

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
49th LEGISLATIVE SESSION -- SPECIAL SESSION II
HOUSE OF REPRESENTATIVES

March 28, 1986

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, March 28, 1986 at 3:30 p.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Gould who was excused by the chairman. Rep. Gould came in later during executive session.

CONSIDERATION OF SENATE BILL NO. 1: Sen. Mike Halligan, Senate District #29, sponsor of the bill, stated that this bill is the governor's private sector liability bill. He said a lot of Republican measures and Democrat measures were embodied and put together in this legislation. The compromising makes it an excellent bill. Language dealing with full legal redress has been removed thereby leaving reference just to legal redress. SB 1 allows the legislature by a majority vote to establish the kind of tort reforms that have been discussed all along. By a two thirds vote, the legislature could regulate compensatory damages which is everything that doesn't include punitive damages. Punitive damages could be entirely eliminated by a majority vote by the legislature under this bill.

PROPOSERS: Keith Colbo, director of the Department of Commerce, said that both he and the governor believe that this bill addresses one of the major economical developmental issues facing the state of Montana now and in the future. He is aware of many businesses that are going belly-up and businesses that are not be started at all due to the crisis. The governor's mail on this issue has set a record high. Mr. Colbo further feels that SB 1 has the best survival chance of the other bills on this subject and urged the committee to pass it.

Gordon Morris, executive director of the Montana Association of Cities and Counties, said that his association is not looking at this bill from a standpoint of a crisis in the insurance industry related to the bill itself. The crisis occurred two years, and this bill is just a response to that. He feels that this bill is a needed private sector initiative that will give this legislature in the 1987 session the prerogative of beginning to address some of the larger issues in the area of private sector concern. Mr. Morris feels that this is the best and last hope for this special session.

3:30 p.m.

John Hoyt, an attorney from Great Falls who represents the United Transportation Union, stated that he isn't for any limitation on the amount of damages that an injured person is entitled to. He pointed out that an insurance spokesman stated the other day that a cap on damages is not necessary; it is not needed and it is not wanted. The spokesman further said it won't lower premiums and won't increase the availability of insurance. Mr. Hoyt said the only reason why he supports SB 1 is because it is the "best game in town." He also stated that the two-thirds vote requirement is needed.

Alec Hansen, representing the Montana League of Cities and Towns, said his organization supports the legislature having the authority to set limits on damages for private businesses. More importantly, however, they support the idea of allowing the people of this state to decide if that is what they want.

Chip Erdmann, representing the Montana School Board Association, stated that the association from the onset of this debate has supported some type of liability limits for the private sector. He feels SB 1 in its present form takes the best of all the bills that have been introduced on the issue of private sector liability limits and places them in one bill such as this. He further stated his continued opposition to combining both public and private sector. SB 1 goes along with the public sector referendum which is HB 7.

Don Walter from Hellgate School District of Missoula, voiced his support for the bill.

OPPONENTS: George Bennett, representing the Montana Liability Coalition, informed the committee that the coalition supported this bill in the Senate both in principle and concept; however, it has since been amended in a form that they can no longer support. It now says to the legislature to hang their clothes on a hickory limb but not to go near the water -- the water being our badly distorted civil liability laws.

Karl Englund, representing the Montana Trial Lawyers Association, feels there exists a liability insurance premium crisis and not a liability or insurance crisis. Furthermore, he doesn't feel that the Montana tort system is completely out of control. Mr. Englund told the committee that the legislature already has the authority to impose limits on damages if a compelling state interest can be shown. Changing the constitution in the kind of atmosphere that is present in this special session is something they don't want to see happen. He urged the committee to retain the two-thirds vote requirement if the committee passes the bill.

There were no further proponents or opponents. Sen. Halligan closed by saying he feels the two-thirds requirement should definitely be left in the bill because we are dealing with a serious issue of being made whole again. By requiring the two-thirds vote, you are telling people that we are not going to take away their rights unless there is broad based, state-wide support for that kind of action.

QUESTIONS ON SB 1: Rep. Spaeth asked Mr. Bennett if it were his interpretation that the amendment added by the Senate -- a new provision 3 -- expanded it to include remedies, claims for relief which is in addition to damages in any civil proceeding. Mr. Bennett said it was a correct interpretation. Rep. Spaeth asked if Mr. Bennett opposed this expansion or was he concerned that the two-third vote now applies to those two new additions as opposed to just damages as originally written. Mr. Bennett said that he is concerned about the two-thirds requirement because he feels the legislature has been placed in a secondary position in the very important policy-making role in this area. Rep. Spaeth further asked Mr. Bennett if it would be acceptable if a two-thirds vote on damages were replaced leaving the principle which was originally introduced in the House and further drop the two-thirds requirement for claims for relief and remedies modifying remedies -- those sorts of things other than the cap on damages. In response, Mr. Bennett said that we are trying to unscrew the inscrutable with language which is the coalition's problem. In response to a final question, Mr. Bennett said that in principle, he would agree because he feels that in the private sector, it is hard to conceive of where caps would be in the public interest.

Rep. Keyser asked Sen. Halligan when referendums go before the public for vote, how much of a vote is required to change the constitution of the state of Montana. Sen. Halligan said a majority vote is required.

EXECUTIVE SESSION: There being no further questions, Chairman Hannah called an executive session. Rep. Brown moved that SB 1 BE CONCURRED IN. The motion was seconded by Rep. Miles and carried 10-8. (See roll call vote.)

ADJOURNMENT: There being no further business, the meeting was adjourned at 4:20 p.m.



REP. TOM HANNAH, Chairman

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DAILY ROLL CALL

JUDICIARY

COMMITTEE

SECOND SPECIAL 49th LEGISLATIVE SESSION -- 1986

Date March 28, 1986

SB 1

NAME	PRESENT	ABSENT	EXCUSED
Rep. Tom Hannah, Chairman	✓		
Rep. Dave Brown, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. John Cobb	✓		
Rep. Paula Darko	✓		
Rep. Ralph Eudaily	✓		
Rep. Budd Gould			✓
Rep. Edward Grady	✓		
Rep. Kerry Keyser	✓		
Rep. Kurt Krueger	✓		
Rep. John Mercer	✓		
Rep. Joan Miles	✓		
Rep. John Montayne	✓		
Rep. Jesse O'Hara	✓		
Rep. Bing Poff	✓		
Rep. Paul Rapp-Svrcek	✓		
Rep. Gary Spaeth	✓		
Rep. Charlotte Neill	✓		

STANDING COMMITTEE REPORT

March 28

19 86

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 1

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

TOM HANNAH

Chairman

LIABILITY LIMITS -- PRIVATE ENTITIES -- CONSTITUTIONAL AMENDMENT

THIRD

reading copy (BLUE)

color

ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE March 28, 1986 BILL NO. SB 1

NUMBER 4:20

NAME	AYE	NAY
BROWN, Dave (Vice-Chairman)	✓	
ADDY, Kelly	✓	
COBB, John		✓
DARKO, Paula	✓	
EUDAILY, Ralph	✓	
GOULD, Budd	✓	
GRADY, Ed		✓
KEYSER, Kerry		✓
KRUEGER, Kurt		✓
MERCER, John		✓
MILES, Joan	✓	
MONTAYNE, John	✓	
O'HARA, Jesse		✓
POFF, Bing	✓	
RAPP-SVRCEK, Paul	✓	
SPAETH, Gary	✓	
NEILL, Charlotte		✓
HANNAH, Tom (Chairman)		✓

TALLY

10

8

Marcene Lynn
Secretary

Tom Hannah
Chairman

MOTION: Rep. Brown moved that SB 1 BE CONCURRED IN. The motion
was seconded by Rep. Miles and carried 10-8.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SB 1

DATE March 28, 1986

SPONSOR Senator Halligan

NAME (please print)	RESIDENCE REPRESENTING	SUPPORT	OPPOSE
Gordon Morris	MACi	SB 1	
John C. Hoyt	U.T.U.	SB 1	
John G. Wallinger	M.B.M.D.A.		XV
Bob Pyser	Mont. Credit Union League	X	
Dore Waldman	Hilbert Elm.	X	
GEORGE BRANNETT	Mont. Paraleg. Coalition		X
Alec Jensen	Mont. Lg. of Cities		
Debi Brammer	MACI Helena	SB 1	
Chip Erenmann	Mont. School Bd Assoc	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.