

Approved 3-31-87
Date

MINUTES OF THE House COMMITTEE ON Insurance

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

3:30 ~~X~~m./p.m. on March 26, 1987 in room 531-N of the Capitol.

All members were present except:

Rep. King
Rep. Littlejohn

Committee staff present:

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

Conferees appearing before the committee:

Rufus Nye, City Manager, Salina
Lyle Dresher, City Manager, Ottawa
E. A. Mosher, League of Kansas Municipalities
Chip Wheelen, Kansas Legislative Policy Group
Jim Seaman, Kansas Public and Interlocal Risk Services
Larry Magill, Independent Insurance Agents of Kansas
Dick Brock, Kansas Insurance Department

The meeting was called to order by the Chairman.

The minutes of the March 25, 1987, meeting were approved.

Hearing on: SB 250 - Interlocal agreements; risk management and claims coverage; annual audit

Mr. Rufus Nye, Salina, said he has spent the past year working on the pooling idea. He believes SB 250 is good public policy because it offers (1) risk management, (2) significant savings, and (3) an option.

He said risk management involves identification of the risk, evaluation, and measures to eliminate or reduce the risk. He said the pool provides both the mechanism and the incentive for on-going risk management. He said commercial insurance costs 75% more and that the coverage is the same. He urged support for the bill as a tool to provide cost savings for taxpayers for those communities that wished to use it.

He responded to questions. He can provide figures to support the savings estimates. They don't feel they should be subject to insurance department regulation as there is now no requirement that they even have insurance, except worker's compensation. The net result of HB 2109 would be to eradicate the savings because of the costs of regulation. They would have the responsibility to pay claims, just as the insurance company does now. The insurance premiums for the city have gone from \$240,000 to over \$500,000 in two years, while claims have been less than \$60,000. Smaller cities cannot on their own afford a risk management officer. He said they are cautious to try new things but have looked long and hard at this and would like the authority to do it. He said an insurance company spends 30% of the money taken in for administration costs; the pool would spend 10%. Another savings factor is that the money would be earning interest for them rather than being sent to an insurance

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 531-N, Statehouse, at 3:30 ~~xx~~m./p.m. on March 26, 1987

company.

Mr. Lyle Dresher, Ottawa, said his city is interested in the pool both for the affordability and availability of the coverage. The insurance premiums for the City of Ottawa in 1984 were \$107,000; the next year the cost was \$228,000 and the general liability policy was lost; last year's premiums were \$328,000. The total claims in the three years totalled about \$21,000. They used competitive bidding in 1984, have raised deductibles, have an individual in charge of risk management, and began a self-insurance program. They have been notified the public officers & o policy won't be renewed. He said their options are to (1) self-insure, (2) join KIRMA, (3) reduce coverage, or (4) reduce and/or terminate some operations. There was discussion as to how a claim would be paid if the pool reserves were all used up; the individual member with the claim would be assessed.

Thirty-three cities are interested in forming KIRMA; they have been kept apprised and policymakers have been involved. They have contributed financially to do the research and background work.

Mr. E. A. Mosher presented testimony with notes on SB 250 and information on KIRMA (Kansas Intergovernmental Risk Management Agency.) (Att. 1.) He said they are not doing this on an amateur basis; the best counsel available has been obtained. He pointed out the difference between HB 2109 and SB 250 on page 2, #11. He stated that the public will continue to be protected, as spelled out in subsection (f) of SB 250 and that it will help keep Kansas public funds in Kansas--most municipal insurance policies are with out-of-state companies.

He responded to questions. A conflict over whether Missouri and Oklahoma have pooling regulations arose; Mr. Mosher has several letters from municipalities to indicate they do not. He believes a pool would be subject to the Open Meetings law. SB 250, page 2, lines 71-73 mandate an audit. The anticipated size of the pool the first year is about \$2 1/2 million, though the potential of those interested is in the \$4 million range. If a reinsurer pulled out in the middle of the year, they would seek other coverage--just as if commercially insured. He said it is superior to the present system; 200 pools have been operating and have proven that the concept can work.

A committee member made a point that 30 cities would be of greater value than most insurance companies in the event of a "worst case scenario" where the taxing authority had to be used and that, because of skyrocketing premiums, something has to be done. Another expressed concern that people know what they are getting into. Conferees said they know it is a new idea and that there must be an educational process.

Mr. Dick Brock explained that municipalities are not individually rated; thus, total experience determines the rate.

Mr. Chip Wheelan appeared in support of SB 250 as a representative

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of an organization of rural county commissioners. Twelve of the twenty-five counties he represents are very interested in pooling; all have had problems with rising insurance premiums. He said it was suggested that an insurance company be hired to administer the pool. (Att. 2.)

Mr. Jim Seaman, KFIRS, spoke in support of the bill. He is responsible for underwriting and getting business for pools. He said he was concerned that HB 2109 does not have a grandfather clause to allow present pooling arrangements to continue and said the law enforcement pool has a lot of coverage here. He gave his theory of the cause of the current insurance crisis and said one-third of the surplus available to the insurance industry is gone and must be recovered in order to pay claims. He said the liability pooling has been carefully thought out and that insurance department regulation is not necessary when there is taxing authority to cover the injured person. He believes the pooling arrangements will help take the surplus load off the insurance companies. He spoke highly of the Kansas Insurance Department and of the type of people in Kansas.

Ms. Bev Bradley, Kansas Association of Counties, gave testimony in support of the bill. (Att. 3.)

Mr. Larry Magill, IIAK, thanked the committee for its work on the bill. He said agent's commission was a non-issue as there is nothing in HB 2109 which would allow agent's commission. He suggested the pools would have a better chance of being successful with insurance department control. He stated that there would be some savings but that he was skeptical of the 75% figure and said that IBNR claims (incurred but not reported) would have to be allowed for. He said this is not the no-risk proposal we are being asked to accept. Also, risk management is a non-issue, according to Mr. Magill, as cities are getting these services now. Whether they take the advice is largely a pocketbook decision. He said a lot of operators will come into the state; this is not just dealing with KIRMA. He felt safety and soundness were the real issues, that an intermediary for injured third parties is vague, and that over a period of time, claims and premiums are more level. He suggested that if the savings are so great, the provisions of HB 2109 wouldn't prevent the pools from operating.

Hearing on: SB 116 - Insurance; brokers; liability coverage
SB 121 - Insurance; excess lines agents; liability requirement

Mr. Dick Brock gave testimony on these bills which would remove the requirement that brokers and excess lines agents maintain an errors and omissions policy for two years after termination of the license. This coverage is very difficult to obtain. They must still have the coverage while they have an active license. (Att. 4.)

Mr. Larry Magill, IIAK, spoke in support of both bills, saying they aren't a watering down of the E & O requirement, but a streamlining of the administration of it.

The meeting was adjourned at 5:55 p.m.

Date: 3-26-87

GUEST REGISTER
HOUSE
COMMITTEE ON INSURANCE

NAME	ORGANIZATION	ADDRESS	PHONE
James J. Seaman	Public & Internal Risk Services	Topeka	357-8212
Don Miller	League of Municipalities	Topeka	
Bob BRADLEY	KS Association of Counties	Topeka	233-2271
BERNIE HAYEN	LEAGUE OF KS MUNICIPALITIES	TOPEKA	354-9565
Bill Curtis	Ks. Assoc. of School Bds	Topeka	273-3600
R. L. NYE	CITY OF SALINA	SALINA	825-6467
LYLE H. DRESHER	CITY OF OTTAWA	4th & WALNUT OTTAWA	242-2190
E. H. ...	League of Municipalities		354-9565

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League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL / 112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: House Committee on Insurance
FROM: E.A. Mosher, Executive Director
DATE: March 26, 1987
SUBJECT: SB 250--Interlocal Cooperation; Public Risk Management

CONTENTS: Notes on SB 250
KIRMA Explanation Sheet
KIRMA Interlocal Agreement
Pool Profiles in This Region
Gallagher-Basset Clients

SB 250, introduced at the request of the League, does three things: (1) broadens and reorganizes the enumerated activities for which local units may cooperate; (2) requires an annual audit if a separate legal entity is created; and (3) specifies, in effect, that joint public risk management does not constitute insurance. Since there is no known controversy to the bill except for the risk-insurance aspects, the comments below are confined to this area.

NOTES ON SB 250

1. There is no general legal requirement that Kansas local governments carry insurance; even workers' compensation may be self-insured.
2. There are now only two options available for risk coverage for local governments: (1) go bare, with or without reserve funding, or (2) buy private insurance.
3. Local governments across this nation have been looking for a third option. We now have about 200 public risk management pools in the United States, including our neighboring states of Colorado, Oklahoma and Missouri. Cities, counties and school districts have formed these governmental pools since they were unsatisfied with the cost of private insurance, and the adequacy and availability of its coverage, and out of concern for risk management--for something more than simply loss reimbursement.
4. A group of Kansas cities has been working on this matter extensively, and retained special counsel with insurance experience and hired as a consultant one of the largest consultant firms in this area of the United States. The Arthur J. Gallagher & Co. services over 40 public pools.

House Insurance Committee

March 26, 1987

Att. 1

Presidents: John L. Carder, Mayor, Iola • Vice Presidents: Carl Dean Holmes, Mayor, Plains • Past Presidents: Ed Ellert, Mayor, Overland Park • Directors: Robert C. Brown, Commissioner, Wichita • Robert Creighton, Mayor, Atwood • Irene B. French, Mayor, Merriam • Frances J. Garcia, Commissioner, Hutchinson • Donald L. Hamilton, City Clerk/Administrator, Mankato • Paula McCreight, Mayor, Ness City • Jay P. Newton, Jr., City Manager, Newton • John E. Reardon, Mayor, Kansas City • David E. Retter, City Attorney, Concordia • Arthur E. Treece, Commissioner, Coffeyville • Deane P. Wiley, City Manager, Garden City • Douglas S. Wright, Mayor, Topeka • Executive Director: E.A. Mosher

5. A steering committee of city officials has met at least eight times on this matter, and determined last December to proceed with developing what is called the Kansas Intergovernmental Risk Management Agency, known as KIRMA.
6. There are about 30 cities, varying in size from Plains to Salina, which are interested in jointly creating this intergovernmental agency. We are convinced that these cities can save over \$1.5 million annually through the KIRMA program, obtain more comprehensive loss coverage than they now have, and do this on a safe and sound basis.
7. These local units are especially concerned with achieving an active risk management service program, and securing support and technical assistance in this endeavor--a program not available, in their judgment, through private insurance.
8. An intergovernmental risk management agency created under the interlocal cooperation act would not be an insurance company, in our view, nor would the agency sell insurance. Only those governmental units which create, own and manage the joint public agency would receive its benefits.
9. Substitute for House Bill 2109 would effectively make municipal group-funded pools a "mutual insurance company," in our view, notwithstanding provisions that say it doesn't. In substance, it attempts to make a public agency like KIRMA just another insurance company, and yet our whole purpose is to do something different than that provided by traditional insurance companies, traditional insurance rates, traditional insurance agents and traditional insurance company risk management programs. SB 250 provides another option.
10. Sub. HB 2109 even eliminates the authority we now have to establish public liability pools, except to form a pseudo insurance company--another reason why we prefer SB 250.
11. The basic approaches of SB 250 and Sub. HB 2109 are fundamentally different--SB 250 is an authorization for local determination; HB 2109 is largely a state limitation. SB 250 permits a true public risk management pool approach, as an option to traditional insurance generally available in the private market. In contrast, HB 2109 essentially makes any Kansas public pool a "mutual insurance company." SB 250 would facilitate risk management and claims prevention; HB 2109 focuses on the insurance aspects. We want the option and approach of SB 250.
12. If you are concerned about the general public and any adverse consequences from KIRMA, we call to your attention subsection (f) of SB 250, which does not take away any obligation or legal responsibility of a KIRMA member--the public is protected.
13. If you are concerned that KIRMA might not do something that its members want, or vice versa, we call to your attention that this legal entity would be created, owned and managed by the participating municipalities. We are confident that KIRMA can do as good or better job of public risk management than is now done through our existing system, now under state regulation.

K I R M A

THE KANSAS INTERGOVERNMENTAL RISK MANAGEMENT AGENCY

—A Protected Loss Coverage Program and Risk Management Service for Kansas Municipalities—

Why KIRMA? Following is a brief explanation, and some advantages and objections, developed by a Steering Committee selected by representatives of over 30 Kansas cities interested in developing KIRMA. While the following was prepared *as if KIRMA now exists*, it will not become a public agency unless legally formed by a sufficient number of municipalities to permit KIRMA to efficiently, effectively and safely secure its public purposes.

A Brief Explanation

In brief, the Kansas Intergovernmental Risk Management Agency (KIRMA) is an official public agency, established to provide risk management services and loss coverages for cities and other municipalities in Kansas. It is created, owned and managed by those municipalities which enter into an interlocal cooperation agreement forming the agency, as authorized by Kansas statutes. While KIRMA is sometimes referred to as a municipal insurance pool, and does provide comprehensive coverages for municipal losses, **the focus of KIRMA is on risk management.** Only those municipalities committed to maintaining an active local risk management program are invited to join KIRMA. It is a protected program — all potential losses not funded by the KIRMA joint risk management pool are covered by loss protection agreements with private insurance companies. All income and assets of KIRMA are public funds, dedicated to the exclusive benefit of its member municipalities.

Some Advantages of KIRMA

- Makes possible an active and effective local safety and risk reduction program
- Provides comprehensive loss coverage, specifically designed for Kansas municipalities, as determined by members
- Encourages the active involvement of its member municipalities, which create, own and operate KIRMA
- Guarantees future and continued availability of needed loss coverages
- Permits substantial savings in public funds compared to the costs of similar loss coverage now available
- Stabilizes long-term costs, based on the experiences of its Kansas members, not on national trends or insurance underwriter experience
- Provides members with control over administrative costs
- Secures computerized fiscal and claims information on a monthly basis
- Permits an aggressive claims defense strategy, with greater control over "courtesy" payments
- Permits the use of claims personnel trained in the processing of claims against governmental units
- Provides for the use of attorneys specializing in the defense of governmental liability and civil rights claims
- Permits the members to participate in the resolution of certain disputes that may arise, including claim settlements
- Permits continued use of governmental tort immunity to the extent provided by law
- Helps keep Kansas public funds in Kansas — most municipal insurance policies are with out-of-state companies

Some Objections to KIRMA

- An intergovernmental risk management program like KIRMA is new and unfamiliar in Kansas, though extensively used in other states — about 200 public pools now exist in the U.S.
- The KIRMA members must accept more risk management responsibility, and work harder to prevent losses
- Local insurance agents will not get a commission on policy sales
- Conflicts may occur over the adequacy of a member's safety and loss reduction program

K I R M A

**INTERLOCAL COOPERATION AGREEMENT
ESTABLISHING THE
KANSAS INTERGOVERNMENTAL RISK MANAGEMENT AGENCY**

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**Published by the
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February 27, 1987**

AUTHORITY TO EXECUTE AGREEMENT

This agreement is entered into pursuant to the provisions of K.S.A. 12-2901 et seq., as amended, entitled "Interlocal Cooperation Act."

WITNESSETH:

WHEREAS, the public interest requires and it is to the mutual interest of the parties hereto to join together to establish and operate a cooperative program of risk management and loss coverage for municipal operations and to accomplish the purposes hereinafter set forth; and

WHEREAS, each of the public entities which is a party to this Agreement has the legal power to individually establish and operate a program of risk management and loss coverage; and

WHEREAS, the Interlocal Cooperation Act permits any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state to be exercised and enjoyed jointly with any other public agency of this state; and

WHEREAS, each of the parties to this Agreement desires to join together with the other parties for the purpose of creating jointly self-insured reserves against losses and jointly purchasing or providing excess and other insurance and administrative services in connection with a cooperative program of risk management;

WHEREAS, the Interlocal Cooperation Act provides that a separate legal or administrative entity may be created and powers delegated thereto;

NOW, THEREFORE, for and in consideration of the mutual advantages to be derived therefrom and in consideration of the execution of this Agreement by the participating municipalities which are parties hereto, each of the parties hereto does agree as follows:

ARTICLE 1. CREATION OF AGENCY. (1) There is hereby created a legal public entity, constituting an interlocal governmental agency as provided by law, the full legal name of which shall be the Kansas Intergovernmental Risk Management Agency, and which may be referred to herein as the "Agency" or "KIRMA." The Agency shall have the power and duty to establish and operate a program of risk management services and loss coverage of benefit to its member municipalities. By this Agreement the parties hereto, through the Agency, agree to provide and pay the cost of the risk management services and coverage for risks and losses described herein, to make contributions to the Agency as provided by this Agreement, and to maintain active and effective local programs of risk management and loss prevention.

(2) In accordance with the provisions of the Interlocal Cooperation Act, this Agreement shall be submitted to the Attorney General to determine whether it is in proper form and compatible with the laws of this state, and to such other state officers and agencies as may have powers of control or regulation over the programs and services encompassed by this Agreement, as may be required by the Interlocal Cooperation Act or other laws of this state. Any municipality which enters into this Agreement shall file a copy of the Agreement with the Register of Deeds in the county in which the municipality is located, and with the Secretary of State, in accordance with the provisions of K.S.A. 12-2905.

(3) This Agreement shall take effect as provided by Article 18.

ARTICLE 2. PURPOSES. (1) The purpose of KIRMA is to provide a cooperative joint risk management pool and to assist members in the prevention and reduction of losses and injuries to municipal property and to persons or property which might result in claims being made against the members of KIRMA or their officers or employees.

(2) It is the intent of the members of KIRMA to create a public entity in perpetuity which will administer a cooperative joint risk management program and to use public funds contributed by the members to defend and indemnify, in accordance with this Agreement,

any member of KIRMA against stated liability or loss, to the limit of the financial resources of KIRMA.

(3) It is also the intent of the members to have KIRMA provide the continued stability and availability of needed risk coverages at reasonable and affordable costs to the public. The risk and loss coverages to be provided by KIRMA shall be broad and comprehensive, tailored to the needs of its member municipalities, to the extent permitted by law. All income and assets of KIRMA shall be at all times dedicated to the exclusive benefit of its members.

(4) It is specifically declared that it is not the intent of this Agreement to establish an insurance company, nor shall the benefits or obligations of this public agency constitute a policy of insurance coverage, nor shall this Agreement be construed to establish a workers' compensation pool under the provisions of K.S.A. Supp. 44-532. It is recognized that private, commercial insurance companies will continue to provide insurance policies for most Kansas municipalities, but that KIRMA members have a special interest in establishing a long-term and mutual program of public benefit to assure the stability of costs, the availability, adequacy and comprehensiveness of needed risk coverages, and the risk reduction, loss prevention, safety and management services that are uniquely available through a joint and cooperative public agency.

ARTICLE 3. LIMITATION ON MEMBERS' LIABILITY. Except to the extent of the financial contributions of members to KIRMA agreed to herein, no member municipality agrees or contracts herein to be held responsible for any claims in tort or contract made against any other member. The contracting parties intend in the creation of KIRMA to establish an agency for joint risk management and loss coverage only within the scope herein set out, and have not herein created as between or among members any relationship of partnership, suretyship, indemnification or responsibility for the debts of or claims against any other member. This agreement shall not relieve any member of any obligation or responsibility imposed upon it by law except to the extent that actual and timely performance thereof by KIRMA satisfies such obligation or responsibility.

ARTICLE 4. NON-WAIVER OF IMMUNITY. All moneys contained within the joint risk management pool authorized by this Agreement are public funds, including earned interest, derived from its members which are municipalities within the State of Kansas. This Agreement is not intended to nor does it waive, and shall not be construed as waiving, any immunity provided to the members or their officers or employees by any law.

ARTICLE 5. DEFINITIONS. As used in this Agreement, the following terms shall have the meaning hereinafter set out:

(1) Agency. The Kansas Intergovernmental Risk Management Agency established by this interlocal cooperation agreement, which may be referred to herein as "KIRMA."

(2) Aggregate Stop Loss Insurance. Insurance purchased by KIRMA to underwrite certain coverages up to a contracted amount for otherwise uninsured losses to be borne by the joint risk management pool, which in any one year aggregate to a pre-set maximum amount of coverage.

(3) Board. The Board of Directors of KIRMA.

(4) Catastrophe Excess Insurance. Insurance purchased by KIRMA providing certain coverage for losses over a prudent amount up to a pre-set maximum amount of coverage.

(5) Joint Risk Management Pool. A fund of public moneys established by KIRMA to self-insure certain risks jointly within a defined scope and to purchase catastrophe excess and/or aggregate stop loss insurance when deemed prudent, which may be hereinafter referred to as Risk Management Pool.

(6) KIRMA. The Kansas Intergovernmental Risk Management Agency established pursuant to this interlocal cooperation agreement, which may be referred to herein as the "Agency."

(7) Member. A municipality which enters into this interlocal cooperation agreement.

(8) Municipality. A local government in Kansas included within the term "public agency" as defined in K.S.A. 12-2903 and "municipality" as defined in K.S.A. 75-6102, provided such municipality is a member city or a research subscriber of the League of Kansas Municipalities.

(9) Risk Management. A program of identification of exposures to accidental loss, the evaluation, reduction, prevention or limitation of losses to municipal properties and from injuries to persons or property caused by the operations of municipalities and its officers and employees, and the prudent funding of these risks.

ARTICLE 6. KIRMA POWERS AND DUTIES. (1) The powers and duties of KIRMA to perform and accomplish the purposes set forth in this Agreement, within budgetary limits and the procedures set forth herein, shall be as follows:

(a) To establish and implement educational, technical assistance and other programs relating to risk management.

(b) To establish reasonable and necessary loss reduction and prevention procedures to be followed by the members.

(c) To provide risk management and claims adjustment or to contract for such services, including the defense and settlement of claims.

(d) To employ agents, employees and independent contractors.

(e) To purchase, sell, encumber and lease equipment, machinery and personal property.

(f) To invest funds as authorized by Kansas statutes.

(g) To create, collect funds for, and administer a joint risk management pool.

(h) To purchase catastrophe excess insurance and/or aggregate stop loss insurance to supplement the loss protection coverages provided by the joint risk management pool.

(i) To sue and be sued.

(j) To enter into contracts.

(k) To reimburse members of the Board of Directors for reasonable and necessary expenses.

(l) To purchase or otherwise provide fidelity bond coverage for the officers, directors and employees of KIRMA.

(m) To be subrogated to the rights and duties of its members, and to seek recovery in the name of its members from any person or entity responsible for claim, loss or payment, in accordance with the provisions of Article 15.

(n) To perform such other activities as are necessarily implied or required to carry out the purposes of KIRMA as specified in Article 2 or the specific powers enumerated in this Agreement.

(o) To incorporate as a not-for-profit corporation, or to create a public trust, should such be necessary to exercise the powers and duties set forth in this Article.

ARTICLE 7. PARTICIPATION. The membership of KIRMA shall be limited to municipalities which enter into this Interlocal Cooperation Agreement. New members shall be admitted only with the approval of the Board of Directors of KIRMA, subject to the payment of such sums and under such conditions as the Board shall in each case or from time-to-time establish. The existing members shall be notified in writing of each proposed new member. Ten percent of the members may request a membership meeting to consider admission of a new member. The request shall be in writing and must be received at the KIRMA offices no later than 15 days after mailing of the notice. If such request is timely received, a membership meeting shall be called and the new member shall be admitted only by a two-thirds vote of the members present and voting at the meeting.

ARTICLE 8. MEMBERS' POWERS AND MEETINGS. (1) The member municipalities, at an official meeting of their voting representatives, shall have the power to:

(a) Adopt Bylaws by a majority vote of the members present and voting at an official meeting, which shall provide for a Board of Directors to serve as the governing body of KIRMA, prescribing the powers and duties of such Board.

(b) Elect a Board of Directors by a majority vote of the members present and voting at the annual meeting, provided that the first election shall be held at the organizational meeting held to adopt the Bylaws.

(c) Amend the Bylaws by a two-thirds vote of the members present and voting at a meeting, provided that any amendment proposed by the Board of Directors may be adopted by a mail ballot. No amendment shall take effect sooner than 15 days after adoption of the amendment.

(d) Propose amendments to this Agreement, as provided in Article 19.

(e) Expel members by a two-thirds vote of the members present and voting at a meeting, as provided in Article 13, and admit new members as provided in Article 7.

(f) Remove any director of the Board of Directors by a two-thirds vote of the members present and voting at a meeting.

(2) Meetings of the members shall be held as follows:

(a) Members shall meet at least semi-annually at a time and place to be set by the Board, with notice mailed to each member at least 15 days in advance. The annual meeting shall be held at the time of and in conjunction with the annual conference of the League of Kansas Municipalities.

(b) Special meetings may be called by the Board of Directors, and shall be called by a petition of one-third of the members. Notice of special meetings shall be mailed to each member at least 15 days in advance. The Executive Director of the League of Kansas Municipalities is authorized to call the first organizational meeting.

(c) One-half of the total of all members shall constitute a quorum to do business.

(d) No absentee or proxy voting shall be allowed at a meeting.

(e) Each member shall be entitled to one vote on each issue.

ARTICLE 9. OBLIGATIONS OF MEMBERS. (1) The obligations of the member municipalities of KIRMA shall be as follows:

(a) To designate, by action of its governing body, a voting representative and alternate. A member's voting representative shall be an employee or officer of the member municipality, and may be changed from time-to-time upon written notice to KIRMA.

(b) To pay promptly all contributions or other payments to KIRMA at such times and in such amounts as shall be established by the Board of Directors pursuant to this Agreement.

(c) To allow KIRMA and its agents, officers and employees access to all facilities and records of the members, including but not limited to financial records, as required for the administration of KIRMA.

(d) To report to KIRMA as promptly as possible all incidents or occurrences, as may be defined by the Board of Directors, which could reasonably and possibly be expected to result in KIRMA being required to consider a claim against the municipality, its agents, officers or employees, or for other losses to municipal property, within the scope of loss coverages provided by KIRMA.

(e) To allow KIRMA and its representatives and attorneys to represent the member in the investigation, settlement and litigation of any claim made against the member, within the scope of coverages provided by KIRMA.

(f) To cooperate fully with KIRMA attorneys, claims adjusters and any other agent, employee or officer of KIRMA in activities relating to the purposes and powers of KIRMA.

(g) To follow the loss reduction and prevention procedures established by the Board.

(h) To adopt a risk management statement approved by the Board.

(i) To maintain a safety committee or safety coordinator.

(j) To report to KIRMA as promptly as possible the addition of new programs and facilities or the reduction or expansion of existing programs and facilities or other acts which could reasonably be expected to affect the member's accidental losses or potential risks.

(k) To provide KIRMA periodically, as requested, with information on the value of buildings and contents and other real and personal properties.

(l) To establish and maintain such reserve funds as may be required by law or by the Board to achieve the purposes of the Agreement.

ARTICLE 10. FINANCING; CONTRIBUTIONS. (1) This joint public agency shall be financed by contributions from its member municipalities, as herein prescribed. The Board of Directors shall adopt an annual budget, in the manner described in the Bylaws.

(2) The amount of the contributions paid by members shall be determined by the Board and may be based on net operating expenditures, number of employees or payroll, loss experience and other relevant criteria established by the Board. The Board may require all new members to submit such information as deemed advisable and may also require the submission of an annual renewal questionnaire by existing members.

(3) The Board may increase the contributions charged to any member to reflect increased risks resulting from a refusal to participate in or willful violation of safety or loss prevention programs or for other reasons established by the Board. Conversely, the Board may reduce the contributions for any member that faithfully participates in loss prevention and safety programs or for other reasons established by the Board.

(4) It is the intent of this Agency to fund appropriately for its annual and future obligations without the use of supplementary assessments. However, supplementary assessments may be made by the Board, but only if financial obligations should be incurred that were not otherwise anticipated or accounted for in the annual membership assessment fee and the remaining sum of the annual assessment is not sufficient to meet said additional obligations.

ARTICLE 11. LIABILITY OF BOARD, OFFICERS AND EMPLOYEES. The directors and officers of KIRMA shall use ordinary care and reasonable diligence in the exercise of their power, and in the performance of their duties hereunder; they shall not be liable for any mistake of judgment or other action made, taken or omitted by them in good faith; nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care. No director of the Board shall be liable for any action taken or omitted by any other director. KIRMA shall provide a bond or other security to guarantee the faithful performance of each director's, officer's and employee's duties hereunder. The joint risk management pool shall be used to defend and indemnify any director, officer or employee for actions taken by each such person in good faith within the scope of his or her authority for KIRMA. KIRMA may, as an alternative, purchase insurance providing similar coverage for such directors, officers and employees.

ARTICLE 12. WITHDRAWAL FROM MEMBERSHIP. Any member may withdraw from KIRMA after the member's initial one year term by giving notice in writing to the Board, no later than 90 days preceding the member's annual renewal date, of its desire to withdraw. The withdrawn member shall not be entitled to any reimbursement of contributions which have been paid or that shall become payable and shall continue to be obligated to make any payment for which any obligation arose prior to such withdrawal.

ARTICLE 13. EXPULSION OF MEMBERS. (1) By a two-thirds vote of the member representatives present and voting at a meeting, any member municipality may be expelled. Such expulsion, which shall take effect 60 days after such meeting, may be carried out for one or more of the following reasons:

- (a) Failure to make any payments due to KIRMA.
- (b) Failure to undertake or continue risk reduction, safety and loss prevention procedures adopted by KIRMA.
- (c) Failure to allow KIRMA access to all facilities and records of the member necessary for the proper administration of KIRMA.
- (d) Failure to fully cooperate with KIRMA attorneys, claims adjusters or other agents, employees or officers of KIRMA.
- (e) Failure to file required reports, including the reporting of a false claim or report, or to carry out any obligation of a member which impairs the ability of KIRMA to carry out its purposes or powers.

(2) No member municipality may be expelled except after written notice from the Board of the alleged failure along with a reasonable opportunity for not less than 30 days

following such notice to cure the alleged failure. The member may request a hearing before the member representatives before any final decision, which shall be held within 21 days after the expiration of the time to cure has passed. The Board shall present the case for expulsion to the members. The member affected may present its case. A decision by the membership to expel a member after notice and hearing and failure to cure the alleged defect shall be final and take effect 60 days after the decision to expel is approved by the members. After expulsion, the former member shall be liable for any unpaid contributions or other charges pro rata to the effective date of expulsion, and shall not be entitled to reimbursement of contributions that have been paid or that shall become payable in the future.

ARTICLE 14. RISK COVERAGES. (1) It is the intent of this Agreement that KIRMA shall provide coverage for all risks generally purchased or needed by the participating members, to the extent permitted by law, thus facilitating the development of a total public risk management system, securing comprehensiveness of risk coverage, eliminating duplication, permitting the pooling of varied risks at reduced over-all public costs, and facilitating the securing of excess or stop loss insurance resulting from such a comprehensive approach. However, the Board shall have authority to schedule the types and monetary levels of loss coverages provided by KIRMA and may also determine the levels of self-insurance or risk retention required of its member municipalities.

(2) As a general rule, the risk coverages provided by KIRMA shall be on a total package basis, to the extent permitted by law. The Board may determine whether any member has extraordinary risks not shared by other members and not financed by the standard annual contribution rates, and the Board may, at the option of the member, either increase the annual contribution of that member or exclude that extraordinary risk from loss coverage under KIRMA.

(3) The risk loss coverages provided by KIRMA shall, as a general rule, extend to and include the losses of subordinate subdivisions of the member municipality, such as a city recreation commission or library board which certifies its annual budget to the governing body of a city, for which the municipality itself may sustain a financial loss or be held liable, but the extent of such coverage, if any, shall be determined by the Board.

ARTICLE 15. SUBROGATION. In the event of the payment of any loss by KIRMA under this Agreement, KIRMA shall be subrogated to the extent of such payment to all the rights of the member against any person or other entity legally responsible for damages for such loss, and in such event the member agrees to render all reasonable assistance to effect recovery.

ARTICLE 16. CONTRACTUAL OBLIGATION. This Agreement, when approved by the proper authority of the member municipality, shall constitute an intergovernmental contract among those municipalities which become members of KIRMA. The terms of this contract may be enforced in court by KIRMA itself or by any of its members. The Agreement shall be governed by the laws of Kansas as to interpretation and performance. The consideration for the duties herewith imposed upon the members to take certain actions and to refrain from certain other actions shall be based upon the mutual promises and agreements of the members set forth herein. A certified copy of the ordinance or resolution of approval for each member joining KIRMA shall be attached to the original Agreement on file with KIRMA.

ARTICLE 17. SEVERABILITY. In the event that any article, provision, clause or other part of this Agreement should be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability with respect to other articles, provisions, clauses, applications or occurrences, and this Agreement is expressly declared to be severable.

ARTICLE 18. DATE AGREEMENT AND KIRMA EFFECTIVE. (1) This Agreement shall not take effect to create the Kansas Intergovernmental Risk Management Agency until such time as it has been executed by ten or more eligible municipalities. Those municipalities which participate in the original formation of KIRMA shall enter into the Agreement with a good faith intent of becoming an active and participating member, but shall not be obligated to pay any contributions to KIRMA until such time as it is legally established as a public entity, with Bylaws and a Board of Directors, and thereafter only by the payment of the contributions that may be required for continuing KIRMA membership by the Board of Directors. Any municipality which enters into this Agreement shall submit an executed copy thereof to the Attorney General and complete such other filings as may be required by law or by Article 1.

(2) Upon a determination by the Executive Director of the League of Kansas Municipalities that not less than ten municipalities have entered into this Agreement, said Executive Director shall call an organizational meeting of the member representatives of those municipalities which have entered into the Agreement. At this meeting, the voting representatives of the member municipalities shall adopt Bylaws as provided by Article 8, and may take such other actions as may be necessary to initiate the operation of KIRMA as a legal public entity, consistent with this Agreement.

(3) Upon a determination by the Board of Directors that a sufficient number of member municipalities, but not less than five, have created and joined the Agency and have made contributions or written commitment sufficient to fund the cost of securing the services and benefits to be provided under the Agreement, KIRMA shall become operational.

ARTICLE 19. TERM OF AGREEMENT; AMENDMENTS. This Agreement shall continue in effect until it is rescinded by mutual consent of the parties hereto or terminated in the manner provided herein. Any amendments to this Agreement shall require the approval of the member municipalities in the same manner as the original agreement.

ARTICLE 20. DURATION; TERMINATION. While it is the intent to establish KIRMA in perpetuity, this Agreement may be terminated at any time on or after one year from its effective date by a vote of two-thirds of the member representatives, in the manner to be provided in the Bylaws. Remaining assets, after the payments of all claims and expenses and the establishment of necessary reserves, shall be distributed pro rata among the existing members based on the contributions made to KIRMA.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by the execution of the signature page which shall be attached to and be a part of this Agreement and by the execution of one or more duplicate copies. An executed duplicate copy shall be retained in the offices of KIRMA.

Executed by the _____ of _____, Kansas, pursuant to Ordinance (Resolution) No. _____, said Ordinance (Resolution) having been passed on the _____ day of _____, 19__.

MAYOR or PRESIDING OFFICER

Attest:

CLERK

PROFILE OF SOME PUBLIC POOLS IN THIS REGION

The Illinois Municipal League Risk Management Association (IMLRMA) was organized in 1979 and currently offers coverage for worker's compensation, property and liability to 285 municipalities. Authority for the program comes from broad constitutional and statutory intergovernmental cooperation provisions. There is no regulatory oversight required by the Illinois Department of Insurance.

The Texas Municipal League (TML) insurance program was organized in 1974 and offers coverage for worker's compensation, property, liability and employee benefits. Currently, there are 760 municipalities participating in the worker's compensation program and over 400 members participating in the liability program. Authority for the program is through the Texas Interlocal Cooperation Act. The program is not subject to direct regulation by the state.

The Oklahoma Municipal League Municipal Assurance Group was organized in 1977 and currently offers coverage for worker's compensation, property, liability and employee benefits to more than 400 municipalities. Authority for the program is through the state's Interlocal Cooperation Act. There is no regulatory oversight required by any state agency.

The League of Minnesota Cities Insurance Trust (LMCIT) was organized in 1980 and offers coverage for worker's compensation, property, liability and employee benefits to more than 600 municipalities. Authority for the program is through statutes governing intergovernmental pools. There is no regulatory oversight required by the Minnesota State Insurance Commissioner.

The Colorado Intergovernmental Risk Sharing Agency (CIRSA) program was organized in 1982 and currently offers coverage for worker's compensation, property and liability to 94 municipalities. Authority for the program is through statutes governing intergovernmental pools. There is no regulatory oversight required by any state agency.

The Missouri Intergovernmental Risk Management Agency (MIRMA) program was organized in 1981 and currently offers coverage for worker's compensation, property and liability to 66 municipalities. Authority for the program is through state statutes governing interlocal cooperation and worker's compensation. There is no regulatory oversight required by any state agency.

PARTIAL LISTING OF PUBLIC POOL CLIENTS

Arthur J. Gallagher & Co. and
Gallagher-Bassett

Alabama School Board Insurance Trust
Alliance of Schools for Cooperative Insurance Program (ASCIP)-California
Arkansas Public Entities Insurance Cooperative (APIC)
Arkansas Public Entities Insurance Cooperative-WC Trust (APIC-WCT)
Arkansas School Boards Insurance Cooperative (ASBIC)
California Association of Recreation and Park Districts (CAPRI)
Camden County Joint Insurance Fund-New Jersey
Collective Liability Insurance Cooperative (CLIC)-Illinois
Colorado Counties Casualty & Property Pool (CAPP)
Colorado Hospital Association Trust for Workers' Compensation
Council of Large Public Housing Authorities-Massachusetts
County Workers' Compensation Pool-Colorado
Educational School Insurance Cooperative (ESIC)-Illinois
Florida Community Colleges Risk Management Consortium
Florida School Boards Insurance Trust (FSBIT)
Illinois Community College Risk Management Consortium
Illinois School Insurance Cooperative (ISIC)
Inland Empire Schools Insurance Authority-California
Intergovernmental Risk Management Agency (IRMA)-Illinois
Mercer County Joint Insurance Fund-New Jersey
Metropolitan Insurance Cooperative-Arkansas
Metro Risk Management Agency-Illinois
Mississippi Valley Intergovernmental Cooperative (MC VIC)-Illinois
Missouri Intergovernmental Risk Management Association (MIRMA)
Missouri United School Insurance Council (MUSIC)
Morris County Joint Insurance Fund-New Jersey
Municipal Insurance Cooperative Association (MICA)-Illinois
New Hampshire Property & Liability Insurance Trust Inc.
New Mexico Public School Insurance Authority
New Mexico Rural Electric
North Bay Schools Insurance Authority-California
North Carolina School Boards Insurance Trust
North East Florida Education Consortium
Panhandle Area Educational Cooperative Risk Management Consortium-Florida
Park District Risk Management Agency (PDRMA)-Illinois
Public Employer Risk Management Association (PERMA)-New York
Puget Sound Schools Risk Management Pool-Washington
School Employee Liability Fund-Illinois
South Town's Agency for Risk Management (STARM)-Illinois
Special Districts Insurance Authority-California
Southwest Agency for Risk Management (SWARM)-Illinois
Suburban Risk Management Agency (SRMA)-Illinois
Suburban School Insurance Cooperative Pool (SSCIP)-Illinois
Vermont League of Cities and Towns



Kansas Legislative Policy Group

301 Capitol Tower, 400 West Eighth, Topeka, Kansas 66603, 913-233-2227

TIMOTHY N. HAGEMANN, Executive Director

March 26, 1987

TESTIMONY
to
HOUSE INSURANCE COMMITTEE
Senate Bill 250

Mr. Chairman and members of the Committee, I am Chip Wheelen of Pete McGill and Associates. We represent the Kansas Legislative Policy Group which is an organization of rural county commissioners. We appear today in support of Senate Bill 250.

Some of our members are seriously considering the organization of a risk management program in accordance with the Interlocal Cooperation Act. Such a program would involve self insurance against claims that may arise under the Tort Claims Act.

We have decided that before proceeding with formal organization, we should await the outcome of certain issues being considered by the 1987 Legislature. We have already testified in support of HB 2023 which, if enacted, will amend the Tort Claims Act to clarify local government exposures to liability.

Another question that needs to be resolved is whether risk management cooperatives should be subject to insurance regulation. We believe that because of the inherent differences between governmental entities and private sector organizations, that regulation is unnecessary. Furthermore the provisions of the Interlocal Cooperation Act, particularly if SB 250 is enacted, stipulate requirements to assure that such risk management associations are organized and operated in a responsible manner.

We would point out that SB 250 does nothing more than clarify that two or more local units of government may exercise the same legal privileges that an individual local unit already can. For these reasons, we urge you to recommend SB 250 for passage. Thank you for your consideration.

Kansas Association of Counties

Serving Kansas Counties

212 S.W. Seventh Street, Topeka, Kansas 66603

Phone (913) 233-2271

March 26, 1987

To: Representative Dale Sprague
Members House Insurance Committee

From: Bev Bradley, Legislative Coordinator
Kansas Association of Counties

Re: SB-250 Interlocal agreements

Thank you Mr. Chairman and members of the committee. I am Bev Bradley, Legislative Coordinator, Kansas Association of Counties.

I appear today in support of SB-250. Since the inception of the Kansas Association of Counties, Intergovernmental and Interlocal Cooperation has been a high priority with counties. We believe this is still essential.

The Kansas Association of Counties supports SB-250.

Explanatory Memorandum for
Senate Bill 116 and Senate Bill 121
(Legislative Proposal No. 9 and No. 10)

Senate Bills No. 116 and 121 suggest a relaxation of requirements regarding the errors and omissions liability coverage required as a condition of obtaining a Kansas broker's license and a Kansas excess lines license respectively. Generally speaking, Kansas has 3 types of licenses residents can obtain which permit them to engage in insurance transactions in this state. The most prominent of these is a Kansas resident agent's license which enables a person to represent a specific insurance company admitted to do business in Kansas in the sale and servicing of insurance policies. Kansas resident agent licensees are not affected by either of these bills except that such licensee may also hold a broker's license and/or an excess lines license.

Unlike a resident agent's license where a person is authorized to represent a specific insurance company or companies, a broker's license permits a person to represent an insured or prospective insured in the negotiation of insurance contracts and may place such insurance with any insurance company admitted to do business in Kansas -- a broker need not be authorized to represent a specific insurer.

The third kind of license is an excess lines license sometimes referred to as an excess coverage or surplus lines license. This license permits a person to place insurance in a company that is not admitted to do business in Kansas in accordance with the laws governing such transactions.

Because persons transacting business pursuant to the authority granted by a brokers or excess lines license do not represent a specific insurance company and are not the legal agent of an insurance company, brokers and excess lines agents are required to have and maintain in force an errors and omissions policy meeting certain requirements since there may not be an insurance company that can be held responsible for the agent's actions.

Senate Bills No. 116 and 121 do not change this basic requirement. However, they would remove the requirement that coverage remain in effect for 2 years after termination of the broker's or excess lines license; that evidence of such coverage be provided the commissioner; that coverage be continuous; and, that any self-retention be covered by a faithful performance bond. Removal of the requirement for continuous coverage will, in turn, permit abrogation of a requirement that the Commissioner be provided 30 days advance notice of any cancellation.

The constriction in liability insurance markets has produced an environment where it is very difficult for brokers and excess lines agents to obtain errors and omissions coverage because of the unique Kansas requirements. This occurs at the same time insurance purchasers are in need of as many insurance market facilities as possible. As a result, a moderation of Kansas requirements seems to be in order even though doing so will reduce to some extent the public safeguards currently in place.