

HOUSE BILL NO. 691

INTRODUCED BY TOOLE, MEASURE, BECKER, WATERMAN,
O'KEEFE, J. RICE, GRADY, WHALEN, D. BROWN, HARPER

IN THE HOUSE

FEBRUARY 8, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

 FIRST READING.

FEBRUARY 19, 1991 COMMITTEE RECOMMEND BILL
 DO PASS. REPORT ADOPTED.

FEBRUARY 20, 1991 PRINTING REPORT.

FEBRUARY 25, 1991 SECOND READING, DO PASS.

FEBRUARY 26, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 60; NOES, 39.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

 FIRST READING.

MARCH 16, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

MARCH 18, 1991 SECOND READING, CONCURRED IN.

MARCH 19, 1991 THIRD READING, CONCURRED IN.
 AYES, 37; NOES, 11.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 23, 1991 RECEIVED FROM SENATE.

 SECOND READING, AMENDMENTS NOT
 CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 28, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 25, 1991

CONFERENCE COMMITTEE REPORTED.

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 29, 1991

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 30, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *691*
 2 INTRODUCED BY *Rep. Michael Becker*
 3 *Rep. Sandy Whalen* *Rep. Dave Brown*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING GOVERNMENTAL
 5 ENTITY IMMUNITY FOR ACTIONS RESULTING IN ENVIRONMENTAL
 6 DAMAGE; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN
 7 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
 8 PROVISION."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 2-9-111, MCA, is amended to read:

12 "2-9-111. Immunity from suit for legislative acts and
 13 omissions. (1) As used in this section:

14 (a) the term "governmental entity" includes the state,
 15 counties, municipalities, and school districts;

16 (b) the term "legislative body" includes the
 17 legislature vested with legislative power by Article V of
 18 The Constitution of the State of Montana and any local
 19 governmental entity given legislative powers by statute,
 20 including school boards.

21 (2) A governmental entity is immune from suit for an
 22 act or omission of its legislative body or a member,
 23 officer, or agent thereof.

24 (3) A member, officer, or agent of a legislative body
 25 is immune from suit for damages arising from the lawful

1 discharge of an official duty associated with the
 2 introduction or consideration of legislation or action by
 3 the legislative body.

4 (4) The immunity provided for in this section does not
 5 extend to:

6 (a) any tort committed by the use of a motor vehicle,
 7 aircraft, or other means of transportation; or

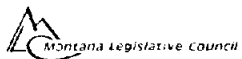
8 (b) any act or omission that results in or contributes
 9 to personal injury or property damage caused by
 10 contamination or other alteration of the physical, chemical,
 11 or biological properties of surface water, ground water,
 12 soil, or air."

13 **NEW SECTION. Section 2. Retroactive applicability.**

14 [This act] applies retroactively, within the meaning of
 15 1-2-109, to any governmental entity action authorized by
 16 2-9-111(4)(b). [This act] authorizes a party who had a cause
 17 of action against a governmental entity dismissed on the
 18 grounds of the previous immunity granted under that section
 19 to refile the action.

20 **NEW SECTION. Section 3. Severability.** If a part of

21 [this act] is invalid, all valid parts that are severable
 22 from the invalid part remain in effect. If a part of [this
 23 act] is invalid in one or more of its applications, the part
 24 remains in effect in all valid applications that are
 25 severable from the invalid applications.



-2- INTRODUCED BILL
 HB 691

IC 1051/01

1 NEW SECTION. **Section 4.** Effective date. [This act] is
2 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0691, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act removing governmental entity immunity for actions resulting in environmental damage; amending section 2-9-111, MCA; and providing an immediate effective date and a retroactive applicability provision.

ASSUMPTIONS:

1. Governmental entity includes state, counties, municipalities and school districts.
2. The proposed legislation authorizes a party who had a cause of action against a government entity for environmental damages, which was dismissed on the ground of sovereign immunity, to refile the action.
3. The amount of potential actions and/or claims against the state or any of its political subdivisions for alleged environmental damage is unknown.

FISCAL IMPACT:

Undetermined.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:


The proposed legislation presents a potentially significant impact upon local governments. However, due to the lack of available information, the magnitude of potential impacts can not be determined.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The retroactive provisions of the proposed legislation will significantly increase the exposure of governmental entities to claims for alleged environmental damage. Liability insurance and legal costs will increase.

TECHNICAL NOTE:

Article II, section 18, of the Constitution of Montana requires a 2/3 vote of each house of the legislature for any exception to immunity. HB0691 may require language pertaining to the super-majority required to pass the proposed amendments to 2-9-111, MCA.


ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning 2-13-91


HOWARD TOOLE, PRIMARY SPONSOR DATE
2/15/91

Fiscal Note for HB0691, as introduced.

HB 691

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 691
2 INTRODUCED BY Rep. Michael Becker
3 Rep. Sandy Whalen Rep. Dave Brown

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5 ENTITY IMMUNITY FOR ACTIONS RESULTING IN ENVIRONMENTAL
6 DAMAGE; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN
7 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
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13 omissions. (1) As used in this section:

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15 counties, municipalities, and school districts;

16 (b) the term "legislative body" includes the
17 legislature vested with legislative power by Article V of
18 The Constitution of the State of Montana and any local
19 governmental entity given legislative powers by statute,
20 including school boards.

21 (2) A governmental entity is immune from suit for an
22 act or omission of its legislative body or a member,
23 officer, or agent thereof.

24 (3) A member, officer, or agent of a legislative body
25 is immune from suit for damages arising from the lawful

1 discharge of an official duty associated with the
2 introduction or consideration of legislation or action by
3 the legislative body.

4 (4) The immunity provided for in this section does not
5 extend to:

6 (a) any tort committed by the use of a motor vehicle,
7 aircraft, or other means of transportation; or

8 (b) any act or omission that results in or contributes
9 to personal injury or property damage caused by
10 contamination or other alteration of the physical, chemical,
11 or biological properties of surface water, ground water,
12 soil, or air."

13 NEW SECTION. **Section 2.** Retroactive applicability.

14 [This act] applies retroactively, within the meaning of
15 1-2-109, to any governmental entity action authorized by
16 2-9-111(4)(b). [This act] authorizes a party who had a cause
17 of action against a governmental entity dismissed on the
18 grounds of the previous immunity granted under that section
19 to refile the action.

20 NEW SECTION. **Section 3.** Severability. If a part of

21 [this act] is invalid, all valid parts that are severable
22 from the invalid part remain in effect. If a part of [this
23 act] is invalid in one or more of its applications, the part
24 remains in effect in all valid applications that are
25 severable from the invalid applications.



LC 1051/01

1 NEW SECTION. **Section 4.** **Effective date.** [This act] is
2 effective on passage and approval.

-End-

HOUSE BILL NO. 690

INTRODUCED BY HARPER, RUSSELL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW REGARDING CRUELTY TO ANIMALS BY ADDING CRUEL CONFINEMENT AND FAILURE TO PROVIDE LICENSED VETERINARY OR MEDICAL CARE AS PUNISHABLE OFFENSES; ADDING AN EXCEPTION FOR SANCTIONED ENDURANCE RACES, COMMONLY ACCEPTED AGRICULTURAL AND LIVESTOCK PRACTICES, AND FOR HUMANE DESTRUCTION OF AN ANIMAL FOR JUST CAUSE; ESTABLISHING A PENALTY FOR REPEAT OFFENSES; AND AMENDING SECTION 45-8-211, MCA."

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

Section 1. Section 45-8-211, MCA, is amended to read:

"45-8-211. Cruelty to animals -- exception. (1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying or confining any animal in a cruel manner;

(c) failing to provide an animal in his custody with:

(i) proper food, drink, or shelter; or

(ii) in cases of immediate, obvious, serious ILLNESS OR injury, licensed veterinary or other appropriate medical

care;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in a horse an animal race of more than 2 miles, except a sanctioned endurance race.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second or subsequent offense of cruelty to animals shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If such the person is the owner, he may be required to forfeit to the county in which he is convicted any animal affected. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(3) In addition to the sentence provided in subsection (2), the court may require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected.

(4) Nothing in this section prohibits:

(a) a person from humanely destroying an animal for



HB 0690/02

1 just cause; or
2 (b) the use of commonly accepted AGRICULTURAL AND
3 livestock practices on livestock."

-End-

SENATE STANDING COMMITTEE REPORT

Page 2 of 2
March 16, 1991

Page 1 of 2
March 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 691 (third reading copy -- blue), respectfully report that House Bill No. 691 be amended and as so amended be concurred in:

1. Title, line 5.
Following: "FOR"
Insert: "NEGLIGENT"

2. Page 2, line 8.
Following: "any"
Insert: "negligent"
Following: "omission"
Insert: ", other than an act or omission set forth in subsection (2),"

3. Page 2, line 12.
Following: "air."
Insert: "This subsection (b) does not create a separate cause of action."

4. Page 2, lines 13 through 19.
Strike: section 2 in its entirety
Insert: "NEW SECTION. Section 2. Coordination instruction. If House Bill No. 653 is passed and approved and if it repeals 2-9-111, then [section 1(4) of House Bill No. 653] is amended to read:
"(4) The immunity provided for in this section does not extend to:
(a) nonlegislative actions taken by a legislative body; or
(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water, ground water, soil, or air."

5. Page 3, line 1.
Following: "date"
Insert: "-- retroactive applicability"

6. Page 3, line 2.
Following: "approval"
Insert: "and applies retroactively, within the meaning of 1-2-109, to causes of action that have not been reduced to final judgment on or before [the effective date of this act]"

Signed: 
Richard Pinsoneault, Chairman

AM 3-16-91
Amd. Coord.
SB 3-16 11:30
Sec. of Senate

HD 691
SENATE

1 HOUSE BILL NO. 690

2 INTRODUCED BY HARPER, RUSSELL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW
5 REGARDING CRUELTY TO ANIMALS BY ADDING CRUEL CONFINEMENT AND
6 FAILURE TO PROVIDE LICENSED VETERINARY OR MEDICAL CARE AS
7 PUNISHABLE OFFENSES; ADDING AN EXCEPTION FOR SANCTIONED
8 ENDURANCE RACES, COMMONLY ACCEPTED AGRICULTURAL AND
9 LIVESTOCK PRACTICES, AND FOR HUMANE DESTRUCTION OF AN ANIMAL
10 FOR JUST CAUSE; ESTABLISHING A PENALTY FOR REPEAT OFFENSES;
11 AND AMENDING SECTION 45-8-211, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 45-8-211, MCA, is amended to read:

15 **"45-8-211. Cruelty to animals -- exception.** (1) A
16 person commits the offense of cruelty to animals if without
17 justification he knowingly or negligently subjects an animal
18 to mistreatment or neglect by:

19 (a) overworking, beating, tormenting, injuring, or
20 killing any animal;

21 (b) carrying or confining any animal in a cruel manner;

22 (c) failing to provide an animal in his custody with:

23 (i) proper food, drink, or shelter; or

24 (ii) in cases of immediate, obvious, serious ILLNESS OR
25 injury, licensed veterinary or other appropriate medical

1 care;

2 (d) abandoning any helpless animal or abandoning any
3 animal on any highway, railroad, or in any other place where
4 it may suffer injury, hunger, or exposure or become a public
5 charge; or

6 (e) promoting, sponsoring, conducting, or participating
7 in ~~a-horse~~ an animal race of more than 2 miles, except a
8 sanctioned endurance race.

9 (2) A person convicted of the offense of cruelty to
10 animals shall be fined not to exceed \$500 or be imprisoned
11 in the county jail for a term not to exceed 6 months, or
12 both. A person convicted of a second or subsequent offense
13 of cruelty to animals shall be fined not to exceed \$1,000 or
14 be imprisoned in the county jail for a term not to exceed 1
15 year, or both. If such the person is the owner, he may be
16 required to forfeit to the county in which he is convicted
17 any animal affected. This provision does not affect the
18 interest of any secured party or other person who has not
19 participated in the offense.

20 (3) In addition to the sentence provided in subsection
21 (2), the court may require the defendant to pay all
22 reasonable costs incurred in providing necessary veterinary
23 attention and treatment for any animal affected.

24 (4) Nothing in this section prohibits:

25 (a) a person from humanely destroying an animal for

HB 0690/02

- 1 just cause; or
- 2 (b) the use of commonly accepted AGRICULTURAL AND
- 3 livestock practices on livestock."

-End-

1 HOUSE BILL NO. 691

2 INTRODUCED BY TOOLE, MEASURE, BECKER, WATERMAN,
3 O'KEEFE, J. RICE, GRADY, WHALEN, D. BROWN, HARPER

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING GOVERNMENTAL
6 ENTITY IMMUNITY FOR NEGLIGENT ACTIONS RESULTING IN
7 ENVIRONMENTAL DAMAGE; AMENDING SECTION 2-9-111, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
9 APPLICABILITY PROVISION."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 2-9-111, MCA, is amended to read:

13 "2-9-111. Immunity from suit for legislative acts and
14 omissions. (1) As used in this section:

15 (a) the term "governmental entity" includes the state,
16 counties, municipalities, and school districts;

17 (b) the term "legislative body" includes the
18 legislature vested with legislative power by Article V of
19 The Constitution of the State of Montana and any local
20 governmental entity given legislative powers by statute,
21 including school boards.

22 (2) A governmental entity is immune from suit for an
23 act or omission of its legislative body or a member,
24 officer, or agent thereof.

25 (3) A member, officer, or agent of a legislative body

1 is immune from suit for damages arising from the lawful
2 discharge of an official duty associated with the
3 introduction or consideration of legislation or action by
4 the legislative body.

5 (4) The immunity provided for in this section does not
6 extend to:

7 (a) any tort committed by the use of a motor vehicle,
8 aircraft, or other means of transportation; or

9 (b) any NEGLIGENT act or omission, OTHER THAN AN ACT OR
10 OMISSION SET FORTH IN SUBSECTION (2), that results in or
11 contributes to personal injury or property damage caused by
12 contamination or other alteration of the physical, chemical,
13 or biological properties of surface water, ground water,
14 soil, or air. THIS SUBSECTION (B) DOES NOT CREATE A SEPARATE
15 CAUSE OF ACTION."

16 ~~NEW SECTION. Section 2. Retroactive applicability.~~
17 ~~{This act} applies retroactively, within the meaning of~~
18 ~~1-2-109, to any governmental entity action authorized by~~
19 ~~2-9-111(4)(b). {This act} authorizes a party who had a cause~~
20 ~~of action against a governmental entity dismissed on the~~
21 ~~grounds of the previous immunity granted under that section~~
22 ~~to refile the action.~~

23 NEW SECTION. SECTION 2. COORDINATION INSTRUCTION. IF
24 HOUSE BILL NO. 653 IS PASSED AND APPROVED AND IF IT REPEALS
25 2-9-111, THEN [SECTION 1(4) OF HOUSE BILL NO. 653] IS

1 AMENDED TO READ:

2 "(4) THE IMMUNITY PROVIDED FOR IN THIS SECTION DOES NOT
3 EXTEND TO:

4 (A) NONLEGISLATIVE ACTIONS TAKEN BY A LEGISLATIVE BODY;

5 OR

6 (B) ANY ACT OR OMISSION THAT RESULTS IN OR CONTRIBUTES
7 TO PERSONAL INJURY OR PROPERTY DAMAGE CAUSED BY
8 CONTAMINATION OR OTHER ALTERATION OF THE PHYSICAL, CHEMICAL,
9 OR BIOLOGICAL PROPERTIES OF SURFACE WATER, GROUND WATER,
10 SOIL, OR AIR."

11 NEW SECTION. Section 3. Severability. If a part of
12 [this act] is invalid, all valid parts that are severable
13 from the invalid part remain in effect. If a part of [this
14 act] is invalid in one or more of its applications, the part
15 remains in effect in all valid applications that are
16 severable from the invalid applications.

17 NEW SECTION. Section 4. Effective date -- RETROACTIVE
18 APPLICABILITY. [This act] is effective on passage and
19 approval AND APPLIES RETROACTIVELY, WITHIN THE MEANING OF
20 1-2-109, TO CAUSES OF ACTION THAT HAVE NOT BEEN REDUCED TO
21 FINAL JUDGMENT ON OR BEFORE [THE EFFECTIVE DATE OF THIS
22 ACT].

-End-

4/25/91
3:05 PM
BOA

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 691 met and considered Senate committee on Judiciary amendments, dated March 16, 1991, and recommend that House Bill 691 (reference copy -- salmon) be amended as follows:

1. Title, line 6.
Strike: "NEGLIGENT"
2. Title, line 7.
Strike: "ENVIRONMENTAL"
Insert: "SURFACE WATER OR GROUND WATER"
3. Page 2, line 9.
Following: "any"
Strike: "NEGLIGENT"
4. Page 2, lines 9 and 10
Following: "omission" on line 9
Strike: remainder of line 9 through "(2)," on line 10
5. Page 2, line 13.
Following: "surface water"
Strike: "I"
Insert: "Or"
6. Page 2, line 14.
Strike: "soil, or air"
Insert: "for which a cause of action exists in statutory or common law or at equity"
7. Page 2, line 14.
Following: "SEPARATE"
Insert: "or new"
8. Page 3, line 9.
Following: "SURFACE WATER"
Strike: "I"
Insert: "Or"
9. Page 3, line 10.
Strike: "SOIL, OR AIR"
Insert: "for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action"


ADOPT

REJECT

And this Conference Committee report be adopted.

For the House:


Rep. Toole, Chair



Rep. Messure


Rep. R Johnson

For the Senate:


Sen. Pinsoneault, Chair


Sen. Boherty


Sen. Harp



AN ACT REMOVING GOVERNMENTAL ENTITY IMMUNITY FOR ACTIONS RESULTING IN SURFACE WATER OR GROUND WATER DAMAGE; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION.

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

Section 1. Section 2-9-111, MCA, is amended to read:

"2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

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(2) A governmental entity is immune from suit for an act or omission of its legislative body or a member, officer, or agent thereof.

(3) A member, officer, or agent of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with the introduction or consideration of legislation or action by the legislative body.

(4) The immunity provided for in this section does not extend to:

(a) any tort committed by the use of a motor vehicle,

aircraft, or other means of transportation; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action."

Section 2. Coordination instruction. If House Bill No. 653 is passed and approved and if it repeals 2-9-111, then [section 1(4) of House Bill No. 653] is amended to read:

"(4) The immunity provided for in this section does not extend to:

(a) nonlegislative actions taken by a legislative body; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action."

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date -- retroactive applicability. [This

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act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to causes of action that have not been reduced to final judgment on or before [the effective date of this act].