Approved March 6, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Senator Don Montgomery at
Chairperson

9:11 a.m./~~p.m.~~ on March 4, 1987 in room 531-N of the Capitol.

All members were present except: Senator: Gaines

Committee staff present: Mike Heim, Arden Ensley and Lila McClaflin

Conferees appearing before the committee:

Ernie Mosher, League of Kansas Muncipalities, Topeka, Ks.
Rufus Nye, City Manager, Salina, Ks.
Mac Manning, City Administrator, Valley Center, Ks.
Don Stone, City Manager, Junction City, Ks.
Chip Wheelen, Kansas Legislative Policy Group
John Blythe, Kansas Farm Bureau
Larry MaGill, Independent Insurance Agents
Jack Ranson, Wichita, KS.

S.B. 250 - Concerning Municipalities; relating to interlocal agreements.

The Chairman stated the League had asked that this bill be introduced and he called on Mr. Mosher to explain the bill.

Ernie Mosher reviewed the bill. He presented written testimony with a brief explanation of the Kansas Intergovernmental Risk Management Agency. (KIRMA), is a protected loss coverage program and risk management service for Kansas municipalities. His testimony list 14 advantages of KIRMA and 4 objections. A copy of "Authority to Execute Agreement", is also attached. (ATTACHMENT I)

Rufus Nye explained the options cities have today concerning their insurance coverage. The pooling available through KIRMA would give them an alternative, it would allow cities to decide what is best for them. It would stabilize the long term cost and would be much easier for a city to predict their cost. KIRMA gives cities the opportunity to save money.

Mac Manning urged the Committee to look favorably on S.B. ~~254~~ 250. It is an alternative method of providing a reliable risk management system. The goal is to provide for the city a complete package of risk coverage at a predictable and stable annual cost. (ATTACHMENT II)

Don Stone estimated they could save $100,000 a year by having such a system as KIRMA. There is a need for cities to be allowed to form such groups.

John Blythe stated they are not opposed to self-insurance as long as those groups or companies are subject to the same rules as all other groups or companies offering insurance coverage. (ATTACHMENT III)

Larry MaGill stated if the Legislature feels a compelling need to authorize such group self-insurance pools, they have attached a proposal they feel would provide a workable framework for them. (ATTACHMENT IV)

Chip Wheelan appeared in support of S.B. 250 and S.B. 251. He suggested something that needed to be considered was whether risk management cooperatives should be subject to insurance regulations. (ATTACHMENT V)

Jack Ranson, Ranson and Co, testified in support of S.B. 251. It would give local governments the authority to band together and form these inter-local authorities. In answered to a question, he stated the basic responsibility would still rest with the cities and inturn it's citizens.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT,

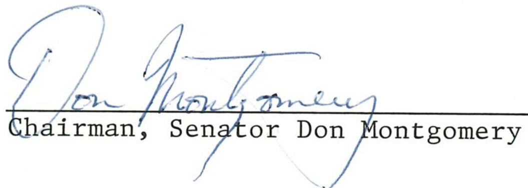
room 531-N, Statehouse, at 9:11 a.m./p.m. on March 4, 1987

Ernie Mosher stated they do not think they are an insurance company, they are a public agency, created only to manage a governmental agency. They won't be selling any insurance to anybody else. It will only be a group of cities entering into an inter-governmental agreement to create a legal governmental public agency, for the purpose of providing this type of service at a substantical savings. It's a governmental agencies, no one else will be involved in it. It's a different kind of concept.

A member of the Committee had a concern as to who would be responsible for making sure these risk management agencies were actuarially sound. The State has had some problems with local pension plans being keep actuarially sound, and in some cases the State had to step in and make sure they were sound.

Senator Daniels moved to adopt the minutes of the March 3, 1987, meeting. The motion was seconded by Senator Langworthy. The motion carried.

The meeting adjourned at 10:02 a.m., next meeting will be on March 5, 1987.



Chairman, Senator Don Montgomery

Date: March 4, 1987

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Bill Curtis	Ks. Assoc. of School Bds.	Topeka
Norm Wilks	Ks Assn of School Bds.	Topeka
Pam Sjoholm	Kansas Insurance Dept	Topeka
Chip Wheelen	Legis. Policy Group	Topeka
Marla Howard	City of Wichita	Wichita
Johnette Shepek	Marion High School	Marion
Jillayne Dannenfelser	Marion High	Florence
Michael Padgett	Marion High	Florence
Joe L. Norton	Gaar & Bell	Wichita
Jack Ranson	Ranson & Company, Inc.	Wichita
Susan M. Henry	Ranson & Company	Wichita
Julie Baer	City of Leawood	9617 Lee Blvd.
Don Gardner	The Woodsmall Cos.	K.C.
M. R. Coryell, Jr.	Ind Ins. Agts of Ks.	Topeka
Larry Magill	Indep. Ins. Agents	Topeka
Bev Bradley	KS Association of Counties	Topeka
Ron Todd	Ins. Dept.	Topeka

KIRMA

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

(ATTACHMENT I) LOCAL GO 3/4/87

KIRMA

INTERLOCAL COOPERATION AGREEMENT

ESTABLISHING THE

KANSAS INTERGOVERNMENTAL RISK MANAGEMENT AGENCY

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Published by the
League of Kansas Municipalities
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

The City of Valley Center

116 S. PARK • VALLEY CENTER, KS 67147 • 316-755-1231

A Valley Of Progress, A Center Of Pride

DATE: March 4, 1987.

TO: Senate Committee on Local Government.
Senator Don Montgomery, Chairman.

FROM: Mac D. Manning Jr., City Administrator, Valley Center.

SUBJECT: S.B. 250 - An Act concerning municipalities; relating to iterlocal agreements; amending K.S.A. 1986 Supp. 12-2904 and repealing the existing section.

The City of Valley Center, along with over 30 other Kansas cities, has for the past nine months been working cooperatively to develop an alternative method of providing a reliable risk management system. The primary goal of this effort is to provide for the city a complete package of risk coverages for all municipal operations at a predicable and stable annual cost.

The City of Valley Center, population 3,844, has been able during the past several years to obtain all forms of insurance coverage through a local agent. However, the cost for this coverage has doubled in the past three years, particularly for lability coverage. The majority of the city's insurance policies will renew April 1, projections by the city's insurance agent shows that the total premium cost will increase from $43,600 in 1986, to a projected total premium cost of $51,000. This represents an increase of $7,400 or the equivalency of a 1 mill property tax increase.

(ATTACHMENT II) LOCAL GO 3/4/87

The need for the creation and the existence of a group such as the proposed Kansas Intergovernmental Risk Management Agency (KIRMA) is one of high priority for a smaller city, both from the aspect of overall risk coverage and prevention, but also the lessor cost of belonging to such a risk management group.

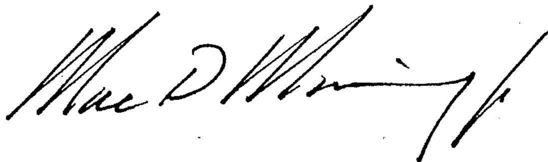
The City of Valley Center has already lost over $24,000.00 in Federal Revenue Sharing Funds and the prospect of losing a portion of LATVR, City-County Revenue Sharing, and State Motor Fuel Funds is almost a certainty. It is imperative that the City find ways to reduce fixed costs without the necessity of increasing it's already high property tax mill levy.

Senate Bill 250 provides the necessary statutory authority for the creation of a agency such as KIRMA, which could provide a full range of risk coverages, risk management services, loss prevention services at a reduced cost and savings to the City of Valley Center.

The concept of an intergovernment risk management program like KIRMA maybe new and unfamiliar in the State of Kansas, but it is needed by local governments as a fiscal management tool. Similar programs are now and have been in successful operation for a number of years in Missouri and Illinois.

The Governing Body of the City of Valley Center respectfully requests this committee to give a favorable recommendation of Senate Bill No. 25Ø to the full Senate.

Respectfully submitted,



Mac D. Manning Jr.

City Administrator

Valley Center

Senate Committee on Local Government
RE: SB 250 - Municipalities -- Interlocal Agreements

March 4, 1987
Topeka Kansas
Presented by
John K. Blythe, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Mr Chairman & members of the Committee:

My name is John K. Blythe. I am the Assistant Director of the Public Affairs Division of Kansas Farm Bureau. I am speaking on behalf of the farmers and ranchers who are members of Farm Bureau. We appreciate this opportunity to express our view of SB 250.

We are not opposed to individual self-insurance nor are we opposed to group self-insurance as long as those groups or companys are subject to the same rules as all other groups or companys that offer insurance coverage.

It is my opinion that the Kansas Insurance Department and Insurance Commissioner were created and established by the Kansas Legislature to provide protection for the citizens of Kansas who purchase insurance.

Chapter 40 of the Kansas Statutes covers 408 pages of our statute book. In addition, there

(ATTACHMENT III) LOCAL GO 3/4/87

are several more statutes that regulate and control insurance companies.

To allow the sale or offering of insurance policies outside the supervision, regulation and taxation as now required by Kansas insurance statutes will not give the protection to our Kansas citizens that they expect and desire.

I will refer to only two short statutes, KSA 40-103 and KSA 40-104. I believe that these two statutes clearly express the intent of the Kansas Legislature for the regulation and supervision of the insurance industry in Kansas.

40-103. Supervision of commissioner. The commissioner of insurance shall have general supervision, control and regulation of corporations, companies, associations, societies, exchanges, partnerships, or persons authorized to transact the business of insurance, indemnity or suretyship in this state and shall have the power to make all reasonable rules and regulations necessary to enforce the laws of this state relating thereto.

History: L. 1927, ch. 231, 40-103; June 1.

40-104. Supervision over transactions. The commissioner of insurance shall have supervision of all transactions relating to the organization or reorganization of insurance companies organized under the laws of this state, and shall also supervise the sale of all stock certificates, bonds or other evidences of interest or indebtedness issued by any such companies. The commissioner of insurance shall supervise in this state the sale of stock certificates, bonds or other evidences of interest or indebtedness by companies organized under the laws of any other state or country.

History: L. 1927, ch. 231, 40-104; L. 1931, ch. 201, § 1; May 28.

Thank you Mr Chairman and members of the Committee for the opportunity to appear befor your committee.

Testimony on SB 250
Before the Senate Local Government Committee
March 4, 1987
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you, Mr. Chairman, and members of the committee for the opportunity to appear today in opposition to SB 250. The Independent Insurance Agents of Kansas has 620 member agencies across the state employing approximately 2,700 people, the majority licensed as insurance agents. We are independent insurance agents because we are free to represent a number of different insurance companies offering our professional advice, the best product and the most competitive cost we can find in the open marketplace to our clients.

We are not opposed to individual self-insurance nor are we opposed to group self-insurance as long as groups are recognized as assessable mutual insurance companies that must meet minimum solvency requirements, minimum consumer protection and play by the same rules as everyone else. But we are opposed to SB 250 in its present form.

The intent of SB 250 is clearly to provide insurance and clearly involves the formation of mutual assessable insurance companies or reciprocal insurance exchanges. When the proponents speak of self-insurance, it is only a question of the self-retention level or deductible that will be assumed by the group. Just as an insurance company only retains a certain portion of each risk it insures, a group self-insurance pool will only retain a certain level and will purchase excess or reinsurance for the remainder.

While individual self-insurance is largely unregulated except for mandated coverages such as workers' compensation, automobile liability

and medical malpractice liability, group self-insurance, to our knowledge, is universally regulated because of its similarity to the formation of an insurance company. The public will assume that insurance laws and regulations apply to these group self-insurance pools and that these groups have met standards and are subject to Insurance Department oversight.

We feel it would be a grave public policy error to turn public entity group self-insurance pools loose without any Insurance Department regulatory oversight. The legislature recognized the validity of this argument when it set-up the group workers' compensation self-insurance statute, K.S.A. 44-581 in 1983.

The purpose of insurance regulation is to protect against insolvency and protect consumers of insurance and the public (injured third parties, workers, etc.) from the actions of insurance companies. With all due respect to the proponents of SB 250, who I am sure will act responsibly, the purposes, needs and goals of these group self-insurance pools may very well be at odds with the best interests of individual buyers and members of the public who are injured. The Insurance Department plays a critical role in mediating these types of insurance disputes.

Despite public entities' tax levying power, the taxpayers who will shoulder the burden if these groups fail will look for the responsible parties to blame. In the case of small public entities, the tax burden could very well exceed their tax levy ability. Attached to our testimony is a copy of a newsletter describing the near bankruptcy of South Tuscon, Arizona as a result of a largely uninsured police professional liability claim.

The public entities themselves need a forum such as the Insurance Department to air coverage and claims disputes without having to resort to expensive litigation.

Injured third parties and workers deserve a forum such as the Insurance Department offers to arbitrate disputes, again without expensive litigation.

We see no valid reason not to establish a "level playing field" for all insurance companies. The legislature has not granted preferential treatment to public entities to compete against private enterprise in other areas; why should it in insurance? When a public entity buys insurance today it is paying 1-2% premium tax, assessments for the operation of the Insurance Department and the division of workers' compensation, costs for insurance companies to participate in assigned risk programs for the lines of insurance written, and the cost of financial and market conduct exams by the Insurance Department. We feel group self-insurance pools should bear these same costs.

One of the underlying concepts of group self-insurance pools is that they allow smaller entities to self-insure. But these are the very entities that are generally much less sophisticated insurance buyers without their own risk managers and in need of Insurance Department regulatory oversight for their own protection. Remember that under group self-insurance each member (insured) who joins the group is tied to the fate of the entire group. Bad claims experience, poor management, weak loss control and safety engineering, unusual exposures to loss of a few, failure to purchase proper excess insurance or maintain it, failure to carefully underwrite (select risks), inadequate pricing, failure to properly design insurance coverages and

failure to appreciate the exposures to loss covered by the policies that they offer such as pollution, asbestosis, police professional, athletic activities, public official liability, etc., can have a dramatic impact on each member of the group.

Will there be joint and several liability of each member of the pool for the obligations of the pool? With joint and several liability, if the pool gets into financial difficulty, everyone would be assessed so that no public entity was left holding the bag. Without joint and several, the smallest public entity could be left holding the bag for the largest claims, if they happened to be made against them.

Other questionable operators may try to qualify under the exemption to the insurance laws and regulations granted by SB 250, which could seriously undermine the Insurance Department's ability to protect public entity buyers of insurance. Obviously, these group self-insurance schemes have the potential of spinning off substantial revenues to the sponsoring organizations. We believe everyone should be subject to the same rules and regulations.

The proponents seem to be arguing that the costs of adequate regulation would be too great to form these group self-insurance pools or that such regulation would make them the same as insurance companies. If that is the case, then we question why a group workers' compensation pool has been formed for eastern Kansas cities and counties under present law. Furthermore, no major amendments have ever been proposed to the group workers' compensation statute.

If the substantial cost savings that proponents have argued are there really exist, then the cost of minimal regulation should not be a problem.

The proponents of SB 250 have also concentrated their comments on workers' compensation, only one line among many different types of insurance that would be authorized by SB 250. Obviously, the more different types of insurance coverage a group self-insurance pool offers, the greater the hazard to the pool and its members and the more volatile its claims experience will become. The pool may pick up long-tail liability lines and possibly liability exposures it never even contemplated.

For example, if the pools offer general liability coverage, it will almost certainly be on a claims-made form. This means only claims actually made during the policy period for incidents which occur during the policy period would be covered. If the public entity is already on a claims made form, it must either buy "prior acts" from the pool or obtain "tail" coverage, if available, from the prior carrier or have a permanent gap in coverage. When a public entity wants to leave the pool, it must either buy "tail" coverage from the pool, if available, or find a new carrier willing to provide "prior acts" if possible, have a permanent gap in coverage or be stuck in the pool.

Even workers' compensation claims can develop reserves on individual losses of over $2 million. For example, USF&G Insurance Company currently has a reserve of $2,706,559 for a young driver injured in an automobile accident while deliverying blueprints. While this is the total payout over the victim's entire life span, I think you will agree it is a significantly more serious risk than what may generally be associated with workers' compensation insurance.

The proponents have also argued that the risk is low for these groups because of the purchase of excess insurance. Yet the excess

insurance is not guaranteed to be available and loss of the coverage could create permanent gaps for the participants of a pool. Further, the Insurance Department may have little control over the types of insurance companies that generally offer this excess coverage.

The proponents have argued that group self-insurance will even out the ups and downs of the insurance cycle, but we think that is doubtful. They will still be subject to the cycles' affect on both the cost and availability of excess insurance. Plus the smaller premium base from a Kansas only group may cause their experience to fluctuate even more unpredictably, affecting both the cost and the solvency of the pools. They may be in for more of a roller coaster ride than the traditional insurance market has even had.

To our knowledge, the proponents have done no quantitative studies that would substantiate the claim to savings or even give them a good idea of whether a pool is feasible. For that matter, no research has been done to provide actuarially sound rates nor is there any guarantee under SB 250 that sound rates will be used.

To our knowledge, none of the proponents have developed policy forms, although we understand that KIRMA is developing their own "manuscript" forms. These would not be approved by the Insurance Department under SB 250 and probably have not been tested in court. It is very possible that the pool could provide coverage that was never contemplated and might not even be "insurable". For example, if pollution coverage is provided, the participants of the pool could be exposed to tremendous liabilities for years to come.

Under SB 250, there are no guarantees. Neither the "cost" of insurance under the pool, nor the availability of the pool to pay

claims when they arise woul be guaranteed. The Kans Guaranty Fund law would not apply in the event of insolvency, there might be no excess insurance coverage for the pool when it comes time to collect because they lost their excess coverage or the carrier became insolvent and they could exceed the limits of the excess purchased. At least with an admitted insurance company, the guaranty fund would apply and you would have some guarantee that the coverage you bought would be there.

Nevertheless, if the legislature feels a compelling need to authorize such group self-insurance pools, we have attached a proposal we feel would provide a workable framework for them. This could either be a substitute bill or new committee legislation and provides what we consider to be minimal Insurance Department regulatory control over group self-insurance pools. It is patterned after the group workers' compensation self-insurance law, K.S.A. 44-581, but modified for all lines and for public entities.

We would be happy to respond to questions either on our testimony or the bill draft. We do appreciate the opportunity to appear today in opposition to SB 250.

RISK LINE

A BI-MONTHLY PUBLICATION
OF RISK MANAGEMENT PUBLISHING

- ☐ Route to:
- ☐ Finance Director
- ☐ Safety Director
- ☐ Purchasing Agent
- ☐ Risk Manager
- ☐ ____________

FEBRUARY 1984

GOOD NEWS FROM SOUTH TUCSON

A plan has finally been developed by the City of South Tucson which is acceptable to Roy Garcia and will close the 4½ year saga that began in 1978. The settlement, with a value of about $3 million, will probably complete the city's financial reorganization in U.S. Bankruptcy Court.

According to *The Arizona Daily Star,* the terms of the settlement are:

- South Tucson will pay about $160,000 to the State Compensation Fund for Garcia's medical bills.
- $70,000 cash followed by $10,000 payments each month for the next 12 months from its General Fund.
- $40,000 per year starting May 1, 1986 and continuing through May 1, 1995.
- A planned bond sale, if completed, would have the $1.5 million proceeds pass directly to Garcia.
- South Tucson believes it has a claim against an insurance broker and others arising from its inadequate liability insurance coverage ($100,000). South Tucson has assigned 90% of any recovery from that claim, up to $10 million in compensatory damages, to the Garcias.

Due to the fact that the settlement was approved by the South Tucson City Council in an emergency meeting, some people have claimed that this might violate the State of Arizona's open meeting law. (Editor's Note: What more could happen? We are personally pleased that both parties, after all of these years, could come to an amicable agreement.)

ARIZONA MAKES THE NEWS AGAIN!

On February 9, 1984, a Pima County (Tucson) jury awarded $5 million to a 12-year old permanently brain damaged boy and an additional $1.5 million to the boy's parents. The judgment was against two doctors, two nurses, and the State of Arizona. What makes this of interest to us is that it is believed to be the first such case against a Poison and Drug Information Center which is operated by a state agency. The center operates an emergency hot line for treatment of poisonings. It was alledged that it was negligent in advice it gave to one of the doctors.

The chances are very great that the State of Arizona will appeal this judgment. If the decision holds, it is feared that the center will be the legal scapegoat for liability in accidental poisonings. The broader impact of this decision on the other 27 regional poison-control centers in the country and the more than 600 poison-information centers in the United States, is still to be determined. We will try to keep you informed on other developments in this case.

SALE! SALE! SALE!

We have found several boxes of our paperback book *Contractual Insurance Agreements for Utilities* by Richard Grennan. We feel that this book will help its readers understand insurance requirements of contracts even if you are not a utility — it has broad applications.

The book regularly sold for $17.95 plus $2.00 for postage and handling. A clearance sale will be held to April 1 — $10.00 each plus $2.00 postage and handling. Send your check, payable to Risk Management Publishing Company, for $12.00 and we will get the book to you by return mail. (Prepaid orders only, please.)

Kansas Legislative Policy Group
301 Capitol Tower, 400 West Eighth, Topeka, Kansas 66603, 913-233-2227
TIMOTHY N. HAGEMANN, Executive Director

March 4, 1987

TESTIMONY
to
SENATE LOCAL GOVERNMENT COMMITTEE
Senate Bills 250 and 251

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 Bills 250 and 251.

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.

(ATTACHMENT V) LOCAL GO 3/4/87

Another consideration that deserves clarification 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.

In addition, SB 251 would allow these associations to exercise privileges that would facilitate adequate financing of loss reserves. This would provide assurance that claims and settlements would be paid on a timely basis.

For these reasons, we urge you to recommend both bills for passage. Thank you for your consideration.