

HOUSE BILL 653

Introduced by Whalen, et al.

2/06	Introduced
2/06	Referred to Judiciary
2/07	First Reading
2/19	Hearing
2/22	Committee Report--Bill Passed as Amended
2/25	2nd Reading Passed
2/26	3rd Reading Passed
	Transmitted to Senate
2/26	First Reading
2/26	Referred to Judiciary
3/14	Hearing
3/16	Tabled in Committee

1 WHEREAS, recent decisions of the Montana Supreme Court
2 have extended governmental immunity beyond the intent of the
3 Legislature and the framers of the 1972 Montana
4 Constitution; and

5 WHEREAS, it is the intention of the Legislature to
6 address the statutory interpretations found in the recent
7 Montana Supreme Court decisions regarding governmental
8 immunity; and

9 WHEREAS, it is the intention of the Legislature to
10 revise statutory legislative immunity to specifically
11 exclude administrative functions; and

12 WHEREAS, it is the intention of the Legislature to
13 revise judicial immunity to apply only to judicial officers
14 and only to judicial actions and not to nonjudicial,
15 administrative, or quasi-judicial actions.

16 THEREFORE, it is appropriate for the Legislature to
17 repeal the statutes relating to legislative and judicial
18 immunity that have been misinterpreted by the Montana
19 Supreme Court and to enact new statutes that are revised as
20 outlined above.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 NEW SECTION. **Section 1.** Immunity from suit for
24 legislative acts and omissions. (1) As used in this section:

25 (a) the term "governmental entity" includes the state,

1 counties, municipalities, and school districts;

2 (b) the term "legislative body" means only the
3 legislature vested with legislative power by Article V of
4 The Constitution of the State of Montana and any local
5 governmental entity given legislative powers by statute,
6 including school boards. Legislative body does not include
7 executive or administrative agencies of a governmental
8 entity exercising nonlegislative responsibilities.

9 (c) (i) the term "legislative act" means:

10 (A) actions by a legislative body that result in
11 creation of law or declaration of public policy; and

12 (B) other actions of the legislature authorized by
13 Article V of The Constitution of the State of Montana; and

14 (ii) the term legislative act does not include
15 administrative actions undertaken in the execution of a law
16 or public policy.

17 (2) A governmental entity is immune from suit for a
18 legislative act or omission by its legislative body, or any
19 member or staff of the legislative body, engaged in
20 legislative acts.

21 (3) A member or staff of a legislative body is immune
22 from suit for damages arising from the lawful discharge of
23 an official duty associated with legislative acts of the
24 legislative body.

25 (4) The immunity provided for in this section does not

1 extend to nonlegislative actions taken by a legislative
2 body.

3 NEW SECTION. Section 2. Immunity from suit for
4 judicial acts and omissions. (1) The state and other
5 governmental units are immune from suit for acts or
6 omissions of the judiciary.

7 (2) A member, officer, or agent of the judiciary is
8 immune from suit for damages arising from his lawful
9 discharge of an official duty associated with judicial
10 actions of the court.

11 (3) As used in this section, the term "judiciary" means
12 only those courts established in accordance with Article VII
13 of The Constitution of the State of Montana. The term does
14 not include executive or administrative agencies of the
15 state and other governmental units exercising quasi-judicial
16 authority.

17 (4) To the extent that this section denies judicial
18 immunity to executive or administrative agencies exercising
19 quasi-judicial authority of the state and other governmental
20 units, this section specifically revises the common-law rule
21 of quasi-judicial immunity as it might otherwise apply to
22 executive or administrative agencies.

23 NEW SECTION. Section 3. Immunity from suit for
24 prosecutorial actions. A governmental prosecutor and the
25 governmental unit by which he is employed are immune from

1 suit for acts or omissions of the prosecutor within the
2 scope of his duties of filing and maintaining criminal
3 charges, regardless of negligence or lack of probable cause.

4 **Section 4.** Section 20-15-403, MCA, is amended to read:

5 "20-15-403. Applications of other school district
6 provisions. (1) When the term "school district" appears in
7 the following sections outside of Title 20, the term
8 includes community college districts and the provisions of
9 those sections applicable to school districts apply to
10 community college districts: 2-9-101, 2-9-~~111~~ [section 1],
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22 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules
23 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

24 (2) When the term "school district" appears in a
25 section outside of Title 20 but the section is not listed in

1 subsection (1), the school district provision does not apply
2 to a community college district."

3 NEW SECTION. Section 5. Repealer. Sections 2-9-111 and
4 2-9-112, MCA, are repealed.

5 NEW SECTION. Section 6. Codification instruction.
6 [Sections 1 through 3] are intended to be codified as an
7 integral part of Title 2, chapter 9, part 1, and the
8 provisions of Title 2, chapter 9, part 1, apply to [sections
9 1 through 3].

10 NEW SECTION. Section 7. Severability. If a part of
11 [this act] is invalid, all valid parts that are severable
12 from the invalid part remain in effect. If a part of [this
13 act] is invalid in one or more of its applications, the part
14 remains in effect in all valid applications that are
15 severable from the invalid applications.

16 NEW SECTION. Section 8. Two-thirds vote required.
17 Because [sections 1 through 3] limit governmental liability,
18 Article II, section 18, of the Montana Constitution requires
19 a vote of two-thirds of the members of each house for
20 passage.

21 NEW SECTION. Section 9. Applicability. [This act]
22 applies to causes of action arising on or after [the
23 effective date of this act].

24 NEW SECTION. Section 10. Effective date. [This act] is
25 effective on passage and approval.

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 653

INTRODUCED BY WHALEN, MEASURE, HOFFMAN, BRADLEY, NATHE,
J. RICE, VAN VALKENBURG, COBB, D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW
RELATING TO LEGISLATIVE IMMUNITY AND JUDICIAL IMMUNITY;
PROVIDING THAT STATUTORY LEGISLATIVE IMMUNITY EXTENDS ONLY
TO LEGISLATIVE BODIES OF GOVERNMENTAL ENTITIES AND ONLY TO
LEGISLATIVE ACTIONS, NOT ADMINISTRATIVE ACTIONS; PROVIDING
THAT EXECUTIVE OR ADMINISTRATIVE AGENCIES EXERCISING
QUASI-JUDICIAL AUTHORITY OF THE STATE AND OTHER GOVERNMENTAL
UNITS ARE NOT ENTITLED TO JUDICIAL IMMUNITY UNDER EXISTING
STATUTES; REVISING THE COMMON-LAW RULE OF QUASI-JUDICIAL
IMMUNITY TO A CERTAIN EXTENT AS IT MIGHT OTHERWISE APPLY TO
THESE AGENCIES; PROVIDING PROSECUTORIAL IMMUNITY; AMENDING
SECTION 20-15-403, MCA; REPEALING SECTIONS 2-9-111 AND
2-9-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
AN APPLICABILITY DATE."

WHEREAS, in 1972, the State of Montana adopted a new
constitution that abolished governmental immunity, except as
specifically provided by law by a two-thirds vote of each
house of the Legislature; and

WHEREAS, in 1977, the Legislature adopted statutory
immunity from suit for legislative acts and omissions and

for judicial acts and omissions, in accordance with the
provisions of the 1972 Montana Constitution; and

WHEREAS, in 1988, the Montana Supreme Court, in the case
of Koppen v. Board of Medical Examiners, 233 Mont. 214, 759
P.2d 173 (1988), held that the abolishment of sovereign
immunity did not affect the separate and distinct doctrine
of quasi-judicial immunity and further held that the Board
of Medical Examiners and the state were entitled to absolute
immunity in negligence suits, based on the doctrine of
quasi-judicial immunity; and

WHEREAS, in 1989, the Montana Supreme Court, in the case
of Peterson v. Great Falls School District, 237 Mont. 376,
773 P.2d 316 (1989), held that the legislative immunity
statute protected a school district from liability for the
discharge of an employee by the school board's
administrative assistant; and

WHEREAS, in 1989, the Montana Supreme Court, in the case
of State ex rel. Eccleston v. District Court, 240 Mont. 44,
783 P.2d 363 (1989), held that the legislative immunity
statute protected a school district and individual employees
from liability for a slip-and-fall accident on school
property; and

WHEREAS, recent decisions of the Montana Supreme Court
have carried legislative immunity beyond the orbit of
legislative action into the sphere of administrative



1 immunity; and

2 WHEREAS, recent decisions of the Montana Supreme Court
3 have extended governmental immunity beyond the intent of the
4 Legislature and the framers of the 1972 Montana
5 Constitution; and

6 WHEREAS, it is the intention of the Legislature to
7 address the statutory interpretations found in the recent
8 Montana Supreme Court decisions regarding governmental
9 immunity; and

10 WHEREAS, it is the intention of the Legislature to
11 revise statutory legislative immunity to specifically
12 exclude administrative functions; and

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15 and only to judicial actions and not to nonjudicial,
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5 The Constitution of the State of Montana and any local
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8 executive or administrative agencies of a governmental
9 entity exercising nonlegislative responsibilities.

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12 creation of law or declaration of public policy; and

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18 (2) A governmental entity is immune from suit for a
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21 legislative acts.

22 (3) A member or staff of a legislative body is immune
23 from suit for damages arising from the lawful discharge of
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25 legislative body.

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4 NEW SECTION. **Section 2. Immunity from suit for**
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8 (2) A member, officer, or agent of the judiciary is
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12 (3) As used in this section, the term "judiciary" means
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 17 authority.

18 (4) To the extent that this section denies judicial
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 4 charges, regardless of negligence or lack of probable cause.

5 **Section 4.** Section 20-15-403, MCA, is amended to read:
 6 "20-15-403. **Applications of other school district**
 7 **provisions.** (1) When the term "school district" appears in
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25 (2) When the term "school district" appears in a

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