

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 28, 1986

The sixth meeting of the Senate Judiciary Committee for the 49th Second Special Session was called to order at 4:15 P.M. on March 28, 1986, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Towe who was excused. He did arrive later in the hearing.

CONSIDERATION OF HB 17: Representative Mercer, House District 50, gave testimony as sponsor of this bill. He said this bill is identical to SB 12, which was introduced by Senator Crippen. He asked that the committee remember all the testimony that was already heard. He said as far as he knows there are three constitutional amendments alive to deal with the number one problem of this special session. The Pfof case created a problem and this bill solves that one problem. He said this bill is the exact bill that would be drafted by this legislature if we sought to deal with the Pfof case. We would do the same thing the Supreme Court did, we would go to section 16 and undo the compelling state interest test. We would then go to section 18 to try to make it clear that the legislature has the authority with respect to governmental immunity. This section tries to treat the state the same as everybody else. He said there is some concern as to why private and public are in the same referendum. The reason for that is they both have the same problem.

PROPOSERS: George Bennett, attorney from Helena and member of the Montana Liability Coalition, gave testimony in support of this bill. He said the system has to be examined and rebuilt, the question is whether we will continue to be confused or whether the legislature will be the architect.

Ed Argenbright, Superintendent of the Office of Public Instruction, gave testimony in support of this bill. In his mind it is imperative that we be mutually supportive of one another whether we put in the public sector or the private sector. If we separate the issue

people will be confused and the chances of losing the legislature's ability to step in in this area would be lost. This is a problem that affects both the public and private sector. If this bill is passed it will help all the people in Montana.

Roger Tippy, counsel for Beer and Wine Wholesalers, gave testimony in support of this bill. He said the bill requires a two-thirds vote on any monetary limits. He wonders what the effect of that language will be in passing statutes. He does not think the two-thirds vote is a good idea.

OPPONENTS: Chip Erdman, Montana School Board Association, said you heard our testimony on SB 12 and our opposition remains the same.

Kim Wilsen, Montana ACLU, gave testimony in opposition to this bill. He said they feel there are two issues and they should be addressed in two different amendments.

Bill Rossbach, Vice President of Montana Trial Lawyers, gave testimony in opposition to this bill. He wonders if this bill is necessary and if it will work. None of the insurance representatives have come forward to say this bill will work. He said we have an insurance crisis, not necessarily a liability crisis. What we are doing is taking away rights without any justification. With this bill we are taking those rights away without any type of ultimate court review. The two-thirds vote makes it uncertain whether you can do what you want in the tort area. It seems this bill is clearly unconstitutional as it is addressing two things at the same time and that is exactly why the constitution says that when you have two amendments they must be done separately.

Alec Hanson, Montana League of Cities and Towns, gave testimony in opposition to this bill. They feel that HB 7 is the most objective way to deal with the Pfost decision and is the most honest position to be brought to the voters in November.

Gordon Morris, Executive Director, Montana Association of Counties, gave testimony in opposition to this bill. Under Article 14, section 11 he sees this bill as unconstitutional and that the public and private sectors should be addressed separately in November.

Phil Campbell, Montana Education Association, stood in opposition to this bill as he has previously testified.

Jesse Long, Executive Secretary of School Administrators of the State of Montana, gave testimony in opposition to this bill. He sees HB 17 as unconstitutional.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked Representative Mercer if this goes before the electorate, what do you say to the person who says I am for the public but not the private.

Representative Mercer said there will be some people that may be in favor of the governmental immunity but not the two-thirds vote. We feel this is the same issue and should be addressed in this way.

Senator Mazurek said traditionally we have had sovereign immunity and the voters have voted on that issue alone and there is a certain amount of history there. He is genuinely concerned there may be many people who would go with one and not the other. He thinks it is crucial to give people that choice.

Representative Mercer said in the constitutional provision that speaks of keeping the issue together, it seeks to avoid confusion. We are the responsible party of putting this referendum out to the people. If we separate these issues then there is an excellent possibility that one would pass and the other might not and the legislature can see that we desire to have the authority that this bill grants in both areas. There is an initiative process and if they do not like the way this is put out then they can put out their own initiative. He does not see where the public or private sector should be any different with respect to legislative authority and that is why they are putting this out the way it is.

Senator Crippen asked Representative Mercer in taking the position where you may have an individual who would lean toward putting caps on the public sector but not the private sector, isn't it logical to assume that person, if this referendum passed, could go to his elected official and make his wishes known and that now you would have the authority by a majority vote, not a two-thirds vote, and if his wish was to place a cap on public liability but not on private liability, that there would be a better chance of that happening with the majority vote.

Representative Mercer said yes. We are seeing how difficult it is to amend the constitution.

Senator Blaylock said in the constitution there were two issues that were very decisive, as this one is, one was the gambling and non-gambling and the other was the unicameral or bicameral. In order to give the people a chance to vote on those issues, as well as the constitution, we put those on as side issues. He asked Representative Mercer why not give the people of Montana the chance to vote on the private and public liability separately.

Representative Mercer said he does not think there is great division on the issue. He thinks there is great division on whether the legislature should have this authority but he does not think there is great division between the public and private. He said the majority of the people against this bill today are afraid that procedurally it would be unconstitutional but they are not opposed to having the issue before the public.

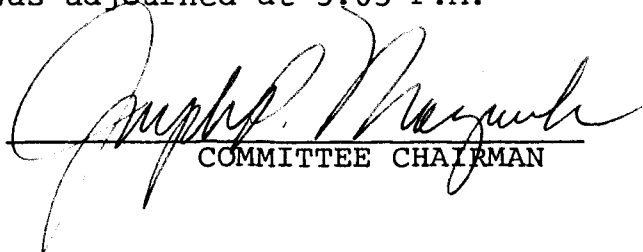
CLOSING STATEMENT: Representative Mercer said there is no confusion here. The question is simply do you want the legislature to determine your civil law here in the public or private sector or don't you. Do you want to leave it with the Supreme Court.

Hearing closed on HB 17.

ACTION ON HB 17: Senator Shaw moved that HB 17 BE CONCURRED IN. The motion failed with a vote of 4-6. See attached Roll Call Vote sheet.

Senator Towe made a motion that HB 17 be tabled. 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 5:05 P.M.



COMMITTEE CHAIRMAN

ROLL CALL

JUDICIARY

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 3/28/86

SENATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Chet Blaylock</u>	✓		
<u>Senator Bob Brown</u>	✓		
<u>Senator Bruce Crippen</u>	✓		
<u>Senator Jack Galt</u>	✓		
<u>Senator R.J. Pinsoneault</u>	✓		
<u>Senator James Shaw</u>	✓		
<u>Senator Tom Towe</u>			✓
<u>Senator William Yellowtail, Jr.</u>	✓		
<u>Vice Chairman Senator M. K. "Kermit" Daniels</u>	✓		
<u>Chairman Senator Joe Mazurek</u>	✓		

Each day attach to minutes.

COMMITTEE ON

DATE

March 28, 1986

Senate Judiciary

VISITORS' REGISTER

HB-17

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Roland D. Pratt	mt Restauers Assoc	HB 17	✓	
	Optometric Assoc		✓	
	Funeral Directors Assoc		✓	
Ben Hudson	MT Motor Carriers	HB 17	✓	
Jim Hughes	mt Bell	HB 17	✓	
Byrl Henry	Mont. Hospital Assn	HB 17	✓	
Wendy Giffney	Montana Teachers	HB 17	✓	
John W. W.	AZLV			✓
Debb Brammer	MACD	HB 17	✓	
John Maynard	Tort Claims - Admin.	HB 17		✓
John C. Hoyt	U.T.U.	"		✓
Don Hollings	M.B.M.D.A	HB 17	✓	
Chips Edmonds	MSBA	HB 17		✓
Roger Tippet	MTBWWA	HB 17	X	
Bob Correa	Boysman Chamber	HB 17	✓	
Dean Mayfield	Montana Auto Insurers	HB 17	✓	
Roger McGlen	Agents Assoc of MT	HB 17	✓	
KEITH L. OLSON	MT. Logging Assn	HB 17	✓	
Kelly Jean Beard	Q's Law Caucus, U.M.	HB 17		X
Bob Pyfer	Mont Credit Unions Leagues	"	✓	
Carl S. Harbut	M.C.O. & L.L.U.I.T.S	HB 17	✓	
Ed Haggard	OPI		✓	
Phil Campbell	MEA	HB 17		X
BILL ROSSBACH	MTLA	17		X
Grand Morris	MAA			HB 17
Phil Andrews	OPI	17	✓	
John T. T.	SAM			✓

(Please leave prepared statement with Secretary)

(This sheet to be used by those testifying on a bill.)

NAME:

Roland D Prast

DATE:

3/28/86

ADDRESS:

Box 908 Helena MT

PHONE:

442-1432

REPRESENTING WHOM?

MT Restaurant Assoc, MT Funeral Directors
Optometric Assoc

APPEARING ON WHICH PROPOSAL:

HB 17

DO YOU:

SUPPORT?

☒

AMEND?

OPPOSE?

COMMENT:

Support without amendments

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Ben Havidan DATE: 3/28/86

ADDRESS: Box 1714 Heland MS

PHONE: 442 6600

REPRESENTING WHOM? Montana Motor Carriers Assn

APPEARING ON WHICH PROPOSAL: HB 17

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: Move that 80% of the 365 motor carrier members of mmca in response to a poll, said they face insurance premium rates increases from 50% to 400%. Tank truck ~~to~~ haulers of gasoline and other hazardous materials, when they can find insurance are seeing rates increased by 1000%. HB 17 grants through an amendment to the constitution, the Legislature the authority to pass laws by a majority vote to cope with the many causes of these high insurance rates. A 2/3 Vote requirement would make legislation reforming and changing laws extremely difficult. Truckers must maintain insurance levels (min) of \$750,000 to \$5,000,000 or be in violation of Federal law.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date March 28, 1986 Bill No. HB 17 Time 5:05 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 Shaw's motion that HB 17 BE CONCURRED IN.

The motion failed 4-6.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date March 28, 1986 Bill No. HB 17 Time 5:05 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 Towe's motion that HB 17 be tabled.

The motion carried 6-4.