent accompanying the act.

Municipalities and counties had nearly identical legislation placed in their chapter of New Jersey law in 1983. Separate legislation was enacted for the municipalities to conform the pooling provisions to language regarding local commissioners of insurance that was already in the statutes. New Jersey is also one of the few states that does not include school boards and school districts under the board definition of "municipality."

The New York Governor's Advisory Commission in April of 1986 recommended that local governments, including school districts, be authorized to form a statewide reciprocal insurance exchange, a type of pool subject to fairly strict regulation by the New York Superintendent of Insurance but still treated separately from insurance companies. However, the New York School Boards Association lobbied for, and ultimately got, separate legislation authorizing reciprocal exchanges for school districts only, arguing that school boards faced significantly different risks than local governments. The law was passed in June of 1986, along with a number of tort reform measures.

The school district reciprocal exchanges are required to have at least 25 subscribers. The reciprocals must be nonprofit organizations and are permitted to have a nonprofit corporation serve as the managing group. The reciprocal that is now being formed has already lined up reinsurance above the \$250,000 self-insured retention. The program will offer general liability, automobile liability, property, boiler and machinery, inland marine, and errors and omissions coverages. It is anticipated that workers' compensation will also be available at a later date.

Idaho considered a bill during the 1986 Session that would have required all governmental entities to become members of a proposed liability fund, paying an initial assessment to become insured directly or for membership in a pool reinsured by the fund for at least three years. Municipalities were generally supportive of the concept, although certain counties that had organized a pool and made prior arrangements with Lloyds of London and the Hartford Insurance Company were opposed. School districts came out in strong

opposition to the mandatory three-year provisions of the bill, arguing that they had suffered neither the availability nor affordability problems that had been plaguing Idaho cities and counties.

The Idaho State Insurance Fund currently writes workers' compensation coverage for governmental entities. The bill would have borrowed \$5 million from the fund in order to maintain a 1-to-3 ratio of premiums to surplus in the proposed liability fund.

The bill died in the Idaho Legislature, due at least in part to claims from insurance companies and the Insurance Department that a new market assistance program was alleviating the liability availability crisis. Nevertheless, proponents claim that the fund could operate 18 percent less expensively than the private insurance industry and may introduce the bill again in 1987.

Arizona in 1986 passed a statute authorizing public agencies to form risk retention pools for the purchase of most types of insurance. A separate section of the act authorized school districts to enter into the pooling agreements, either separately or with other governmental entities. The bill set up a joint insurance retention pool revolving fund, and gave the insurance director authority to review and approve pooling arrangements based on financial data supplied by applicants.

E87-42/CC

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

Testimony on H.B. 2109

before the

House Insurance Committee

by

Bill Curtis, Assistant Executive Director
Kansas Association of School Boards

February 12, 1987

Mr. Chairman, members of the Committee, the Kansas Association of School Boards appreciates the opportunity to testify today on H.B. 2109. That bill was introduced by the House Education Committee at our request.

During a joint meeting of this committee and the House Education Committee on January 28, of this year, testimony was given by the Kansas Association of School Boards. Since that time members of the KASB staff have visited individually with most of the committee members. Using the content of those discussions perhaps it would be best, instead of debating the merits of H.B. 2109, to begin by asking several questions. First, is there presently statutory authority to do what is advocated in H.B. 2109? In the opinion of KASB, there is not and committee members are once again referred to the KASB Staff Memorandum handed to you at the joint meeting on January 28th. Second, if there isn't statutory authority, should there be? Obviously the Kansas Association of School Boards is going to answer that question affirmatively. Self-funded

House Insurance Committee
Feb. 12, 1987
Att. 2

pooling arrangements afford several important advantages. It permits pool members to be rated upon their own experience, to use investment income as funds in the pool, to govern the operation of the program, to pursue aggressive loss prevention and loss control programs, and to maintain some control over the provisions of the contract. Self-funding also has an advantage over self-insurance because it spreads the risk over a greater number of insureds. Finally, how should this authority be granted? H.B. 2109 is one answer. It clearly gives school districts the authority to pool for any type of risk for which insurance contracts may be purchased.

One last point should be made. School districts are unique taxing governmental subdivisions of the State. They are not likely to go broke and they already have the ability to self-insure. Should they choose to self-insure, they are not subject to oversight and regulation by the Insurance Department. However, self-funding is less of a risk than self-insurance.

Thank you for your time and attention. We would urge your favorable consideration of H.B. 2109.