MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 26, 1986

The second meeting of the Senate Judiciary Committee
for the 49th Second Special Session was called to
order at 11:20 A.M. on March 26, 1986, by Chairman
Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 5: Senator Towe, Senate District
46, Billings, sponsor of SB 5, gave testimony in support
of this bill. He stated under the new constitution
sovereign immunity was abolished. The people petitioned
and presented to the voters a change in the constitution
which allowed sovereign immunity to be reinstated upon
a two-thirds vote of the legislature. The referendum was
the basis for an interim committee study between the 1975
and 1977 legislative sessions. Senator Towe was the
chairman of the committee. The committee studied the
problem of sovereign immunity and instead of adopting
a list of items that we felt should be immune from
suit, we concluded the best approach was to eliminate
any recovery for all noneconomic damages, damages such
as pain and suffering. We left in the right of any
citizen who has established an injury to collect their
wage loss, medical bills and any out of pocket expenses
incurred as the result of that loss and put a limit on
the amount of the loss. The Montana Supreme Court
declared that the limit on noneconomic damages was
unconstitutional in the White case. In 1985 the Supreme
Court handed down another decision in the Pfost case
which said even the monetary caps are unconstitutional
under constitutional provisions. He stated that SB 5
is attempting to go into section 16 of Article II to
make a correction which he thinks was intended all
along. He read the amendment proposed in SB 5. He
feels this is the most logical and rational way to
address the problem. All the amendment does is to say
that section 16 no longer stands in the way of limits
voted by a two-thirds vote of the legislature on
sovereign immunity. Section 18 would be left intact
and should be left intact. He feels that SB 5 is the
best approach to the problem and does not think HB 7
addresses the amendments in the appropriate section.

PROPONENTS: Phil Campbell, representing the Montana
Education Association, testified in support of this bill.
He supports the concept of SB 5 but does not like the
approach that is taken. He is of the opinion that
section 18 gives the legislature the authority to place
limits with a two-thirds vote but the Supreme Court
disagrees with that opinion. This bill will give the
people of this state the right to decide whether we
should place caps.

Chip Erdman, Montana School Board Association, gave
testimony in support of SB 5 but he does prefer the
approach that is taken in HB 7. With this bill the
people of Montana will have the opportunity to decide
whether or not the legislature can set limits and once
that is done, we will then have the option, if SB 2
passes, of taking care of our liability problems.
His specific concern with SB 5 is that it does not
address section 18.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked Mr.
Erdman why he thought we needed to take a hard look
at the Pfost case.

Chip Erdman said there are several areas we should be
taking a look at. He feels the best approach to this
is in section 18. He is specifically talking about the
possibility of an unconstitutional delegation of the
legislature. HB 7 addresses that delegation authority,
SB 5 does not even address the delegation problem.

Senator Towe asked Mr. Erdman how HB 7 addressed this
differently than SB 5.

Mr. Erdman stated that SB 5 does not go into section 18
and HB 7 does go into section 18 and changes the wording.

Senator Mazurek said it has been suggested that we shouldn't
be talking about immunity and nonimmunity, that we should
be talking specifically about limitations on damages as
opposed to immunity versus nonimmunity. The amendment by
the people in 1974 gave the lesiglature the authority to
grant immunity or not to grant immunity. It does not
say anything on limiting liability. He stated the new
language in SB 5 refers to limits on governmental
immunity. He asked Senator Towe if he thought it is

necessary to go back into 18 and talk about the authority
of the legislature to limit damages as opposed to limiting
immunity.

Senator Towe said that was discussed by the interim
committee and he invited the committee to review the
report. He stated the approach that we took was that
sovereign immunity means immunity from a suit whether
it involves the complete immunity from any suit whatsoever
in a particular injury or a partial immunity of a limit
of so many dollars the amount that the state can be sued.
We considered they both are immunities and therefore
when the constitution refers to immunity from suits it
may be partial or full immunity as the legislature
decides and except as provided. We did not consider
that was a serious problem. We acted on the basis of
that. He does not see there would be a legal problem
at all.

CLOSING STATEMENT: None.

Hearing on SB 5 was closed.

There being no further business to come before the
committee, the meeting was adjourned at 11:45 P.M.

COMMITTEE CHAIRMAN

ROLL CALL

SENATE JUDICIARY   COMMITTEE

49th SECOND SPECIAL LEGISLATIVE SESSION - 1986   Date 3-26-86

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	✓		
Senator Bob Brown	✓		
Senator Bruce D. Crippen	✓		
Senator Jack Galt	✓		
Senator R. J. "Dick" Pinsoneault	✓		
Senator James Shaw	✓		
Senator Thomas E. Towe	✓		
Senator William P. Yellowtail, Jr.	✓		
Vice Chairman Senator M. K. "Kermit" Daniels	✓		
Chairman Senator Joe Mazurek	✓		

COMMITTEE ON _____ SENATE JUDICIARY _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose

(Please leave prepared statement with Secretary)