

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
April 15, 1983

The Fifty-fifth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage, on Friday, April 15, 1983, at 9:10 a.m., in Room 325, State Capitol.

ROLL CALL: All Committee members were present.

CONSIDERATION OF SENATE BILL 465:

PROPOSERS: Mr. Mike Young of the Montana Department of Administration, testified that this bill was drafted because of the Montana Supreme Court's decision in Karla White v. State of Montana, which was issued on Friday, April 8, 1983. Mr. Young testified that the State of Montana has, in the past, been issued insurance by commercial carriers. However, because the premiums on this insurance has been costing up to \$1,250,000 per year and continues to excell, the State of Montana no longer carries insurance with a commercial carrier. Mr. Young explained that the Supreme Court has stricken the \$300,000-\$1,000,000 limit and has stated that the claim for compensation is a fundamental right. Mr. Young then submitted statistics showing the amount of claims and the total amount paid on these claims by the State of Montana since 1977. (See attached Exhibit "A"). Mr. Young stated that he believes \$4,500,000 will be paid on these claims by the State of Montana in the immediate future and there is no way to tell how these claims might be increased because of the recent Supreme Court decision. Mr. Young told the Committee that the amount of attorneys' fees paid for outside counsel has risen from \$7,900 in 1978, to \$25,000 paid for the month of March 1983 alone. Mr. Young also informed the Committee, that when the State of Montana was insured by commercial carriers, these carriers paid out 209 percent of the premiums. Mr. Young stated this is the reason why the State no longer has insurance with these commercial carriers.

Senator Towe testified that since the new Montana Constitution was adopted in 1972, the State has been generous when a person has suffered a loss. The court has stated that when a person has non-economic damages, you must reimburse him for his damages. Senator Towe stated that it is Justice Morrison's opinion that the \$300,000-\$1,000,000 limit is unconstitutional. Senator Towe asked the Committee to act promptly on this bill while the road to imposing the limit is open because, in Senator Towe's opinion, if the Committee fails to act, the limit will be gone forever. Senator Towe felt that if the Committee can show compelling State interest for the upper limit, SB465 will hold. Senator Towe informed the Committee that Justice Gulbrandson disagreed with Justice Morrison's finding the limit unconstitutional. Senator Towe stated that sometimes

the State has to take risks and these risks justify having the limit, because, in Senator Towe's opinion, if we do not, the State could suffer serious economic losses. Senator Towe suggested that the Committee add language to SB465 reflecting the fact that the limits they have chosen are very generous compared to other states. Senator Towe expressed concern for the school boards and other groups with a small number of taxpayers who could be devastated by a large claim. Senator Towe stated that under the old law, if a person collected a large amount of money, they could still come to the Legislature to collect an additional sum. Now, a person would not be able to do this because the enabling language has been omitted from the bill. Senator Turnage felt that a person could always took to the Legislature, but Senator Towe felt people would be hesitant to do this if it is not provided for. Senator Turnage stated that the bill should reflect the amount of claims and legal actions filed against the fund at this time, and how much money these actions would take from the existing fund.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

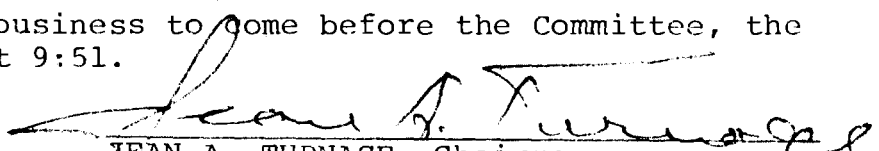
Senators Mazurek and Crippen had questions as to the Constitutionality of the retroactivity clause contained in the bill.

Mike Young stated that he is petitioning for a rehearing and Senator Turnage reminded the Committee that the vote of the Supreme Court as 4-3, and it would not be impossible to change their decision. Mr. Young stated that California is the only other state which has unlimited liability like this. Senator Mazurek questioned how the self-insurance fund is generated. Mr. Young stated that the State uses the same percentage breakdown used by the insurance companies and some of the money comes from the general fund, while some comes from the revolving account. Senator Turnage stated that after the adoption of the 1972 Constitution, the people granted the Legislature the right to reinstate sovereign immunity.

Senator Tow suggested the Committee might want to use some of Justice Gulbrandson's ideas to strengthen Section 1 of the bill. Senator Crippen suggested that if the State does not have an excess coverage carrier, it should start looking for one. Mr. Young responded that there is no point in carrying excess coverage if the State has unlimited liability.

ACTION ON SENATE BILL 465: Senator Mazurek moved that Senator Bill 465 DO PASS. This motion carried unanimously.

There being no further business to come before the Committee, the meeting was adjourned at 9:51.

  
JEAN A. TURNAGE, Chairman

JUDICIARY COMMITTEE

Date 4/15/83

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# STANDING COMMITTEE REPORT

March 15, 19 83

MR. **PRESIDENT**

We, your committee on **SENATE JUDICIARY**

having had under consideration **SENATE** Bill No. **465**  
**TURNAGE**

Respectfully report as follows: That **SENATE** Bill No. **465**

DO PASS