

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

March 28, 1986

The fifth meeting of the Senate Judiciary Committee for the 49th Second Special Session was called to order at 11:20 A.M. on March 28, 1986, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 7: Representative Bardanouve, House District 16, gave testimony as sponsor of this bill. He said he does not feel this is his bill but a bill of the citizens of Montana. This bill has been worked on almost from the day of the Supreme Court decision. He has worked with the Board of Education, county commissioners, mayors, city government, and everyone having an interest in this area to get a bill that is acceptable to all parties. He said he is not sure where the blame lies but we must do something to limit liability. He said there are some proposed amendments to the bill, see attached Exhibit 1, and he will be happy to endorse the amendments if the committee feels the amendments will improve the bill.

PROPOSERS: Mona Jamison, Legal Counsel, Governor's Office, gave testimony in support of this bill. She said this bill represents months of meetings and weeks and weeks of work by a coalition of people with interest in this issue. She went through several of the factors that the coalition reviewed before determining that the form this bill is in would be the best approach to the problem. She said the issue is whether or not the legislature should have the authority to consider the issue of monetary caps and the vehicle to let the people of Montana decide whether the legislature should have the authority or not. The people of Montana have already faced this issue. They believe this bill is in its best form and will get the job done.

Alec Hanson, Montana League of Cities and Towns, gave testimony in support of this bill. He said this is the most logical, responsible answer to the question of governmental liability limits in the state of Montana. They have been working on this bill for almost two months and as written is in direct response to the issue of the Pfof decision. He does not think we should

merge the public and private in one referendum. Public liability is similar ground, the people of Montana understand this issue. He thinks the issue of private liability is going into unknown territory and for that reason the two issues should be considered separately. We need some protection on limiting liability and they feel this bill is the best answer to that question and would urge support for that reason.

Chip Erdman, representing the Montana School Board Association, gave testimony in support of this bill. He said a lot of time has gone into the preparation of this bill and that the bill was written specifically to address the concerns that were addressed by the Pfof decision. The amendments mentioned by Representative Bardanoue (attached Exhibit 1) were proposed because the House expressed some concern under the equal protection language in this bill on page 2, lines 4 and 5. He feels it is proper to address the concerns of the private sector and the public sector in a separate referendum.

Gordon Morris, Executive Director of the Montana Association of Counties, gave testimony in support of this bill and the amendments presented. He said this best addresses their concerns and he does not feel the private sector should be addressed in the bill. This bill will allow the legislature to take some positive steps to help the problem. County commissioners across the state support this bill.

John Hoyt, representing the United Transports Union, gave testimony in support of this bill. He represents the railroad works who run the trains across our state. He said he is in favor of this bill because he is a strong believer in our constitution. He believes the Pfof decision was incorrect in what the majority of the justices proposed to be the correct decision and that the framers of our constitution clearly intended that this legislature had the right, by a two-thirds vote of each house, to put caps on public liability if they so desired. He said he has found that the legislature is playing politics with this bill and that if they want to do what they really should do they will separate this bill from the politics and pass it.

Phil Campbell, Montana Education Association, gave testimony in support of this bill. He said he testified on another bill that he thought the language was a little better in but he thinks this is the bill this legislature

is going to deal with. He feels the amendment proposed makes this a better bill and also disagrees with the court and feels that the legislature already has the authority to deal with this.

John Maynard, Administrator, Tort Claims Division, Department of Administration, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 2.

Jesse Long, Executive Secretary, School Administrators of Montana, gave testimony in support of this bill. He stated he would not go into the premium changes or loss of insurance in school districts. He thinks that school districts are different from private industry in that they are not allowed to declare bankruptcy. He supports the amendments presented.

Will Anderson, Office of Public Instruction, representing Mr. Argenbright, said there is no way we could be a part of opposing this bill. He said you heard Mr. Argenbright's testimony on SB 12 and you know what his views are. In our testimony we supported the bill because we felt the legislature needs more power to regulate. They feel strongly that schools are financed from private and local money used from property tax payers and the same property tax payers also pay for their own insurance. He sees very little difference, we all have to buy insurance. Many are giving up life savings to stay afloat. He supports this bill but what the Office of Public Instruction is saying is we need both bills and they would hope we will find a way to pass both because just passing this bill will not change the insurance picture or economic picture of Montana.

Don Waldron, Superintendent of Schools, Hellgate near Missoula, supports this bill. He said the committee has all the facts and he hopes the committee will keep this bill alive and do something to protect the schools.

OPPONENTS: Kim Wilsen, Montana Chapter of Civil Liberties Union, gave testimony in opposition to this bill. He referred to page 2, lines 1-5, which states "Damage awards within such limits constitute the full legal redress available against the governmental entity under Article II, section 16, and do not deny equal protection of the laws

under Article II, section 4." He would submit that this is very broad and could severely limit some very important constitutional rights. He understands from Mr. Erdman's testimony that amendments have been prepared to strike out the equal protection language. He said they would still disagree in principal to placing limits in the constitution at all. We must ask ourselves if it is necessary to allow the legislature to place limits to bring about the results desired. He said we do know that this amendment will be affecting our civil rights but we do not know that any such amendment will in fact have any effect on liability insurance.

Rose Skoog, Montana Liability Coalition, gave testimony in opposition to this bill with great reluctance. They agree with the concept of this bill and understand that something has to be done. They appear in opposition because they feel this bill is the improper vehicle to get the job done. She said what you are looking at is a simple issue, should the legislature have the authority to consider the issue of limiting liability. If you agree with that then they see no reason to ask that question twice. They should have the authority with respect to the public as well as the private sector. Separating the issue makes no sense to them. Another area of great concern is the two-thirds vote in order for future legislatures to act. They feel this is an unnecessary roadblock for any possibility of reform. They feel the proper vehicle is HB 17 which gets the problem done in a better fashion.

Bill Leary, President of the Montana Hospital Association, gave testimony in opposition to this bill. He said you have not heard from the Hospital Association or the Medical Association during this session. There is a genuine reason for that as we deal in the whole area of medical health care liability and professional liability and we consider ourselves to be a responsible trust for the people of Montana in terms of trying to provide to those people the highest quality of care. You have not heard the horror stories coming out of the hospitals or from physicians this session. You have not heard of hospitals inability to access insurance carriers because right now we do not have a problem with access. You have not heard about high interest increases in our premiums. The record of both hospitals and physicians in maintaining excellent risk management programs is of top drawer. Both of their organizations, the Montana Medical Association and the Montana Hospital Association, have been working

for a significant number of months to prepare tort reform packages for introduction in 1987. He sees the problem with this bill as the inclusion of all government entities. If we recognize that all other governmental entities would include all hospitals which are owned by counties and all hospitals which are owned by the State of Montana and if in the 1987 legislative session significant tort reform is introduced on behalf of the State of Montana which would grant absolute total immunity to all governmental entities, including all property owned by the state, and knowing that the hospitals owned by the state could not be sued, we would soon see the elimination of our risk management programs and the cut backs in staffing would be so severe as to leave the patients of which we hold a deep trust unguarded. He feels that if this committee is serious about reporting this particular bill out they should take a good hard look at those kinds of considerations and come up with some kind of concrete definition of what is meant by all governmental entities.

George Allen, representing the Montana Retail Association, gave testimony in opposition to this bill.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked Mona Jamison if Senator Halligan's bill passed with a majority vote in it and this bill passed with the two-thirds vote if there would be a problem.

Mona Jamison said the amendment that came out of the bill was to make it clear that a two-thirds vote would be required for the actual injury and to make sure that the tort reform area would have to be a majority vote.

Senator Mazurek said that was done by the removal of the language "this full legal redress" and the whereas clauses and what that addresses is the issue of whether or not full legal redress is a fundamental constitutional right and it will not be subject to the compelling state interest test.

Mona Jamison said yes, that was the reason.

Senator Crippen asked Mona Jamison to respond to the situation that we still have the language "full legal redress" in this bill.

Mona Jamison said we believe there are two ways to deal with this. We believe that the amendment drafted on SB 1 does the job and that the way this bill is drafted is another approach to get to the very same end.

Senator Crippen asked Mr. Hoyt if in his opinion he thought the Supreme Court would strike down any statute under this provision in SB 1 or HB 7, if approved by the voters, to set limits on the same rationale that they used in the White and Pfozt cases.

Mr. Hoyt said he did not think there was the slightest chance of that happening. He continues to maintain that this body has the absolute right to set limits and to set policies to do almost anything it wants. He believes the legislature will have no problem.

Senator Towe asked Mona Jamison how she would respond to the language in this bill in subparagraph 1, which you are stating that the legislature, by a two-thirds vote, has the right to limit civil liability and then in the next sentence when it does that it doesn't constitute a limit of civil liability and full redress.

Mona Jamison said she is not a constitutional lawyer. If you state in the constitution that a particular provision doesn't constitute a violation of a particular section she thinks that is acceptable. She said work has been done to show that is an acceptable way to phrase this.

Senator Towe said he has some concern. He does not see a useful purpose for subparagraph 2 and sees it as a duplication of what was said in subparagraph 1.

Mona Jamison said the initial drafts just deleted the word "no" on line 20 of page 1 of the bill and that was done in direct response to the Pfozt decision. However, when we went that approach they said we were returning it to sovereign immunity. They believe that to say in the second section that any of those limits addressed do not violate full legal redress is okay.

Senator Towe asked if they weren't really saying the same thing twice.

Mona Jamison said in the first one we are saying that the limits can be set by the two-thirds vote and in the second we are saying that any of those limits will not constitute violations of full legal redress.

Senator Mazurek asked Mona Jamison if the Governor's office was in support of the amendment proposed.

Mona Jamison said they were in full support.

Senator Towe asked John Maynard if he understood the question addressed to Mona Jamison on the first sentence of subparagraph 2 and if he would respond.

Mr. Maynard said it does repeat the language in section one but he does not see a problem with repeating the language. He does not see what that language adds.

Senator Towe asked John Maynard if he thought we needed the information he presented in his testimony now as a basis for this constitutional amendment.

Mr. Maynard said this gives the legislature the prerogative of presenting these figures to demonstrate sufficient need for raising the issue of the constitutional amendment. This is simply for the purpose of demonstrating what our experience has been.

Senator Towe said assuming this is passed by the people, would it be your position that we would then have to go into the statute and reenact all those statutes or do they automatically become effective again.

Mr. Maynard said it is his opinion the limits would have to be reenacted.

Senator Mazurek referred to Rose Skoog's testimony where she said this is one issue and we must deal with it. He asked her if she was willing to assure this committee that under Article 14, section 11, that we can do this.

Rose Skoog said she could obviously not guarantee what will be declared constitutional. She has not heard attorneys make those kinds of guarantees. She thinks that what they are proposing is rational, more rational than what the other side is proposing. That is our stand. She sees this as relating to one subject and as such the public and private sector can be addressed in one referendum. We are not afraid of what will happen at the ballot if this were addressed in two referendums. She said we want to do this right and this is the best approach.

Senator Towe said if you really want to do this right, it really wouldn't be too difficult to divide the two issues to take away the problem of two amendments in one referendum.

Senator Daniels said he thinks the jury system is preferable to this body trying to determine limits on how badly a man is hurt and that is the sole point.

CLOSING STATEMENT: Representative Bardonouve furnished the committee with a newspaper clipping giving his view of the situation. See attached Exhibit 3. He said he thinks we will have to compromise sometime on this issue and there is much more support for the concept of limiting government liability than there is the private sector. There are a lot of people in the private sector who are against limiting. He suggests that the opponents to this bill read the Montana Constitution and Senator Etchart's comments.

The hearing was closed on HB 7.

ACTION ON HB 7: Senator Mazurek asked Valencia Lane if she would comment on the concern of Senator Crippen about equal protection. That if you strike the language on lines 4 and 5 and do not deny equal protection of the law, should we still leave the words "full legal redress" in the bill.

Valencia Lane said she thinks you have to keep the language "full legal redress" in this bill if you really want to take care of the Pfozt problem.

Senator Mazurek said even if the Halligan bill were to pass and be adopted by the people, which would essentially delete that language, it doesn't hurt to leave this in the bill.

Valencia Lane said it will not hurt anything to leave it in the bill.

Senator Towe thinks the amendment is proper. He thinks the matter is covered because the equal protection of the law is in the federal constitution already anyway.

Senator Towe made a motion to move the amendments presented and attached as Exhibit 1. The motion carried unanimously.

Senator Towe does have some problems with the other parts of the bill. Obviously if this bill passes and Senator Halligan's bill passes then at that point we have got an inconsistency.



Senator Towe has a proposal to amend this bill to eliminate any problems. He would propose striking all of subsection 2 in its entirety and put in "nothing contained in this constitution shall interfere with the right of the legislature to limit civil liability as provided in subparagraph 1 of this section." He thinks this will make it clear.

Senator Mazurek asked if that is potentially subject to the same criticism in the language that you are amending out to limit civil liability.

Senator Towe said this puts it back in the proper context that just because there is another provision, that doesn't interfere with the right of the legislature to limit civil liability.

Valencia Lane said she thinks Senator Mazurek is correct that you have the exact same problem with being overbroad and, at this point, approving anything the legislature may do in the future. She thinks that is one reason the equal protection language was taken out. She does not believe there will be any problem in leaving this full legal redress in the amendment because this full legal redress refers to section 1. It is not the same as the full legal redress in section 16. She thinks you have to leave this language in in case the other section does not get amended because if you don't you are not going to take care of the Pfozt problem.

Senator Towe said he does not agree with her comment, but even assuming that he did, wouldn't it be better to say what he said in his amendment. You have done what you want to do cleaner and neater without the inconsistent reference to full legal redress.

Valencia Lane said she is not sure but it appears that may be true. If you strike out the reference in the proposed amendment to section 4 and any other provision then we would have to consider whether or not this is simply two different ways of doing the same thing.

Senator Brown asked Mona Jamison to respond.

Mona Jamison said what we are stating in here is if a limit is passed then nothing contained in this constitution will interfere with the right of the legislature to limit liability. She said this bill was drafted in direct response to the Pfozt decision. She does not know what the implications are in reconciling this with other constitutional provisions and that concerns her. At

least with HB 7 we are focused on full legal redress and we have been through a lot of research and time on equal protection.

Senator Towe made a motion to delete all of subparagraph 2 and insert the following language "nothing contained in Article II, section 16, shall interfere with the right of the legislature to limit civil liability as provided in subparagraph 1 of this section."

Senator Blaylock said a lot of work has been done on this bill and he wants to go with this bill as it is.

Senator Mazurek asked Mona Jamison to respond to the proposed amendment.

Mona Jamison said there are other things in section 16 that this will be eliminating.

Senator Pinsoneault said he is not a bill drafter or writer and with all due respect, somebody has been working hard to submit this bill and they might know a lot more than we do.

Senator Towe asked Valencia if she was in favor of this amendment.

Valencia Lane said she believes the amendment would cut off the access to the courts to speedy remedy. She just thinks it is not wise to use such a broad exemption in the constitution.

Senator Towe withdrew his motion. He asked the committee to give serious consideration to at least taking out the first sentence.

Senator Mazurek disagrees with Senator Towe. He said it may be an additional statement but he sees no harm in that.

Senator Mazurek asked Valencia if she was comfortable with leaving "full" in.

Valencia Lane said that she was.

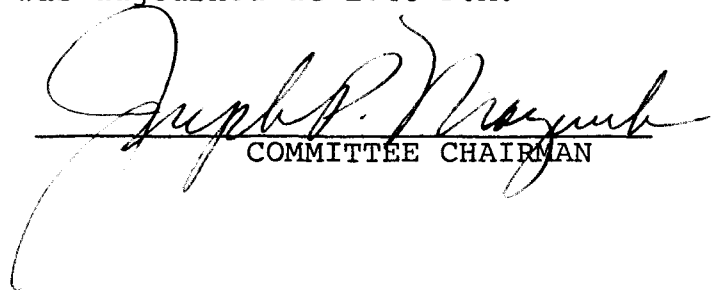
Senator Blaylock made a motion that HB 7 BE CONCURRED IN AS AMENDED.

Senate Judiciary Committee  
Minutes of the Meeting  
March 28, 1986  
Page 11

Senator Shaw said you have heard all the testimony with regard to separating these two issues and he thinks that we need the private and public tied together so there is no confusion.

The motion carried with a vote of 6-4. See attached Roll Call Vote sheet.

There being no further business to come before the committee, the meeting was adjourned at 1:40 P.M.

  
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COMMITTEE CHAIRMAN

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th SECOND SPECIAL LEGISLATIVE SESSION - 1986

Date 3-28-86

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	✓		



Amendment to HB 7

1. Page 2, lines 4 and 5

Following: "16" on line 4

Strike: remainder of line 4 through "4" on line 5

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 01  
DATE 032886  
BILL NO. HB-7

HOUSE BILL NO. 7

TESTIMONY OF JOHN H. MAYNARD, ADMINISTRATOR  
TORT CLAIMS DIVISION, DEPARTMENT OF ADMINISTRATION

BEFORE THE HOUSE JUDICIARY COMMITTEE  
MARCH 26, 1986, 8:00 A.M.  
ROOM 325, CAPITOL BUILDING

The function of the Tort Claims Division is twofold. First, it must provide for the investigation, defense, and payment of bodily injury and property damage claims incurred by all agencies, officers and employees of the State of Montana under Article II, Section 18, Constitution of Montana, and the Montana Tort Claims Act. Second, the Division must assess the fire, casualty and bond risks of the state for all state-owned buildings, equipment, fixtures, boilers, aircraft, cash and securities, etc. and provide either commercial or self-insurance protection for the financial loss of such property.

The vast majority of the Division's time and effort is concentrated in the comprehensive general liability risks that are fully self-insured by the Division. Examples of coverages include owner/landlord tenant liability, professional errors and omissions, medical malpractice, defamation, false arrest and imprisonment, wrongful discharge, violation of covenants of good faith and fair dealing, civil rights violations, and general common law negligence. Activities of state government

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 02

DATE 03 28 86

BILL NO. H.B. 7

DEPARTMENT OF ADMINISTRATION  
Tort Claims Division

PART I - Insurance protection provided

	<u>Annual Cost</u>
	<u>FY86 (11-26-85)</u>
<u>A. Commercial Insurance:</u>	
Property Insurance	139,852
Boiler Insurance	15,544
Fidelity Bond	18,279
Fine Arts Policy	14,370
Airport Liability	5,850
Money & Securities	852
Aircraft Liability & Physical Damage	35,677
Helicopter Liability & Physical Damage	107,452
Misc. Inland Marine Policies	<u>21,281</u>
TOTAL	<u><u>359,157</u></u>

B. Self-Insured:

Auto Fleet Insurance	400,518
Comp General Liability	1,615,635
Retail Liquor Stores	12,136
Auto Physical Damage	19,687
Inland Marine	73
Property Insurance Deductible	<u>139,852</u>
TOTAL	<u><u>2,187,901</u></u>

PART II - Self Insured Comp-General Liability

A. Actual payments made for claims and expenses:

	<u>FY78&amp;79</u>	<u>FY80&amp;81</u>	<u>FY82&amp;83</u>	<u>FY84</u>	<u>FY85</u>	<u>FY86<sup>1</sup></u>
Claims						
Paid	47,115	144,339	2,943,589	1,305,784	2,096,214	712,545
Leg. Fees	19,956	137,840	299,270	308,749	362,084	174,458
Misc. Exp.	578	14,007	95,085	74,728	130,147	41,371
TOTALS	<u><u>67,649</u></u>	<u><u>296,186</u></u>	<u><u>3,337,944</u></u>	<u><u>1,689,261</u></u>	<u><u>2,588,445</u></u>	<u><u>928,374</u></u>

SENATE JUDICIARY COMMITTEE

EXHIBIT 1

EXHIBIT NO. 2

DATE 03 28 86



B. Income by Fiscal Year:

	<u>Billings to Agencies</u>	<u>Interest Earned</u>	<u>Total</u>
FY78	1,047,684	150,534	1,198,218
FY79	1,260,030	345,821	1,605,851
FY80	1,106,604	526,532	1,633,136
FY81	1,166,625	815,119	1,981,744
FY82	1,016,058	1,062,550	2,078,608
FY83	1,006,865	950,949	1,957,814
FY84	1,440,000	260,729	1,700,729
FY85 <sup>1</sup>	1,440,000	921,052	2,361,052
FY86 <sup>1</sup>	1,615,635	887,452	2,503,087

PART III - Fund Balance by Fiscal Year - Comp-General Liability

	<u>Beg. F. Balance</u>	<u>Receipts</u>	<u>Expenses</u>	<u>Ending F. Balance</u>
FY78	-0-	1,823,218 <sup>2</sup>	36,037	1,787,181
FY79	1,787,181	2,230,851 <sup>2</sup>	31,612	3,986,420
FY80	3,986,420	1,633,136	71,921	5,547,635
FY81	5,547,635	1,981,744	224,265	7,305,114
FY82	7,305,114	2,078,608	797,844	8,585,878
FY83	8,585,878	1,957,814	2,540,100	8,003,592
FY84	8,003,592	1,700,729	1,689,261	8,015,060
FY85 <sup>1</sup>	8,015,060	2,361,052	2,588,445	7,787,667
FY86 <sup>1</sup>	7,787,667	2,503,087	928,374	9,362,380

PART IV - Comp-General Liability Claims Filed by Year of Occurrence

<u>FY78</u>	<u>FY79</u>	<u>FY80</u>	<u>FY81</u>	<u>FY82</u>	<u>FY83</u>	<u>FY84</u>	<u>FY85</u>	<u>FY86</u>	<u>Total</u>
107	110	151	94	123	125	189	155	89	1143 <sup>3</sup>

PART V - Self-Insured Automobile Fleet Insurance Claims Filed<sup>4</sup>FY86

114

A. Amounts Paid

Liability Claims	20,073
Adjusting Expenses	2,652
Fire and Theft	1,004
<b>TOTAL</b>	<b>23,729</b>

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86

B. Fund Balance Summary

Beginning Balance	-0-
Billings to Agencies	400,518
Amounts Paid	<u>23,729</u>
ENDING BALANCE	<u>376,789</u>

- 
- 1 Amounts as of February 28, 1986.
  - 2 In FY78 and FY79, General Fund appropriations were utilized to augment the self-insurance fund. This General Fund support was discontinued in the 80-81 biennium.
  - 3 Of the total claims filed, 231 remain outstanding as of 03/25/86.
  - 4 Amounts as of March 24, 1986.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03 28 86

BILL NO. H.B. 7

STATE OF MONTANA

ACTUARIAL ESTIMATES OF ADEQUACY OF  
COMPREHENSIVE GENERAL LIABILITY SELF-INSURANCE FUND

for the accident period July 1, 1977  
through June 30, 1984

Prepared for: State of Montana  
Department of Administration  
Insurance and Legal Division

Prepared by: Coopers & Lybrand

Date: September 28, 1984

EXHIBIT 2

Coopers  
& Lybrand

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

Certified Public Accountants

DATE 03-28-86

FILE NO. 1187

September 28, 1984

Mr. Steve Weber  
Assistant Administrator  
Department of Administration  
Insurance and Legal Division  
State of Montana  
Room 111, Mitchell Building  
Helena, Montana 59620

Dear Steve:

Attached are three (3) copies of our preliminary report entitled "Actuarial Estimates of Adequacy of Comprehensive General Liability Self-Insurance Fund for the State of Montana, as of June 30, 1984". Estimates are made for the accident period July 1, 1977 through June 30, 1984.

We estimate ultimate loss and loss adjustment expense to be approximately \$23.9 million. Reserves are estimated to be approximately \$19.8 million. Since the State's reserves are be approximately \$8.6 million, we estimate a reserve deficiency of approximately \$11.2 million. This estimate does not reflect any investment income earned on reserves. If future payments were discounted to present value at an assumed interest rate of 10% per annum, the indicated reserves would be approximately \$16.1 million. This would reduce the reserve deficiency to \$7.5 million.

The ultimate estimate is much higher than our estimate in our previous report dated June 22, 1982. Much of this difference is reflected in ultimate estimates for the additional years 1982-1983 and 1983-1984. We are witnessing increased claim reportings and higher average claim costs. We are aware of a number of claims with the potential to close at large amounts. Also, we understand that the State's liability for tort damages has been expanded to include noneconomic as well as economic damages, thus causing an additional increase in claim costs.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03-28-86

Mr. Steve Weber  
Assistant Administrator  
Department of Administration  
Insurance and Legal Division  
State of Montana  
September 28, 1984  
Page 2

Please realize these estimates are subject to a great deal of variability. There is much uncertainty in the ultimate outcome of many of these claims. Also, the factors used to adjust for noneconomic damages were derived from a limited data base as discussed in our report. Exhibit 5 in our report sets forth the estimated distribution of loss outcomes. As your experience develops, we will be able to provide more accurate estimates.

Steve, I apologize for the delay in issuing our report. Our original estimate of the cost and timing of the report was based on the assumption that it would be similar to the analysis we made in our last study. However, the change in the State's statute regarding noneconomic damages has required additional analysis and increased the variability in our estimates. It has been very difficult to quantify this effect as relatively little data was available from industry sources.

It is a pleasure to again be of service to the State of Montana. I look forward to responding to any questions you may have.

Sincerely,



Richard J. Fallquist, FCAS, MAAA  
Director

RJF:gm

Enclosures -  
As stated

cc: Michael Young  
Rick Sherman, C&L San Francisco

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 032886

BH1 NO 4 R 7

## TABLE OF CONTENTS

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	<u>Page</u>
Introduction	1
Findings and Recommendations	1 - 2
Methodology	2
Data	3
Assumptions	3
Estimated Ultimate Losses and Adjustment Expenses and Reserves - Exhibit 1	4
Property Damage Liability - Exhibits 2, 8-15	4
Bodily Injury Claims - Exhibits 3, 16-23	5
Estimated Ultimate Adjustment Expenses - Exhibit 4	5
Estimated Interest Income to be Earned - Exhibit 5	6
Runoff of 6/30/84 Reserves with Funding at Present Value of Future Expected Payments - Exhibit 6	6
Estimated Variability Around Expected Reserves - Exhibit 7	6

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 032886

BILL NO H.R. 7

The purpose of this report is to estimate the ultimate liabilities of the State of Montana's Comprehensive General Liability Self-Insurance Fund. These estimates are for accidents occurring during fiscal years 1977-1978 through 1983-1984.

On July 1, 1973, the "Montana Comprehensive State Insurance Plan and Tort Claims Act" became effective. From July 1, 1973 through June 30, 1977, the State of Montana purchased comprehensive general liability insurance from private insurance companies. Beginning July 1, 1977, the coverage was provided by the Self-Insurance Fund which is administered by the Insurance and Legal Division of the Department of Administration.

We understand that the State's liability for tort damages has changed since our last report. Previously, the State was liable for only economic damages. Due to a recent court decision, the State is now liable for both economic and noneconomic damages. This applies retroactively to all open claims as of the date of the court ruling as well as to all claims reported in the future. Liability for economic and noneconomic damages is limited to \$300 thousand for each claimant and \$1 million for each occurrence. Liability for punitive damages is excluded. We have assumed these limits and exclusion in our calculations and projections.

#### Findings and Recommendations

1. It is estimated that the expected ultimate loss and loss adjustment expense for comprehensive general liability for accidents occurring during the fiscal years 1977-1978 through 1983-1984 are approximately \$23.9 million. The indicated reserve is approximately \$19.8 million. Since the State's current reserve is \$8.6 million, we estimate a reserve deficiency of approximately \$11.2 million. This deficiency does not reflect investment income earned on reserves. If future payments were discounted to present value at an assumed interest rate of 10% per annum, the indicated reserve would be approximately \$16.1 million. This would reduce the reserve deficiency to approximately \$7.5 million. Exhibit 6 shows the run-off of payments with this discounted amount. These estimates apply only to statutory limits of \$300 thousand per claim and \$1.0 million per occurrence for economic damages and noneconomic damages.
2. The estimated variability in these estimates is provided on Exhibit 7 at the 50%, 75%, 95% and 99% levels for accidents occurring during fiscal years 1977-1978 through 1983-1984. These levels imply there is an estimated 50%, 25%, 10%, 5% and 1% chance, respectively, that total future payments on claims open or incurred and unreported will exceed the amounts indicated. For example, we estimate a 5% chance that total payments will exceed \$24.45 million.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 2  
DATE 03 28 86

## Findings and Recommendations, Continued

3. Because of the variability in these estimates, the State of Montana may wish to fund reserves at levels higher than the expected estimate. This would provide the additional funds necessary for adverse claims experience greater than expected.
4. We recommend that the State computerize the historical claim information. For purposes of actuarial projections, we recommend, at a minimum, capturing individual claim characteristics and amounts and dates of payments, amounts and dates of estimated reserve amounts, amounts and dates of other expense and attorney fee payments, incident date, report date and closed date. We will provide an expanded letter to the State regarding this topic within two weeks.
5. Because of the inherent variability in these estimates and because of the limited data base available, we recommend annual updates in estimating ultimate amounts and reserves.

## Methodology

Our approach for this study was to group claims into two categories: Property damage liability and bodily injury liability. Loss amounts (payments and incurred amounts) were grouped by accident year developed as of June 30, 1984. Loss payments, attorney fees and other expenses were each grouped by fiscal year end. Reported claims, grouped by property damage and bodily injury, were summarized for each Accident Year developed as of June 30 through June 30, 1984.

Ultimate economic loss amounts were estimated using the historical experience of the State of Montana. In addition, data from other sources was used where deemed appropriate. Actuarial techniques employed consisted of payments development, incurred development, reported claim development, average claim cost and development of a size-of-loss distribution.

As the State's historical experience is largely based on liability for economic loss only, we had to adjust our ultimate amounts to include the liability for noneconomic damages. Based on data from other sources such as Closed Claim Surveys, and using our best judgement, we applied factors to adjust estimated ultimate economic loss to total loss for bodily injury claims as shown on Exhibit 3. We made this adjustment only to bodily injury ultimate amounts as we determined that a similar adjustment for property damage claims would be negligible.



## Data

The data used in the study was the actual experience of the Self-Insurance Fund as provided by the Insurance and Legal Division. This data was supplemented by data from other sources. Data utilized was not audited by Coopers & Lybrand.

Data provided consisted of the Division's Register of Accident/ Incident Reports for Self-Insurance and a payments of record as of June 30, 1984. Information was also provided by the Division's staff and gathered by reviewing selected claim files.

Throughout this study we have combined individual claims together and have made estimates using the grouped data only. We have not estimated ultimate amounts on individual claims.

## Assumptions

We have used a number of assumptions in this study for estimating ultimate loss amounts. These assumptions are as follows:

1. Historical reported claim development patterns in the fund are reasonable estimates of future reported claim development.
2. The estimated size-of-loss distribution for accident year 1979 can be approximated using the average of reported claims for accident years 1977-1978 through 1980-1981 and the estimated size-of-loss experience from other sources may be used as a guide.
3. Incurred loss development factors and increased limits tables for several general liability sublines can be used as a guide in projecting ultimate costs.
4. The ratio of calendar year expense and attorneys fees payments to loss payments may be used as a reasonable estimate of the ultimate ratio.
5. +11% per annum and +13% per annum is a reasonable rate of change in average cost per occurrence for property damage and bodily injury claims, respectively.
6. Several industry studies relating economic and noneconomic damage and costs can be used as a basis for estimating noneconomic costs, subject to inherent variability.
7. A 10% per annum interest rate was assumed based on current interest earnings of the fund.
8. An estimated "typical" payments pattern based on data from other sources can be used to approximate interest earnings in the future.

Our estimates would vary to the extent these assumptions would change.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03 28 86

Estimated Ultimate Losses and Adjustment Expenses and Reserves -  
Exhibit 1

Exhibit 1 sets forth a comparison of our estimate of ultimate liabilities of the Self-Insurance Fund versus the State's estimate as of June 30, 1984. We estimate an expected reserve of approximately \$19.8 million while the fund balance is currently \$8.6 million. This translates to an estimated reserve deficiency of approximately \$11.2 million. This estimate does not reflect investment income earned on reserves.

Property Damage Liability - Exhibits 2, 8-15

Exhibits 2 and 8 through 15 set forth our analysis of property damage liability claims. Exhibit 2 summarizes ultimate loss amounts and loss reserves for each accident year. Exhibits 8-11 estimate ultimate reported claims for each accident year. Exhibits 12-15 provide a basis for estimating ultimate loss amounts.

Exhibit 2 shows estimate ultimate loss for each accident year based on development methods (Column 1) and on size-of-loss estimates (Column 2). Column 3 sets forth our selected estimates. Column 5 is the estimated loss reserves as of June 30, 1984 which is calculated as ultimate loss (Column 3) loss payments as of June 30, 1984 (Column 4).

Exhibits 8-11 present the basis for estimating ultimate counts. Incremental counts (Exhibit 8) were cumulated (Exhibit 9) and development factors were calculated and selected using historical factors as a guide (Exhibit 10). The estimated ultimate claims for each accident year are shown on Exhibit 11.

Size-of-loss distributions of property damage liability claims are shown on Exhibits 12 and 13. Exhibit 12 shows claims for each accident year by size-of-loss category reported through June 30, 1984. On Exhibit 13 we have estimated the ultimate distribution of claims for Accident Year 1979. To estimate this distribution, we reviewed Accident Year 1977-1978 through 1980-1981 on Exhibit 12 and the ultimate estimates for these same years shown on Exhibit 15.

Exhibit 14 sets forth estimates of ultimate loss for each accident year using ultimate counts from Exhibit 10 and the average loss shown on Exhibit 13 trended +11% per annum. This estimate was selected using data from other sources as a guide. These estimates are also summarized on Exhibit 2, Column 2.

An ultimate estimate based on development was calculated on Exhibit 15 using both paid and incurred development factors. These development factors are multiplied to cumulative amounts as of June 30, 1984 and produce ultimate estimates of payments and incurred amounts. Selected estimates are shown in Column 7 and on Exhibit 2, Column 1. Development factors were selected using data from other sources.

### Bodily Injury Liability - Exhibits 3, 16-23

Exhibits 3 and 16 through 23 present our analysis of bodily injury liability claims. Exhibit 3 summarizes ultimate loss amounts and reserves for each accident year. Exhibits 16-19 estimate ultimate counts for each accident year and Exhibits 20-23 provide the basis for estimating ultimate economic loss amounts.

On Exhibit 3 is shown our estimate of ultimate loss (Column 5) and the estimated reserves (Column 7) for each accident year. Again, ultimate economic loss amounts (Column 3) were selected based on estimates using the development method (Column 1) and the size-of-loss method (Column 2). Then a factor (Column 4) was selected for each accident year to adjust for noneconomic damages to arrive at our estimated ultimate loss. This factor, was developed after comparing economic and total losses from several studies.

Ultimate reported counts are shown on Exhibit 19. Ultimates were selected using the historical experience set forth on Exhibits 16 through 18.

Ultimate economic loss amounts on Exhibit 22 were calculated using both ultimate counts and average economic loss. Average economic loss was selected based on the ultimate size-of-loss distribution for Accident Year 1979 (Exhibit 21) trend +13% per annum. The size-of-loss distribution was constructed after reviewing the reported distribution of claims for each accident year (Exhibit 20) and the average estimates for Accident years 1977-1978 through 1980-1981 shown on Exhibit 22, Column 9.

Estimated ultimate economic loss based on paid and incurred development is displayed on Exhibit 23. Cumulative amounts in Columns 1 and 2 were multiplied by selected development factors (Column 3 and 4) to produce ultimates in Columns 5 and 6. We then selected ultimates in Column 7. Development factors were based on data from other sources.

### Estimated Ultimate Adjustment Expenses - Exhibit 4

Because adjustment expenses were unavailable by accident year, we were unable to compare adjustment expenses to loss by accident year as we used in our prior report.

The approach selected as to compare adjustment expenses to loss payments for each fiscal year. Exhibit 4 sets forth loss payments, other expenses and attorney fees for each fiscal year and the ratio of other expenses to loss and attorney fees to loss. The total ratio to date is .296 (other expense - .064, attorney fees - .232). Because we expect an increase in this ratio as claims mature and new claims are reported, we selected an ultimate ratio of adjustment expense to loss of .325. This estimate, which is subject to a great deal of variability, is shown in Exhibit 1, Row 2.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03 28 86

BILL NO. H.B. 7

#### Estimated Interest Income To Be Earned - Exhibit 5

Exhibit 5 shows the calculation of interest income on the reserves as of June 30, 1984. Interest is earned through June 30, 1991 which is the estimated payment period.

This exhibit shows beginning reserves of approximately \$19.8 million. As of June 30, 1985, we estimate a reserve of approximately \$15.8 million. This assumes payments during the year of approximately \$5.7 million and interest income of approximately \$1.7 million earned at a 10% rate per annum. We have assumed the payments occurred as of December 30. This same calculation is continued through June 30, 1991.

The assumed payment pattern is based on liability payments from other similar data sources. Because of the lack of an appropriate payments data source for the State, we have substituted this assumed payment pattern. We believe this substitute provides a reasonable estimate of future interest earned.

#### Runoff of 6/30/84 Reserves With Funding at Present Value of Future Payments - Exhibit 6

Exhibit 6 shows the present value of future expected payments of \$19.8 million to be approximately \$16.1 million assuming a 10% per annum interest rate. The same assumptions made in the previous exhibit are also used here. This exhibit illustrates the runoff of these reserves to accident year 1990-1991.

#### Estimated Variability Around Expected Reserves - Exhibit 7

Exhibit 7 sets forth the probability distribution of expected reserves, shown as the probability that the total actual future payments on incurred claims should not exceed various indicated totals shown in Column 2. These estimates, developed using a Coopers & Lybrand model, display amounts at various probabilities: .50, .75, .90, .95., .99. Thus, a .99 probability translates to a 1% chance that estimated future payments will exceed \$26.7 million. These reserve amounts do not reflect the present value of future payments or investment income earned on reserves.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03 28 86

BILL NO. H. B. 7

STATE OF MONTANA  
ESTIMATED ULTIMATE LOSSES AND ADJUSTMENT EXPENSES AND RESERVES  
Property Damage and Bodily Injury Claims

(1)	Estimated Ultimate Expected Loss	\$18.05 million
	A. Property Damage Claims	2.61 million
	B. Bodily Injury Claims	15.44 million
(2)	Estimated Ultimate Expenses and Attorneys Fees (1) x .325	\$ 5.87 million
(3)	Estimated Payments as of June 30, 1984	\$ 3.20 million
	A. Property Damage Claims	.76 million
	B. Bodily Injury Claims	2.44 million
(4)	Estimated Expenses and Attorneys Fees Payments as of June 30, 1984	\$ 942 thousand
(5)	Estimated Expected Reserves as of June 30, 1984	\$19.77 million
	A. Property Damage Claims (1A)-(3B)	1.85 million
	B. Bodily Injury Claims (1B)-(3B)	12.99 million
	C. Expenses and Attorneys Fees (2) - (4)	4.93 million
(6)	State of Montana's Reserve "Accounts 06511 and 06532" as of June 30, 1984 (estimated)	\$8.58 million
(7)	Estimated Reserve Redundancy (+) or Deficiency (-) (6)-(5)	-\$11.19 million

Note:

1. These estimates were not adjusted to reflect interest income.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86BILL NO. 487

STATE OF MONTANA  
ESTIMATED ULTIMATE LOSSES  
Property Damage Claims

<u>Accident Year</u>	<u>Estimated Ultimate Loss</u>		
	<u>Based on</u>	<u>Based on</u>	<u>Selected</u>
	<u>Development</u>	<u>Size-of-Loss</u>	
	<u>(1)</u>	<u>Projection</u>	<u>(3)</u>
		<u>(2)</u>	
1977-1978	\$140.0	\$ 260.4	\$ 140.0
1978-1979	168.0	284.1	170 0
1979-1980	660.0	407.8	675.0
1980-1981	250.0	301.8	275.0
1981-1982	-	281.4	275.0
1982-1983	-	349.5	350.0
1983-1984	-	<u>734.6</u>	<u>725.0</u>
Total		\$2,619.6	\$2,610.0

<u>Accident Year</u>	<u>Payments</u>	<u>Estimated</u>
	<u>as of</u>	<u>Reserves as</u>
	<u>6/30/84</u>	<u>of 6/30/84</u>
	<u>(4)</u>	<u>(3) - (4)</u>
		<u>(5)</u>
1977-1978	\$101.2	\$ 38.8
1978-1979	152.0	18.0
1979-1980	459.1	215.9
1980-1981	11.1	263.9
1981-1982	17.7	257.3
1982-1983	11.0	339.0
1983-1984	<u>5.8</u>	<u>719.2</u>
Total	\$757.9	\$1,852.1

Notes:

1. The estimates in Column (1) are from Exhibit 15 and the estimates in Column (2) are from Exhibit 14.
2. Amounts are in thousands of dollars.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86

STATE OF MONTANA  
ESTIMATED ULTIMATE LOSSES  
Bodily Injury Claims

Accident Year	Estimated Ultimate Economic Loss			Factor to Adjust Economic to Total Loss
	Based on Development (1)	Based on Size-of-Loss Projection (2)	Selected (3)	
1977-1978	\$ 350.0	\$ 860.8	\$ 700.0	1.00
1978-1979	640.0	895.9	750.0	1.00
1979-1980	1,300.0	1,302.1	1,300.0	1.05
1980-1981	1,500.0	1,046.3	1,300.0	1.10
1981-1982	2,000.0	2,253.8	2,200.0	1.20
1982-1983	1,600.0	3,298.4	3,000.0	1.40
1983-1984	-	<u>2,972.2</u>	<u>2,900.0</u>	1.50
Total		\$12,655.1	\$12,150.0	

Accident Year	Estimated Ultimate Loss (3) x (4) (5)	Payments as of 6/30/84 (6)	Estimated Reserves as of 6/30/84 (5) - (6) (7)
1977-1978	\$ 700.0	\$ 210.1	\$ 489.9
1978-1979	750.0	372.1	377.9
1979-1980	1,365.0	923.0	442.0
1980-1981	1,430.0	373.1	1,056.9
1981-1982	2,640.0	420.1	2,219.9
1982-1983	4,200.0	141.2	4,058.8
1983-1984	<u>4,350.0</u>	<u>4.9</u>	<u>4,345.1</u>
Total	\$15,435.0	\$2,444.5	\$12,990.5

Note:

1. The estimates in Column (1) are from Exhibit 23 and the estimates in Column (2) are from Exhibit 22.
2. Amounts are in thousands of dollars.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86BY 11 2 7

## Exhibit 4

STATE OF MONTANA  
ESTIMATED ULTIMATE ADJUSTMENT EXPENSES  
Property Damage and Bodily Injury Claims

<u>Fiscal Year</u>	<u>Loss (1)</u>	<u>Expenses (2)</u>	<u>Ratio of Expenses to Loss (2)/(1) (3)</u>	<u>Attorneys Fees (4)</u>	<u>Ratio of Attorneys Fees to Loss (4)/(1) (5)</u>
1978	\$ 3,057	\$ 25,023	8.185	\$ 7,957	2.603
1979	19,058	555	.029	11,999	.630
1980	10,584	3,806	.360	57,531	5.436
1981	133,755	10,201	.076	80,309	.600
1982	616,304	39,350	.064	142,190	.231
1983	1,270,785	55,626	.044	164,465	.129
1984	1,135,706	67,995	.060	274,836	.242
Total	\$3,189,249	\$202,556	.064	\$739,287	.232

Selected Factor: 0.325

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03 28 86

BILL NO. H.B. 7



## STATE OF MONTANA

## ESTIMATED INTEREST INCOME TO BE EARNED

## Property Damage and Bodily Injury Claims

Accident Year	Reserves as of 6/30/84	Estimated Annual Payments as of June 30						
		1985	1986	1987	1988	1989	1990	1991
1977-1978	\$ 704.3	\$ 704.3						
1978-1979	527.4	351.6	\$ 175.8					
1979-1980	876.4	350.6	350.6	\$ 175.2				
1980-1981	1,759.5	659.8	439.9	439.9	\$ 219.9			
1981-1982	3,300.0	900.0	900.0	600.0	600.0	\$ 300.0		
1982-1983	5,858.5	1,562.3	1,171.7	1,171.7	781.1	781.1	\$ 390.6	
1983-1984	6,746.4	1,124.4	1,499.2	1,124.4	1,124.4	749.6	749.6	\$ 374.8
Total	\$19,772.5	\$ 5,653.0	\$ 4,537.2	\$ 3,511.2	\$ 2,725.4	\$1,830.7	\$1,140.2	\$ 374.8
Beginning Reserves		\$19,772.5	\$15,820.8	\$12,644.2	10,226.0	\$8,390.2	\$7,309.2	6,844.3
Less Payments		5,653.0	4,537.2	3,511.2	2,725.4	1,830.7	1,140.2	374.8
Plus Interest Income		1,701.3	1,360.6	1,093.0	889.6	749.7	675.3	666.1
Ending Reserves		\$15,820.8	\$12,644.2	\$10,266.0	\$ 8,390.2	\$7,309.2	\$6,847.3	\$7,135.6

## Note:

1. The assumed payments pattern used in the calculation above was based on data from other sources.

0-12 months	10%
12-24 months	15%
24-36 months	20%
36-48 months	15%
48-60 months	15%
60-72 months	10%
72-84 months	10%
84-96 months	5%

2. The calculation assumes a 10% interest rate per annum and that payments are made at the midpoint of each year.

3. Amounts are in thousands of dollars.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86

STATE OF MONTANA  
 RUNOFF OF 6/30/84 RESERVES WITH FUNDING AT PRESENT VALUE  
 OF FUTURE EXPECTED PAYMENTS  
 Property Damage and Bodily Injury Claims

	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Beginning reserves	16,110.8	11,793.0	8,213.6	5,352.4	3,029.2	1,412.1	357.5
Less payments	5,653.0	4,537.2	3,511.2	2,725.4	1,830.7	1,140.2	374.8
Plus interest income	1,335.2	957.8	650.0	402.2	213.6	85.6	17.3
Ending reserves	11,793.0	8,213.6	5,352.4	3,029.2	1,412.1	357.5	0

Note:

1. Amounts are in thousands of dollars.
2. Accident year ends June 30.
3. Beginning reserves (1985) are as of June 30, 1984.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86FILE NO. 1187

STATE OF MONTANA  
ESTIMATED VARIABILITY AROUND EXPECTED RESERVES

Property Damage and Bodily Injury Claims

Probability that Actual  
Should Not  
Exceed Indicated Total  
(1)

Indicated Total  
(2)

.99

\$26.69 million

.95

24.45

.90

23.30

.75

21.50

.50

19.64

Average

\$19.77 million

Note:

1. These variability estimates were developed using a Coopers & Lybrand's model.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03 28 86

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STATE OF MONTANA  
Number of Reported Claims  
Property Damage Claims

Accident Year	Months of Development						8.
-----	12	24	36	48	60	72	--
1978	39	10	4	4	2		
1979	43	11	2	1	1		
1980	60	8	4	3			
1981	30	12	5	2			
1982	24	12	4				
1983	32	9					
1984	64						

Note:

1. Accident year ends June 30.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03 28 86

BY H.B. 7

STATE OF MONTANA  
Cumulative Reported Claims  
Property Damage Claims

Accident Year	Months of Development						
-----	12	24	36	48	60	72	84
	--	--	--	--	--	--	--
1978	39	49	53	57	59	59	59
1979	43	54	56	57	58	58	
1980	60	68	72	75	75		
1981	30	42	47	49			
1982	24	36	40				
1983	32	41					
1984	64						

Note:

1. Accident year ends June 30.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 2  
DATE 03 28 86  
BILL NO. H.B. 7

STATE OF MONTANA  
 Ultimate Claims Based on Reported Claim Development  
 Property Damage Claims

Accident Year =====	Cumulative Reported Claims =====	Selected Development Factor =====	Cumulative Development Factor =====	Ultimate Claims (1)X(3) =====
	(1)	(2)	(3)	(4)
1978	59	1.000	1.000	59
1979	58	1.000	1.000	58
1980	75	1.005	1.005	75
1981	49	1.015	1.020	50
1982	40	1.040	1.061	42
1983	41	1.090	1.156	47
1984	64	1.200	1.388	89
Total	386			420

Note:

1. Accident year ends June 30.

SENATE JUDICIARY COMMITTEE  
 EXHIBIT NO. 2  
 DATE 03 28 86  
 BILL NO. H.B. 7

STATE OF MONTANA  
Reported Claim Development  
Property Damage Claims

Accident Year -----	Months of Development						
	12 --	24 --	36 --	48 --	60 --	72 --	84 --
1978	1.256	1.082	1.075	1.035	1.000	1.000	
1979	1.256	1.037	1.018	1.018	1.000		
1980	1.133	1.059	1.042	1.000			
1981	1.400	1.119	1.043				
1982	1.500	1.111					
1983	1.281						
1984							
Average	1.304	1.082	1.044	1.018	1.000	1.000	
Weighted Average	1.331	1.091	1.041	1.012	1.000	1.000	
3 Year Average	1.394	1.096	1.034	1.018	1.000	1.000	
Linear Trend							
Slope	0.032	0.014	-0.007	-0.018	0.000		
Intercept	1.192	1.039	1.063	1.053	1.000		
R2	0.220	0.416	0.167	1.000	0.000		
Projected	1.417	1.124	1.026	0.982	1.000		
Exponential Curve							
Slope %	2.436	1.307	-0.699	-1.710	0.000		
Intercept	1.194	1.040	1.063	1.053	1.000		
R2	0.214	0.411	0.161	1.000	0.000		
Projected	1.413	1.124	1.026	0.983	1.000		
Selected	<u>1.200</u>	<u>1.090</u>	<u>1.040</u>	<u>1.015</u>	<u>1.005</u>	<u>1.000</u>	<u>1.000</u>

Note:

1. Accident year ends June 30.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 02DATE 03 28 86

STATE OF MONTANA  
REPORTED CLAIMS ARRANGED BY SIZE-OF-LOSS CATEGORY

Property Damage Claims

Size-of-Loss Category	Number of Claims Accident Year						
	1977-1978	1978-1979	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
\$ 0	33	45	48	32	25	19	42
1-500	17	4	10	5	7	12	19
501-1,000	2	2	4	2	3	5	1
1,001-2,500	1	1	5	0	1	3	1
2,501-5,000	3	1	3	6	4	2	0
5,001-10,000	0	2	1	0	0	0	0
10,001-25,000	1	1	1	1	0	0	0
25,001-50,000	1	0	0	2	0	0	1
50,001+	<u>1</u>	<u>2</u>	<u>3</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>59</u>	<u>58</u>	<u>75</u>	<u>49</u>	<u>40</u>	<u>41</u>	<u>64</u>

Size-of-Loss Category	Number of Claims as Ratio of Total Accident Year						
	1977-1978	1978-1979	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
\$ 0	.56	.78	.64	.65	.63	.46	.66
1-500	.29	.06	.13	.11	.17	.30	.29
501-1,000	.03	.04	.06	.04	.08	.12	.02
1,001-2,500	.02	.02	.06	.00	.02	.07	.01
2,501-5,000	.05	.01	.04	.12	.10	.05	.00
5,001-10,000	.00	.04	.02	.00	.00	.00	.00
10,001-25,000	.02	.02	.01	.02	.00	.00	.00
25,001-50,000	.01	.00	.00	.04	.00	.00	.02
50,001+	<u>.02</u>	<u>.03</u>	<u>.04</u>	<u>.02</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
Total	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>

Note:

1. Reported claims are estimated as of June 30, 1984.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03 28 86



STATE OF MONTANA  
ESTIMATED SIZE-OF-LOSS DISTRIBUTION  
FOR ACCIDENT YEAR 1979

Property Damage Claims

<u>Size-of-Loss Category</u>	<u>Estimated Percentage (1)</u>	<u>Estimated Average Loss (2)</u>
\$ 0	66.5%	\$ 0
1-1,000	18.0	300
1,001-5,000	7.5	2,600
5,001-10,000	2.0	6,700
10,001-25,000	2.0	14,500
25,001-50,000	1.5	32,500
50,001+	2.5	160,000
Total	100.0%	-
Average	-	\$ 5,161

Note:

1. The distribution was estimated using the reported distributions for accident years 1977-1978 through 1980-1981, estimated development factors and data from other sources.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03 28 86

BILL NO. 1107

STATE OF MONTANA  
ESTIMATED ULTIMATE LOSS BASED ON SIZE-OF-LOSS DISTRIBUTION

Property Damage Claims

<u>Accident Year</u>	<u>Estimated Average Loss (1)</u>	<u>Estimated Ultimate Number of Claims (2)</u>	<u>Estimated Ultimate Loss (1) x (2) (3)</u>
1977-1978	\$4,413	59	\$260,367
1978-1979	4,899	58	284,142
1979-1980	5,437	75	407,775
1980-1981	6,035	50	301,750
1981-1982	6,699	42	281,358
1982-1983	7,436	47	349,492
1983-1984	8,254	89	734,606

Note:

1. The estimated average loss amounts in Column (1) were developed from the accident year 1979 estimate on Exhibit 11, trended an estimated 11% per annum.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 2  
DATE 03 28 86  
BILL NO. 11

STATE OF MONTANA  
ESTIMATED ULTIMATE LOSS BASED ON PAID AND INCURRED DEVELOPMENT  
Property Damage Claims

Accident Year	Months of Development	Payments (1)	Losses Incurred (2)	Selected Paid Factor To Ultimate (3)	Selected and Incurred Factor To Ultimate (4)	Estimated Ultimate Loss (1)x(3) (5)	Estimated Ultimate Loss (2)x(4) (6)	Selected Ultimate Loss (7)	Estimated Ultimate Number Of Claims (8)	Average Loss (7)/(8) (9)
1977-1978	84	\$101.2	\$136.2	1.07	1.02	\$108.3	138.9	140.0	59	\$2,373
1978-1979	72	152.0	162.0	1.08	1.04	164.2	168.5	168.0	58	2,897
1979-1980	60	459.1	600.6	1.12	1.09	514.2	654.6	660.0	75	8,800
1980-1981	48	11.1	209.1	-	1.14	-	238.4	250.0	50	5,000
1977-1981	-	723.4	1,107.9	-	-	-	1,200.4	1,218.0	242	5,033
1981-1982	36	17.7	20.3	-	-	-	-	-	42	-
1982-1983	24	11.0	20.0	-	-	-	-	-	47	-
1983-1984	12	5.8	56.0	-	-	-	-	-	89	-

## Note:

1. Payments in Column (1) and incurred amounts (Column 2) are developed through June 30, 1984.
2. Amounts in Columns (1), (2), (5), (6), and (7) are in thousands of dollars.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86

STATE OF MONTANA  
Number of Reported Claims  
Bodily Injury Claims

Accident Year	Months of Development						
-----	12	24	36	48	60	72	84
	--	--	--	--	--	--	--
1978	14	9	8	4	3		
1979	9	9	1	9	4	2	
1980	16	11	8	8			
1981	9	6	5	9			
1982	17	14	10				
1983	22	18					
1984	18						

Note:

1. Accident year ends June 30.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 02DATE 03 28 86BILL NO. H. B. 7

STATE OF MONTANA  
Cumulative Reported Claims  
Bodily Injury Claims

Accident Year -----	Months of Development						
	12	24	36	48	60	72	84
	--	--	--	--	--	--	--
1978	14	23	31	35	38	38	38
1979	9	18	19	28	32	34	
1980	16	27	35	43	43		
1981	9	15	20	29			
1982	17	31	41				
1983	22	40					
1984	18						

Note:

1. Accident year ends June 30.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86BILL NO. H.B. 7

STATE OF MONTANA  
Reported Claim Development  
Bodily Injury Claims

Accident Year -----	Months of Development						
	12 --	24 --	36 --	48 --	60 --	72 --	84 --
1978	1.643	1.348	1.129	1.086	1.000	1.000	
1979	2.000	1.056	1.474	1.143	1.063		
1980	1.688	1.296	1.229	1.000			
1981	1.667	1.333	1.450				
1982	1.824	1.323					
1983	1.818						
1984							
Average	1.773	1.271	1.320	1.076	1.031	1.000	
Weighted Average	1.781	1.286	1.356	1.062	1.042	1.000	
1 Year Average	1.818	1.323	1.450	1.000	1.063	1.000	
Linear Trend							
Slope	0.009	0.023	0.072	-0.043	0.063		
Intercept	1.740	1.203	1.141	1.162	0.938		
R2	0.017	0.087	0.302	0.355	1.000		
Projected	1.806	1.339	1.500	0.990	1.125		
Exponential Curve							
Slope %	0.623	1.977	5.852	-4.029	6.250		
Intercept	1.731	1.194	1.138	1.167	0.941		
R2	0.024	0.091	0.321	0.373	1.000		
Projected	1.808	1.343	1.513	0.990	1.129		
Selected	<u>1.775</u>	<u>1.320</u>	<u>1.340</u>	<u>1.060</u>	<u>1.030</u>	<u>1.010</u>	<u>1.010</u>

Note:

1. Accident year ends June 30.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86BILL NO. H.B. 7

STATE OF MONTANA  
 Ultimate Claims Based on Reported Claim Development  
 Bodily Injury Claims

Accident Year =====	Cumulative Reported Claims =====	Selected Development Factor =====	Cumulative Development Factor =====	Ultimate Claims (1)X(3) =====
	(1)	(2)	(3)	(4)
1978	38	1.010	1.010	38
1979	34	1.010	1.020	35
1980	43	1.030	1.051	45
1981	29	1.060	1.114	32
1982	41	1.340	1.492	61
1983	40	1.320	1.970	79
1984	18	1.775	3.497	63
Total	243			353

Note:

1. Accident year ends June 30.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86BILL NO. 4.B.7

STATE OF MONTANA  
REPORTED CLAIMS ARRANGED BY SIZE-OF-LOSS CATEGORY

Bodily Injury Claims

Size-of-Loss Category	Number of Claims Accident Year						
	1977-1978	1978-1979	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
\$ 0	18	15	17	9	20	15	8
1-1,000	3	2	4	4	5	5	3
1,001-2,500	5	0	2	2	2	3	0
2,501-5,000	2	5	4	1	1	4	3
5,001-10,000	1	2	7	3	2	3	0
10,001-25,000	3	4	2	2	3	4	1
25,001-50,000	5	3	3	2	1	1	2
50,001-100,000	1	1	1	3	5	5	0
100,001+	<u>0</u>	<u>2</u>	<u>3</u>	<u>3</u>	<u>2</u>	<u>0</u>	<u>1</u>
Total	<u>38</u>	<u>34</u>	<u>43</u>	<u>29</u>	<u>41</u>	<u>40</u>	<u>18</u>

Size-of-Loss Category	Number of Claims as Ratio to Total Accident Year						
	1977-1978	1978-1979	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
\$ 0	.47	.44	.40	.31	.49	.38	.44
1-1,000	.08	.06	.09	.14	.12	.12	.17
1,001-2,500	.13	.00	.04	.07	.05	.08	.00
2,501-5,000	.06	.15	.10	.03	.02	.10	.17
5,001-10,000	.02	.06	.16	.11	.05	.07	.00
10,001-25,000	.08	.11	.05	.06	.07	.10	.05
25,001-50,000	.13	.09	.07	.07	.03	.03	.11
50,001-100,000	.03	.03	.02	.11	.12	.12	.00
100,001+	<u>.00</u>	<u>.06</u>	<u>.07</u>	<u>.10</u>	<u>.05</u>	<u>.00</u>	<u>.06</u>
Total	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>

Note:

1. Reported claims are estimated as of June 30, 1984.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03 28 86

BILL NO. H.B. 7



STATE OF MONTANA  
ESTIMATED SIZE-OF-LOSS DISTRIBUTION  
FOR ACCIDENT YEAR 1979

Bodily Injury Claims

<u>Size-of-Loss Category</u>	<u>Estimated Percentage (1)</u>	<u>Estimated Average Economic Cost (2)</u>
\$ 0	41.5%	\$ 0
1-1,000	10.0	300
1,001-5,000	13.0	2,800
5,001-10,000	8.0	6,900
10,001-25,000	8.0	15,000
25,001-50,000	8.0	34,000
50,001-100,000	5.0	70,000
100,001+	6.5	290,000
Total	100.0%	-
Average	-	\$ 27,216

Note:

1. The distribution was estimated using the reported distributions in accident years 1977-1978 through 1981-1982, estimated development factors and data from other sources.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 2  
DATE 03 28 86  
BILL NO. H.B. 7

STATE OF MONTANA  
ESTIMATED ULTIMATE ECONOMIC LOSS BASED ON SIZE-OF-LOSS DISTRIBUTION  
Bodily Injury Claims

<u>Accident Year</u>	<u>Estimated Average Economic Loss</u> (1)	<u>Estimated Ultimate Number of Claims</u> (2)	<u>Estimated Ultimate Economic Loss (1) x (2)</u> (3)
1977-1978	\$22,653	38	\$ 860,814
1978-1979	25,598	35	895,930
1979-1980	28,936	45	1,302,120
1980-1981	32,698	32	1,046,336
1981-1982	36,948	61	2,253,828
1982-1983	41,752	79	3,298,408
1983-1984	47,179	63	2,972,277

Note:

1. The estimated average loss amounts in Column (1) were developed from the accident year 1979 estimate on Exhibit 17 trended an estimated 13% per annum.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2DATE 03 28 86BILL NO. H.B. 7

STATE OF MONTANA  
ESTIMATED ULTIMATE ECONOMIC LOSS BASED ON PAID AND INCURRED LOSS DEVELOPMENT  
Bodily Injury Claims

Accident Year	Months of Development	Payments (1)	Losses Incurred (2)	Selected Paid Factor To Ultimate (3)	Selected and Incurred Factor To Ultimate (4)	Estimated Ultimate Economic Loss (1) x (3) (5)	Estimated Ultimate Economic Loss (2) x (6) (6)	Selected Ultimate Economic Loss (7)	Estimated Ultimate Number Of Claims (8)	Average Economic Loss (7)/(8) (9)
1977-1978	84	\$210.1	\$ 337.1	1.15	1.08	\$ 241.6	\$ 364.1	\$ 350.0	38	\$ 9,211
1978-1979	72	372.1	589.2	1.25	1.13	465.1	665.8	640.0	35	18,286
1979-1980	60	923.0	1,031.5	1.45	1.18	1,338.4	1,217.2	1,300.0	45	28,888
1980-1981	48	373.1	1,212.6	2.00	1.30	746.2	1,575.7	1,500.0	32	46,875
1981-1982	36	420.1	1,382.1	3.25	1.70	1,365.3	2,349.6	2,000.0	61	32,787
1977-1982	-	2,298.4	4,552.5	-	-	4,156.6	6,172.4	5,790.0	211	27,441
1982-1983	24	141.2	633.0	-	2.50	-	1,582.5	1,600.0	79	20,253
1983-1984	12	4.9	442.4	-	-	-	-	-	63	-

## Note:

1. Payments in Column (1) and incurred amounts (Column 2) are developed through June 30, 1984.
2. Amounts in Columns (1), (2) and (4), (5), (6) and (7) are in thousands of dollars.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 2  
DATE 03 28 86  
BILL NO. H.B. 7

# Rep. Bardanouve explains bill work

Rep. Francis Bardanouve presented the following letter concerning the problem of liability limitations for public governmental bodies which was ruled unconstitutional by the Montana Supreme Court recently.

Rep. Bardanouve has been active in laying groundwork for a constitutional amendment this November, which must receive approval from the special session of the Montana Legislature.

He has explained that process for readers which we feel has been done clearly and concisely. Here is his report:

It might be of interest to understand how legislation is formed.

A legislative bill isn't found full blown under a cabbage leaf or a toadstool. Quite often, on serious bills, a great deal of pre-planning and leg work has to be undertaken before you have a drafted bill that will receive strong support.

This process has been going on for several months in regards to the proposed limitation of liability for public governmental bodies. The recent State Supreme Court opinion striking down legislative imposed limitations on liability claims came at a most unfortunate time. Insurance rates for several months, across the nation, have been soaring and in many states some companies have completely withdrawn.

In December, even before the court opinion, Michael Young, our very able administrator of our state insurance program, on his retirement, wrote me a concerned report

on the potential heavy liability that our state insurance fund faced. Montana has been operating under a partial self-insured and private insurance coverage program.

Several years ago I was largely responsible for creating the self insured portion of our coverage when I "borrowed" about three million dollars from a temporary surplus account for start up seed money. This was done by a short amendment to the principal appropriations bill. The self insured fund is replenished each session by appropriating money to the account that would normally be paid out to insurance companies.

The program has been highly successful—the \$3,000,000 has been paid back, the claims against the state have been paid and, as of now, there is approximately \$9,000,000 surplus in the account to pay future settlements.

Shortly after the court opinion I began contacting key people that are involved in providing coverage for public entities. First I contacted the legal research staff of the Legislative Council on how to best solve the problem.

Their advice was to amend either one or two sections of our state constitution. With this information I contacted the principal concerned parties; Mr. Erdman of the Montana School Boards Association, Mr. Hanson of the League of Cities and Towns, Mr. Morris of the Montana Association of Counties and Mrs. Feaver, director of the Department of State Administration which handles the state insurance pro-

gram. I strongly urged them to work together and arrive at a common consensus of opinion on the proposed legislation so as to avoid conflicting and often self defeating approaches.

In the meantime I contacted Governor Schwinden urging him to include the liability issue in the special session. At that time there was doubt that the governor would expand the session to include this issue.

Later all parties met with the governor and his chief legal counsel, Mrs. Jamison, and at my suggestion the legal staff of the Legislative Council met with the group. The Legislative Council staff never meets with the governor's office staff but I felt it important that the lawyers get their act together to avoid any hassles on legal procedures.

Later all parties agreed to a common approach after another meeting with the governor's staff. A constitutional amendment has been drawn up for presentation to the session. I have contacted the able

Senator Mazurek for his expert support in the Senate. You never want to forget the opposite legislative body or you may end up dead!

The amendment, if passed, will go to the voters this November for either approval or rejection. If it is passed by the electorate, then the 1987 legislative session can set the liability limits at whatever level they deem proper for public bodies.

The private sector now wants to "piggy back" their approach to limitation of liability onto this proposal. This is not all bad but it would amend a different section of the constitution and it would leave hanging in the constitution a sentence which might cause mischief in future years. The court in the past has made note of this sentence but has not ruled directly on it. Some future court may make a ruling on it.

I hope this review hasn't been too long. It is only written so that citizens can understand a little better the pre-legislative process.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 03-28-86

BILL NO. H.B. 7

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date March 28, 1986 Bill No. HB 7 Time 1:39 P.M.

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown		X
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman		
Senator M. K. "Kermit" Daniels	X	
Chairman		
Senator Joe Mazurek	X	

Aggie Hamilton  
Secretary

Senator Joe Mazurek  
Chairman

Motion: Senator Blaylock's motion that HB 7 BE CONCURRED IN  
AS AMENDED. The motion carried 6-4.

# STANDING COMMITTEE REPORT

March 28, 1986

MR. PRESIDENT

## JUDICIARY

We, your committee on

## HOUSE BILL

having had under consideration

No. 7

third reading copy ( blue )  
color

(Senator Mazurek)

## SOVEREIGN IMMUNITY - CONSTITUTIONAL AMENDMENT

## HOUSE BILL

Respectfully report as follows: That

No. 7

be amended as follows:

1. Page 2, lines 4 and 5

Following: "16" on line 4

Strike: remainder of line 4 through "4" on line 5

AND AS AMENDED  
BE CONCURRED IN

~~SENATOR~~

~~SENATOR~~

Senator Joe Mazurek,

Chairman.