

Approved February 18, 1987
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~/p.m. on February 5, 1987 in room 519-S of the Capitol.

All members were present except:
Representatives Jenkins, Peterson and Vancrum, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Mary Jane Holt, Secretary

Conferees appearing before the committee:

Jim Kaup, League of Kansas Municipalities
Kathryn Peters, Assistant City Attorney, Kansas City
Tom Powell, Director of Law, City of Wichita
David Retter, City Attorney, Concordia
Leah Ann Anderson, County Clerk, McPherson County, Lindsborg
Mike Pepoon, Assistant County Counselor, Sedgwick County, Wichita

Hearing on H.B. 2023-Kansas Tort Claims Act Amendments

Jim Kaup testified there is a problem of availability and affordability of liability insurance for cities. He stated Kansas has a good tort claims act and H.B. 2023 is a good bill. The League proposed nine amendments to the Kansas Tort Claims Act which were adopted in whole or in part by the 1986 interim committee and are included in H.B. 2023. Seven additional amendments were not adopted, (see Attachment I). He explained the League is presently creating an organization, KIRMA, Kansas Inter-governmental Risk Management Agency. It will allow a number of cities, that qualify for membership, to get out of the private insurance market. It is estimated the participating cities will save 20% to 50% on premiums. Mr. Kaup explained the amendments to the Tort Claims Act in H.B. 2023. He stated he would have some more amendments he would submit at a later date.

Kathryn Peters informed the Committee that Bob Watson, City Attorney of Overland Park and she prepared the statment she handed out to the Committee. She testified there is a problem with punitive damages. Plaintiff's attorney telling juries that punitive damage awards will be paid by the cities, leads to increased likelihood that punitive damages will be assessed. To correct the problem she proposed the following section be included in Section 8, after existing subsection (c). "The possibility that a governmental entity may pay that part of a judgment that is for punitive or exemplary damages or attorney's fees or other costs related thereto shall not be disclosed in any trial in which it is alleged that an employee of that entity is liable for punitive or exemplary damages, and such disclosure shall be grounds for mistrial." She urged the Committee to pass H.B. 2023, (see Attachment II).

Tom Powell proposed an amendment in Section 3 (d), lines 78 and 79. He proposed eliminating the words "written personnel policy" and substituting "policy governing an employee's discharge of duties". He said he will prepare and amendment and give it to Jim Kaup to present to the Committee.

David Retter informed the Committee he would submit written testimony to the Committee at a later date. He addressed K.S.A. 12-105(a) and K.S.A. 12-105(b) which are claim procedures for Kansas municipalities, including cities, school districts, etc. Oftentimes written claims are not filed with the City Clerk, as required by statute, prior to filing of a suit in District Court. He suggested addressing this in amendments.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 519-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 5, 1987

Leah Ann Anderson testified in support of H.B. 2023. She said H.B. 2023 is an important step in the re-establishment of a appropriate balance between the needs of local governments and their constituents. She addressed three specific amendments in the bill, (see Attachment III).

Mike Pepoon stated Sedgwick County Commissioners support the League of Kansas Municipalities position on H.B. 2023. The county is in agreement with the city of Wichita's position on this bill.

The Chairman announced the hearing on H.B. 2023 will be continued Monday, February 9, 1987, at 3:30 p.m. in room 313-S.

The meeting was adjourned at 5:00 p.m.



League of Kansas Municipalities

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

TO: Chairman Bob Wunsch and Members of the House Judiciary Committee
FROM: Jim Kaup, League Attorney
RE: **HB 2023 — Amendments to the Kansas Tort Claims Act**
DATE: February 5, 1987

I. INTRODUCTION

Like the other conferees who have appeared before this Committee already this session, the League of Kansas Municipalities advises you that our membership has faced, and continues to face, a problem in the area of tort liability in Kansas. The dimensions of this problem are so severe as to threaten to erode the ability of some Kansas cities to provide basic services to their citizens.

We recognize that the current liability insurance "crisis" not only affects cities, but also reaches out to a wide cross-section of American society. Many groups -- from health care providers, small businesses and professionals, schools and others -- have felt the helplessness of expanding liability exposure and the shocking increase in insurance premiums. Often these two problems of liability exposure and insurance affordability or availability merge, creating a cause and effect scenario with drastic consequences. While cities may find some comfort in the fact that they are not alone in their struggle, local governments do not have the option open to many other parties suffering from the same ills. A city simply cannot pull up stakes and move out. Certain functions have to be carried out, and certain services have to be provided regardless of the risk which insurance companies attribute to the performance of those activities.

We would ask you to recognize, as our city officials do, that inevitably the increases in local budgetary expenditures for insurance protection or for larger liability awards come from the local tax base. That level of government which is least able to raise revenues is forced to foot the final bill for a state-wide, and nation-wide, problem which touches upon all aspects of society.

The League is well aware of the continuing controversy and finger-pointing between the liability insurance industry and advocates of our current tort system. We realize that when two influences bear on the same subject at the same time, each can tend to obscure the existence of the other. While our cities are first and foremost preoccupied with the affordability and unavailability of municipal liability insurance, we fear the dangers of this legislature overlooking the fact that this is a "crisis" arising out of both insurance industry practices and the evolution of this nation's tort law system. While we believe the hands of the insurance industry are far from clean, we also believe that a major cause of the problems we face involves tort liability awards that seem to accelerate daily in dollar terms and in terms of the nature of conduct for which cities can be held liable. Courts are

awarding damages for actions that were not admissible in a court only a few years ago. Right versus wrong and the balancing of the needs of society versus the dangers to a few do not appear to be as important in today's tort system as is the public's expectation that someone, preferably a deep pocket such as a municipality, should pay for every injury suffered.

Common sense tells us it is too simplistic to blame the insurance industry solely for rising insurance premiums. Many factors which are unique to the insurance industry had a great deal to do with the rising premiums which cities are now faced with. During the 1970's cities benefited from insurance company practices which encouraged selling of premiums at rates below what actuarial and experience data would indicate. High interest rates which premium payments would receive upon investment was the incentive for doing this for many companies. Thus, to sell more insurance and collect as much cash as possible, insurance companies slashed rates. Low reinsurance rates were readily available to insurance companies, providing them with affordable protection for major claims. Cities had no reason to object to these bargain premiums, which were the result of cash flow underwriting.

Today, in a grand example of the cyclical nature of the insurance industry, the practices of the 1970's have come back to haunt our cities. Interest rates have dropped to the point where insurance companies no longer reap the insurance profits from investments which they once did. The foreign reinsurance market has abandoned this nation after having been hit with too many large liability claims. Insurance company reserves are depleted as companies must still pay out on policies which were sold at a discount years ago. To remedy their financial situation companies have abruptly and dramatically raised premiums to reflect the "true" cost of risk. Some companies are refusing to underwrite certain types of policies, such as environmental pollution, because they are just too risky. Others limit the amount of risky policies they do write. It is also a fact of life that, true to the principle of insurance to spread risk over a pool, even cities with relatively few claims have faced increased premiums.

While the most recent data suggests that the insurance industry may be recovering, many uncertainties remain. Liability policy renewals for cities in 1986 show that the marketplace remains tight--as premiums climbed, retentions increased and limits decreased. In response, during 1986 cities in Kansas, and across the nation, became self-insured in greater numbers than ever before.

Recent results from a nationwide PRIMA (Public Risk and Insurance Management Association) survey indicated that in 1986 only 65.3% of the respondents reported that they were able to renew their policies. Of those being renewed, 90.6% experienced a rate increase ranging from 10% to 354%. In 1986, the average renewal increase exceeded 86%. By comparison, the average renewal increase in 1985 was a staggering 184%.

In 1986, 45% of those public agencies whose policies were renewed indicated that additional exclusions were added to their policies.

This national survey covered several public agencies although the majority of respondents were cities (56%).

In Kansas, cities are experiencing similar premium increases and reduced or non-existent coverage. For example, seven such cities contacted by the League during the week of February 2, 1987 reported the following increases:

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>Two Year Increase</u>
Manhattan	\$108,692	\$191,440	\$212,580	96%
Ottawa	107,076	228,300	327,864	306%
Hesston	41,026	52,951	57,303	40%
Dodge City	172,833	226,648	291,147	68%
Junction City	182,250	277,461	280,648	54%
Valley Center	26,886	43,273	43,500	62%
El Dorado	73,296	109,496	164,980	125%

The League recognizes that some parties challenge the assertion of the insurance industry that there has been a tort explosion in this country. Statistics on the number of cases filed and the average size of judgments awarded tort victims can be submitted to support that challenge. But whether the tort explosion is a myth, the insurance industry appears accurate in its claim that the types of liability for which cities can be sued has expanded. We recognize that the prospect of expanded liability and damages makes it almost impossible for insurers to predict losses with accuracy. Consequently, the mere threat of an increase in the types of lawsuits has made insurance companies avoid cities.

We also submit to you that the very existence of liability insurance over the years has hidden some of the abuses and excesses that have developed within our tort system. Insurance had shielded society from an accurate perception of the tremendous costs associated with tort law. We suggest to you that municipalities offer a sterling example of this societal-wide problem. As will be detailed later, the manifestations of these problems range from the annoying but relatively minor cancellation of fireworks displays clear to the other end of the continuum -- liability for the way in which basic governmental services, such as police and fire protection, are provided to individual members of the public. For example, in 1986 we read with alarm the Kansas Supreme Court decision of Fudge v. City of Kansas City, a decision which broke new ground for municipal tort liability -- cities can be held liable for what someone else did because the city failed to prevent something from happening.

Overall, this is a confusing situation for our member cities. We recognize that the figures show that the insurance industry is making healthy profits again -- yet our premiums continue to rise and the industry continues to press hard for civil justice reforms. We are exposed to more and more potential liability risks -- such as was recently created by the Fudge decision -- yet the claims record of Kansas cities remain exceptionally low. Because our obligation is to our citizens living in cities in Kansas -- and because those citizens are suffering as taxpayers and also as users (or former users) of municipal services and programs which are being curtailed or eliminated out of liability fears -- the League will ask the 1987 Legislature to take action on both tort law reform and insurance regulatory reform. More immediately we ask this Committee to approve HB 2023 and the League's amendments to that bill offered today.

II. LEAGUE RESPONSE TO THE "LIABILITY INSURANCE CRISIS"

In response to the insurance cost and availability problems Kansas cities were facing, in 1986 the League proceeded on several fronts -- a risk management consultant was hired to study the dimensions of the problem in Kansas; a Task Force of city officials was created to identify possible shortcomings in Kansas tort law; and the League's 1986 Convention

Delegates adopted a formal policy statement on tort reform which guides us in our testimony and proposals here today. Each of these initiatives is discussed, in turn, below.

A. Insurance Market Analysis.

In January 1986 the League retained a risk management consultant to prepare an insurance market analysis to determine whether the private insurance market was capable of meeting Kansas municipal insurance needs. These consultants surveyed 500 of the 627 Kansas municipalities. 160 responded to the survey, with those cities having a population representing 40% of Kansas' municipal population. Following is a listing of the major findings of that survey:

1. Municipal insurance availability is not as severe a problem in Kansas as it is in many other states. Only 15% of the respondents indicated difficulty in obtaining insurance during the most recent renewal period.
2. There were no wholesale policy cancellations during the time period surveyed. Most of the cancellations that did occur were for general liability and public official's liability coverage.
3. Liability premiums increased dramatically from 1984-85 to 1985-86. The increase over this period was 115%. The increase from 1983-84 to 1984-85 was 50%. As most policy years run from April 1 - April 1, 1984-85 to 1986-87 premium increases were not available at the time of the survey.
4. The dramatic increases in premiums which did occur cannot be attributed to sharp increases in policy exposures.
5. 60% of the respondents have never had a claim filed against the city or its officers or employees since the time the Kansas Tort Claims Act took effect on July 1, 1979.
6. 72% of the respondents (118 of 165) had never had a claim paid under the lifetime of the Kansas Tort Claims Act. Only 9% of the respondents (14) have paid more than five claims since July 1, 1979.
7. **"...Kansas municipalities have not experienced a frequency problem on tort liability claims. Therefore the very sharp increases in premiums charged by the insurers over the last two years is probably not caused by actual Kansas municipal loss experience, but rather by the overall poor loss ratios experienced by the insurance industry and perhaps by the poor loss experience experienced by public entities in other states."**
8. **"...Conditions may improve for liability coverages sometime late in 1987. Even when conditions start to improve...conditions will probably never return to normal. Generally speaking public entities will be forced to take more aggressive risks retention postures to focus more on risk assessment and risk control... (T)he commercial insurance market will not be a principal source of risk financing for the most difficult risk exposures, including public official's liability, law enforcement liability and environmental impairment liability."**

B. League Task Force on Municipal Tort Liability.

The Task Force on Municipal Tort Liability was created by action of the Governing Body of the League of Kansas Municipalities in July 1986. The Task Force is comprised of the six members of the League's standing Committee on Municipal Legal Defense and five members appointed by the League president.

The Task Force was created for the following purposes:

1. To identify the causes and affects, and extent, of the current tort liability and insurance "crisis" faced by local governments in Kansas.
2. To analyze the Kansas Tort Claims Act and state insurance laws for those amendments and revisions necessary to reach an appropriate level of immunity for local governments from tort liability which will balance the needs of harmed individuals with the public's need for governmental programs and services.
3. To assist the League in developing policy positions and legislative proposals regarding tort law reform and insurance regulatory efforts for the 1987 legislative session.
4. To assist the League staff in preparing proposed amendments for consideration by the Special Committee on Tort Reform and Insurance Liability during the Summer and Fall of 1986, and to follow through on those recommendations during the 1987 legislative session.

The membership of the Task Force is as follows:

David Retter, Chairman, City Attorney, Concordia
Dale Bell, City Attorney, Emporia
Greg A. Bengston, City Attorney, Salina
Robert Evans, City Manager, Bonner Springs
Irene B. French, Mayor, Merriam
Tom Glinstra, City Attorney, Olathe
Ron Miller, City Administrator, Topeka
David R. Platt, City Attorney, Junction City
Tom Powell, Director of Law, Wichita
Robert G. Suelter, City Attorney, Great Bend
Robert Watson, City Attorney, Overland Park

The Task Force held a number of meetings during the Summer and Fall of 1986 to prepare proposals for the Special Committee on Tort reform and Liability Insurance. The Task Force also met following the Interim Committee's adoption of HB 2023 to discuss how well that bill addresses the need for tort law reform.

Task Force Findings. As the basis for its proposals for tort law amendments, the Task Force reached several conclusions as to the nature of the tort liability "crisis" facing Kansas municipalities:

1. Kansas municipalities benefit from a Tort Claims Act and insurance claims history that are favorable when compared to many other states.

2. While the liability situation could be worse, nonetheless many municipalities have experienced hardships in finding, and financing, municipal liability insurance coverage.
3. There is a growing concern that Kansas courts are gradually eroding the exceptions to tort liability created by the legislature in 1979 when the Kansas Tort Claims Act (KTCA) was enacted. Cases such as Schmeck v. City of Shawnee and Fudge v. City of Kansas City are graphic examples of that erosion.
4. The combination of (a) chaos in the private insurance industry, (b) court erosion of tort immunity, and (c) the efforts by many cities to self-insurance or to form pooling arrangements, justifies a rethinking of the scope and extent of tort liability that municipalities should have. While the Kansas Tort Claims Act may have once adequately balanced the competing private and public interests in having limited tort liability immunity for municipalities, such a public policy may not be the best public policy today.

Task Force Proposals. Having arrived at the above findings, and tailored proposals for amendments to the KTCA to those findings, the Task Force submitted a draft bill which would have made some 16 changes to the KTCA. Nine of those proposals were endorsed, in whole or in part, by the Interim Committee.

While these KTCA amendments do not in every instance parallel the language suggested to the Interim Committee by the Task Force, it is significant that every amendment has its origin with the Task Force, and none of these amendments conflicts with the proposals of the Task Force. Thus, these amendments are all positive from the League's perspective and all serve to either limit or more clearly define municipal tort liability or to procedurally improve upon the KTCA.

Major amendments to the KTCA are set out below in an abbreviated form, and a side-by-side comparison of the HB 2023 language with the Task Force's proposed language is offered. The League will offer more detailed testimony in support of amendments 1-9 below. Also, in the instances of amendments 1, 2 and 9, this Committee will be asked to consider further amendments to HB 2023.

<u>HB 2023</u>	<u>League Task Force Proposal</u>
1. Blanket immunity for all governing body members acting within scope of their office.	1. Substantially the same.
2. Provide a new exception from liability for adoption or enforcement or failure to adopt or enforce "any written personnel policy which protects persons' health or safety unless a duty of care, independent of such policy, guideline or procedure, is owed	2. <u>May</u> be substantially the same, but Task Force's proposal would have arguably broader scope so as to encompass any administration policy, guideline or procedure and thereby fully respond to the <u>Fudge v.</u>

<u>HB 2023</u>	<u>League Task Force Proposal</u>
to the specific individual involved."	<u>Kansas City decision.</u>
3. Expand the application of the discretionary function exception to liability.	3. Same.
4. Provide a new exception for claims resulting from community service work.	4. Same.
5. Authorize municipality to compensate employees for legal expenses of defending a claim for punitive damages.	5. Same.
6. Clarifies that participation in a pooling arrangement does not automatically waive the \$500,000 cap on liability.	6. Same.
7. Clarifies that pooling arrangements are not subject to state insurance regulatory law.	7. Same.
8. Authorizes municipalities to pay KTCA judgments via structured settlements.	8. Same.
9. Authorizes municipalities to compensate employees for legal expenses of defending a claim for punitive damages in a suit brought under the Federal Civil Rights Act and the actual judgment for such punitive damages provided certain criteria are met.	9. Substantially the same.

In addition to the above nine proposed amendments which had their origins with the Task Force, seven additional amendments were submitted to the Interim Committee. While each of the following proposals had some support from Interim Committee members, none found their way into HB 2023. Item 2 below will be the subject of a new proposed amendment to HB 2023. Items 4 and 5 are the subject of two bills introduced by the Senate Local Government Committee.

1. Modifying the KTCA from "open-ended" to "closed-ended" liability.

2. Requiring written notice of claims as a prerequisite to bringing a KTCA lawsuit.
3. Prohibiting any punitive damage awards under the KTCA.
4. Authorizing the use of temporary notes to pay KTCA judgments and settlements.
5. Clarifying that no-fund warrants issued to pay KTCA judgments or settlements do not require the prior approval of the State Board of Tax Appeals.
6. Creating a new exception from tort liability for "quasi-judicial" functions.
7. Creating an exception from liability for all traffic signing and marking.

C. League 1986-1987 Policy Statement on Tort Reform

L-2. Governmental Immunity; Insurance.

(a) **Tort Claims Act.** In recent years cities have suffered from the effects of a steady expansion of exposure to tort liability, accompanied by the cancellation of insurance for some cities and dramatic increases in premiums and reduced coverages for others. Because of this expansion of tort liability, primarily by the courts, coupled with the uncertain future of present-day exceptions from liability, we witness the threatened disruption of the balance thought to have been achieved in 1979 when the Kansas Tort Claims Act was enacted--a balance between the legitimate needs of individuals harmed by wrongful conduct and the public's need for an appropriate level of immunity for cities from tort liability, which makes possible the continued provision of governmental programs and services. In an effort to restore this balance, we support the recommendations of the League's Task Force on Tort Reform to amend the Kansas Tort Claims Act, as follows:

- (1) change the focus of the Act from one of "open-ended" liability where liability is the rule and immunity the exception, to one of "closed-ended" liability where immunity for actions of municipalities is the rule and liability the exception;
- (2) require written notice of claims by persons alleging injury from acts of municipalities as a jurisdictional prerequisite to commencing a lawsuit under the Act;
- (3) prohibit the awarding of punitive damages against the officers or employees of municipalities;
- (4) establish blanket tort immunity for municipal governing body members;
- (5) clarify that no duty of care arises from the local adoption or implementation of policies or guidelines, and that, accordingly, no liability arises when an employee fails to follow such policies or guidelines;
- (6) authorize the payment of tort claims judgments and settlements by structured settlements;
- (7) clarify the authority of cities to issue no-fund warrants and temporary notes to pay tort claims judgments and settlements; and
- (8) create a clear distinction between "insurance purchased" by cities for tort liability coverage as opposed to participation in pooling arrangements, and to further clarify that pooling arrangements are not insurance companies subject to state laws regulating such companies.

(b) **Insurance.** We further support legislation intended to correct flaws in the state's insurance regulatory laws which have exposed municipalities to the "feast or famine" cycle

of the commercial insurance industry. We support legislation to (a) require insurance companies to return excess profits earned from premiums to policy holders; (b) provide the insurance commissioner greater authority to regulate insurance rating plans and to limit premium credits and debits in the rating plans; and (c) establish an assigned risk program for municipalities.



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February 5, 1987

House Judiciary Committee
Bob Wunsch, Chairman
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Re: H.B. No. 2023, Relating to Tort Reform

Ladies and Gentlemen:

My comments on H.B. 2023 deal with the issue of punitive damages. For the Committee's ease of reference, I present this letter outlining my comments.

1. There is a difference between the availability of punitive damages under the Kansas Tort Claims Act for state law torts, and under the United States Constitution and federal civil rights statutes for civil rights violations.

a. KTCA: An official or employee acting within the scope of employment can only be held liable for punitive damages if the employee's act or omission was because of actual fraud or actual malice. K.S.A. 75-6105; H.B. 2023, Sec. 4.

b. Federal Civil Rights: An official or employee acting within the scope of employee can be held liable for punitive damages not only when the employee's act or omission was because of evil motive or intent, but also when the employee's act or omission constituted "reckless or callous indifference to the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 56 (1982).

2. The difference in standards means that local governmental officials and employees in Kansas can be, and have been, assessed punitive damages for actions and omissions where there was no actual fraud, actual malice, or any other kind of evil motive or intent.

a. Experience of Board of Public Utilities: \$80,000 in punitive damages assessed against several Board elected members and employees for a major employee reorganization when they had only voted to implement the reorganization

b. Experience of Kansas City, Kansas: \$70,000 in punitive damages assessed against police officers and police chief for failure to follow extradition procedure for individual arrested in sting operation, held for 2-1/2 hours, charges dismissed after individual showed that he had not been the person with the same name and similar driver's license number passing the bad checks. Officers had only acted on information and warrants supplied by the County District Attorney's office, under a plan approved by the D.A. and Police Chief, and there was no evidence that any of the defendants had acted with actual fraud or malice.

c. Neither case involved charges of race or sex discrimination or similar civil rights violation, but instead had to do with procedural problems.

d. If either action had been brought under the KTCA, punitive damages could not have been assessed. However, the federal judges are allowing punitive damages against individuals any time there is any civil rights violation, whether or not there is evidence the individual acted with actual fraud, actual malice, or evil intent. The judges say that any time any kind of civil rights violation occurs, it establishes reckless or callous disregard for federally protected rights, and that punitive damages can be assessed.

3. The cities support H.B. 2023, which has been drafted to address the problem of different standards for assessing punitive damages in state tort and federal civil rights cases.

a. The bill allows cities to pay the costs of defending an individual against punitive damages claims in either case. K.S.A. 75-6105(f); H.B. 2023, Sec. 4(f).

b. The bill allows cities to pay punitive damages awards in federal civil rights cases where there was no actual fraud or actual malice. K.S.A. 75-6116(c); H.B. 2023, Sec. 8(c).

c. Both protections are necessary. Governmental entities will not be required to pay punitive damages in instances where there was actual fraud, actual malice, or evil intent, but will have discretion to relieve their officials and employees of punitive damage awards where the

conduct was not so motivated.


4. There is one other problem with punitive damages that has just become apparent: plaintiffs' attorneys telling juries that punitive damage awards will be paid by the cities, leading to increased likelihood that punitive damages will be assessed.

a. To correct this problem, we propose one additional section to be included in H.B. 2023, in Section 8 after existing subsection (c), as follows:

"The possibility that a governmental entity may pay that part of a judgment that is for punitive or exemplary damages or attorney's fees or other costs related thereto shall not be disclosed in any trial in which it is alleged that an employee of that entity is liable for punitive or exemplary damages, and such disclosure shall be grounds for mistrial."

In conclusion, the City of Kansas City, Kansas, joins the League of Kansas Municipalities and other Kansas cities in urging the passage of H.B. 2023.

Sincerely,


Kathryn Pruessner Peters
Assistant City Attorney

KPP:djj



McPHERSON COUNTY

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE ON HOUSE BILL NO. 2023

BY

LEAH ANN ANDERSON, COUNTY CLERK
ON BEHALF OF THE
BOARD OF MCPHERSON COUNTY COMMISSIONERS
FEBRUARY 5, 1987

The 1979 enactment of the Kansas Tort Claims Act was intended to stabilize the conflict between the provision of governmental immunity and non-immunity. This comprehensive measure was to provide a suitable level of immunity for local governments, while recognizing the rights of individuals harmed by wrongful acts of governments or their employees.

However, the current environment seems to substantiate an expansion of local government's tort liability exposure. When this factor is coupled with the current difficulties in obtaining effective general liability insurance coverage, it results in an unsettled and non-productive environment for the continued provision of local governmental programs and services.

The Board of McPherson County Commissioners supports the provisions of House Bill No. 2023, as an important step in the re-establishment of an appropriate balance between the needs of local governments and their constituents. While the Board's support encompasses all the suggested amendments contained in the bill's provisions, I would like to direct my comments today, to three specific amendments.

First, the suggested changes outlined in lines 53 to 66 also address a specific area of concern to McPherson County. This suggested amendment would not hold a member of the governing body liable for damages caused by the negligent or wrongful act or omission by the member or the governing body. While this change would not affect the liability of the local government for damages caused by a negligent or wrongful act or omission of its governing body or a member, it would still afford the individual member appropriate protection.

Attachment III
House Judiciary 2/5/87

MCPHERSON COUNTY COMMISSIONERS

McPherson County
Courthouse

John C. Magnuson, Chairman
District 1

John W. Casebeer
District 2

Tony Wedel
District 3

P.O. Box 676
Phone No. 316-241-8149

Immunity for elected officials will help to encourage further participation of qualified individuals in local government. The protection provided by this suggested provision will mitigate any harmful effects that the expansion of tort liability has had on the pool of qualified candidates for local government positions. Without dedicated elected officials in local government, the provision of governmental services and program will be less effective and more costly.

Secondly, the expansion of K.S.A. 75-6104 (e) regulating the degree of discretion involved in performing a function or duty appears to provide further clarification to the Act's original intention to provide sufficient immunity from tort liability, to allow a "government to govern". Local governments should be able to support the exercise of duties of an office, where factors of judgement, choice, selection and discretion are required, without concern for claims of damage. This suggested change is appropriate. Local governments must be able to delegate discretionary functions and duties to its officers and employees with the knowledge that the law supports that effort. The revision to this enumerated exception will enhance the environment, in which local governments must operate.

Finally, the addition of lines 151 to 153, ..."s) any claim for damages arising from the performance of community service work, other than damages arising from the operation of a motor vehicle," to K.S.A. 75-6104, as an enumerated exception, which acts to immunize the local governmental entity and its employees from liability, will insure the continuation of McPherson County's community service program. The concept which guides the County's community service sentencing alternative is the return of work to the community, for the harm caused by the actions of an individual sentenced for a crime. This alternative has also reduced the pressure on and the costs of running the county's jail facility, while the community directly benefits from the work contributed by these individuals.

The County recently evaluated its continued participation in the program based on the liability exposures involved in its operation. Given the success of the program, it is unfortunate that the Board has had to consider its termination solely on the basis that it could ill-afford this exposure. House Bill 2023 will serve to address this concern in an appropriate manner, thus, insuring McPherson County's continued participation in an effective sentencing alternative.

I would like to conclude this testimony, by restating the support of the Board of McPherson County Commissioners for the adoption of the provisions of House Bill No. 2023. It is important that local and state governments work together to develop an environment that encourages the continued provision of governmental programs and services.