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# Sneed Law Firm, LLC

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## Memorandum

To: The Honorable Fred Patton, Chair  
House Judiciary Committee

From: William W. Sneed, Legislative Counsel  
Kansas County Association Multiline Pools (KCAMP)

Date: January 29, 2019

RE: HB 2065

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the Kansas County Association of Multi-Line Pools ("KCAMP"). Please accept this testimony as support for H.B. 2065.

Kansas County Association Multiline Pool was formed under the sponsorship of the Kansas Association of Counties and began operation January 1, 1991. Regulated by the Kansas Insurance Department, KCAMP was formed because in the late 1980's and early 1990's insurance for counties was difficult to obtain and extremely expensive. KCAMP was created to provide a viable alternative to private insurance, which was not a good alternative at that time. KCAMP is not unique; there are over 430 public entity pools in the United States to which 85% of all public entities belong. That means in the U.S., most schools, cities, public transit systems, special districts, townships and counties belong to pools. Over time pools have proven to be the preferred alternative to the private insurance market.

KCAMP is a member-owned, member-funded self-insured property and liability pool. KCAMP is not an insurance company. Members pay contributions (premiums) to the pool. These contributions are used to pay claims, provide risk management services and education to the members, and pay costs associated with the administration of the pool. Members elect a Board of Trustees from their peers to oversee KCAMP. Professional staff handle the day to day functions, including claims administration. We have only one purpose, which is to provide to our members the best risk management and insurance services available.

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The Kansas Tort Claims Act (KTCA) states that a public entity is liable for injury or damages caused by the negligence of their employees acting within course and scope of duties of their employment. The KTCA then lists exceptions to liability, where the public entity is immune from liability. There are two relevant exceptions related to pursuit. The first is that the KTCA provides immunity for the exercise or exception to liability (i.e., immunity) for the “method of providing” police or fire protection. In a 2018 Kansas Appellate Court case involving the KHP (*Montgomery v. Saleh*), the Court held that the decision to engage in a pursuit was not a discretionary function and therefore the agency or officer engaged in the pursuit was immune under the KTCA. The Court went further and found that since the Legislature enacted K.S.A. 8-1506, which creates a duty for officers to act with due care for the safety of others when engaged in pursuit, the KTCA immunities do not apply at all.

The legislation proposed by H.B. 2065, rather than establish that pursuits are discretionary acts, simply modifies K.S.A. 8-1506 to state that the agency or officer is not relieved from the consequences of “reckless disregard” for the safety of others. This change in essence raises the standard from ordinary negligence to gross negligence.

My client contends that this change conforms to the true intent of K.S.A. 8-1506(d) and provides a reasonable balance between the actions of law enforcement and the general public. Thus, we respectfully request that your Committee act favorably on H.B. 2065.

Thank you for your consideration, and I will be happy to answer questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Will W. Sneed".

William W. Sneed