

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
MARCH 20, 1981

The forty-eighth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 813:

TO CLARIFY THAT EMPLOYEES OF GOVERN-
MENTAL ENTITIES ARE IMMUNE FROM
EXEMPLARY AND PUNITIVE DAMAGES.

Rep. Anderson, District 16, Flathead County, presented the bill, saying it came about because of the actions taken against trustees of school boards.

Chad Smith, representing the Montana School Board Association, presented written testimony (attached Exhibit A) in support of the bill.

Chuck O'Reilly, Lewis & Clark County Sheriff and member of the Montana Sheriffs Association, supported the bill.

Senator Tveit supported the bill as a school board member for many years, and former president of the School Board Association.

Mike Meloy, representing the Montana Trial Lawyers Association, pointed out that the bill would include all elected public officials, not just school board members; that the bill used terms not found in other parts of the law on official liability; that the bill omitted protection for employees; and opposed the bill because he said that this would not be good public policy.

Senator S. Brown asked Rep. Anderson why the amendment was made in the House to exclude public employees, and pointed out that a sheriff, for instance, who committed a felonious act would be exempt from punitive damages under this bill whereas his deputy would not be immune. Rep. Anderson said that employees could be included under the exemption if that was this committee's wish, but that was not the intent of the bill.

Senator S. Brown made reference to the Bull Connors case in Alabama, and said that if an elected official is acting maliciously he should be subject to punitive damages.

Senator Olson asked how many lawsuits have been brought against school trustees in Montana in the last ten years, and Chad Smith said that over one hundred had.

Senator Mazurek asked if among these cases there had been any claims for punitive damages, and Mr. Smith said that this is a practice that has become more prevalent just recently.

Senator Olson asked if the caliber of school trustees has or would, unless this bill were passed, deteriorate. Mr. Smith said that many of a community's outstanding citizens will not take on the job if they have to face such risks.

Senator S. Brown pointed out that no one in any capacity can get insurance against felonious acts and that that's the way things should be in his opinion.

Senator Anderson asked if any attempt had been made to draw the bill up narrowly enough so as to include only school board members, and Rep. Anderson said that possibility had been rejected in favor of the broader coverage.

Senators S. Brown and Mazurek said that they thought this bill would require a two-thirds majority in both houses to pass.

CONSIDERATION OF HOUSE BILL 824:

TO INCLUDE IN THE CRIME OF AGGRAVATED
ASSAULT THE INFLICTION OF BODILY INJURY
UPON A PERSON WHO IS RESPONSIBLE FOR THE CARE
OR CUSTODY OF A PRISONER.

Rep. Keyser, District 81, presented the bill.

Dan Russell, representing the Department of Institutions, supported passage of the bill and told of episodes of prison employees being injured by prisoners, saying that they should be free from this type of threat.

Chuck O'Reilly supported passage of this bill.

Joe Roberts, representing the Montana Public Employees Association, supported the bill for the previously given reasons.

Senator Mazurek asked if aggravated assault charges could not be presently brought against the offending parties, and was told by Mr. Russell that only misdemeanor charges have been brought.

Senator S. Brown asked if the language of the bill would apply to prison social workers, and was told by Mr. Russell that it would.

CONSIDERATION OF HOUSE BILL 758:

TO PROVIDE FOR TERMINATION OF CERTAIN
SEVERED MINERAL INTERESTS OWNED BY
PERSONS OTHER THAN THE SURFACE OWNER.

Rep. Roush, District 13, presented the bill, saying the reason for the act is that under the Homestead Act the mineral interests went along with the land, and many of the interests are still in the names of the original owners, who cannot be located. He felt that the surface owner should be able to petition for title to these interests through quiet title action. He said that there is no intent to take away from anybody, regardless of the interest they have on the land, so long as they have recorded the interest at the courthouse.

Dick Beatty, of Shelby, said that the bill would affect only those types of interests which now should be picked up under Montana's abandoned property laws or escheat property laws. He said the bill is not intended to divest anyone of property rights acquired over the years, so long as he meets the very minimum standards of caring for his property. He said the act would not create in the statute itself an automatic taking away or vesting of title; it merely creates a means of using present statutes relative to ownership of these interests. Filing of a notice of intention not to abandon is not required of everyone, only of those persons who wish to prevent abandonment of their interests. It is not being created as a "fee generation" on these minerals; it is not intended to tax minerals, or to try to deprive somebody of something which they have an interest in preserving; it would not result in increased clouding of title.

Carl Iverson supported the bill, saying that it would not damage anyone at all.

Senator Larry Tveit, District 27, supported the bill and said that he felt it would provide a tool for correcting a problem which exists, and that it would provide many benefits.

Opposing the bill was Bill Hand, representing the Montana Mining Association. He said that the owners of surface rights are completely separate from mineral interest owners. He felt that this bill would create a worse situation than the problem it attempted to solve. He mentioned landowners who are forced to default, but who want to retain some kind of interest, and said they would be hurt by this bill. He asked why the surface owner should automatically be the one who inherits the mineral rights -- why not the state of Montana or any other individual?

Opposing on behalf of Bill Sternhagen, representing the Northwest

Mining Association, Mr. Hand said that anyone should have the right to bid on abandoned property.

Jim McDonough opposed the bill because he felt it served no purpose other than being a scheme for taking mineral rights away from people. He said there was no means of notice provided for in the bill to let people know their rights were in jeopardy. He said that "royalties" and "mineral rights" should be differentiated between.

John Sullivan opposed the bill as shown on his attached written testimony.

Don Allen, representing the Montana Petroleum Association, was opposed to the bill because of its retroactive effect, and because he feels it would violate the Fifth Amendment and would not let the owner know his interests were in jeopardy. He said he could not see any purpose to the bill, and that there was no provision for the mineral owner to bring suit if his rights are violated. He asked how the "real owner" would be determined; how the bill would affect minors and people who are incapacitated; and if production of the mineral would be construed as keeping the interests alive.

Gene Phillips, Kalispell attorney opposed the bill and stressed the difference between severed mineral interests and royalties.

Senator Keating, District 32, Billings, speaking as a mineral owner, opposed the bill. He explained that mineral ownership carries with it the rights to lease, whereas royalty ownership has only the right of participation in production. He said this bill did not address the matter of the lost royalty owner, and that because the burden of proof is on the mineral interest owner it jeopardizes the peaceable ownership of such interests.

Senator Tveit asked Mr. Beatty to explain the leasing of surface and minerals at the same time; and Mr. Beatty said that this might happen during a quiet title attempt when the mineral owner could not be found, and did not present a problem.

Senator Crippen expressed concern that this bill could create clouds on the title to land.

Senator Mazurek asked why the legislature should deviate from the historical position that abandoned property reverts to the state. Rep. Roush said that the surface owner should get it because he has maintained the surface through all the years, and should be reimbursed for the damage to the surface which occurs when the interests begin to be exploited.

Senator Mazurek asked why hard rock minerals had not been

included under the bill. Rep. Roush said that mining laws cover these, and that his intent was only to include the oil and gas interests. Mr. McDonough added that eighty to ninety percent of the mineral interests in his area are owned by the surface owners.

Senator Crippen said that under Montana law there are surface rights and subsurface rights, and that these are two separate but equal rights. Therefore, he likened the solution proposed in this bill to the situation of a neighbor's land accruing to him automatically if the neighbor defaulted in the handling of that land.

Senator Tveit asked Mr. McDonough why he opposed this bill if he felt there was no purpose to it, and was told that if a person was notified by publication that his rights were in jeopardy, an out-of-state owner would never know he had a problem.

Senator Halligan asked how other states handle these situations. Mr. Allen said that Texas and Oklahoma have a trust set up to take care of the owners who cannot be found; four states have had laws similar to this bill held unconstitutional; and five states still have not ruled on this type of legislation.

In closing, Rep. Roush stressed that if the owners simply record their rights this bill will never affect them.

An executive session was planned by the committee for tomorrow at 10:00 a.m. David Niss told the committee that the bill for reinstituting the small claims courts is ready for printing.

A handwritten signature in cursive script, reading "Mike Anderson".

Mike Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date March 20, 1981

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

48

NAME: Charles W. Miller DATE: 3-16-87

ADDRESS: Box 677, H. 20, A.

PHONE: 972-2783

REPRESENTING WHOM? John Doe

APPEARING ON WHICH PROPOSAL: *MT 875*

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

DATE: 11/28/2016 9:05 AM

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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STATEMENT IN SUPPORT OF HOUSE BILL NO. 813

This bill would extend immunity from exemplary and punitive damages to elected officials when acting in an official capacity. At present, Section 2-9-105, M.C.A. provides immunity from exemplary and punitive damages to the state and other governmental entities but makes no mention of the elected officials who actually conduct the business of the governmental entity.

The reasoning behind Section 2-9-105, M.C.A. which presently exempts governmental entities from exemplary and punitive damages is that the government would not experience any gain by the abuse of its citizens and that therefore the protection offered by possible exemplary or punitive damages is not necessary. The same reasoning applies to the elected officials of the governmental entity because the elected officials would not have any incentive to abuse the public for personal gain and if they did, the people could respond by refusing to return the elected officials to office.

The possibility of being sued for exemplary or punitive damages serves to intimidate elected officials and it has been noticed recently that claims for punitive damages are brought or threatened in an attempt to coerce an official in the course of his performance of public duties. This bill would not absolve the government entity or the elected officials from actions for actual damages. In other words, the individual would still be liable for the amount of injury or damages that he actually caused to any individual by his wrongful or negligent acts.

Under present law, school district trustees, for example, may be sued individually for punitive damages by reason of actions that they took in their official capacity. The trustee's actions may not be malicious at all but there is a fine line of determination between what is malicious and what is not and the trustee is still put to the burden of defending against such an action and at great risk to his personal possessions. Investigation has revealed that it is not possible to purchase insurance protection for punitive damages and therefore there is no protection that the school district can afford to its trustees who serve without compensation.

It is certainly most unreasonable for a government to expect volunteer service which involves a great deal of personal sacrifice and further expose the public official to risks that could cause great personal loss. The intimidation that is possible from such suits can affect the freedom of consideration which elected officials should apply in deciding matters of public concern. The net result from this is that quality citizens who have been willing to serve without pay in elective public office will turn from such responsibility, greatly to the detriment of society in general.

NAME: Chuck Keelby DATE:

DATE: _____

ADDRESS: Helena

PHONE: 458-9146

REPRESENTING WHOM? Mt Sheryls Assoc

APPEARING ON WHICH PROPOSAL: HB 813 & 824

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

AMEND? _____ OPPOSE?

OPPOSE?

COMMENTS: _____

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NAME:

Mike May

DATE:

3/20/81

ADDRESS:

Securities Bld

PHONE:

442 9430

REPRESENTING WHOM?

MTCA

APPEARING ON WHICH PROPOSAL:

AB 813

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(78)

NAME: DAN Russell DATE: 3/20/81

ADDRESS: 1539 ~~Hill~~ Ave, Helena

PHONE: 449-5671

REPRESENTING WHOM? Dept. of Invt

APPEARING ON WHICH PROPOSAL: HB 824

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: The Dept. Strongly Supports

This bill. Correctional Staff must be
afforded protection against physical attack
from inmates & in order to insure
protection, the penalties for attacking
an officer must be severe

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Joe Roberts

DATE : _____

ADDRESS: 729 Eleventh Avenue

PHONE: 443-1551

REPRESENTING WHOM? UNPEC

APPEARING ON WHICH PROPOSAL: #B 824

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: JOET CHISHAM DATE: 3/20

ADDRESS: _____

PHONE: 449 - 39 30

REPRESENTING WHOM? INSTITUTIONS

APPEARING ON WHICH PROPOSAL: 43 824

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

DEPARTMENT STRONGLY
SUPPORTS PASSAGE
OF BILL.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: RICHARD L. BEATTY

DATE: 3/20/81

ADDRESS: 105 10TH AVE. N. SHELBY, MT

PHONE: 434-2165

REPRESENTING WHOM? *SELF*

APPEARING ON WHICH PROPOSAL: *AB 758*

DO YOU: SUPPORT? ☒ AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

45

NAME: C. J. IVERSON. DATE: 3/20/81

ADDRESS: Box-930 - SHELBY, MONT. 59474

PHONE: (406) 434-5401 - OR - 434-2566.

REPRESENTING WHOM? SELF.

APPEARING ON WHICH PROPOSAL: HB. 758.

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bill Hunt

DATE: 3/20/81

ADDRESS: Helena

PHONE: ~~441. 10m 1780e~~ 443-7297

REPRESENTING WHOM? 1st. Mg. Assoc

APPEARING ON WHICH PROPOSAL: HB 758

DO YOU: SUPPORT?

AMEND?

OPPOSE? ☒

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bill Sternhagen DATE: 3/20/81

ADDRESS: Helena

PHONE: 442-0280

REPRESENTING WHOM? N.W. Mining Assoc

APPEARING ON WHICH PROPOSAL: HB 758

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ☒

COMMENTS: Represent 400 Mt. Members - oppose
HB 758 because I feel anyone ought to
have the right to bid on abandoned property -

Bill Sternhagen by Bill Hanel

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE : _____

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ☒

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Collins DATE: 3/20/71

ADDRESS: PO Box 1166

PHONE: 412-5070

REPRESENTING WHOM? ASU

APPEARING ON WHICH PROPOSAL: 48 758

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ☒

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

COMMENTS OF MONTANA-DAKOTA UTILITIES CO.

RE: HOUSE BILL 758

My name is John Sullivan, representing Montana-Dakota Utilities.

This is the third bill this session designed to terminate severed mineral interests. The bill appears to have been drafted in an effort to eliminate some of the objections to the other two bills, but it does nothing more than create an unnecessary trap for the unwary, a nuisance for the wary and more paperwork for the county clerks.

The bill is unnecessary because the only mineral interests that could be terminated under it are those that have been either completely ignored or forgotten. Forgotten mineral interests are scarce, and in any event those that fall within this category are not an impediment to mineral development. This is because last session a bill (Senate Bill 88) was enacted which allows mineral owners to petition the district court for creation of a trust on behalf of mineral owners who cannot be located. If the benefits of the trust are not claimed, the monies contained therein are credited to the State of Montana.

Although the bill is ambiguous as to whether a recorded mineral interest must ever be re-recorded, it might be construed to require periodic recording or re-recording of all severed mineral interests. If this is the case, the bill creates a trap for unwary private citizens who own severed mineral interests, and who do not read the Montana session laws every two years to see whether the legislature has done anything to affect their interests. Corporate mineral interest holders, who have attorneys and lobbyists, and who are aware of the requirement of re-recording, will

do so, even though the paperwork is a nuisance to the owners and to the county clerks.

The bill, in short, imposes a substantial burden on many for a negligible and questionable benefit for few. The supposed problem addressed in the bill, that of unknown and unlocatable mineral interest holders, was solved last session by the passage of Senate Bill 88. Accordingly, MDU respectfully requests that this Committee vote DO NOT PASS on House Bill 758.

NAME: Don Allen DATE: 3/30/81
2030-11R (17)

DATE: 3/50/81

ADDRESS: Helena, MT, 59601

PHONE: 402-7582

REPRESENTING WHOM? Nat. Petroleum Assoc.

APPEARING ON WHICH PROPOSAL: HB 758

DO YOU: SUPPORT? AMEND? OPPOSE? ☒

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: GENE PHILLIPS DATE: 3/20/81

ADDRESS: KALIS PELL

PHONE: 443-1999

REPRESENTING WHOM? MYSELF

APPEARING ON WHICH PROPOSAL: HR 758

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

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NAME: MAC JOHNSON DATE: 3/20

ADDRESS: 2214 LOCKEY Helena

PHONE: 442x831

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: 72-8

DO YOU: SUPPORT? AMEND? OPPOSE? ☒

COMMENTS: _____

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DATE March 20, 1981

COMMITTEE ON JUDICIARY

HB 813

HB 758

~~HB-824~~

VISITORS' REGISTER

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