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Senate Post Office
Main Capitol Building
Harrisburg, PA 17120-0030
(717) 787-7680
(717) 787-6211

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TESTIMONY

OF

PENNSYLVANIA LOCAL GOVERNMENT COMMISSION

BY

ANDREW SISLO, ESQUIRE
LEGAL COUNSEL

BEFORE THE

HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE

ON

GOVERNMENTAL IMMUNITY

AND

LIABILITY INSURANCE

SEPTEMBER 4, 1986
HARRISBURG, PENNSYLVANIA

02-04-006

My name is Andrew Sislo, and I am Legal Counsel to the Local Government Commission. With me today is Virgil Puskarich, Executive Director of the Local Government Commission. The Commission was requested by your Committee to present testimony at this Hearing which hopefully would provide the Committee a "frame of reference" to help it formulate conclusions about the impact which proposed restrictions upon the civil justice system might have on the availability and affordability crisis in the liability insurance market.

We all know the problem: liability insurance is either unavailable or unaffordable for many businesses, local governments, and individuals. Certain special interest groups throughout the Commonwealth, including insurance companies, have waged a strong and persistent campaign before the Legislature and in the press advocating tort reform as the most effective solution to the problem. Others have counter-argued that restricting access to the civil courts, limiting damage awards, and restricting procedures for collecting damage awards cannot be justified by substantiated empirical data; and that tort reform may not be the panacea for the crisis in the insurance market place.

As currently promoted, "tort reform" implies and assumes that lawsuits are either an exclusive or substantial cause of high insurance rates. The issue before the Committee appears to be whether this assumption has any legitimate basis to warrant further consideration of tort reform or is the assumption mostly rhetoric.

Thus, with these considerations in mind, the Local Government Commission, today, refers the Committee to: (A) generally, its Report of its

Hearing on Municipal Liability Insurance (September 24, 1985); and specifically, (B) the Pennsylvania Political Subdivision Tort Claims Act (42 Pa.C.S. 8501, 8502, and 8541, et. seq.) as comparative existing law which is similar to current proposals for general tort reform both within the Commonwealth and nationally in that it imposes restrictions upon the civil justice system when a local government is the tortfeasor; (C) the Act's impact upon availability and affordability of municipal liability insurance; and (D) the issue of availability of data as evidence to support allegations that municipal insurance rates have risen because claims against local governments have risen.

At the Local Government Commission's hearing, some witnesses most frequently cited excessive use of the judicial system and unprecedented jury verdicts as the major cause for the current insurance problem. Selective cases, none of which were Pennsylvania cases, were cited in an attempt to substantiate this allegation. The testimony and responses to pointed questioning from members of the Commission very clearly established that no empirical data was available to substantiate the indictments of the Pennsylvania tort system as it impacts municipal governments of the Commonwealth. Thus, due to the unsubstantiated allegations, it appeared to the Commission that either (A) the allegations leveled against the tort recovery system are overstated or have little basis in fact, and that the system of tort recovery has adapted itself to an age of technology where harms and dangers unknown a decade ago are now commonplace; or (B) the time for reform of the tort recovery system has arrived. In any event, any reasonable doubt as to the validity of the allegations set off warning signals to avoid a "quick fix" which may have substantial and far reaching effect upon the rights

of every individual and upon fundamental concepts of social accountability and social justice.

Avoidance of "quick fix" solutions for municipal insurance woes became more evident to the Commission when it compared testimony about local government claims experience with the effects of the Political Subdivision Tort Claims Act. Both the testimony and the acquired knowledge of the Commission lead it to find that over the last ten years tort claims against local governments have been minimal; that no real data exists to support any conclusion to the contrary; and that minimal claims are consistent and compelling evidence that the provisions of the Political Subdivision Tort Claims Act have substantially and effectively insulated local governments from legal accountability for their tortious conduct. Given these findings of fact, the only ultimate and logical conclusion is that municipal insurance rates and availability should not have reached crisis proportions.

As a study in comparative legislation, the Committee could reasonably characterize the Political Subdivision Tort Claims Act as a municipal tort reform act. It is a very restrictive immunity statute. It excuses local governments from accountability for its negligent acts or conduct, or the negligent acts or conduct of its employees. This immunity is complete and absolute, except for eight limited categories (vehicles, real property, streets, and sidewalks, traffic controls, utility services, animals, etc....). Moreover, even if authorized, a law suit is not allowed unless a written claim is filed within a six month statute of limitations (42 Pa.C.S. 5522); and, if timely filed, the Plaintiff must still prove negligence (42 Pa.C.S. 8542).

Other restrictions of the act include:

- (1) Limited damages for pain and suffering when medical expenses exceed \$1,500 only in the following cases:
 - death
 - permanent loss of bodily functions
 - permanent disfigurement
 - permanent dismemberment (42 Pa.C.S. 8553(c))
- (2) \$500,000 absolute cap on damages per occurrence (42 Pa.C.S. 8553(b)) (no matter how many plaintiffs).
- (3) Specificity of recognized losses (42 Pa.C.S. 8553(e)).

Historically, beginning in 1973, legislators faced the difficult task of accommodating inherently mutually exclusive fundamental social and political interests not unlike, and perhaps even more critical than, those which legislators currently face in the insurance crisis. Then, as now, accountability for tortious conduct and redress through adjudication for harm and damage to person and property competed with the more general interests of the Commonwealth in protecting the collective interests of its citizens from adverse impacts upon the ability of local governments to provide for both necessary services and to maintain the health, safety, and welfare of all its residents. In passing the Political Subdivision Tort Claims Act, the Legislature made a declaration of public policy that the rights of individuals to seek redress and damages for harm must yield to a paramount and more compelling state-interest in the integrity of local government. Nevertheless, the legislative process which preceded passage of the act was deliberate. Perhaps this procedure is instructive in that even in the face of the Pennsylvania Supreme Court's complete abrogation of the common law doctrine of

governmental immunity in 1973 (in the case of Ayala v. Philadelphia Board of Education, 453 Pa. 584, 305 A2d 877), serious questions remained about the extent to which individual rights should defer to state interests.

I earlier referred to the Report of the Hearing of the Local Government Commission on Municipal Liability Insurance. The Commission's recommendations as a result of that hearing can be found on pages 9 through 11 of the report. Many of those recommendations have found their way into legislation. One which did not is recommendation #11, calling for recordkeeping requirements.

As a result, the Commission recommended and initiated introduction of an amendment to the Political Subdivision Tort Claims Act to require municipal recordkeeping of claims and lawsuits filed against local governments. The Commission recognized that the virtual non-existence of such data hindered the Commission, as well as local governments and insurance companies, in assessing the probable cause of the municipal insurance crisis more definitively. A copy of the amendment, defeated in the Senate, as well as pertinent debate extracted from the Senate Journal, are attached.

In conclusion, the Local Government Commission in the report of its hearing acknowledges the municipal tort reform embodied in the Political Subdivision Tort Claims Act as a conscious deference of individual rights to a compelling state interest in local government immunity from liability for otherwise tortious conduct; it finds persuasive evidence that governmental immunity has protected Pennsylvania local governments from suit to the degree intended; and that, nevertheless, municipal liability insurance rates have escalated while availability of coverage has diminished or disappeared.

The Commission expresses its appreciation for the invitation to offer comments to this Committee on the very important issue of tort reform. Again, we do not pretend to have any special expertise on either insurance matters or the civil justice system. However, we do hope that our comments will cause the Committee to pause and reflect upon the effects and impacts existing municipal tort reform has had upon insurance cost and availability as it considers issues of general tort reform.

Also, a copy of the Commission's report is being made available to each member of the Committee as a matter of convenience.

Thank you.

Local Government Commission
Presented by:
Andrew Sislo, Esq.
Legal Counsel
September 4, 1986

Use of containers.

(a) General rule.—A person owning shopping carts, laundry carts or containers may adopt and use a name or mark on the carts or containers.

(b) Prohibited uses.—

Amend Sec. 3, page 5, line 2, by inserting after "3": unless authorized to do so by the owner

Amend Sec. 4, page 5, lines 6 through 8, by striking out "dairy" in line 6, all of lines 7 and 8 and inserting: or containers.

Amend Sec. 4, page 5, lines 10 and 11, by striking out "dairy case, egg basket, poultry box, bakery tray or bakery basket" and inserting: or container

Amend Sec. 4, page 5, line 12, by inserting a period after "property"

Amend Sec. 4, page 5, lines 12 through 14, by striking out "and commits a summary offense and" in line 12 and all of lines 13 and 14

Amend Sec. 5, page 5, lines 15 and 16, by striking out "dairy cases, egg baskets," in line 15, all of line 16 and inserting: containers;

Amend Sec. 6, page 5, lines 24 and 25, by striking out "dairy cases, bakery trays or" in line 24, all of line 25 and inserting: containers.

Amend Sec. 6, page 5, lines 27 and 28, by striking out "dairy case, bakery tray or bakery basket to remove a dairy case, bakery tray or bakery basket" and inserting: container to remove it

Amend Sec. 6, page 5, line 29, by inserting after "any": processor, distributor or

Amend Sec. 6, page 6, line 1, by striking out "dairy case, bakery tray or bakery basket" and inserting: container

Amend Sec. 6, page 6, lines 5 and 6, by striking out "dairy case, bakery tray or bakery basket" and inserting: container

Amend Bill, page 6, lines 7 through 28, by striking out all of said lines

Amend Sec. 10, page 6, line 29, by striking out "10" and inserting: 7

Amend Sec. 10, page 7, lines 8 and 9, by striking out "or sign" and inserting: , name or mark

Amend Sec. 11, page 7, line 10, by striking out "11" and inserting: 8

Amend Sec. 11, page 7, lines 12 and 13, by striking out "any dairy case, egg basket, poultry box, bakery tray, bakery basket" and inserting: a container

Amend Sec. 12, page 7, line 15, by striking out "12" and inserting: 9

Amend Sec. 13, page 7, line 21, by striking out "13" and inserting: 10

Amend Sec. 13, page 7, lines 23 and 24, by striking out "dairy case, egg basket, poultry box, bakery tray, or bakery basket," and inserting: or container

Amend Sec. 13, page 7, lines 26 through 28, by striking out the comma after "care" where it appears the second time in line 26, all of line 27 and "basket," in line 28 and inserting: or container

Amend Sec. 13, page 7, lines 28 and 29, by striking out "case, tray, basket or box" and inserting: or container

Amend Sec. 14, page 8, line 1, by striking out "14" and inserting: 11

Amend Sec. 14, page 8, lines 2 and 3, by striking out "dairy case, egg basket, poultry box, bakery tray or bakery basket" and inserting: or container

Amend Sec. 15, page 8, line 6, by striking out "15" and inserting: 12

On the question,

Will the Senate agree to the amendment?

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT pro tempore. The Chair notes the presence on the floor of Senator Jones. Her temporary Capitol leave will be cancelled.

And the question recurring,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator HELFRICK.

BILL OVER IN ORDER

SB 1391 — Without objection, the bill was passed over in its order at the request of Senator STAUFFER.

BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE

SB 1395 (Pr. No. 1916) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for indemnification for local agency employees in civil actions; and further providing for a local agency to purchase insurance.

Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

Senator CORMAN, by unanimous consent, offered the following amendment:

Amend Sec. 1 (Sec. 8564), page 10, by inserting between lines 10 and 11:

(s) Report to local agencies.—As a condition of doing business within this Commonwealth, an insurance company shall report quarterly to each of its insured local agencies the amount of every claim paid and all legal defense costs incurred pursuant to the respective policy of insurance issued to each such local agency.

(t) Records of local agencies.—A local agency shall maintain an accurate and concise record, numbered consecutively and indexed alphabetically, of every claim made and every lawsuit filed against it and its employees for damages without regard to the legal sufficiency of the claim or the cause of action. Every such record shall contain the following data:

(1) The name and post office address of the claimant or plaintiff and of his or her attorney.

(2) The date of the claim or lawsuit.

(3) A brief description of the claim or lawsuit.

(4) A copy of any written claim or legal complaint, if available.

(5) The amount of alleged damages.

(6) The final disposition of the claim or lawsuit by a local agency prior to referral to an insurance carrier and the amount of damages paid by the local agency from local funds or from a self-insurance reserve.

(7) Whether the claim or lawsuit is referred to an insurance carrier, including the name and address of the insurance carrier, the policy number, and the date of referral.

(8) The disposition of the claim or lawsuit by the insurance carrier.

(9) The amount of damages paid on behalf of a local agency by an insurance carrier pursuant to a contract or policy of liability insurance and the total legal costs incurred in defense of said claim or lawsuit.

(10) The date and the verdict of any trial or other legal proceeding.

(11) The date and the outcome of any appeal.

(12) The date a case is closed.

Worker's compensation claims are specifically excluded from the requirements of this subsection.

(u) Report from local agencies.—On or before February 15 each local agency shall submit an annual report of all records, including records closed within the preceding calendar year, to the Department of Community Affairs. The report required by this section shall be in a form prescribed and furnished by the Department of Community Affairs and shall contain a summary of all the data maintained by a local agency pursuant to this section. On or before June 1, the Department of Community Affairs shall compile an annual summary of the reports required to be filed by this section.

Amend Bill, page 10, by inserting between lines 24 and 25:

Section 4. Section 8564(s), (t) and (u) shall be applicable notwithstanding any inconsistent provision of any law or regulation to the contrary.

Amend Sec. 4, page 10, line 26, by striking out "4" and inserting: 5

On the question.

Will the Senate agree to the amendment?

Senator CORMAN. Mr. President, the purpose of this amendment is to provide information to the municipalities of the Commonwealth of Pennsylvania which heretofore have expressed a lack of knowledge of what claims have, in fact, been paid on their behalf and what expenses insurance companies have in providing liability insurance for the various municipalities in the Commonwealth. I think, as everyone in this Chamber is well knowledgeable of the fact, that currently municipalities are having difficulty getting liability insurance and some of the reasons are known but a good many of them are not truly known. The purpose of this amendment is to require the insurance companies once a year to inform each municipality they happen to insure of the amount of money spent on behalf of that municipality, either in payment of a claim or for legal defense used in defending a claim. Once a year those same municipalities would then inform the Department of Community Affairs of the various aspects of the claims so the Department of Community Affairs may amass that information to develop plans for assisting the various municipalities in becoming better risk managers. In some cases maybe the municipalities do have more claims than are necessary, if they would better examine their mission and what they are doing, and that is the purpose of this, to help better understand the issue and maybe come up with easier obtainable insurance at a more equitable price.

Senator O'PAKE. Mr. President, as the prime sponsor of this legislation, I oppose this amendment. First of all, let us examine what the amendment actually does. I think this is very important because we are going to have to be held accountable for what we are doing here to every city, to every borough, to every township, to every local elected government official at the school board level, borough and every township secretary. What the amendment of the gentleman from Centre, Senator Corman, proposes to do is to require every

local government to maintain precise records of every claim and every lawsuit filed against them and to report this annually to the Department of Community Affairs. The information required of your township secretary and your borough secretary, among others, would include the name of the claimant and his attorney, the amount of damages alleged, whether or not it was referred to the municipality's insurance carrier, whether or not the carrier paid it, the date the claim was appealed if there was an appeal, the date the case was closed, and on and on ad infinitum. In addition, every insurance company would be required to report every quarter to the municipalities telling them which claims were paid and the amount, including all legal defense costs. The reason given by my colleague, the gentleman from Centre, Senator Corman, in support of this bill is that the Local Government Commission wants some data. They want to study whether or not there is a crisis in the insurance field for municipalities. I do not think we need this data. If you have been talking to your local elected government officials you know there is a real crisis. Many public-spirited citizens are unwilling to serve, some of them are resigning because they do not want to be personally liable for an insurance problem of the municipality, unavailability of insurance and the cost of insurance. As a matter of fact, the Local Government Commission, which is now ostensibly asking for this amendment, has said that Pennsylvania's Tort Claims Act eliminates "even the possibility that suits against local government are the cause of the problem." In other words, there is immunity out there for local government officials. Despite that, they are having problems getting insurance.

This is not an answer to the problem, this is bureaucratic overkill. This is imposing layer upon layer of bookkeeping, accounting, reporting responsibilities, and local government officials have had it up to you know where. They do not want anymore paperwork. They do not want to file all of these reports. The fact of the matter is that the reason given for requiring this extra paperwork is really not a valid reason at all, because the Local Government Commission has said do not blame the Tort Claims Act for the problem, the way the act is worded eliminates even the possibility that suits against local governments are the cause of the problem. If you vote for the amendment of the gentleman from Centre, Senator Corman, you will have to be accountable to every local government official as to why in the name of solving the problem you have imposed even more responsibilities on our hard-working local government officials.

I respectfully suggest a "no" vote on this amendment. I think this amendment does not add anything that cannot be done in a less offensive way, and probably will result in the end of our effort to provide what this bill is all about, namely, pooling by local governments. Local governments can do the jobs themselves if given the opportunity and the legal authority to pool. New Jersey municipalities have saved in one year \$700,000 in premiums by pooling. This gives Pennsylvania local governments the same legal right. Do not kill this bill with this kind of kindness. The Local Government Commis-

sion does not need to make every local government official a bookkeeper, a record keeper, a data gatherer for the Local Government Commission. I urge a "no" vote on this amendment.

Senator CORMAN. Mr. President, last year the Local Government Commission held public hearings on the insurance plight that is faced by all the various municipalities in the Commonwealth of Pennsylvania and issued a report on some of the things they felt were important in order to try to assist these municipalities in obtaining insurance or, at least, understanding why they cannot get insurance and how they can better themselves to be in a position to buy insurance. That report was published, and all the units of local government were made knowledgeable of the recommendations of the Local Government Commission. To my knowledge, only one unit of local government, the Boroughs' Association, raised a question about the bookkeeping that would be required. After they discussed that issue with the Executive Director of the Local Government Commission, they indicated they had no problem with this particular amendment.

I cannot say to any of my colleagues there is not going to be some township or some borough somewhere that might not object to some record keeping. I think they would object more strenuously, however, as they currently are, to their inability to purchase insurance. The purpose of this is to assist local government. I believe most units of local government will cooperate willingly to help provide this information to gain a book of knowledge as to how we can get their understanding of the problem with their insurance which will help them to become better risk managers.

Senator LEWIS. Mr. President, having served as a Member and Chairman at one time of the Local Government Commission, together with many of my colleagues in this Body, I have the greatest amount of respect for the work they do, for the staff and for the efforts of those who serve on the commission, but this is one occasion—and it may well be the first I can recall—when I rise to oppose a request being made. In so doing, I embrace all of the comments made by the gentleman from Berks, Senator O'Pake, and add the following observations from my experience with regard to local government reporting requirements. For years we have required local government units to report to the Department of Community Affairs with regard to their statistical and actuarial experiences on their pension plans, and I can tell you that, even when we were able to gather the information, it was, at best, two or three years old and then, even under the most polite circumstances, incomplete because of the failure of many units of local government to respond. There is no doubt there is a crisis in availability of insurance in Pennsylvania and there is no doubt that our local government units are experiencing many hardships because of that. I, for one, was privileged to have the gentleman from Centre, Senator Corman, join with me in a public hearing in my district, which was not only testimony to his commitment to this issue, but I think also an opportunity for both of us to hear again firsthand from the people in the community what their sense of the

problem is all about. In so doing, I think we need to be keenly aware of the fact that the biggest problem with local government insurance availability is outside of the control or the parameters of effect of this state government. The problems are arising from federal civil rights litigation, from employee dismissal litigation being taken in the federal courts and from environmental litigation, again under the parameters of federal law. So, in addition to the reporting requirements being bureaucratic overkill, in addition to the experience we have had of the reluctance and failure of local governments to supply information at all or in any timely fashion—and I note there is no obligation or penalty for failure to supply information—I would further say, at best, the information once developed is going to show us only what we already know and that is to the extent that there is a litigation and award to plaintiff cause and effect relationship in the availability of insurance. It is occurring because of circumstances that are absolutely outside of our control.

As one footnote, I think it is important for us also to be aware of the fact that cost of insurance is foremost in the minds of our constituencies, and there should be none among us who for a moment believes the costs of complying with this bureaucratic proposal will not be passed right back on to the very people who now find it difficult, if not impossible, to pay the premium rates.

For all of those reasons, I would urge a negative vote on the amendment.

Senator STOUT. Mr. President, I rise to support the amendment offered by the gentleman from Centre, Senator Corman, to Senate Bill No. 1395. As a member of the Local Government Commission, I, likewise, participated in the hearings that were held concerning the insurance crisis in Pennsylvania. One of the most glaring things that came out of that hearing was the fact that most of the local municipalities had no knowledge whatsoever of claims their insurance carriers had paid in their behalf and only find out after the fact that the claims are settled. So part of this amendment offered by the gentleman from Centre, Senator Corman, would notify the local municipalities of the various claims the insurance carrier was paying and that information was very important to local townships and boroughs as they have to get a handle on the risk management.

I feel it is not an overburden. The forms that would be developed by the Department of Community Affairs would be so structured so if a municipality has no claims filed against it in the previous calendar year, it can simply mark that on the form and not have to go through the itemized areas of one through twelve that are covered in this amendment. I strongly feel this amendment is needed to help deal with the insurance crisis in Pennsylvania as it affects local government.

Senator RHOADES. Mr. President, I also rise to support the amendment offered by the gentleman from Centre, Senator Corman, because of the same thing. Look at the amendment and look at the bill. Why? Because the premiums have increased by almost 100 percent or maybe 200 percent.

We have municipalities throughout the Commonwealth who cannot obtain insurance and are running without it and, therefore, are facing a great personal liability to the municipality. The amendment offered by the gentleman from Centre, Senator Corman, will help define those risk management areas. If we do have a municipality that has had four or five incidents, at least it hopefully will be able to take the steps to reduce or eliminate those risks and, by that time, hopefully reduce its insurance premiums.

Secondly, the issue of claims, as was addressed by the gentleman from Washington, Senator Stout, is very true. Those that are settled the municipalities are never informed about. Those that are unsettled are settled out of court. Many times a municipality never knows, and then this is placed upon them as a responsibility and a liability which has forced their premiums to go higher.

The third thing is the statistics which we see are insurance industry statistics. Compared to what? We do not have that base. This amendment will give us that base and a verification.

Lastly, I say it is a responsibility to keep the rates as low as we possibly can. So we do two things. We compare locally to the insurance industry and draw a bottom line which will say here is the most effective method. This is how we keep our premiums low. This is how we reduce our risk management levels and this is how we serve our constituency.

Senator O'PAKE. Mr. President, we are being asked by local governments and municipalities throughout the Commonwealth to prescribe some medicine to a very, very serious illness. When we go back and tell these people who have complained to us that our prescription for their ills is to do more record keeping, to increase the cost of local government, to report back to DCA so a couple of years down the road they can compare and make some studies, I think we will be laughed at. Reference has been made by several colleagues on the floor to the work of the Local Government Commission. Let me quote from the report recommendations and summary of testimony of the Local Government Commission, November 1985, where they zero in on this question of unavailability or unaffordability of liability insurance. The argument was made that we have to do it because of all the lawsuits. I quote now from the Local Government Commission:

"No witness presented to the Commission any substantial data or evidence that civil lawsuits against Pennsylvania local governments have risen so dramatically in either frequency or size of claims to justify a conclusion that the accommodation of conflicting interests reached by the Legislature in 1978"—that is the Tort Claims Act—"are no longer viable. In fact, testimony presented to the Commission by major litigators of municipal tort cases and by experienced and active municipal solicitors indicates that the Act"—the Tort Claims Act—"stops most claimants who otherwise have suffered legitimate injuries dead in their tracks. Further, other testimony presented at the hearing and other information from local governments appears to indicate that the claims experience of Pennsylvania local governments is very low..."

"We do not judge whether the civil justice system generally has caused the current market phenomena, but can conclude that as far as the impact of tortious local government conduct in Pennsylvania is concerned, the Political Subdivision Tort Claims Act in its current form eliminates even the possibility that suits against local governments are the cause of the problem."

In other words, Mr. President, this amendment is not necessary to solve the problem at the local government level. As a matter of fact, legislation containing this amendment, which is being sold as a solution to the problem, is really a complication of the problem so far as local governments are concerned. There is no proven need for the amendment. Certainly, there is, as everybody understands, additional cost and burden and, yet, this is being prescribed by the gentleman from Centre, Senator Corman, as the medicine that is going to solve the problem. It will not solve the problem. It will exacerbate the problem. Once again I urge defeat of this amendment.

Senator RHOADES. Mr. President, one thing I would possibly want to add is the municipalities have not provided statistics because they have not kept statistics.

Secondly, if there is not any litigation by a municipality, there is not any need by them to report any litigation.

Thirdly, if the claims are low that are submitted to or by or against municipalities, then why do we have premium increases?

Senator LINCOLN. Mr. President, would the gentleman from Centre, Senator Corman, submit to a brief interrogation?

The PRESIDENT pro tempore. Will the gentleman from Centre, Senator Corman, permit himself to be interrogated?

Senator CORMAN. I will, Mr. President.

Senator LINCOLN. Mr. President, if this amendment is adopted by the Senate, does it then necessitate Senate Bill No. 1395, Printer's No. 1916, being recommitted to the Committee on Appropriations for a fiscal note?

Senator CORMAN. Mr. President, I can imagine it would. Certainly, I do not recognize any large or any expenditure of any significance of any money by any municipality or by the Commonwealth. Yes, I guess there would. There is record keeping on behalf of the Department of Community Affairs. I do not know for sure, but it might very well. There certainly would be a record keeping expense on the part of the Department of Community Affairs and, if that is sufficient to have it go to the Committee on Appropriations for a fiscal note, it might. I do not know.

Senator LINCOLN. Mr. President, I thank the gentleman.

Mr. President, I think the question as to whether the bill would then have to be recommitted for a fiscal note is one of paramount importance, because the bill itself faces several issues in an attempt to solve some of the very serious problems that our local governments are experiencing. I believe this amendment adds so little to the bill that it is really a waste of time to cause the problem of having it go to the Committee on

Appropriations and delay, for whatever period of time, final passage of the bill. It does not make sense in that the amendment would ask the insurance companies to report claims to local governments and then ask those same local governments to report that same information to someone else. I think from the debate it is clear there is a need for the insurance company to report the claims against the local government to them that I really do not see any need or sense in making that chain of reporting go any further. I think the amendment itself would be probably more proper in the form of a bill introduced on its own so as not to stop or impede the progress of this particular piece of legislation. For that reason, I would ask for a negative vote on the amendment.

Senator ZEMPRELLI. Mr. President, perhaps my remarks will be regarded by many as being extremely parochial. It does affect my district. I do not think there are too many, if any, districts in the Commonwealth that are having more municipal financing problems than those that have been beset by the loss of a principal industry in the Monongahela Valley and the general area of southwestern Pennsylvania.

Mr. President, this would impose such a tremendous burden on those communities that just now cannot bear anything, communities that do not have police forces, communities that do not have firemen, communities that are unable to hire employees who are rendering no service to anybody. I can guarantee you that I know of five municipalities that would not have the wherewithal to provide this information simply because they do not have the money to hire anybody to do it. Mr. President, if there was something that could come as a benefit from the imposition of these additional requirements of filing that have to do with insurance or the acquisition of insurance or anything other than a compilation of records that are meaningless in a statistic as to the meat of the problem, and that is how do we get insurance companies to carry coverage for municipalities and how do we try to understand this problem other than a compilation of records as to what has happened, I could then somehow, maybe, justify it. I make an urgent appeal that the time has come for us not to look for new and innovative means of imposing additional financial burdens upon our municipalities. We should be looking at the opportunity to relieve municipalities from this responsibility because as sure as I am standing here today, I know of five or six municipalities that will stand in default because the priority of service to the community is going to be one of fire protection, police protection and those kinds of services and not the idiocy of making reports as to accident claims. I would hope this message is understood for what it is worth and that this amendment will be rejected.

Senator KELLEY. Mr. President, after listening to the debate on this amendment, it appears to me that not only from what the gentleman from Allegheny says about encumbering more greatly the cost upon those municipalities already strangled by a financial despair but, additionally, we are moving away from finding out the information from those who immediately have it available, and that is the insurance companies themselves. It seems absolutely ridiculous to go

and try to gather this information from all the 2,600 municipal governments in this Commonwealth when those insurance companies doing business in the Commonwealth of Pennsylvania have it immediately, readily available. I could not think of anything so inconsistent as to not go get the source material where it is immediately available instead over the long run try to get it from the municipalities. We seem to be attempting to solve a crisis situation by going in a circuitous route. I would urge a negative vote.

Senator O'PAKE. Mr. President, something was just raised and I desire to interrogate the Majority Leader, the gentleman from Chester, Senator Stauffer.

The PRESIDENT pro tempore. Will the gentleman from Chester, Senator Stauffer, permit himself to be interrogated?

Senator STAUFFER. I will, Mr. President.

Senator O'PAKE. Mr. President, if this amendment goes in, will this have to go the Committee on Appropriations for a fiscal note?

Senator STAUFFER. Mr. President, may we be at ease just a moment?

The PRESIDENT pro tempore. The Senate will be at ease. (The Senate was at ease.)

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT pro tempore. The Chair notes the presence on the floor of Senator Brightbill and Senator Fumo. Their temporary Capitol leaves are hereby and herewith cancelled.

And the question recurring,

Will the Senate agree to the amendment?

Senator STAUFFER. Mr. President, I would have no intention of moving this bill to the Committee on Appropriations. I do not believe that is necessary.

The PRESIDENT pro tempore. Senator O'Pake, I would remind you that this is your third time on the bill.

Senator O'PAKE. Mr. President, I would be concerned that since the Governor has declared an emergency and really undertaken some broad and extensive executive powers, I would hate to see this derailed in a committee because of this amendment.

The PRESIDENT pro tempore. Since you have raised that issue, I have to let the gentleman from Centre, Senator Corman, respond for the third time.

Senator CORMAN. Mr. President, I would like to go by the Rules and not speak three times but since the gentleman opposing did that I would like to only clarify one thing. Many people are making references to huge expenses on the part of the local municipalities. We are talking about them filling out a form once a year, that may have six entries in it, and returning it to the Department of Community Affairs. There is no great big financial burden placed upon any municipality and, hopefully, the Local Government Commission has drafted this to be of some assistance to them.

LEGISLATIVE LEAVES

Senator LOEPER. Mr. President, Senator Armstrong has been called from the floor and I would request a temporary Capitol leave on his behalf. Also, Senator Shumaker has been called from the floor and I would request a temporary Capitol leave for him.

The PRESIDENT pro tempore. Senator Loeper has requested temporary Capitol leaves for Senator Armstrong and Senator Loeper. The Chair sees no objection. The leaves will be granted.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were required by Senator CORMAN and were as follows, viz:

YEAS—20

Armstrong	Early	Madigan	Shaffer
Bell	Greenleaf	Moore	Singel
Bodack	Helfrick	Peterson	Stauffer
Brightbill	Jubelirer	Rhoades	Stout
Corman	Lemmond	Salvatore	Wenger

NAYS—30

Andrezeski	Jones	Musto	Scanlon
Fisher	Kelley	O'Pake	Shumaker
Fumo	Kratzer	Pecora	Stapleton
Hankins	Lewis	Reibman	Tilghman
Hess	Lincoln	Rocks	Williams
Holl	Loeper	Romanelli	Wilt
Hopper	Lynch	Ross	Zemprelli
Howard	Mellow		

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,
Will the Senate agree to the bill on third consideration?
It was agreed to.

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT pro tempore. The Chair notes the presence of Senator Salvatore, Senator Armstrong and Senator Shumaker. Their temporary Capitol leaves will be cancelled.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

Andrezeski	Holl	Mellow	Scanlon
Armstrong	Hopper	Moore	Shaffer
Bell	Howard	Musto	Shumaker
Bodack	Jones	O'Pake	Singel
Brightbill	Jubelirer	Pecora	Stapleton
Corman	Kelley	Peterson	Stauffer
Early	Kratzer	Reibman	Stout
Fisher	Lemmond	Rhoades	Tilghman
Fumo	Lewis	Rocks	Wenger

Greenleaf	Lincoln	Romanelli	Williams
Hankins	Loeper	Ross	Wilt
Helfrick	Lynch	Salvatore	Zemprelli
Hess	Madigan		

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered. That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILL ON THIRD CONSIDERATION AMENDED

SB 1402 (Pr. No. 1917) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 17, 1921 (P. L. 682, No. 284), entitled "The Insurance Company Law of 1921," requiring certain insurance companies to record and report their losses, expenses and other data with respect to municipal liability insurance; and further providing for penalties.

Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

Senator HANKINS, by unanimous consent, offered the following amendment:

Amend Title, page 1, line 15, by striking out "MUNICIPAL"
Amend Sec. 1 (Sec. 321.1), page 5, line 19, by striking out "MUNICIPAL LIABILITY"

Amend Sec. 1 (Sec. 321.1), page 5, lines 27 through 30, by striking out all of said lines and inserting:

(b) Each report submitted pursuant to subsection (a) shall separately state the required information for each class of property or casualty insurance written by the insurer, including, but not limited to, the following categories of insurance:

- (1) Political subdivision liability insurance, reported separately for municipalities, school districts and authorities.
- (2) Liability insurance for purposes of section 497 of the act of April 12, 1951 (P.L. 90, No. 21), known as the "Liquor Code."
- (3) Day-care center liability insurance.
- (4) Errors and omissions liability insurance.
- (5) Officers and directors liability insurance reported separately for nonprofit entities and for-profit entities.
- (6) Product liability insurance.
- (7) Medical malpractice insurance.
- (8) Attorney malpractice insurance.
- (9) Architect and engineer malpractice insurance.
- (10) Nurse/midwives liability insurance.
- (11) Any other type of insurance deemed necessary by the commissioner.

On the question,

Will the Senate agree to the amendment?

Senator HANKINS. Mr. President, Senate Bill No. 1402 requires the insurance companies to give data to the Insurance Commissioner for municipal liability insurance. This amendment requires the companies to give data to the commissioner for nine other lines of insurance which would be municipal liability insurance, liability insurance for purposes of Dram Shop liability, nurses, et cetera.

And the question recurring,