

MINUTES OF THE House COMMITTEE ON Insurance

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

8:30 a.m./~~p.m.~~ on April 10, 1987 in room 531-N of the Capitol.

All members were present except:

Rep. Brady, Rep. King, Rep. Littlejohn, Rep. Sawyer

Committee staff present:

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

Conferees appearing before the committee:

The meeting was called to order by the Chairman.

Hearing on: SB 407 - Municipalities, issuance of bonds, finances

Staff explained the provisions of the bill as it relates to insurance. (Att. 1.)

A balloon amendment prepared by the revisor's office was explained. (Att. 2.) Another piece of legislation has already amended K.S.A. 12-195; another attachment outlines changes needed to correspond with that legislation and to make a technical change at the suggestion of the Attorney General's office. (Att. 3.)

The following explanations were given in the committee discussion. New section (8) (d) is more encompassing than authorizing a pool to be formed. Cities/counties who participate in the Interlocal Agreement could come together and form a new corporation which would not be considered a municipality; it would have the power to receive money for bond proceeds or have bond power itself. A possible purpose would be for a local economic development project. Section 8 was introduced as SB 73 at the recommendation of an interim task force. Two municipalities can now go together to issue only housing bonds.

Rep. Gross made a motion to adopt the balloon amendments; Rep. Harper seconded the motion. The motion carried.

Rep. Brown made a motion to adopt the technical amendments suggested in Attachment 3; Rep. Cribbs seconded the motion. The motion carried.

Rep. Gross made a motion to recommend the bill favorably as amended; Rep. Bryant seconded the motion. The motion carried.

The meeting was adjourned at 9:05 a.m.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

ROOM 545-N -- STATEHOUSE

Phone 296-3181

April 8, 1987

TO: Representative Dale Sprague

Office No. 112-S

RE: Provisions of S.B. 407 Relating to Insurance

This green sheet is in response to your request for information regarding certain provisions of S.B. 407 that relate to insurance issues, some of which have been considered by the House Committee on Insurance during the 1987 Session.

S.B. 407, as amended by the Senate Committee on Economic Development, appears to contain several provisions that have implications on the municipal insurance-pooling issue and other insurance issues. New Section 8 which begins on line 499 is nearly identical to S.B. 251, originally a companion measure to S.B. 250. As you know, S.B. 250 was heard by the House Committee on Insurance. The section apparently would authorize municipalities to enter into Interlocal Cooperation Agreements to create separate legal entities empowered to conduct the joint or cooperative action provided for in the agreements. Such entities also would be empowered to make contracts and could sue and be sued as corporations.

The section further stipulates that "the provisions of the cash-basis law and budget laws shall not apply to any obligations incurred. . . by one or more public agencies in connection with the provision for the payment of claims against any public agency of this state caused by the negligent or wrongful act or omission of any of its employees under circumstances where any public agency would be liable for such claims. . ." The cash-basis law and budget laws would also not apply to obligations incurred by a public agency exercising powers under an Interlocal Cooperation agreement, to the extent that such obligations are incurred by the newly authorized separate legal entities.

The separate legal entities would also be empowered to issue bonds on behalf of public agencies that are or become parties to the agreement creating the entities for those purposes for which public agencies are authorized to issue bonds.

New Section 9 which begins on line 574 authorizes a municipality to issue general obligation bonds for the purpose of procuring liability insurance or providing for the payment of claims caused by the negligent or wrongful act or omission of any of its employees when such municipality would be liable.

Since the definition of "public agency" in K.S.A. 12-2903 is similar to the definition of "municipality" in K.S.A. 75-6102, it appears that municipalities would be able to enter into Interlocal Cooperation agreements to create a separate legal entity that could issue general obligation bonds on behalf of its members to provide for the payment of certain claims or for the purchase of liability insurance.

If creation of the separate legal entities through the Interlocal cooperation statutes was not deemed to fall under the constitutional authority of the Insurance Commissioner, it is possible that the agreements would not be subject to the approval of the Commissioner under K.S.A. 12-2906.

Dick Brock also said that since the separate legal entities could make contracts and sue and be sued, it is theoretically possible that one municipality could have to levy taxes to pay for a claim against the entity arising against another municipality, depending on how the contracts were structured.

If I can be of any further assistance, please let me know.

Chris W. Courtwright
Research Assistant

CWC/jsf

0491 thereto.

0492 (9) Bonds issued under the provisions of this section shall be
0493 exempt from any statutory limitation of bonded indebtedness
0494 imposed on such municipality.

0495 (10) The provisions of the cash basis and budget laws of the
0496 state shall not apply to any bonds issued under authority of this
0497 section in such a manner as to prevent the intention of this
0498 section from being made effective.

0499 New Sec. 10 8. (a) Any interlocal agreement entered into
0500 under the provisions of K.S.A. 12-2901 *et seq.*, and amendments
0501 thereto, may authorize the creation of a separate legal entity to
0502 conduct the joint or cooperative action provided for in the
0503 agreement. Such separate legal entity shall constitute a body
0504 corporate and politic, and shall have, in addition to any other
0505 powers reasonably necessary to the exercise of its function under
0506 the agreement, the following powers to:

0507 (1) Sue and be sued in its corporate name;

0508 (2) take and hold any property, real or personal, in fee simple
0509 or otherwise;

0510 (3) sell, lease, lend or otherwise transfer any property or
0511 interest in property owned by it;

0512 (4) make contracts; and

0513 (5) have and use a corporate seal.

0514 Any such separate legal entity shall not constitute a municipality
0515 within the meaning of K.S.A. 10-1101, and amendments thereto,
0516 or a political subdivision of the state under any provision of the
0517 law of this state establishing limits on bonded indebtedness. ~~The~~
0518 ~~provisions of the cash basis law and budget laws shall not apply~~
0519 to any obligations incurred by a public agency exercising powers
0520 under K.S.A. 12-2901 *et seq.*, and amendments thereto, to the
0521 extent such obligations are incurred by such public agency to a
0522 separate legal entity created pursuant to K.S.A. 12-2901 *et seq.*,
0523 and amendments thereto, by one or more public agencies in
0524 connection with the provision for the payment of claims against
0525 any public agency of this state caused by the negligent or
0526 wrongful act or omission of any of its employees under circum-
0527 stances where any public agency would be liable for such claims,

0565 (d) Any separate legal entity referred to in this section may
 0566 act by resolution, adopted by the affirmative vote of at least a
 0567 majority of its members. The membership of such separate legal
 0568 entity may be as provided in the agreement under which it was
 0569 created, provided that the governing body of each public agency
 0570 that is a party to such agreement is entitled to appoint at least one
 0571 member and any successor to such member. The term of any
 0572 member may be as provided in such agreement, but shall not be
 0573 less than two years.

0574 ~~New Sec. 4-9. Any municipality, as the term is defined in~~
 0575 ~~K.S.A. 75-6102 and amendments thereto, may issue general ob-~~
 0576 ~~ligation bonds for the purpose of paying the costs of procuring~~
 0577 ~~liability insurance or to provide for the payment of claims~~
 0578 ~~against such municipality caused by the negligent or wrongful~~
 0579 ~~act or omission of any of its employees under circumstances~~
 0580 ~~which such municipality would be liable for such claims.]~~

0581 Sec. ~~42~~ 10. K.S.A. 10-131, 40-1000 and ~~72-6761~~ and 10-1009
 0582 and K.S.A. 1986 Supp. 10-116a, 10-311, 10-427, 10-427a and
 0583 12-195 are hereby repealed.

0584 Sec. ~~43~~ 11. This act shall take effect and be in force from and
 0585 after its publication in the Kansas register.

(d) Unless otherwise authorized by law, no such separate legal entity shall operate or administer any arrangement or program under which any two or more municipalities, as defined in K.S.A. 75-6102, and amendments thereto, have agreed to pool their liabilities incurred as a result of negligent or wrongful act or omission of their employees or any other liabilities or losses incurred by such municipalities regardless of the cause thereof.

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Insurance

Recommends that Senate Bill No. 407 (As Amended by Senate Committee)

"AN ACT concerning municipalities; relating to the issuance of bonds thereby and to the finances thereof; amending K.S.A. 10-131 and 10-1009 and K.S.A. 1986 Supp. 10-116a, 10-311, 10-427, 10-427a and 12-195, and repealing the existing sections."

Be amended:

On page 5, in line 170, by striking all after the period; by striking all of lines 171 to 174, inclusive, and inserting the following: "The trust agreement shall pledge or assign the moneys and investments held in trust for the payment of the principal of the bonds being refunded and may pledge or assign the moneys and investments held in trust for the payment of the interest on the bonds being refunded and any redemption premium thereon. The trust agreement may pledge or assign any of the obligations or other moneys or investments, or interest accruing thereon, held in trust, which are in excess of the amount of the obligations and other moneys and investments held which is equal to the amount of the principal of the bonds to be refunded which comes due on the date for which the bonds may have been called for redemption or irrevocable instructions to call bonds for redemption have been given and any redemption premium thereon, for the payment of the principal of and interest on any or all of the refunding bonds and any redemption premium thereon, and shall contain provisions for protecting and enforcing the rights and remedies of the holders of the bonds.";

Also on page 5, by striking all of lines 187 to 191, inclusive;

On page 6, by striking all of lines 200 to 231, inclusive;

On page 7, by striking all of lines 232 to 268, inclusive;

On page 8, by striking all of lines 269 to 294, inclusive;

after line 294, by inserting a new section to read as follows:

"Sec. 7. K.S.A. 1986 Supp. 12-195, as amended by section 4 of 1987 House Bill No. 2080, is hereby amended to read as follows: 12-195. (a) Except as otherwise provided in subsections subsection (b) and--(e), no city or county shall commit any of the funds or proceeds derived from a retailers' sales tax as a guarantee for the payment of bonds issued by such city or county.

~~(b)--The board of county commissioners of a county which imposes a countywide retailers' sales tax may issue revenue bonds payable from the proceeds thereof for the purpose of paying the state's share of the cost of highway improvement for which a federal share is to be received.~~

~~(c)--The board of county commissioners of a county which imposes a countywide retailers' sales tax pursuant to paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may issue revenue bonds payable from the proceeds thereof for the purpose of financing the construction or remodeling of a county courthouse, jail or law enforcement center facility.~~

~~(d)--Any tax imposed pursuant to subsection (b) or (c) shall terminate whenever such revenue bonds and any interest thereon has been paid in full.~~

(b) Any city or county which is the recipient of funds derived from a local option sales tax pursuant to K.S.A. 12-187 et seq., and amendments thereto is hereby authorized to issue revenue bonds to provide for the payment of all or any portion of the cost of public facilities or improvements of such city or county for which such city or county is authorized pursuant to the constitution or laws of this state to issue general obligation bonds, excluding any facilities or improvements to be used for commercial or retail purposes.

(1) Such bonds shall be authorized by ordinance of the governing body of such city or resolution of the governing body of such county. The bonds may be issued as registered bonds or coupon bonds, payable to bearer, and, if coupon bonds, may be

registrable as to principal only or as to principal and interest, and may be made exchangeable for bonds of another denomination or in another form. The bonds may be in such form and denominations, may have such date or dates, may be stated to mature at such time or times, may bear interest payable at such times and at such rate or rates, may be payable at such places within or without the state, may be subject to such terms of redemption in advance of maturity at such prices, and may contain such terms and conditions, all as the city or county shall determine. The bonds shall have all the qualities of and shall be deemed to be negotiable instruments under the laws of the state of Kansas. The authorizing ordinance or resolution may contain any other terms, covenants and conditions that the city or county deems reasonable and desirable, including without limitation those pertaining to the maintenance of various funds and reserves, the nature and extent of any security for payment of the bonds, the custody and application of the proceeds of the bonds, the collection, transfer and disposition of sales tax revenues, the investing of bond proceeds or any funds pledged to the repayment of the bonds, and the rights, duties and obligations of the city or county and the owners of the bonds.

(2) The authorizing ordinance or resolution may provide for the execution of a trust indenture between the city or county and any financial institution within or without the state of Kansas. The trust indenture may contain any terms, covenants and conditions that are deemed desirable by the city or county.

(3) Any authorizing ordinance or resolution and trust indenture relating to the issuance of and security for the bonds shall constitute a contract between the city or county and the owners of the bonds, which contract, and all covenants, agreements and obligations therein, shall be promptly performed in strict compliance with the terms and provisions of such contract, and the covenants, agreements and obligations of the city or county may be enforced by mandamus or other appropriate proceeding at law or in equity. The pledge of revenues made by

the city or county shall be valid and binding from the time when such pledge is made and the revenues so pledged and thereafter received by the city or county shall immediately be subject to the lien of such pledge without such physical delivery thereof or further act on the part of the city or county, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the issuer, irrespective of whether such parties have notice thereof. Neither the authorizing ordinance or resolution nor any other instrument by which a pledge is created need be filed or recorded except in the records of the city or county.

(4) The revenue bonds may be sold in such manner, either at public or private sale, and upon such terms as the city or county shall determine to be reasonable, including sale at discount. It shall be plainly stated on the face of such bond that it has been issued under this act, that the bonds shall be special obligations of the city or county, payable solely and only from the revenues derived from the collection of such local sales taxes, and that, in no event, shall the bonds constitute an indebtedness of the state of Kansas or the city or county for which the faith and credit of the state of Kansas or city or county is pledged.

(5) Any bonds issued under the provisions of this section and the interest thereon, shall be exempt from all taxes levied by the state of Kansas, or any political or taxing subdivision thereof, except inheritance taxes.

(6) Bonds may be issued for the purpose of refunding, either at maturity or in advance of maturity, any bonds issued under this section. Such refunding bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may either be applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded, as shall be specified by the city or county and the authorizing ordinance or resolution or trust indenture securing such

refunding bonds. The authorizing ordinance or resolution or trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same security for their payment as provided for the bonds being refunded. Refunding bonds shall be sold and secured in accordance with the provisions of this act pertaining to the sale and security of the bonds.

(7) Bonds issued under the provisions of this act shall be eligible to secure the deposit of public funds under article 14 of chapter 9 of the Kansas Statutes Annotated and amendments thereto.

(8) Bonds issued under the provisions of this act shall be in addition to and not subject to any statutory limitation of bonded indebtedness imposed on such city or county."

On page 14, in line 517, by striking "The"; by striking all of lines 518 to 527, inclusive;

On page 15, by striking lines 528 and 529;

On page 16, after line 573, by inserting a new subsection to read as follows:

"(d) Unless otherwise authorized by law, no such separate legal entity shall operate or administer any arrangement or program under which any two or more municipalities, as defined in K.S.A. 75-6102, and amendments thereto, have agreed to pool their liabilities incurred as a result of negligent or wrongful act or omission of their employees or any other liabilities or losses incurred by such municipalities regardless of the cause thereof.";

Also on page 16, by striking all of lines 574 to 580, inclusive; in line 583, after "12-195" by inserting ", as amended by section 4 of 1987 House Bill No. 2080,"; by renumbering original sections 10 and 11 as sections 9 and 10, respectively;

In the title, in line 21, after "12-195" by inserting ", as amended by section 4 of 1987 House Bill No. 2080";

And the bill be passed as amended.

Chairperson