

MINUTES

GOVERNMENT AFFAIRS
SUBCOMMITTEE ON ACR 9
February 9, 1977

Members Present: Assemblyman Robinson
Assemblyman Jeffrey
Assemblyman Banner (ex officio)

Guests Present: Tom Moore, Clark County
Robert Pidcock
Bill Parish, Nevada Ind. Ins. Agents
Don Rhodes, LCB, Research Division
Bob Warren, Nevada League of Cities
Pete Kelley, Nevada Ind. Ins. Agents
Larry Struve, Washoe Co. D. A.
David M. Ebner, Kafoury, Armstrong, Turner & Co., CPA's

This subcommittee meeting was called to order at 2:20 p.m. by Mr. Robinson. He stated this meeting would be used as an educational experience for those present regarding tort liability insurance. He then indicated that the committee would be looking into specific questions reviewing liability protection at the local government level and a list of those questions was given to each present and is attached and marked Exhibit A. Also handed out was a letter to Mr. Murphy regarding this from Larry Struve which is attached and marked Exhibit B.

Mr. Don Rhodes stated the Research Department has done some background work in this area and have compiled information from other states regarding sovereign immunity statutes and case involving these problems in other states and municipalities. They also have a copy of a recent decision in Maine which declared their sovereign immunity law wasn't what it should have been and they are now in the process of trying to clean up this type of statute. He indicated they are prepared to research any additional information the committee feels they will need.

Mr. Struve stated the primary concern here was to investigate how many ways and how many alternatives are available to reduce the cost of obtaining adequate liability insurance. He stated that Washoe County had experienced a 104% increase in a one year period in the cost of their liability insurance. Secondly, is the evaluation of the Nevada laws to see if there is sufficient leeway to use different alternatives in providing liability protection. He then introduced Mr. David Ebner who prepared the list of questions marked Exhibit A. Mr. Ebner is the independent auditor for Washoe County. He stated he prepared this list so that there could be basis for cost comparison and information collected regarding the alternative forms of insurance. He said that in order to effectively review what is needed in the area of insurance you must have a complete report from every government agency as to their policy coverage particularly and the limits of that coverage. This would enable you to see if some town or county were going without coverage too.

Mr. Banner stated that just collecting the information on liability insurance would be a big job.

Mr. Struve stated that in Washoe County the focus is on the liability of local

political subdivisions and their entities. He felt the other fields should be handled at a different time. He stated he felt it was important to try to find out how these local governments can get protection against liability. Also, he said there must be a determination as to what is "adequate".

Mr. Robert Pidcock interjected at this point that this area is, indeed, so extremely vast that rather than get into its many areas, that at this time you should try to think about what can be done, that in the future will provide a basic outline for all entities which will be effected. He stated that he would like to see the approach taken by setting up some sort of study group, such as the proposed two-year legislative study committee. He said he did not believe this subcommittee could possibly look into this situation deeply enough, with the limited time involved, to do a lot of good.

Mr. Bill Parish stated that the problem of collection of the information would not be too bad in Clark and Washoe counties. However, the collection in the smaller counties would be more difficult and, certainly, time consuming. He stated that he felt this is a tremendous project and that the study approach was the only effective way to handle it.

Mr. Parish also pointed out that the entire premium for insurance that can be developed in Nevada, from municipal business and the state business, is less than \$3,000,000 and this is probably less than a quarter of the business in a city like Chicago. In light of this, the insurance companies are not too eager to get into the insurance business in Nevada because the municipal liability payoffs in adjacent areas have been over the million dollar figure, even though we don't have this problem currently.

Mr. Warren stated that he thought it was important that AB 128 be passed this session to provide a vehicle to use when the study group comes up with any ideas or solutions in this area. If AB 128 is passed, it would provide the vehicle necessary to go ahead without delaying until next session.

Mr. Banner pointed out that in the smaller counties it might take a great amount of time just to get the policies located and analyzed. He said that when he took this project over in Clark County there were no real records even in that larger county.

Mr. Parish commented that when the Washoe County records on insurance were gone into, they found 185 different insurance policies in effect. Some of those policies were duplications of coverage and some were covering property that the city no longer owned. It took them approximately two years just to get all the information together just on Washoe County.

Mr. Pidcock stated he felt it was important to bring in someone in the insurance industry to help in determining what coverages and limits are needed when this information is compiled (someone other than an insurance agent). This would aid in the compilation of information in a form that would be helpful in determining what would be needed.

Discussion followed on this subject and it was decided that Mr. Banner and Mr. Pidcock would work out between them language of a resolution to set up an interim study committee and report it back to the subcommittee. Further discussion on this matter will be held until that resolution is received.

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Mr. Robinson, Mr. Pidcock and Mr. Struve discussed AB 128 regarding terminology referencing policial subdivisions. Mr. Robinson said he would direct these comments to Chairman Murphy.

Mr. Robinson stated that the meeting would have to be adjourned because another committee meeting was about to start in this room. The meeting was adjourned at 3:00 p.m.

Respectfully submitted,

Linda Chandler
Linda Chandler, Secretary

EXHIBIT A

on Liability Protection
of Local Government

SPECIFIC QUESTIONS TO BE ADDRESSED BY LEGISLATIVE COMMISSION AND/OR SUBCOMMITTEE REVIEWING LIABILITY PROTECTION AT LOCAL GOVERNMENT LEVEL

1. What are the total costs per year of the various types of insurance, including liability insurance, now being purchased by all governmental entities in the State of Nevada?
2. What is the frequency and dollar value of claims paid on behalf of governmental entities by their insurance carriers in relation to the amount of premiums paid during a fiscal year?
3. How many governmental entities are no longer able to insure themselves and their officers or employees to a level deemed appropriate for their sphere of activity?
4. In the event an inadequate level of insurance protection exists, is there any adverse impact on the defense offered by the insurance carrier for that governmental entity and/or will an adverse judgment against such governmental entity cause any harm to other governmental entities through additional premiums and/or reductions of coverage?
5. If a governmental entity does not carry an appropriate level of insurance or carries no insurance at all and if an elected or appointed official is held liable to answer in damages or to pay civil and/or criminal penalties, how is the governmental entity adequately protecting itself against such a contingent liability?
6. How much of a governmental entity's insurance premium payment goes to pay for the defense of suits and claims brought against the insured governmental entity?
7. Can a self-insurance fund created by a local government significantly reduce the overall cost of an adequate liability insurance program?
8. If a local government creates a self-insurance fund, how is an adequate defense provided through the governmental entity and its officers and employees in the case of lawsuits?
9. In addition to purchasing liability insurance and establishing self-insurance funds, have local governments taken any other actions to reduce the cost of liability protection?
- 9A. Could action be taken by all governmental entities within the State of Nevada consistent with a statewide

policy, which would significantly reduce their costs of providing for liability protection.

10. Are there any other alternatives available to provide adequate liability coverage at a significantly reduced cost? (Such alternatives could include --(a) wider dissemination of information concerning insurance costs, coverages and alternatives; (b) employment of persons knowledgeable in "risk and management" at a regional or state level to advise local governments concerning insurance; (c) establishment of a statewide governmental insurance pool; and (d) statewide liability insurance.



LARRY R. HICKS
District Attorney

Washoe County Courthouse
South Virginia and Court Streets
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Murphy
Exhibit B

February 9, 1977

Assemblyman Patrick Murphy
Chairman, Government Affairs Committee
Nevada State Assembly
Nevada Legislative Building
Carson City, Nevada

Re: Tort Liability Insurance of Nevada Governmental Entities

Dear Chairman Murphy:

The following is a summation of remarks prepared for your above mentioned Committee, when it considers proposed Assembly Concurrent Resolution 9 on February 10, 1977. It is the recommendation of the Washoe County District Attorney's Office, which has been authorized to make this recommendation on behalf of the Nevada District Attorney's Association, the Washoe County Commissioners, and the Clark County District Attorney's Office, that proposed Assembly Concurrent Resolution No. 9 be tabled and that the Assembly Government Affairs Committee request the Legislative Counsel to draft a new concurrent resolution, which would direct the Legislative Commission of the Nevada Legislature to conduct a study of the existing practices of the various governmental entities of the State of Nevada concerning tort liability insurance and liability risk management and to submit a report of its findings and recommendations to the 1979 Session of the Nevada Legislature. A form of such a proposed resolution is attached as Exhibit "A".

The need for an interim legislative study of the problem of local government tort liability insurance protection can be summarized as follows:

A. The number of claims and lawsuits filed against local governments and local public officers and employees continues to increase.

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At the present time, there is no statewide data summarizing the number of claims and lawsuits that have been filed against the various governmental entities in this State. However, figures from Washoe County may be indicative of the increasing number of claims and lawsuits being filed against local governments. On February 29, 1976, there were eighty-five (85) suits and/or claims pending against Washoe County, seeking damages or some sort of monetary relief against the County. Most of these eighty-five (85) cases had been filed prior to January 1, 1975. Between March 1, 1976 and February 2, 1977 (an eleven month period) a total of seventy (70) new lawsuits and/or claims were filed against Washoe County. Thus, the number of cases filed against Washoe County seeking some sort of monetary relief during the eleven month period almost doubled. Moreover, of the eighty-five (85) cases outstanding on February 29, 1976, fifty (50) were being handled by the County's insurance carriers. Of the seventy (70) new cases filed between March 1, 1976 and February 2, 1977, only twenty-five (25) have been handled by Washoe County's insurance carriers. Accordingly, during the past two years, Washoe County has experienced a dramatic increase in the number of suits and claims being filed against the County and its officers and employees, coupled with an increasing number of claims and suits being handled by the District Attorney's Office. It is anticipated that this trend will continue, in view of developments nationally in which local governments and officials are being named more and more often in lawsuits. Such a trend would have special significance in Nevada because of NRS 41.0337, which obligates local governments (political subdivisions) in the State of Nevada to defend any tort action against one of its officers or employees.

B. The cost of available tort liability insurance for local governments is increasing very rapidly.

According to the 1975-76 Audit Report for Washoe County, the County Auditor has noted that the County's insurance premiums increased \$147,000.00 over the prior year, representing a 100% increase in premium payments. In FY1975-76, Washoe County paid in excess of \$235,000.00 for insurance protection. Attached to this letter is a statement from Washoe County's Auditor, strongly recommending that the problem of providing adequate liability protection at the local level should be examined in depth and at a statewide level immediately. Our Office has been informed that the cost of liability insurance for other local political subdivisions have increased as much or more as Washoe County's insurance rates over the

past year. In some instances, governmental entities in the State of Nevada have been forced to drop liability insurance policies because of the astronomical costs now being charged for liability protection. More significant is the fact that continued availability of liability insurance for local governmental entities is in doubt due to developments at the national level in the casualty insurance industry. Trends in other states indicate that liability insurance carriers are becoming more and more reluctant to offer liability policies to governmental entities. In order to prepare for such an eventuality in this State, a comprehensive study is needed now to consider the alternatives that will be available to Nevada's local governments in the coming years.

C. The problem of liability protection of local governments is a matter of statewide concern and not just local concern.

As indicated above, there appear to be great disparities among governmental entities in Nevada respecting the amount of liability insurance carried by each particular entity. It is not known at this time what adverse effects may result if one local government in a particular county is uninsured and another local government is fully insured against liability risks. Furthermore, public officials and employees working for an uninsured local government would not know the extent to which a complete and proper defense would be provided to them if they were named in a lawsuit filed pursuant to NRS 41.031. Usually, the insurance carrier arranges for the defense of such an official or employee, which is one of the biggest inducements to maintain adequate liability insurance coverage.

The Nevada District Attorney's Association recognized the need for some sort of uniformity in the availability of liability insurance protection at the local level and unani- mously adopted a motion at its December, 1976 meeting, sup- porting some kind of legislation to assure that adequate insurance coverage existed at the County and local level, so there would be uniformity of liability protection among all seventeen counties and all local units of government in the State of Nevada. Our Office has also been informed by the legal counsel to the Clark County Commissioners, Mr. Jim Bartley, Esq. that the Clark County District Attorney's Office strongly supports a statewide study of this problem for the reasons noted above.

D. Questions to be reviewed by the Legislative Commission.

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Basically, the Legislative Commission or a subcommittee thereof should obtain as much data as is possible prior to the 1979 Nevada Legislature, pertaining to liability protection of Nevada governmental entities. Included in the data that should be obtained is the following:

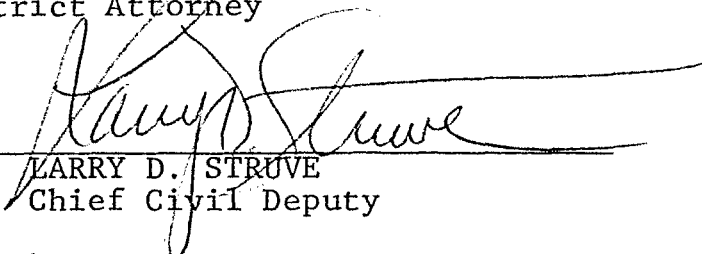
1. The total annual cost of insurance at all levels of government within the State of Nevada.
2. The total amount of claims that have been paid by insurance carriers of all levels of government within the State of Nevada in relation to the premiums that have been collected.
3. A synopsis of the actions that have been taken by various local governmental entities to minimize the costs of obtaining adequate liability insurance or to cover their liability risks in some other manner.
4. Suggestions for minimizing the costs to local governments in providing adequate liability protection, including concepts of self-insurance, pooling of risks, statewide insurance policies, or other feasible solutions to the problem.

Thank you for your Committee's consideration.

Very truly yours,

LARRY R. HICKS
District Attorney

By


LARRY D. STRUVE
Chief Civil Deputy

LDS:ph

Encl.

ASSEMBLY CONCURRENT RESOLUTION NO. _____ - COMMITTEE
ON GOVERNMENT AFFAIRS

DATE: _____

SUMMARY--Directs Legislative Commission to study current practices of local governments and governmental entities of the State of Nevada in providing adequate tort liability insurance or alternative means of providing adequate liability protection.

ASSEMBLY CONCURRENT RESOLUTION - Directing the Legislative Commission to study current practices of local governments and governmental entities of the State of Nevada in providing adequate tort liability insurance or alternative means of providing adequate liability protection.

WHEREAS, the fifty-eighth session of the Legislature adopted Assembly Concurrent Resolution No. 32 directing the Legislative Commission to conduct a study of the methods of creating, governing and financing general improvement districts in Nevada; and

WHEREAS, the Legislative Commission appointed a subcommittee to conduct the study, and the subcommittee learned that some general improvement districts and other local governments had made no arrangements for tort liability insurance; and

WHEREAS, the services provided by local governments are wide ranging and as a result the potential liability to these governments and their officers is extensive; and

WHEREAS, the subcommittee has concluded that local governments should have adequate liability insurance; and

WHEREAS, there is inadequate information currently available to evaluate the extent to which local governments in the State of Nevada and other governmental entities in the State of Nevada have obtained adequate tort liability insurance or made other arrangements to provide adequate protection against liability in connection with activities, services, and functions performed on behalf of said governmental entities; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, that the Legislature supports the subcommittee's conclusion that every local government or governmental entity should have adequate tort liability insurance or other adequate protection against liability; and be it further

RESOLVED, that the Legislative Commission conduct a study of the current practices of local governments in the State of Nevada and other governmental entities in the State of Nevada in obtaining adequate liability insurance or other adequate protection against liability for the purpose of determining whether or not any disparities exist among local governments and governmental entities of the State of Nevada respecting the availability of liability insurance for the protection of each such governmental entity and the officers and employees of each such entity and determining what other alternatives have been utilized by such governmental entities to provide protection against liability if liability insurance has not been obtained and whether such alternatives are providing adequate protection; and be it further

RESOLVED, that the review by the Legislative Commission determine what is the total annual cost of insurance for local governments in the State of Nevada, what claims have been paid by the insuring agents or carriers in relation to the aforesaid costs, what actions have been taken by various local governments and governmental entities to minimize their costs for adequate liability protection, and what action can be taken by either the State of Nevada or local governments and other governmental entities in the State of Nevada to minimize costs for protection against liability in the future; and be it further

RESOLVED, that a report of findings and recommendations be submitted to the Sixtieth session of the Nevada Legislature.

STANDING RULES OF THE ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE FOR THE
FIFTY-NINTH SESSION, 1977

1. The order of business under which this committee shall be organized is as follows:
 - a) Constitution of the State of Nevada
 - b) Nevada Revised Statutes
 - c) Standing rules of the Nevada Assembly
 - d) Standing rules of the Assembly Government Affairs Committee
 - e) Mason's Manual of Parliamentary Procedure
2. A minimum of five (5) members of this committee will constitute a quorum.
3. Motions may be moved, seconded and passed by voice vote by a majority of those present except a definite action on a bill or resolution will require a majority of the entire committee.
4. A two-thirds majority (6) of all the committee is required to reconsider action on a bill or resolution.
5. Committee introduction requires concurrence of two-thirds (6) of the committee and does not imply commitment to support favorable passage.
6. All questions concerning committee procedure will be directed through the chairman.
7. Attendance will be taken at every meeting.
8. The secretary of the committee shall call the roll at the beginning of each meeting, noting members present, absent, and/or late. Absences excused will be so recorded.
9. Subcommittees may be formed at the discretion of the chairman.
10. Minority committee reports may be made as per Mason's Manual §677.
11. All definite actions of the committee will require roll call votes which shall be recorded by the secretary.
12. In the absence of or at the discretion of the chairman, the vice chairman shall conduct the meetings of the committee.
13. Any final voting action of the committee will not be made until all witnesses have been heard, questioned and dismissed. The chairman shall determine when a final action is to be taken.
14. All meetings and deliberations of this committee will be open and available to the public and all members of the media.
15. The committee may swear in persons appearing before the committee to give testimony. This rule was adopted by the committee on March 25, 1977 pursuant to NRS 218.535.