

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
49TH LEGISLATIVE SESSION
SECOND SPECIAL SESSION
HOUSE OF REPRESENTATIVES

March 29, 1986

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on March 29, 1986, at 10:45 p.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 12: Sen. Crippen of District 45, Billings, appeared before the committee as sponsor to present the bill. He stated that when introduced, this bill was identical to HB 17, which he co-sponsored with Rep. Mercer. Sen. Crippen then proceeded to explain the bill and the changes made in the Senate. On page 1, lines 13 - 15, new language was added in the title to reflect the changes made which now require a two-thirds vote of each house of the legislature. On page 3, the Senate Judiciary Committee added the capitalized language beginning on line 4 and ending on line 7. On the floor of the Senate, they included the brackets around this sentence. On page 3, line 11, the Judiciary Committee of the Senate added in the capitalized language which came from HB 7, Rep. Bardanouve's bill. On line 23, page 3, through line 1 of page 4, the capitalized words referring to the two-thirds limitation were inserted in the Senate Judiciary Committee. On the Senate floor, on lines 12 - 14 and lines 18 - 21, page 4, the Judiciary Committee inserted the two-thirds limitation. On the floor of the Senate, on page 4, line 2, they struck "This", inserted "(1) Except as provided in subsection (2)" and inserted the language in subsection (2). Subsection (2) states "The bracketed language contained in subsection (3) of Article II, section 16 and subsection (2) of Article II, section 18 is effective only if approved by a majority of the electors voting on issue 2." On page 4, following line 8, the Senate inserted "PLEASE VOTE ON BOTH ISSUES". In addition to the vote on the limits, there is now a vote on whether limits should be set by two-thirds or majority. I opposed the provision that was added on the floor of the Senate. I empathize with all parties. This is a very difficult area. Everyone is trying to do what they were sent up here to do. My concern when I agreed to sponsor this bill was that I felt that the legislature had the responsibility to act as they felt the framers had on their mind. When you were elected, you were elected on a majority vote. Our whole system of government is based on the will of the majority and protecting the minority. I feel my bill as unamended has done that and I hope you will see fit to

strike all the amendments with one proviso, that you leave the provisions that were suggested by Rep. Bardanouve's bill, and send it back for concurrence.

PROPOSERS: Sen. Towe of District 46, stated he would like to speak in favor of the Senate amendments. That is the right way to go. This bill provides two things. It goes into section 16 on civil liabilities. It goes into section 18 and amends the provision on sovereign immunity. It provides for a two-thirds vote for any maximum limit on compensatory damages. On page 3, line 23, a bracket was placed around the the sentence beginning "A LAW" and to the top of page 4 after "LEGISLATURE". In that bracketed area is the two-thirds vote. There is an amendment after line 8 and that amendment says "PLEASE VOTE ON BOTH ISSUES". On the second one you vote for or against the two-thirds vote. If you vote against, then the bracketed language comes out of the amendment. It leaves it up to the people.

OPPOSERS: Rep. Jack Ramirez of District 87 spoke in opposition to the bill. This is absolutely the most incredible bill that I have ever seen. This is an important issue where there are so many people affected, and you should not consider this type of bill. If you want to see that nothing is done, you should support this bill as amended. You are spreading the vote of the people in favor of doing something and you are giving two votes to the people who are against doing something. You guarantee that nothing will be done. This bill has no business being considered. It is outrageous. He suggested kicking it out and fighting on the floor.

There were no further proponents or opponents. In closing, Sen. Crippen said Rep. Ramirez had hit it on the head. It is confusing. It is of pertinent importance that clarity is uppermost in our minds. When people go to vote, the ballot should be clear and concise and understandable. If we submit anything else than that, then we are doing them a disservice. We have the potential of a good bill. The bill is still alive and I urge you to consider it as a body and that is to strip off amendments except Rep. Bardanouve's and send it back to the Senate and let us vote on it.

DISCUSSION OF SENATE BILL NO. 12: Rep. Miles asked Sen. Crippen to please explain Article 2, section 18, which now requires a two-thirds vote on sovereign immunity. Sen. Crippen replied that if you put this bill in effect the way I have it, you will still be able to come back on the vote of the majority.

Rep. Cobb asked Sen. Towe what he thinks of what Sen. Crippen said about the ballot boxes. Sen. Towe answered

that what we are talking about is a two-thirds vote versus a majority vote. If some of the no votes on #1 vote yes on #2, the two-thirds question, I don't see anything wrong with that. If you let the no votes on #1 vote on #2, most of them won't vote. It is all based on assumptions and that is where I disagree.

In response to a question from Rep. O'Hara, Rep. Ramirez stated that what Sen. Towe says is absolutely not the case.

ACTION OR DISPOSITION ON SENATE BILL NO. 12: Rep. Keyser made the motion that SB 12 BE CONCURRED IN. Rep. Keyser also moved the amendment to strip all the Senate amendments except the Bardanouve language (from HB 7) that was sent over from the House. Rep. Eudaily seconded the motion. Rep. Spaeth asked how the bill would read, and Rep. Mercer explained the bill will be exactly as HB 17, except for the addition of the Bardanouve amendment. All of the material on two-thirds vote will be deleted. Rep. Mercer also said that in the title on page 1, line 9, "AN AMENDMENT" will stay. The underlined language on lines 13 - 15 comes out. Page 2 stays the same. On page 3, lines 4 through 7, the capped language is out. The capped language in section 18, subsection (1) stays in. The capped language in subsection (2) on page 3, line 23, to page 4, line 1, comes out. The capped language on lines 12 through 14 and 18 through 21 comes out. The double ballot in brackets comes out.

Question being called for motion FAILED on a Roll Call vote of 8 to 10, which is attached.

Rep. Spaeth moved to amend page 4, following lines 9 to 21. That is where you have the real problem. The same language that the Senate has amended above in issue #1, also appears in issue #2. Rep. Spaeth proposed an amendment to delete on line 9, following the word "FOR", all the way down to line 12 through the word "BUT", leaving "REQUIRING A TWO-THIRDS VOTE OF EACH HOUSE", and inserting "impose immunity from suit for governmental entities or to". He suggested doing the same on line 15, striking from the word "AGAINST" all the way through to line 18, through the word "BUT" and inserting "impose immunity from suit for governmental entities or to". If this amendment is adopted, it would require two-thirds vote of each house to impose governmental immunity or to set a maximum dollar amount. Rep. Spaeth also said his other amendments go into the title. In the title, line 13, following (;), insert "AND SUBMITTING TO THE ELECTORS THE QUESTION OF". On line 15, following "DAMAGES", insert "OR TO IMPOSE IMMUNITY FROM SUIT". That clarifies the title and there should be no problem with either of these amendments. In addressing the amendments, the real problem that you have is that when a voter goes into the ballot

box and starts voting, he is faced with two things -- issue number one and issue number two. The statements of implication for issue number one and issue number two are now exactly the same. If it wasn't confusing before, there is a good deal of confusion now. You would have several different votes. I don't know how the voter would sort it out. I don't know if that would do what Sen. Crippen and Sen. Towe had suggested. I think this approach is something that is totally unique. Whether you vote for or against the bill, unless you want to leave in the bill some glaring flaws, I do think that we have to try to do it correctly.

Rep. Hannah questioned if this would leave the voter issue number one and issue number two. Instead of four choices, would he still have four boxes to choose from. As it appears on the white sheet, it would not change.

Rep. Mercer said he does not understand fully what the amendment is. But I definitely have to oppose it because it deals with government immunity and this issue is attempting to deal with two issues. I think we should take it on the floor.

Rep. Dave Brown told Rep. Mercer that it seems to me that all it does it clear the issue. It simplifies the ballot.

Rep. Brown then called for the question of Rep. Spaeth's amendment. Motion CARRIED on a Roll Call vote of 10 to 8, which is attached.

Rep. Cobb asked Brenda Desmond, Researcher, if an amendment had been prepared to address the voting problems mentioned by Rep. Ramirez and others. Ms. Desmond said that her office has been trying to deal with the question that is being raised on whether the ballot issue election would occur in a way that some people perceive as improper. She stated that her office had come up with one suggestion for an amendment to the statements of implication, to take care of Rep. Cobb's concern. However, it turned out that this amendment would not take care of the problem seen by Rep. Cobb. Ms. Desmond said that at this moment she couldn't do anything better. Rep. Cobb then asked if it would be possible to prepare an amendment for him to put in on the floor. Ms. Desmond answered that there are still people downstairs who are trying to address this question but that she couldn't guarantee that they would come up with something tonight. Rep. Cobb said he would try to amend it on the floor.

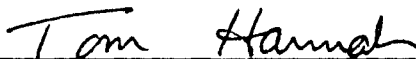
Rep. Mercer moved that SB 12 BE CONCURRED IN AS AMENDED, and this was seconded by Rep. Gould. Motion PASSED on a Roll Call vote of 13 to 5, which is attached.

Judiciary Committee

March 29, 1986

Page 5

There being no further business before the committee,
Rep. Keyser moved to adjourn at 11:35 p.m.



Representative Tom Hannah
Chairman

Judiciary Committee

March 29, 1986

Page 5

There being no further business before the committee,
Rep. Keyser moved to adjourn at 11:35 p.m.

Representative Tom Hannah
Chairman

STANDING COMMITTEE REPORT

3-29-86

19

Mr. Speaker: We, the committee on

JUDICIARY

report

SB 12

- do pass
- do not pass

- be concurred in
- be not concurred in

- as amended
- statement of intent attached

Chairman

HOUSE AMENDMENT

3-29-86

11:15 pm

19.....

1. Title, line 13.

Following: "PROCEEDINGS,"

Insert: "AND SUBMITTING TO THE ELECTORS THE QUESTION OF"

2. Title, line 15.

Following: "DAMAGES"

Insert: "OR TO IMPOSE GOVERNMENTAL IMMUNITY FROM SUIT"

3. Page 4, line 9.

Following: "FOR"

Strike: remainder of line through "BUT" on line 12

4. Page 4, line 13.

Following: "TO"

Insert: "impose immunity from suit for governmental entities
or to"

5. Page 4, line 15.

Following: "AGAINST"

Strike: remainder of line 15 through "BUT" on line 18

6. Page 4, line 19.

Following: "TO"

Insert: "impose immunity from suit for governmental entities
or to"

.....
Chairman.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

SECOND SPECIAL 49th LEGISLATIVE SESSION -- 1986

Date 3/29/86

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	✓		

ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE 3/29/86 BILL NO. SB12 NUMBER _____

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

8 10

Marcene Lynn
Secretary

Tom Hannah
Chairman

MOTION: Rep. Keyser moved the amendment to strip all the
Senate amendments except the Bardanouve language from HB7
that was sent over from the House. Rep. Eudaily seconded
the motion. Motion FAILED on a vote of 8 to 10.

ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE 3/29/86 BILL NO. SB 12 NUMBER _____

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. Spaeth's Amendment -- see committee report.

Motion CARRIED on a vote of 10 to 8.

ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE 3-29-86

BILL NO. SB 12

NUMBER _____

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

13 5

Marcene Lynn
Secretary

Tom Hannah
Chairman

MOTION: Rep. Mercer moved BE CONCURRED IN AS AMENDED, this
was seconded by Rep. Gould. Motion PASSED on a vote of 13
to 5.
