

Approved February 8, 1989
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m./~~p.m.~~ on February 7, 1989 in room 531-N of the Capitol.

All members were present except:

Committee staff present:

Mike Heim, Legislative Research
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Jim Kaup, League of Kansas Municipalities
Dick Brock, Kansas Insurance Department
James Todd, Kansas State Firefighters Association
Jerry Marlott, Kansas State Council of Firefighters

The meeting began with the hearing on SB 55 concerning expenditures from the firefighters relief fund. Jim Kaup, League of Kansas Municipalities, testified in support of the bill. (See Attachment I). The Chairman asked if there has been a problem of someone spending more than what is coming in. Mr. Kaup said that in some cases, there is an unforeseen decline in money coming into the association, and it does not have money to honor pensions. The Chairman asked how it could be foreseen, and Mr. Kaup answered that there is a provision in the firefighters relief act which states that in cases of associations dissolving, funds must be consolidated with another association, but he could not be specific in answering the Chairman's question. Staff noted that there are no caps or limits on firefighters benefits in the statutes and that the firefighters fund is in lieu of workers compensation which does have limits. Sen. Steineger asked if the firefighters' pension would be covered by federal law (ARISO) which guarantees all pensions, and Mr. Kaup replied that they are not. Sen. Steineger asked further about the actuarial soundness of the associations. Mr. Kaup said that within the association, there is not a good check or authority to make commitments.

Dick Brock, Kansas Insurance Department, stood to give a background of the relief act. It was created before the turn of the century before there was insurance coverage for firefighting duties. Until two years ago funds had been distributed by the Department on the basis of the territory covered by each department. He added that each association has its own pension plan, life insurance, and health insurance; and larger ones have pension plans, others have an ad hoc basis.

Sen. Daniels asked why some associations do not qualify to receive the 2% distribution when they send in their report. Mr. Brock replied that the only reason they do not qualify would be because of some technical information needed. Sen. Daniels asked further if the reports include a record of all monies received by the associations, including donations. Mr. Brock said that it does, however, that has nothing to do with the Department's distribution.

Sen. Steineger asked if most firefighters are covered by workmens comp. Mr. Brock said they are not; they can be out if they have their own plan.

Sen. Daniels asked what base year was used when the law was changed. Mr. Brock answered, 1983. Sen. Daniels asked further how the firefighter's fund works in regard to overlapping districts. Mr. Brock said if there are contracts, they are on standby provision or it is someone who does not have protection other than the contract.

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 9:00 a.m. ~~pm~~ on February 7, 1989.

James Todd, Kansas State Firefighters Association, followed with further testimony in support of the bill and offered amendments. (See Attachment II). He said 88% of the departments would benefit from the first amendment offered. The second amendment would relieve a lot of attorney work. Sen. Burke asked if Mr. Todd has a list of departments that would benefit. Mr. Todd had a list which was almost complete. Mr. Brock said he would have information completed in a few days regarding the .15% computation. Both will furnish copies to committee members when the lists are complete.

A discussion began regarding what departments will receive the largest increase. It was confirmed that the smaller departments will receive the largest increase, and those who will lose will not lose a significant amount. The Chairman asked Mr. Todd what the increased amount would be used for in those who gain and if those who lose would experience a cut back on programs. Mr. Todd said those gaining would use the money for health and accident insurance or annuities, and those who lose will not have to cut back. The Chairman said the committee would wait for the information from Mr. Brock about the .15% before it acts on the bill.

Jerry Marlott, Kansas State Council of Firefighters, testified next in support of SB 55. He stated that he concurs with the amendments offered by the League of Municipalities and the Firefighters Association. He said the monies collected statewide are utilized for health benefits, prescriptions, medical supplies, etc., and he feels it is well spent. Another important use of the monies collected statewide is for education and training for firefighters. He feels that the amendments offered are basically minor, the biggest change being the change from \$500 to .15% which will adversely affect the larger associations who will be able to deal with this. The Chairman asked Mr. Marlott if he had held meetings to explain this to the associations, and Mr. Marlott said he had done so.

Sen. Daniels had questions for Mr. Brock as to the amount the Department had spent in 1988. Sen. Gaines asked if there has been any problems since the 1983 studies. Mr. Brock said one new association was disappointed with the amount of distribution it received, but, by and large, there has been great satisfaction, and associations appreciate these funds very much.

The Chairman announced that SB 55 would be held until the committee receives information requested from Mr. Brock.

The minutes of February 3 were approved.

The Chairman noted that there will be no meeting this Friday, and the meeting was adjourned.



**League
of Kansas
Municipalities**

**Municipal
Legislative
Testimony**

An Instrumentality of its Member Kansas Cities. 112 West Seventh Street, Topeka, Kansas 66603 Area 913-354-9565

TO: Chairman Don Montgomery and Members,
Senate Local Government Committee
FROM: Jim Kaup, League General Counsel
RE: **SB 55; Amendments to the Firefighters' Relief Act**
DATE: February 7, 1989

The League requested introduction of SB 55 by this Committee in response to a member city's recent identification of a gap in the Firefighters' Relief Fund Act (K.S.A. 40-1701 et seq.). The League believes that gap is adverse to the interests of firefighters, relief associations and the municipalities (cities, counties, townships and fire districts) served by those associations.

Specifically, SB 55 amends K.S.A. 1988 Supp. 40-1706 to help ensure accountability for expenditures made by relief associations on behalf of firefighters and further amends that statute to remove outdated restrictions upon investments those relief associations are authorized to make.

Background. Supp. 40-1706 is part of the Firefighters' Relief Fund Act, enacted in 1927. This act is intended to provide for the establishment and funding of relief associations within the fire departments of counties, cities, townships and fire districts. The associations provide a variety of services and benefits for injured or disabled firefighters, as well as for the families of those who die as a result of service-related causes (K.S.A. 40-1707). Among the benefits associations may pay for are pensions; health, disability and life insurance premiums; medical expenses; and lost earnings. Funding is provided by a tax upon insurance companies that issue fire and lightning policies for the area served by the individual fire department. This tax, set at 2% of the premiums collected for such coverage, is paid to the commissioner of insurance (K.S.A. 40-1703), and then distributed to the local associations (K.S.A. 40-1706).

Problem: Although the act requires that each association must annually give the commissioner of insurance a verified account of receipts and disbursements and general condition of its fund, and that the commissioner is to determine whether the funds are being used only for purposes authorized by the relief act, the law presently provides no connection between association assets and liabilities

Although it appears clear that the amount of financial assistance to be paid as relief to a firefighter, for injuries or physical disabilities, falls within the discretionary power of the association to administer its public funds (Lauber v. Fireman's Relief Association, 202 Kan. 564 (1969)), some questions have arisen regarding the possibility of associations "overcommitting" their funds--promising benefits to firefighters at a level beyond the amount of funds they are likely to receive from the state tax on insurance premiums. Such a situation raises legal liability questions for not only the association, but also, because of the wording of the act, potential liability for cities, counties, townships and fire districts.

Amendments. (1) The principal objective of SB 55--amending Supp. 40-1706 to ensure that firefighters are not promised more benefits than associations can financially provide--is

*Senate Local Gov't
Attachment I*

*President: Douglas S. Wright, Mayor, Topeka * Vice President: Irene B. Franch, Mayor, Merriam * Past President: Carl Dean Holmes, Mayor, Plains
* Directors: Margo Boulanger, Mayor, Sedan * Nancy R. Darring, Commissioner, Manhattan * Ed Eiert, Mayor, Overland Park * Greg Ferris,
Councilmember, Wichita * Frances J. Garcia, Commissioner, Hutchinson * William J. Goering, City Clerk/Administrator, McPherson * Jesse Jackson,
Commissioner, Chanute * Richard U. Nienstedt, City Manager, Concordia * David E. Retter, City Attorney, Concordia * Judy M. Sargent, City Manager,
Russell * Joseph E. Steineger, Mayor, Kansas City * Bonnie Talley, Commissioner, Garden City * Executive Director: E.A. Mosher*

set out at lines 246:249. The amended language simply ties an association's expenditures and payments to the amount of the 2% insurance premium tax distributed to that association. This would, for example, prevent an association which gets \$10,000 in annual distributions from promising \$50,000 in benefits. It would mean that an association would not be liable for benefits promised in excess of moneys actually received from the 2% tax distribution. Association expenditures would be conditioned upon the availability of distributions to that association of the 2% tax moneys at a level sufficient to finance those financial commitments. The League recommends this amendment as providing certainty for all parties--the firefighters being promised benefits, the associations making the commitments, and those municipalities which could conceivably be liable for the financial shortfall of the association.

(2) The amendment at lines 251:253 is clean-up. It is to clarify which attorney is charged with the duty of certifying that relief association expenditures over \$500 comply with the relief act. The amendment is consistent with a legal opinion rendered by the Insurance Department's general counsel by letter dated February 18, 1982.

(3) The amended language found at lines 261:269 is intended to modernize a restriction upon investment, in municipal bonds, of relief association funds that has remained unchanged since it was added to the act in 1941 (L. 1941, Ch. 257, sec. 5). The amendment borrows language taken from K.S.A. 10-131, which governs the investment of proceeds from bonds or temporary notes by municipalities. The amendment removes an archaic investment restriction, and replaces it with language that is used elsewhere in Kansas law to protect the investment of public funds.

(4) The League's final amendment, at lines 270:278, would remove the duty of the city, county, township or fire district attorney to examine and approve all bond-related investments of an association. This requirement that a local government's attorney preapprove bond investments does not appear to have any parallel in other state law. The League proposes that such investments need only be approved by the governing body of the city, county, township or fire district, as is now already required under Supp. 40-1706 (see lines 269:270).

The League respectfully requests favorable consideration by this Committee of SB 55.

Senate L.G.

(2) The state firefighters relief fund shall be administered by the commissioner of insurance. An amount equal to not more than the amount authorized for expenditure during the current fiscal year by appropriations enacted by the legislature may be set aside in the state firefighters relief fund and expended by the commissioner of insurance for the administrative expenses of the department of insurance under the firefighters relief act, subject to the provisions of appropriations acts.

(c) Prior to August 1, 1987, and each August 1 thereafter, except as provided in subsections (b) and (d), of the total amount of moneys credited to the state firefighters relief fund as of July 1 of the same year the amounts determined as prescribed in subsections (c)(1) through (c)(6) shall be paid as provided therein.

(1) An amount equal to 3% of such total amount shall be paid by the commissioner of insurance to the treasurer of the Kansas state firefighters association, inc. for fire prevention and fire extinguishment education and study.

(2) An amount equal to 5% of such total amount shall be paid by the commissioner of insurance to the Kansas state firefighter association, inc. which shall be set aside as a death benefit fund to provide such benefits as determined by the association in accordance with the constitution and bylaws thereof, except the amount paid under this subsection (c)(2) shall not be more than the lesser of \$100,000 or the result obtained by subtracting the balance in the death benefit fund of the association on July 1 from \$100,000.

~~(3) The amount of \$500 shall be paid by the commissioner of insurance to each firefighters relief association.~~

(4) The remaining amount of the moneys credited to the state firefighters relief fund, after the amounts are reserved or paid for the purposes authorized by subsections (b)(2), (c)(1), (c)(2) and (c)(3), shall be paid by the commissioner of insurance to firefighters relief associations so that the amount received by each firefighters relief association bears the same proportion to the total amount to be paid as the amount such firefighters relief association received from the amounts collected from the tax imposed by K.S.A. 40-1703, and amendments thereto, for all of calendar year 1983, bears to the total amount paid to all firefighters relief associations from the taxes col-

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Attachment II

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LINE 70-71

K.S.A. 40-1706(c)(3) is hereby amended to read as follows:

(3) An amount equal to 15% of the moneys available for distribution after the deductions required by subsections (b)(2), (c)(1) and (c)(2) of this section shall be distributed equally among all firefighters relief associations participating in the payments to be distributed by August 1 of the current year.

230 olution of such disqualified association and shall be paid by the
 231 surviving association if the disqualification resulted from consolida-
 232 tion, merger or annexation and shall be paid by the county attorney
 233 if disqualification resulted from reasons other than consolidation,
 234 merger or annexation. Nothing in the firefighters relief act shall be
 235 construed as a bar to the lawful receipt of such benefits.

236 (g) The treasurer of a firefighters relief association shall give bond
 237 for the safekeeping of funds received under the firefighters relief act
 238 and for faithful performance in such sum with such sureties as may
 239 be approved by the governing body of such city, township, county
 240 or fire district. All the moneys so received shall be set apart and
 241 used by the firefighters relief association of such cities, townships,
 242 counties or fire districts solely and entirely for the objects and pur-
 243 poses of the firefighters relief act and shall be paid to and distributed
 244 by the firefighters relief associations of such cities, townships, coun-
 245 ties or fire districts under such provisions as shall be made by the
 246 governing body thereof. *All such expenditures or payments shall be*
 247 *subject to the continued availability of moneys distributed to the*
 248 *association from the tax imposed by K.S.A. 40-1703, and amendments*
 249 *thereto, in amounts sufficient for such expenditures.* In all cases
 250 involving expenditures or payments in an amount of ~~\$500~~ or more
 251 prior certification shall be obtained from ~~the~~ an attorney of ~~desig-~~
 252 *nated by the governing body of the city, township, county or fire*
 253 *district that such expenditure or payment complies with the re-*
 254 *quirements of the firefighters relief act.*

255 (h) (1) The officers of a firefighters relief association may invest
 256 any amount, not to exceed 90% of all such moneys, in investments
 257 authorized by K.S.A. 12-1675, and amendments thereto, in the man-
 258 ner prescribed therein or in purchasing bonds of the city, township,
 259 county or fire district in which such firefighters relief association is
 260 located. When such investments are not obtainable, United States
 261 government bonds may be purchased or any municipal bonds of
 262 this state, except that such funds shall not be invested in any
 263 such municipal bonds where the bonded indebtedness of the
 264 municipality is more than 15% of its total assessed valuation,
 265 as shown by the last assessment preceding such investment
 266 municipal bonds or other obligations issued by any municipality of

\$1,500.00

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