KANSAS ASSOCIATION OF COUNTIES

Testimony of the Kansas Association of Counties
To the Senate Judiciary Committee
Proponent for HB 2246 (Notice under Kansas Tort Claims Act)

March 19, 2015

Mr. Chairman and Members of the Committee:

The Kansas Tort Claims Act (KTCA) arose in 1979 to resolve years of disputes between the judicial and legislative branches "over the issue of governmental immunity."[1] Historically, government has—as a matter of public policy—held the power of sovereign immunity.[2] This power specified that governments had "immunity from being sued in its own courts without its consent."[3] Kansas does not grant itself sovereign immunity, but the notice requirement under the KTCA is an essential remnant from the law with a very modern purpose.

A survey of KTCA claims against municipalities shows municipalities acting as:

- Health-care provider;
- Road and rail-crossing provider;
- Public-works provider;
- Building inspector;
- Park administrator;
- Law-enforcement provider;
- Solid-waste manager; and
- Flood-protection manager.[4]

This is just a portion of the services that local governments provide—a diverse and complex list of tasks. And even though some of these responsibilities may fall to individuals with a degree of autonomy from typical city or county business, it is still essential that municipalities receive proper notice when potential plaintiffs threaten lawsuits that may impact local services. A recent Kansas

[1] Robert Allison-Gallimore, Kansas Legislator Briefing Book 2014, Judiciary (2014), www.kslegresearch.org/Publications/2014Briefs/2014/O-1-TortClaimsAct.pdf.
[2] Legal Information Institute, CORNELL U. Sovereign Immunity (2015), www.law.cornell.edu/wex/sovereign_immunity.
[3] Black's Law Dictionary 753 (7th ed. 1999).
[4] *Sleeth v. Sedan City Hosp.*, 298 Kan. 853 (2014); *Dodge City Implement, Inc. v. Board of Barber County Comm'rs,* 288 Kan. 619, 638 (2009); *Meara v. Douglas County*, 293 P.3d 168 (Kan. Ct. App. 2013) (Unpublished); *Kirtdoll v. City of Topeka*, 253 P.3d 386 (Kan. Ct. App. 2011) (Unpublished); *Isaiah v. Unified Government of Wyandotte County/Kansas City,* 249 P.3d 912 (Kan. Ct. App. 2011) (Unpublished); *Ney v. City of Hoisington*, 242 P.3d 1281 (Kan. Ct. App. 2010) (Unpublished); *Steed v. McPherson Area Solid Waste Utility*, 43 Kan.App.2d (Kan. Ct. App. 2010); *City of Arkansas City v. Bruton*, 284 Kan. 815 (Kan. Ct. App. 2007).

Supreme Court decision, *Whaley v. Sharp*, undercut the KTCA requirement to serve adequate notice on a government entity,[5] and HB 2246 serves to remedy the notice requirement.

HB 2246 specifies that "[a]ny person having a claim against a municipality *or against an employee of a municipality* which could give rise to an action brought under the Kansas tort claims act shall file a written notice as provided" in the KTCA. Prior to *Whaley*, municipalities believed that the law already required meeting the notice requirement if a plaintiff was suing an employee of a municipality. But the *Whaley* decision made HB 2246 necessary to ensure plaintiffs give adequate notice, so municipalities can defend potential suits.

The concept of proper notice is essential when considering the diverse and unique functions that municipalities perform. The KTCA recognizes the high stakes for municipalities and the fact that all Kansans rely on local services. HB 2246 helps ensure that the KTCA continues to require adequate notice when municipalities are facing lawsuits, and it addresses the concerns prompted by *Whaley v. Sharp*. The bill promotes a sound and well-founded public policy in Kansas, and KAC asks that this committee vote favorably for HB 2246.

Respectfully,

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[5] *Whaley v. Sharp*, No. 107,776, 2014 WL 7331586, at *1 (Kan. Dec. 24, 2014).