MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

June 26, 1986

The third meeting of the Senate Judiciary Committee for the 49th Legislature, Third Special Session, was called to order at 10:10 A.M. on June 26, 1986, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONTINUED CONSIDERATION OF SB 22:

CLOSING STATEMENT: Senator Blaylock: I opened yesterday by saying that I didn't like the dicision of the court and why. But it is the law and they have made certain demands, if any statute passed, it is going to pass muster. One of those demands was that we must prove a compelling state need if we are going to gain approval of the court. I think we have worked hard here to do that. Our school districts, our cities, our counties and our state have presented strong evidence that we are in difficulty without limits on our public liability. Senator Towe has placed into the record the legislative findings of the interim committee study and I would like to, at this time, ask that all the evidence presented to this Judiciary Committee in the March session, on behalf of the proposed constitutional amendment on public liability, be made a part of the record if that is acceptable. I would further urge that as part of this that we ask the state, in the case of Mr. Maynard, to continue to build evidence of our difficulties, so that any future challenge to this statute, that that evidence that he might gather might be part of any proceedings before the Supreme Court. I would like to say at this time, for all of those who are interested in this, that in executive session that I intend to offer two amendments. The first is to strike Section 6, which is the section which would make this retroactive to 1977 and I've thought this over and I've talked to other counsel and I think that it would be unfair to make this retroactive to the lawsuits that have already proceeded to the courts, to the negotiations that are going on. What this would do by striking Section 6, it would make it applicable on July 1st of this year if it passes. Then I'm going to offer an amendment to terminate Section 2, which sets the limits, whatever limits that we decide, that will sunset those limits in 1989, so that the

legislature, at that time, can again take up whether those limits should be raised or lowered or left the same. I think that that's probably the prudent course to follow because it is a volatile thing and so with that Mr. Chairman, I close.

QUESTIONS FROM COMMITTEE MEMBERS: Senator Yellowtail: I'd like to ask Karl Englund to comment on something that we heard yesterday. I've forgotten, Mr. Englund, who said this but someone noted that actuarially, under the self-insurance pool, that the Montana League of Cities and Towns has put together, that actuarially that program could cover a liability at, I believe they said, 3/4's of a million dollars per individual and 1-1/2 million dollars per occurrence, or some such figures. Mr. Tubergen said that. Would you comment on that please.

Mr. Englund: Well, that was my understanding of what was said also, and I guess, I think, that that then creates a good basis for you to understand where the cities and towns can get insurance, through that market. I don't believe that that creates a good place to set limits in and of itself. In other words, the simple fact that that's what that policy can offer, doesn't necessarily mean that there is a compelling interest to set the limits at those figures. We all purchase insurance for our automobiles and for our homes, make economic decisions concerning what are going to be the limits, knowing full well that there is a slight chance that we will cause an injury which results in liability greater than those limits and that's a chance that we take. So, I have automobile insurance and limits on the amount of my coverage and I think right now I'm at $500,000 or $750,000. Well, I know full well, that if I seriously injured someone, the potential for my liability is greater than that. I've just made a decision that that's as far as I'm willing to go in terms of paying for insurance. So, the point that I think is important there is that that creates the point at which they can get insurance. I don't think that we necessarily have to conclude from that, that that is the point at which there is a compelling interest to impose the limits.

Senator Towe: For some of those who are proponents of the bills that come from local governments themselves, would you have any comments on the proposed increase of the limits from the bill figure of $300,000 and a million to $500,000 and two million. Does anybody find that that would be a really difficult thing to live with. I think, in view of the Pfost case, where we had a really serious

injury where there were medical bills of some $250,000, $300,000 probably is a little bit low and we probably ought to be talking about a higher limit.

Gentleman answered but did not identify himself: I think that people in the cities recognize some of the arguments in the Pfost case and that they are legitimate and we are willing and prepared to consider adjustments in the limits. In response to Mr. Englund's comment, if we were asked actuarially what type of limits would provide some reasonable margin of safety under the program that we're offering, I'm sure that the counties under the program that they're developing are going to be looking at some of the same considerations, and at this present time $500,000 per person and a million dollars per occurrence, would fall within that margin of safety. If we are able, down the road, and down the road that isn't too far, we're talking September 1st, to put together our bonding program and expand the participation in this, we could, I would say with a reasonable margin of safety, offer coverage to our members at the level of $750,000 per person and 1-1/2 million per occurrence. Anything beyond that then, would become a direct tax obligation of the city or town.

Senator Mazurek: I have a question for John Maynard. John, I want to confirm or disaffirm an understanding. There has been some question as to whether or not the legislative findings, not as expressed in the statute, but the legislative record, including the introduction of reports on the reserves held by state government, the number of claims, the potential exposure, whether any of the information that was part of the legislative record when this statute was adopted in 1977 and again in 1983, whether those matters were in the district court record and available for consideration by the Supreme Court prior to the Pfost decision, or at the time of the Pfost decision.

John Maynard: It is my understanding they were not.

Senator Mazurek: I guess I'd only comment that there has been much made about the fact that the court rejected what the legislature had done, but the only thing the court had to look at was the statutory language. It didn't have any of the information, such as the study Senator Towe in his interim committee did, or any of the evidence which was introduced in support of SB 184 last time or any of the information that has ever been presented before this legislature to justify the imposition of the

limits. That in and of itself may have been an important factor in the court's decision. So, I think the importance of this record today and yesterday is important and I would indicate that we are making a verbatim transcript of this hearing and this executive action and hopefully in any future litigation this would all become a part of the record in justifying the action that this legislature may or may not take.

Senator Towe: Pursuant to that end, I would request that we do include the minutes from the House and Senate committess in 1983 that considered the sovereign immunity bill or the limitation on liability bill.

Senator Mazurek: Would you also include those in 1985 when the limits were extended; $300,000 and 1 million had been sunseted and they were reenacted in 1985.

Senator Towe: I would ask then that all four, the House and Senate considerations in 1983, and the House and Senate considerations in 1985 be added. (The minutes from the House and Senate Committees on SB 465 in 1983, and SB 184 in 1985 are attached as Exhibit 1)

Senator Towe: I would also request, I think John referred to a study yesterday, John Maynard, and I think that study you said was not available but you indicated some of the results and related those to use. I would ask that that study be included in the record. (the report referred to, furnished by John Maynard, is attached in the minutes dated June 25, 1986 as Exhibit 4, SB 22)

Senator Mazurek: Yes, I think Mr. Maynard made reference, orally, to what some of the report would say. We would like a written copy of that report. I do think it's important that you get it to us before this legislature adjourns. We do have the oral record of your testimony, but we would like the written report as well and I think you indicated that may be available by Friday. Is that correct? Or, you're hoping it will be available by Friday.

Don Maynard: It will be mailed from Seattle on Friday and I can try and make arrangements to have a copy mailed directly to this committee on Saturday.

Senator Mazurek: Or, if not, if there's any chance you could get a telecopy.

Senator Towe: It occurs to me, Mr. Chairman, that that should be insignificant, the minutes will certainly be open until we get a written copy that you can review and bring to the secretary to add to the record.

Senator Shaw: Karl, can you explain the equal protection clause of the federal government?

Karl Englund: As it relates to this?

Senator Shaw: Yes.

Karl Englund: Well, first of all, as it relates to this, there's no necessity to do that. The Pfost decision applied the equal protection clause to the Montana Constitution and the doctrine that even though that clause mirrors the federal clause, the Montana Supreme Court can adopt a more expansive meaning for our equal protection clause, but, the equal protection clause prohibits discrimination. Basically, that is the cleanest and shortest way that I can explain it to you, considering that you want to take executive action on this bill before you go into session.

Senator Shaw: If this bill should become law and we don't get anything done on the private sector, doesn't that put this bill into jeopardy because of the equal protection?

Karl Englund: It puts it under scrutiny because of equal protection and that's exactly what the Supreme Court said last time, it puts it under scrutiny because there is a right to full legal redress and, therefore, the level of scrutiny is a high level of scrutiny and so the court will look to see whether there are compelling reasons for the enactment of this statute. If your record in this committee and if the record in the district court is sufficient to justify that, then the court will uphold it.

Senator Towe: For the record, I did ask Bonnie Tippy, after the meeting, if I had understood her correct, that she said she did not think we had shown a compelling state interest and she corrected me on that. That is not the case, she said, she felt there was a compelling state interest shown. Her comments were simply directed that she didn't think we'd shown anything additional that would change the court's opinion. She promised a letter to that effect clarifying that. I would like to ask that that letter be added to the record. (Letter from Bonnie Tippy attached as Exhibit 2)

Senator Mazurek: I had the same conversation and that letter will be made a part of the record.

ACTION ON SB 22: Senator Mazurek: There have been suggested a couple of amendments. We need to look at the limitations,

the applicability and retroactivity and the effective date and termination date. The first thing we should probably take up is the limits as to whether or not you would want to change those. I have a suggestion, just a comment, the cities and counties and their insurance advisors have indicated that $500,000 to a million, or at a million per occurrence or per person/per occurrence. I think it may be advisable for us to take $500,000 and a million and then perhaps sunset this thing so we have to look at it again in the regular session because the self-insurance fund is just getting started and I guess I'd rather not take their higher number. We may have to do that in January, but let the bonds be sold and let us reexamine those.

Senator Towe: Let's do it this way then. Let's go $500,000 and 1-1/2 million. I don't think that that extra amount per occurrence is that much more difficult to cover and I really think that if you got a number of people injured in the same accident, you've got some real problems. Suppose, you've got 30 people or 300 people, for instance, you've got some real problems. You get it down to where you aren't even going to cover medical bills. So, my suggestion would be $500,000 according to your principle, but boost it up to at least 1-1/2 million and then sunset it in a couple of years. I would move to make that motion.

Senator Mazurek: Any discussion on the motion to amend page 3, line 12 to strike $300,000, insert $500,000 and strike 1 million and insert 1.5 million. Alec Hansen, I guess I'd be curious to know yours and John Maynard's reaction to that.

Alec Hansen: I think that those limits fall within the perimeters of what we were told represents the margin of safety and I think we can accept that.

John Maynard: My answer, I have two answers, my first answer is that imposes a 1.25 factor that we have to reserve for and that is opposed to the unlimited 2.35. It's a much more reasonable limit. The fact that additionally you should consider is that if you change the limits and raise them, that is one additional fact that the Supreme Court will have to look at. It is questionable as to the relevance of that fact, but I think that it is a relevant fact that will affect where they draw the line concerning a compelling state interest and it seems like a good idea from that respect.

Senator Mazurek: Any discussion on those limits? The question having been called for, those in favor of the motion say aye, opposed no, the ayes have it, the motion carries.

Senator Mazurek: The other matter we should address is applicability. Senator Blaylock has suggested that we not make this retroactive.

Senator Blaylock: I move that we strike Section 6 in its entirety and then that will leave the effective date at section, what is now section 8.

Senator Mazurek: Any discussion on that? I guess I'd ask John McMaster, I have some questions as to whether we can go back on pending claims, but I know in the veterans' preference situation, which arguably is different because that was a governmental gift, essentially a priviledge, we went back and affected only those that had not been reduced to judgement. Is that a possibility here?

John McMaster: Mr. Chairman, I think it's a possibility here. In my own mind, I'm not certain that you'd be able to get away with it though, especially in light of the way the court looks at the right of full redress.

Senator Mazurek: What about this? What if we went retroactive to the date of the Supreme Court decision in Pfost.

John McMaster: That would be okay with me, although personally I think that there's a very good chance that you could go back beyond that because all you're really changing here are limits. I mean, the court said that they have the right to sue. What you're saying is we're going to let them have that right, but impose certain limits on what they're going to collect in damages.

Senator Towe: A suggestion might be to go back to the effective date of the last change in 85 or maybe even before that change, the major change in 83 after the Karla White decision. I think probably 1985. In other words make it retroactive to July 1, 1985. And, if in fact, and I guess I would argue in favor of it this way, that I feel like John, that there's a fair chance that they wouldn't accept it. You've got a severability clause, if they don't accept that, fine, we haven't lost the rest of it. We're taking no really big risk. Maybe it will be effective and if it is so much the better.

Senator Crippen: I don't know what the court will say about the severability clause, Senator, you may have a little different opinion than I do. We're trying to solve a problem here, why are we doing it the way we're doing it? Let's not throw up any red flags at all. I think Senator Blaylock made a good point about fairness, aside from that I think if we're trying to go from here on down the line, that's fine. We may be able to go back to the Pfost case, maybe we should and maybe not, but I think we're starting in at this point in time and I think we should just stick right here, right where we are now.

Senator Blaylock: I feel somewhat strongly that I think we ought to make the applicability date as of July 1st this year. Then I don't think we get into trouble with what's already going on and what's already been decided and I think we make it more difficult for the court to really look at this thing if we say, you know, in effect those court decisions now are going to be changed, are going to be affected by this limitation and I would like to go, I think that this statute has a better chance before the court and I'm not a lawyer, but I just feel that it has, as a person, if we make it applicable now and not affect those court cases that are already decided, are already in process.

Senator Towe: That is not what we're talking about. I think we need to clarify that. This, at the present time, says claims, lawsuits and causes of action arising after, not necessarily those that have already been filed. The fact is that there may be claims out there at this point that have already accrued, because the accidents happened, but no lawsuits have been filed yet. So there is a difference there.

Senator Blaylock: I move that we strike section 6.

Senator Towe: To do that wouldn't you just, why not just clarify it by saying, instead of striking section 6, strike 1977 and add 1986. Then we clarify that. It does apply to everything where an action commences or where the cause of action accrues after July 1, 1986 and we don't build any further ambiguity of whether it applies to lawsuits or whether it applies to accrual of action.

John McMaster: If the intent is to make it apply only to actions arising after this act takes effect, the act is effective on passage and approval and I suggest that you

amend 6 to simply say this act applies to all claims, losses and causes of action arising after the effective day of this act.

Senator Blaylock: I'll accept that. I withdraw my previous motion to amend and move to amend it, as John said, making it after the effective day of this act.

Senator Mazurek: You've heard the motion, those in favor say aye, opposed no, the ayes have it, the motion carries.

Senator Mazurek: Senator Blaylock, regarding the effective date, you indicated you wanted to have a termination date.

Senator Blaylock: I would suggest, is there any interest in changing the termination date to July 1, 1987, so that we have to look at it again in January? We can look at how the insurance program is operating.

Senator Towe: I'll move to that effect. That John draft the language to make the termination date on section 2 for June 30, 1987.

Senator Blaylock: John Maynard, what do you think of that?

John Maynard: Good idea.

Senator Mazurek: You've heard the motion, those in favor say aye, opposed no, the ayes have it the motion carries.

Senator Mazurek: Senator Crippen has moved the bill DO PASS AS AMENDED, those in favor say aye, those opposed no, the ayes have it with Senator Daniels, Senator Shaw and Senator Yellowtail voting no. The motion carries.

Chairman Mazurek requested that in addition to the information that has already been presented for testimony, that the following be included as a part of the minutes:

Exhibit 3 - Testimony and Exhibitsof the 1975-1977 Interim Committee on Sovereign Immunity. The actual interim report is part of the testimony that was presented at the hearing on SB 22 on June 25, 1986 and is attached to that set of minutes as Exhibit 6.

Exhibit 4 - All House and Senate Minutes, Testimony, Exhibits and Reports of the March, 1986 Special Session re: Representative Bardanouve's bill (HB 7) proposing a constitutional referendum.

There being no further business to come before the committee, the meeting was adjourned at 10:40 P.M.

COMMITTEE CHAIRMAN

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NOTE: For clarification purposes, all exhibits for this set of minutes, whenever possible, will be marked in the upper right hand corner.

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th THIRD SPECIAL LEGISLATIVE SESSION - 1986 Date 1-26-86

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

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

ACTION ON SB 245: Mr. Petesch stated the information required in this bill would be available in discovery or in the writ of assistance or writ of attachment. Senator Pinsoneault questioned whether this applied if your judgment came out of justice court instead of district court. Senator Towe responded he thinks there is a reference in the justice court statutes to the rules of civil procedure in district court. Senator Crippen moved SB 245 be recommended DO PASS. The motion carried with Senators Brown, Crippen, Galt, Pinsoneault, and Yellowtail voting in favor and Senators Blaylock, Daniels, Shaw, and Towe voting in opposition.

ACTION ON HB 103: Amendments to HB 103 were distributed to the committee (See Exhibit 1). Mr. Petesch stated the committee has adopted all of the amendments on the attached Exhibit 1 except the last one, which is one Senator Pinsoneault requested be looked into. Senator Towe moved amendment No. 4 be adopted. The motion carried unanimously. Senator Pinsoneault moved HB 103 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senator Crippen voting in opposition.

ACTION ON SB 267: Mr. Petesch stated Representative Bergene has a comprehensive bill revising the exemptions that has not yet been introduced. Senator Daniels stated the chair would entertain a motion to lay the matter on the table pending introduction of Representative Bergene's bill. Senator Towe stated if we lay this bill on the table, it will effectively be dead due to the close proximity of the transmittal deadline. He believes there is some merit in the bill. Senator Towe moved that SB 267 be recommended DO PASS. The motion carried with Senators Daniels and Galt voting in opposition.

CONSIDERATION OF SB 184: Senator Tom Towe introduced SB 184 due to Senator Joe Mazurek's absence from the hearing. Senator Mazurek was presenting a bill to the State Administration Committee and was unable to present SB 184 on his own behalf. Senator Towe stated this bill simply repeals the sunset provision in the language the legislature adopted last session. The language we adopted last session amended that section because of the law on sovereign immunity. One of the cornerstones of that law is that only general damages will be allowed. That meant only those monetary damages you can put a finger on. The supreme court ruled that was unconstitutional, and we cannot deny the other intangible damages. The 1983 legislature put in a limit of $1 million. It also put in a sunset provision until June 30, 1985. This bill repeals the sunset provision. Senator Towe stated he understands the bill has been working quite well. It has meant an enormous increase in damages paid out. If we took the limit off, we would be paying out a lot more. The feeling of the legislature is that ought to be sufficient. He thinks it would be wise to continue the existing provision by repealing the sunset provision.

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PROPONENTS: Mike Young, from the Department of Administration, states his department defends and pays any bodily injury claims under the statute. The 1972 constitution abolished immunity completely. The 1974 general election approved a referendum to allow the legislature to reinstate by two-thirds vote of each house believing being compensated for only pecuniary loss was a denial of equal protection. They have gone from a net fund balance of $10 million at that time to $8.6 million now. The reserves they have for an existing 150 lawsuits are about $5,638,000. That leaves them with about $2,961,000. A study viewed the White decision as having a negative impact on our existing reserves. They are looking at increased exposure. In our actual claims paid, 1980-81 claims paid to individual claims were $144,000 for the bienniem. In 1982-83, $2,943,589, because they had to reevaluate all claims because of the White decision. In 1984-85, they are currently standing at $2,619,530 for just the first year and a half of the biennium. No one can act arbitrarily and hide behind a shield, not even the state. Whether you have economic or non-economic loss, you have the same cap. It has been ruled unconstitutional in one district court in Missoula, and it is up on appeal. Chip Erdmann, from the Montana School Boards Association, stated they strongly support the bill. They agree governments should be responsible for their actions, including schools, but we have to remember they are out there providing mandatory services and not for profit. He thinks we need reasonable limits. One of the nice things about the present law is we have a figure that we can insure up to. Last session when we lost that figure, several insurance companies advised they would no longer insure school districts. They think without such limits, the operation of school districts would be in jeopardy. Then we are faced with the problem of how to provide the mandated services if there is no money. Alec Hansen, representing the Montana League of Cities and Towns, stated his organization strongly supports the bill. They feel limits are absolutely necessary to prevent cities and towns from financial catastrophe. The limits are reasonable and should be retained. Cities and towns cannot afford the increased insurance costs. Greg Jackson, representing the Urban Coalition, stated they would like to go on record in support of SB 184. The trickle down effect of an increase of claims becomes an increased cost to the taxpayers. In addition, he stated that on behalf of Gordon Morris, of the Montana Association of Counties, the Montana Association of Counites would like to go on record as supporting this bill. Curt Chisholm, Deputy Director for the Department of Institutions, stated the department would like to go on record in support of this bill. One reason is economic because of the cost of increased insurance rates. He stated we should keep in mind the populations at risk that the Department of Institutions traditionally and currently receive as wards of the state and criminals convicted in the state of Montana. The decision to place these kind of individuals in a less restrictive environment in the communities puts populations at risk. Regardless of the ceiling of

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limitations in existence, the legislature and the people of the state of Montana need to be fully aware of the populations they have at risk. (See written testimony from Gordon Morris, Executive Director of the Montana Association of Counties, attached as Exhibit 2.) (See written testimony from Jim Nugent, of the City of Missoula, attached as Exhibit 3.)

OPPONENTS: Karl Englund, representing the Montana Trial Lawyers Association, presented a letter from Erik Thueson (see Exhibit 4). Mr. Theuson was the plaintiff's attorney in the White case. Mr. Englund stated there are potential constitutional problems with a limitation on judgments against public entities and the denial of equal protection. The sunset rather than being repealed should instead be at a later date, particularly because of the rising cost of medical costs which may be appropriate today but may not be in a few years. They suggested we resunset it for two years down the road.

CLOSING STATEMENT: Senator Mazurek stated the White decision was a 4 to 3 decision. He would resist an effort to reinsert the sunsetting. He believes we can review the ceiling as costs go up.

QUESTIONS FROM THE COMMITTEE: None.

Hearing on SB 184 was closed.

RECONSIDERATION OF HB 103: Chairman Mazurek stated a concern had been brought to him by Senator VanValkenburg regarding this bill. It has a particular impact in the larger counties, such as Yellowstone, Missoula, and possibly Lewis and Clark. The law states each district will designate one judge as the youth court judge. That has become a problem in Missoula where youth court matters take up nearly all of one judge's time. Senator VanValkenburg has asked the committee to change the bill to add that the district shall designate one or more youth court judges. Senator Blaylock moved that the committee reconsider its action on HB 103 for purposes of amendment. The motion carried unanimously. Senator Shaw moved HB 103 be amended as requested. The motion carried with Senator Crippen voting in opposition. Senator Pinsoneault moved that HB 103 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senator Crippen voting in opposition.

ACTION ON SB 184: Senator Shaw moved that SB 184 be recommended DO PASS. Senator Towe stated it has been working well, so there is no need to put in a sunset that may be overlooked. Senator Mazurek stated we are more liberal in our state statutes and in general immunity than other states. The motion carried unanimously.

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EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

MONTANA ASSOCIATION OF COUNTIES

1802 11th Avenue
Helena, Montana 59601
(406) 442-5209

TO: Senator Joe Mazurek
Chairman, Senate Judiciary Committee

FROM: Gordon Morris
Executive Director

RE: SB 184 and SB 200

DATE: February 4, 1985

On behalf of the Montana Association of Counties I wish to indicate support for Senator Mazurek's Senate Bill 184 and Senator Christiaens' Senate Bill 200.

Both bills propose needed legislation to extend protection by placing limits on liability. Local elected officials throughout Montana live with the fear of tort suits and civil suits in general. The number of cases filed nationwide have increased tremendously as have the size of settlements or awards.

The insurance industry record, measured in terms of their loss ratio, dictates ever increasing premium costs. In Montana public official liability has generally increased at a 3 fold rate, due to both the extent of litigation and the size of the awards. Currently, several counties are <u>without</u> a private insurance provider due to loss ratios which caused their providers to discontinue coverage.

I urge your favorable action on both.

GM/mrp

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 021285

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

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6/26/86 DATE: 2/12/85
BILL NO. SB-22

NAME: Jim Nugent

ADDRESS: 201 West Spruce Missoula City Hall

PHONE: 721-4700 EXT 213

REPRESENTING WHOM? City of Missoula

APPEARING ON WHICH PROPOSAL: SB 184

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Please see attached copy of letter II

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 021285
BILL NO. SB 184

MISSOULA
OFFICE OF THE CITY ATTORNEY
201 W. SPRUCE • MISSOULA, MT 59802-4297 • (406) 721-4700

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO SB-22

February 11, 1985 85-80

Senate Judiciary Committee Members
Montana State Senate
Montana State Capitol
Capitol Station
Helena, Montana 59620

Re: SB-184 repealing sunset provision for Section 2-9-107, M.C.A.

Dear Senate Judiciary Committee Members:

The purpose of this letter is to express the support of City of Missoula officials for the enactment of SB-184 entitled, "An Act to Repeal the Sunset Provision on Section 2-9-107, M.C.A. Limiting Damages Recoverable in Tort Suits Against State and Local Governments." Further, City of Missoula officials support and urge the continuation of the current tort damage recovery ceiling limits in Section 2-9-107, M.C.A. which are "$3,000.00 for each claimant and $1 million for each occurrence." City of Missoula officials are opposed to any increase in the current statutory tort damage recovery limits.

The City of Missoula currently has $1,000,000 million dollars in primary liability insurance coverage. This week I have received the following percentage premium cost increases for additional liability insurance if the City needed to acquire additional primary liability insurance coverage:

1. First million of excess insurance in addition to the current one million primary liability coverage would cost 25% to 35% of the cost of the primary liability insurance in order to achieve 2 million total coverage;

2. Second million of excess insurance in addition to the primary would cost another 15% to 20% of the cost of the primary liability in order to achieve 3 million total coverage which would amount to a total premium increase in cost of 40% to 50% in order to acquire this level of coverage.

After that point the increased cost in premium increases by 10% to 15% of the primary liability coverage for each additional 1 million in coverage.

According to City of Missoula Finance Director Mike Young, the City of Missoula is currently paying a liability insurance premium of approximately $52,000.00 for general liability insurance, as well as approximately $51,000.00 for automobile liability insurance for a total liability insurance premium of approximately $103,000.00.

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During the 1983 regular state legislative session when the Montana State Legislature was amending this Section of law as a result of the Montana Supreme Court's decision in the case of Karla White v. State of Montana, 661 P.2d 1272 (1983), one of the suggestions that was made was to increase the statutory limits to "1 million for each claimant and $3 million for each occurrence." Pursuant to the above percentages, if the City had to increase its liability coverage to $3 million, the increase in insurance premium cost would be 50% to 70% additional cost.

City of Missoula officials strongly urge that SB-184 be enacted as proposed. Thank you in advance for your consideration of this matter.

Yours truly,

Jim Nugent
City Attorney

JN:my

cc: Alec Hansen, Executive Director Montana League of Cities and Towns
Missoula County Senators Farrell, Haffey, Halligan, McCallum, Norman, Pinsoneault and VanValkenburg

ERIK B. THUESON
Attorney at Law

410 CENTRAL AVENUE
STRAIN BUILDING, SUITE 517
GREAT FALLS, MONTANA 59403

MAILING ADDRESS:
P. O. BOX 2566

(406) 727-7304

February 5, 1985

Senate Judiciary Committee
Capitol Station
Helena, MT 59620

Dear Committee members:

A few years ago, I represented a young lady named Karla White. She was attacked and brutally beaten by an escapee from Warm Springs State Hospital. In the lawsuit which followed, White v. State, the Montana Supreme Court ruled that the legislative created limitations on recovery from the government then in existence were unconstitutional.

After this ruling, the legislature quickly passed the current limitations on recovery from a government entity. I understand that these limitations are now under review. I would like to have the following comments made part of the record when you consider this matter.

I can say unequivocally that the current limitations on recovery for damages are unconstitutional. I can say this with some confidence because the current legislation was based upon the dissenting opinion of a justice in the White case. In other words, the current legislation is directly contrary to the majority decision in that important constitutional case. Because of this, I would suggest that the committee carefully revise the legislation so it does, in fact, pass constitutional muster.

In my opinion, any attempt to limit recovery of damages when the defendant is a government entity violates equal protection of the law. It creates two classes of victims who have suffered injury because of government negligence. Those with lesser injuries are entitled to full compensation. Those with immense injuries, meriting recovery of damages in excess of the current $300,000 limitation, are deprived of full redress for their injuries. This is a classic form of discrimination which does not pass constitutional muster where, as here, we are dealing with a fundamental constitutional right.

SENATE JUDICIARY
EXHIBIT NO. 1
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BILL NO. SB-22

Be that as it may, I recognize that as a practical matter, the legislature may well impose limitations on damages anyhow. If this is true, I would suggest that you seriously consider and study the possibility of requiring government entities to purchase some sort of umbrella insurance policy, that would increase recovery above the current $300,000 limitation.

For instance, an umbrella policy that would increase damage coverage to one million dollars would probably only amount to a few cents in taxes per capita in the area where any government entity, large or small, has its tax base.

Extending the limits in such a manner would not clear up the constitutional problems, but it would certainly decrease the size of the class of victims who will not receive full recovery when injured by the government. Moreover, it will also decrease the hardships and adverse impact upon those whose injuries are still so severe that a million dollar limit will not compensate them for all of their losses. In short, for very little extra expense, such an umbrella insurance plan would greatly reduce the reprehensible aspects of the current damage limitations.

In summary, the people of this state are entitled to great care by the legislature when the legislature chooses to limit fundamental constitutional rights. I think this at least requires an impartial and careful study of how the limits on damages can be adjusted without significantly affecting the fiscal integrity of our government entities. I would hope that the committee and legislature would consider such a plan and act accordingly.

I thank you in advance for this opportunity to express my thoughts as a concerned citizen of this state.

Sincerely yours,

Erik B. Thueson

EBT:eml

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 021284
BILL NO. SB 184

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 18, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, March 18, 1985 at 8:30 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Brown who was previously excused.

CONSIDERATION OF SENATE BILL NO. 184: Senator Joe Mazurek, District #23, sponsor of SB 184, testified. He said SB 184 was introduced at the request of the Department of Administration. The effect of this legislation would be to reinstate the current limitations which were imposed at the end of the 1983 session on tort damage claims against the state, county and municipal governments including school districts and others. By way of background, the need for this legislation resulted from the 1983 decision of the Montana Supreme Court in Karla White vs. State of Montana wherein the damage limits imposed by the 1977 legislature were deemed unconstitutional. These limits were amended to conform to the Court's ruling and reimposed at $300,000 per person and $1,000,000 per occurrence. If the legislature doesn't do anything, there will be no limit on claims against the state, county and municipal governments. The Department of Administration did a study showing the government liability statutes of some of the surrounding states. Senator Mazurek continued by saying that Montana is on the "liberal" side of the aisle other than Washington and Alaska who have no limitations at all. Senator Mazurek feels that the $300,000 per person and the $1,000,000 per occurrence is a reasonable limitation.

Mike Young, administrator of the Insurance and Legal Division of the Department of Administration, testified as a proponent. He said that we do have constitutional authority to pass this type of legislation. Mr. Young gave the committee a quick run down of the problems they have experienced in this particular area. (A copy of his letter and a copy of the study were marked as Exhibits A and B respectively.) He said that basically, the state is self-insured for most of its risks with the exception of automobile and aircraft. He said that he feels somewhere we have all forgotten why the state is waiving immunity, and that is to impose liability to the same extent the private persons have liabilities for their accidents in operations. He said the government has to perform many functions that are highly risky. Another point he made is that in comparison with other states, Montana is at the

SENATE JUDICIARY
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liberal end with the exception of Alaska, Washington and California.

Chip Erdmann, representing the Montana School Board Association, testified as a proponent of this bill. He said that school districts do not self insure. He said that the MSBA, as well as other governmental agencies, are not in the business of providing mandated services -- we are not out there to make a profit. A reasonable balance between the needs of the insured party and the interest of government planning services needs to be determined.

Gordon Morris, executive director for the Montana Association of Counties, testified as a proponent. He said this is not a matter of a law that would impact those counties that do not self insure -- it will affect all of them.

Curt Chisholm, deputy director of the Department of Institutions, testified in support of this bill. He said that the state of Montana is asked to do some things by law that are high risk ventures.

Alec Hansen, representing the Montana League of Cities and Towns, spoke in favor of this bill. He told members that if some limitations are not set in tort suits, cities may not be able to acquire insurance. He informed the committee that the League did a survey in the larger cities of Montana. In raising these limits to $1,000,000 per person and $3,000,000 per occurrence would have increased insurance premiums in the larger cities in the state of Montana by an average of $25,000 annually.

OPPONENTS:

Karl Englund, representing the Montana Trial Lawyers Association, testified as an opponent. Mr. Englund submitted a letter written by Erik B. Thueson, who was the attorney of record in the White vs. State case. The letter was marked Exhibit C and attached hereto. One of the things Mr. Englund is concerned with is the present constitutional problem with limits on judgements against the state of Montana which was further addressed in Mr. Thueson's letter, paragraph 4 on the first page. He feels, at the very least, that it would be prudent for this committee to reinstate the sunset provisions for the next biennium, so that during the next legislature, the limits can be further studied and see whether or not they are applicable to the statute.

Jim Moore, trial lawyer from Kalispell, testified as an opponent. He wished the committee to consider the victim's perspective when this bill is further considered. He feels that we should be upholding the "little guy" in every

SENATE JUDICIARY
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way possible. He doesn't feel that the state presented any evidence that there is, in fact, a crisis. Mr. Moore informed members that in some very serious cases, a set limitation could be eaten up very quickly in medical costs alone. He said with respect to the schools, cities, and towns and their difficulty in continuing insurance coverage, he suggested that they pool their resources so that they may become self insured. In closing, Mr. Moore suggested that the committee continue the sunset provision for another two years or do away entirely with the limitations.

John Hoyt, an attorney from Great Falls, testified on behalf of himself. He said that the $300,000 limitation, as everyone agrees, is not fair to the person who is seriously injured. Mr. Hoyt suggested that the state can take out the $300,000 deductible policy without costing much money and provide for the economic losses for those catastrophic victims. He suggested the bill be amended in this manner.

There being no further opponents, Senator Mazurek closed. He said that since the government is taking higher risks than others, those limits may be appropriate.

The floor was opened for questions.

Rep. Rapp-Svrcek wanted to know if the School Board Association has ever considered the idea of pooling together their resources in order to self insure. Mr. Erdmann said that it is one of the things that is being considered right now.

Rep. Addy wanted to know what 300,000 1973 dollars are now worth. Senator Mazurek stated that he didn't know. Rep. Addy asked Senator Mazurek if he felt this should be taken into account in determining what the limit should be today. Senator Mazurek said "yes, but we should look at what is appropriate today."

Rep. Addy wanted to know how many "quad" cases now exist. Mr. Young said that they have around 900 and some claims and they have a dozen different quad cases. Mr. Young also mentioned that social security qualifies all these people for disability plus their own insurance.

Rep. Addy said that it seems to him that we are assuring ourselves and making it a state policy that the burden is going to fall upon the injured person - not upon the state. He said that bothershim a little. Mr. Young said that he has seen a number of lawsuits against teenage drivers who have either no insurance or has a limited policy which doesn't begin to pay offthe case. Finally, he feels that what is being said is that "I don't like immunity any better than you folks." He said that 10 years ago, the state couldn't be sued at all. From 1955 to 1973, a person could only sue for the amount of insurance carried which was the

minor amount. He sees the state asbeing out on the far end of recovery here in the historic perspective.

In response to a question asked by Rep. O'Hara, Mr. Hoyt said that social security benefits paid to those who have been seriously injured is not that answer for those people by any means. Rep. O'Hara further questioned Mr. Hoyt as to what the standard rate for attorneys fees in cases against the government is. Mr. Hoyt said that depending on the facts of the particular case, he thought the standard contingent fees would be approximately 20% to 13% of the total damages awarded.

In response to a question asked by Rep. Addy, Senator Mazurek said that the problem in the White case was that the effort that was made was unsuccessful to state a sufficient reason for the state to establish a limit. The Legislative Council, with the help of the Department of Administration, attempted in reimposing these limits to make a better statement of why there was a compelling need for limits at all.

Rep. Addy asked what the state's policy regarding appeals from district court between session. Mr. Young said that they do appeal their cases.

Rep. Miles stated that she is having a problem justifying the $1,000,000 cap if it is a real multiple injury situation. She wanted to know what the original rationale was. Senator Mazurek said he didn't know.

There being no further questions, hearing closed on SB 184.

CONSIDERATION OF SENATE BILL NO. 200: Senator Chris Chirstiaens, District #17, sponsor of SB 200, testified in support of the bill. The committee previously heard most of Senator Christiaens' testimony on February 12, 1985 when the other punitive damage bills were considered that day. A copy of his written testimony was submitted at that hearing.

Mike Rice, representing Trans-systems Inc. from Great Falls and also representing the Montana Motor Carriers Association, testified in support of SB 200. He said the punitive damage issue in Montana is a very serious concern. He informed the committee that his company has sold their largest operating division in Montana. He said their legal costs in Montana run 30 to 50 times to what they do in any other state. They have had more punitive damage requests in Montana in the last couple years than they have had in all the rest of the prior 38 years. He further stated that they can find no insurance company that will write up their industry here in Montana. He said that to his notice, punitive damages are generally not covered by insurance. For that reason, it has caused his company to look at

EXHIBIT A
3/18/85
SB 184

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

DEPARTMENT OF ADMINISTRATION

INSURANCE AND LEGAL DIVISION

TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

(406) 444-2421

CAPITOL STATION
HELENA, MONTANA 59620

March 13, 1985

Representative Tom Hannah
House Judiciary Committee
Room 312, State Capitol
Helena, MT 59620

Re: Senate Bill 184 -- Repeal of Sunset provisions on damage limits in civil actions against state and local governments

Dear Representative Hannah:

The Department of Administration has asked Senator Mazurek, as Chairman of the Senate Judiciary Committee, to sponsor Senate Bill 184 for the benefit of the State and all political subdivisions.

By way of background, the need for this legislation resulted from the 1983 decision of the Montana Supreme Court in Karla White v. State of Montana wherein the damage limits imposed by the 1977 Legislature were deemed unconstitutional. These limits were amended to conform to the Court's ruling and reimposed at $300,000 per person and $1,000,000 per occurrence in the waning days of the 1983 Legislature. However, it was felt that a sunset provision was necessary in order to review the amount of those limits in 1985.

The following information is provided by the department in support of retaining the existing $300,000 per person, $1,000,000 per occurrence damage limit:

I.
CLAIMS DATA

(A) Total number of self-insured nonautomobile claims made since July 1, 1977 . . . . . 900+

(B) Number of active litigation files as of 12/31/84 113

(C) Number of cases filed since 11/26/84 24

SENATE JUDICIARY
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(D) Table of actual loss payments

	FY78 & 79	FY80 & 81	FY82 & 83	FY84	FY85*
Claims Paid	$47,115	$144,339	$2,943,589	$1,305,784	$1,313,746
Leg.Fees	19,956	137,840	299,270	308,749	164,774
Misc.Exp.	578	14,007	95,085	74,728	79,394
TOTALS	$67,649	$296,186	$3,337,944	$1,689,261	$1,557,914

*Amounts shown are only for 6 month period ending 12/31/85

II.
LOSS RESERVES AND ACTUARIAL REPORT

(A) Loss reserves for pending litigation - Ins. & Legal Div.

Claims Value	Legal Fees	Claims Expense	
$4,832,000	$532,000	$274,200	
TOTAL:			$ 5,638,200
Total Assets - Self-Insurance Reserve Fund as of 6/30/84			8,600,000
Net Reserves			2,961,800

(B) Actuarial Evaluation - Coopers & Lybrand for period ending June 30, 1984

Estimated liabilities of existing claims and claims incurred but unreported	$19,800,000
Less State's assets as of 6/30/84 . . .	8,600,000
Deficit for existing claims and claims incurred but unreported	$11,200,000

As you can see from the above, the State has gone from a healthy surplus in 1982 to an $11.2 million deficit from an actuarial standpoint. In its report, Coopers and Lybrand attribute this result to increased claim reporting, higher average claim cost, and the expansion of the State's liability to include noneconomic damages as well as economic losses by plaintiffs under the White decision.

In addition, I have attached the results of a survey taken of western states to compare their liability limits to Montana's

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existing limits. With the exception of Washington and Alaska, which have no limits, Montana has favorable dollar limitations by comparison. Also, Montana has total exposure on virtually all state activities whereas other states have retained immunity in various specific activities such as law enforcement or highway design.

Although there is no exact means to estimate the cost of no damage limits for state government, it is inevitable that verdicts against the State similar to the recent $3,000,000 judgment against Burlington Northern will occur. Even if only three or four such catastrophe losses occur in the existing litigation, the State's ability to pay from available reserves would be totally exhausted.

Your support for this legislation would be greatly appreciated.

Sincerely,

J. MICHAEL YOUNG
General Counsel

gk

EXHIBIT B
3/18/85
SB 184
SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

GOVERNMENT LIABILITY STATUTES OF WESTERN STATES

STATE	LIMITS	IMMUNITY
North Dakota		Sovereign immunity for State only
New Mexico	100,000 PD 300,000/500,000 BI	See #1 below
Alaska	No limits	None
Idaho	500,000 CSL	See #2 below
Wyoming	500,000 CSL	See #3 below
Washington	No limits	None
Colorado	150,000/400,000	See #4 below
Oregon	50,000 PD 100,000/300,000 BI	See #5 below

1. New Mexico excludes from immunity:

   a. Highway design and maintenance
   b. Motor vehicle operation
   c. Personal injury caused by law enforcement personnel
   d. Premises liability - buildings, state parks, machinery and equipment
   e. Airport liability
   f. Operation of medical facilities
   g. Liability for health care providers

2. 120-day limitation for filing claims. There is immunity from: E&O, assessment of a fee or tax, establishment of a quarantine, personal injury by law enforcement personnel, claims arising from acts of National Guard, claims arising from riots or civil violence and claims from highway design.

3. Wyoming has immunity, except for claims from:

   a. Contracts entered into by a governmental entity
   b. Negligence while operating a motor vehicle
   c. Premises liability

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d. Operation of an airport
e. Operation of a public utility (except for failure to provide electricity or natural gas)
f. Operation of a medical facility
g. Health care providers who are government employees
h. Operation of public facilities
i. Tortious conduct of law enforcement officers

One year limitation on filing claims, except on minor age 7 or less then two years or until age of 8, whichever is longer.

4. Colorado has immunity except as follows:

a. Vehicle operations
b. A dangerous condition in any institution or premise
c. A dangerous condition in any public building
d. A dangerous condition on any public roads
e. A dangerous condition of any public facilities
f. From operation of public water, gas or sanitation facilities

If a public entity obtains insurance coverage from an insurance company it is deemed to have waived any immunity available, up to the amount of the coverage.

5. Oregon has immunity from punitive damages, discretionary acts, workers' compensation, settlement of taxes and from riots or mob actions. They have a 180-day limitation (from date of discovery) for filing claims.

jjc

ERIK B. THUESON
Attorney at Law

410 CENTRAL AVENUE
TRAIN BUILDING, SUITE 517
GREAT FALLS, MONTANA 59405

MAILING ADDRESS:
P. O. BOX 2566

(406) 727-7304

February 5, 1985

Senate Judiciary Committee
Capitol Station
Helena, MT 59620

Dear Committee members:

A few years ago, I represented a young lady named Karla White. She was attacked and brutally beaten by an escapee from Warm Springs State Hospital. In the lawsuit which followed, White v. State, the Montana Supreme Court ruled that the legislative created limitations on recovery from the government then in existence were unconstitutional.

After this ruling, the legislature quickly passed the current limitations on recovery from a government entity. I understand that these limitations are now under review. I would like to have the following comments made part of the record when you consider this matter.

I can say unequivocally that the current limitations on recovery for damages are unconstitutional. I can say this with some confidence because the current legislation was based upon the dissenting opinion of a justice in the White case. In other words, the current legislation is directly contrary to the majority decision in that important constitutional case. Because of this, I would suggest that the committee carefully revise the legislation so it does, in fact, pass constitutional muster.

In my opinion, any attempt to limit recovery of damages when the defendant is a government entity violates equal protection of the law. It creates two classes of victims who have suffered injury because of government negligence. Those with lesser injuries are entitled to full compensation. Those with immense injuries, meriting recovery of damages in excess of the current $300,000 limitation, are deprived of full redress for their injuries. This is a classic form of discrimination which does not pass constitutional muster where, as here, we are dealing with a fundamental constitutional right.

Be that as it may, I recognize that as a practical matter, the legislature may well impose limitations on damages anyhow. If this is true, I would suggest that you seriously consider and study the possibility of requiring government entities to purchase some sort of umbrella insurance policy, that would increase recovery above the current $300,000 limitation.

For instance, an umbrella policy that would increase damage coverage to one million dollars would probably only amount to a few cents in taxes per capita in the area where any government entity, large or small, has its tax base.

Extending the limits in such a manner would not clear up the constitutional problems, but it would certainly decrease the size of the class of victims who will not receive full recovery when injured by the government. Moreover, it will also decrease the hardships and adverse impact upon those whose injuries are still so severe that a million dollar limit will not compensate them for all of their losses. In short, for very little extra expense, such an umbrella insurance plan would greatly reduce the reprehensible aspects of the current damage limitations.

In summary, the people of this state are entitled to great care by the legislature when the legislature chooses to limit fundamental constitutional rights. I think this at least requires an impartial and careful study of how the limits on damages can be adjusted without significantly affecting the fiscal integrity of our government entities. I would hope that the committee and legislature would consider such a plan and act accordingly.

I thank you in advance for this opportunity to express my thoughts as a concerned citizen of this state.

Sincerely yours,

Erik B. Thueson

EBT:eml

The title of the bill would also be amended to conform with the above language. The motion was seconded by Rep. Mercer.

Rep. Hannah feels this bill will have no real impact one way or the other. It appears to him the reason for including a penalty provision is due to non-compliance. However, there was no testimony given at the hearing that would indicate that there is a non-compliance problem.

Rep. Keyser also pointed out that he feels this type of legislation could take a lot of individual rights away.

Rep. Bergene said that she agrees with Rep. Keyser in that these kinds of statutes errode a little more of individual rights, but this bill definitely comes down on the side of the child.

The question was called on Rep. Addy's motion to amend, and the motion carried on a voice vote.

Rep. Hammond moved that SB 314 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Keyser and carried unanimously. Rep. Bergene will carry this bill on the floor.

ACTION ON SENATE BILL NO. 184: Rep. Keyser moved that SB 184 BE CONCURRED IN. The motion was seconded by Rep. Eudaily and discussed.

A question was asked as to how this bill differs from the HB 714 which was sponsored by Rep. Spaeth. This bill extends Rep. Spaeth's bill.

Rep. Addy moved to amend SB 184 by extending the sunset two years later. The motion was seconded by Rep. Hammond.

Rep. Keyser stated that he is against the motion to sunset for two more years. He feels this legislation should go on the statutes. He said that if the limits need to be changed next session due to the inflation factor, they will consider it at that time.

It was Rep. Eudaily's opinion that the sunset be removed completely because he feels it will be much more effective.

Rep. Addy feels this area should be further looked into. A decision in a law case (earlier cited by Mike Young) is expected to be handed down by the Montana Supreme Court relating to this issue, also.

The question was called, and the motion to amend carried 9-8. (See roll call vote.)

Rep. Hammond further moved that SB 184 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Darko and carried on a voice vote. The bill will be carried on the floor by Rep. Addy.

ADJOURN: Without objection, the meeting adjourned at 12:00 noon.

Tom Hannah
TOM HANNAH, Chairman

STANDING COMMITTEE REPORT

March 19 1985

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6/26/86
BILL NO. SB-22

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 134

Third reading copy (Blue color)

REMOVE SUNSET ON DAMAGE LIMIT IN SUITS AGAINST STATE-LOCAL GOVERNMENTS

Respectfully report as follows: That SENATE Bill No. 134

be amended as follows:

1. Title, line 5.
Strike: "REPEAL"
Insert: "EXTEND TO JUNE 30, 1987"

2. Title, line 8.
Strike: "REPEALING"
Insert: "AMENDING"

3. Page 1, line 12.
Strike: "Repealer"
Insert: "Termination Date"

4. Page 1, line 13.
Strike: "repealed"
Insert: "amended to read: 'Section 2. Termination date. Section 2 terminates June 30, 1985 1987.'"

AND AS AMENDED,
BE CONCURRED IN
DO PASS

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
April 15, 1983

The Fifty-fifth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage, on Friday, April 15, 1983, at 9:10 a.m., in Room 325, State Capitol.

ROLL CALL: All Committee members were present.

CONSIDERATION OF SENATE BILL 465:

PROPONENTS: Mr. Mike Young of the Montana Department of Administration, testified that this bill was drafted because of the Montana Supreme Court's decision in Karla White v. State of Montana, which was issued on Friday, April 8, 1983. Mr. Young testified that the State of Montana has, in the past, been issued insurance by commercial carriers. However, because the premiums on this insurance has been costing up to $1,250,000 per year and continues to excell, the State of Montana no longer carries insurance with a commercial carrier. Mr. Young explained that the Supreme Court has stricken the $300,000-$1,000,000 limit and has stated that the claim for compensation is a fundamental right. Mr. Young then submitted statistics showing the amount of claims and the total amount paid on these claims by the State of Montana since 1977. (See attached Exhibit "A"). Mr. Young stated that he believes $4,500,000 will be paid on these claims by the State of Montana in the immediate future and there is no way to tell how these claims might be increased because of the recent Supreme Court decision. Mr. Young told the Committee that the amount of attorneys' fees paid for outside counsel has risen from $7,900 in 1978, to $25,000 paid for the month of March 1983 alone. Mr. Young also informed the Committee, that when the State of Montana was insured by commercial carriers, these carriers paid out 209 percent of the premiums. Mr. Young stated this is the reason why the State no longer has insurance with these commercial carriers.

Senator Towe testified that since the new Montana Constitution was adopted in 1972, the State has been generous when a person has suffered a loss. The court has stated that when a person has non-economic damages, you must reimburse him for his damages. Senator Towe stated that it is Justice Morrison's opinion that the $300,000-$1,000,000 limit is unconstitutional. Senator Towe asked the Committee to act promptly on this bill while the road to imposing the limit is open because, in Senator Towe's opinion, if the Committee fails to act, the limit will be gone forever. Senator Towe felt that if the Committee can show compelling State interest for the upper limit, SB465 will hold. Senator Towe informed the Committee that Justice Gulbrandson disagreed with Justice Morrison's finding the limit unconstitutional. Senator Towe stated that sometimes

the State has to take risks and these risks justify having the limit, because, in Senator Towe's opinion, if we do not, the State could suffer serious economic losses. Senator Towe suggested that the Committee add language to SB465 reflecting the fact that the limits they have chosen are very generous compared to other states. Senator Towe expressed concern for the school boards and other groups with a small number of taxpayers who could be devistated by a large claim. Senator Towe stated that under the old law, if a person collected a large amount of money, they could still come to the Legislature to collect an additional sum. Now, a person would not be able to do this because the enabling language has been omitted from the bill. Senator Turnage felt that a person could always took to the Legislature, but Senator Towe felt people would be hesitant to do this if it is not provided for. Senator Turnage stated that the bill should reflect the amount of claims and legal actions filed against the fund at this time, and how much money these actions would take from the existing fund.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senators Mazurek and Crippen had questions as to the Constitutionality of the retroactivity clause contained in the bill.

Mike Young stated that he is petitioning for a rehearing and Senator Turnage reminded the Committee that the vote of the Supreme Court as 4-3, and it would not be impossible to change their decision. Mr. Young stated that California is the only other state which has unlimited liability like this. Senator Mazurek questioned how the self-insurance fund is generated. Mr. Young stated that the State uses the same percentage breakdown used by the insurance companies and some of the money comes from the general fund, while some comes from the revolving account. Senator Turnage stated that after the adoption of the 1972 Constitution, the people granted the Legislature the right to reinstate soverign immunity.

Senator Tow suggested the Committee might want to use some of Justice Gulbrandson's ideas to strengthen Section 1 of the bill. Senator Crippen suggested that if the State does not have an excess coverage carrier, it should start looking for one. Mr. Young responded that there is no point in carrying excess coverage if the State has unlimited liability.

ACTION ON SENATE BILL 465: Senator Mazurek moved that Senator Bill 465 DO PASS. This motion carried unanimously.

There being no further business to come before the Committee, the meeting was adjourned at 9:51.

JEAN A. TURNAGE, Chairman

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 1/15/83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

STANDING COMMITTEE REPORT

March 15, 19 83

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration SENATE Bill No. 465
TURNAGE

Respectfully report as follows: That SENATE Bill No. 465

DO PASS

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House

REPRESENTATIVE JENSEN commented that he hoped they could enter into a reciprocity agreement, but he hoped it wouldn't include acid rain because he didn't want to get any of that stuff back.

The motion carried unanimously.

SENATE BILL 465

SENATOR TURNAGE, District 13, stated that this was a bill, which was requested by the Senate Judiciary Committee and he requested Senator Towe to co-sponsor the bill with him. He indicated that the bill was intended to address a problem that was created by a supreme court decision in the case of White vs. the state of Montana, that was handed down on April 8; the opinion struck a section from our statutes that placed a limit on sovereign immunity lack of (?) liability on state and local government; the opinion also addressed some questions of what is called economic and non-economic damages; but that is not the point of this bill. He continued that the bill is intended to reestablish the maximum or the cap on the amount of liability of state and local government; it also has some important language about state interest; that has to do with some of the language in the court opinion; he felt that without the bill state and local government's potention exposure to tort liability is unlimited; that the people voted and approved the constitutional amendment that allowed the legislature to address the limitation of governmental liability; and he felt that Senator Towe could explain it a little more.

SENATOR TOWE, District 34, Billings, stated that he was chairman of the interim committee that studied sovereign immunity in 1977 following the 1975 session, leading up to the passage of the law that was involved in the court case. He commented that prior to that time the constitution did not allow any sovereign immunity originally; it was amended allowing sovereign immunity only upon a two-thirds vote of each house of the legislature; following that passage, there was an enormous amount of legislation proposed that would remove the liability of cities and counties, towns, governments and the state for all kinds of things; (the laundry list of items that they got in the 1975 session suggesting that sovereign immunity be reinstated was enormous - they wanted sovereign immunity for everything); they successfully avoided those bills; they threw it into a subcommittee - an interim committee -

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and they studied it over the interim. He indicated that Senator Turnage and he were both on that committee; the solution they came up with was that they did not want a laundry list of things for which the city is not liable, or the county is not liable, or the state is not liable, such things as when a highway patrol is pursuing a speeding motorist, should they be liable or shouldn't they be liable; when the fairgrounds committee supports some activity, should they be liable or shouldn't they. He continued they felt they should be liable on everything; but they were going to put a limit of the amount of damages, so that people will be protected if they have been done wrong to; if they have suffered injuries, they should be able to collect from the state, but they recognized that there is a limit; the state does have a deep pocket, it is true; the state can usually afford large amounts of damages, but they do not want to break the local governments, cities, counties and other governments so they are going to put an upper limit on the amount that can be sued for; and that limit was $300,000.00 and $1 million. He advised that they also did another thing and they said that it was not quite so important if you have noneconomic damages, and they were going to disallow such damages, but they will allow economic damages, essentially medical costs, doctor bills, hospital bills, the cost of reimbursing someone that has to be hired to do something that you did before, work loss, and all those things, but not for pain and suffering, the defamation, those noneconomic damages they disallowed. He explained that the supreme court has now said that they can't do that; they, in effect, have said very clearly that it is discriminating against injured parties to say that one suffers economic damages, for which one can recover, but if one suffers noneconomic damages, one cannot recover. He contended that they can argue whether or not that that is a good idea, but that is the law of the land in the state of Montana. He noted that the supreme court also said that the $300,000/$1 million limit would be inconsistent if they didn't strike it too, because then you could collect only up to $300,000.00 for economic damages, but you are unlimited on noneconomic damages; and that would be an anomaly that should not be permitted, so they struck down the $300,000/$1 million limit as well; but the implication from Judge Morrison's opinion is very clear, i.e. if the legislature finds a compelling state interest to reinstate that $300,000/$1 million

limit, then it may do so; and that is what this bill attempts to do. He noted that in section 2 on the bottom of page 5, the first paragraph there, that is the meat of the bill - $300,000.00 for each claimant and $1 million for each occurrence - that is the limit of damage that can be obtained against a sovereign. He stated that they recognized that there was evidence that with unlimited liability, some of these communities could not just afford insurance to cover it all; and he is not sure the state could afford it; consequently, he felt that there really is a compelling state interest. He cited an example wherein a fairly well-to-do city, such as the city of Billings, which operates the airport, a worker at the airport was loading some petrol gasoline into an airplane; some gasoline spilled; somebody dropped a cigarette and it exploded with 150 people on the plane; the liability to the city of Billings could be astronomical; not to mention the several million dollars it would cost to the airline company for the airplane; and all because of the negligence of an employee of the airport. He declared that they would really be in trouble; now add to that the kinds of problems you get in a small community - a little tiny community like Bear Creek for instance - how many accidents could they afford if they couldn't get the insurance. He added that the first five pages of the bill attempt to bolster their case for a compelling state interest; he thought what he just told them is, in fact, a compelling state interest and that is what they are asking the committee to find that there is a compelling state interest to impose this kind of liability. He suggested that they may want to consider, but he does not think that it is absolutely critical, adding one more and that is some specific figures that are not in the bill at the present time that there has been a total of 562 claims made since the bill took effect on July 1, 1977; and of those, about 44 per cent (247) actually stated how many dollar in damages that they were claiming; 56 per cent didn't even state how many dollars they were claiming; and of the 44 per cent that stated an amount, that came to $83.9 million; and that is just against the state; and he felt that that was very significant because that is a lot of money; and that, if nothing else, shows a compelling state interest. He indicated that he would be happy to answer any questions.

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MIKE YOUNG, Administrator of the Insurance and Legal Division of the Department of Administration, passed out to the committee a proposed amendment to this bill. See EXHIBIT A. He stated that his job is to manage all the claims against the state and self-insure or insure against those liabilities; what they should realize, in looking at the figures that he passed out, is that the state does commercially insure a number of its activities - they insure aircraft, they insure their boilers and their property; and they do have liability insurance on the state auto fleet for $300,000 per person and $1 million per occurrence. He advised that the state self-insures its comprehensive general liability; all sorts of errors and omissions, the institutions, the prison, the basic decisions that are made, liability for professionals and non-professionals in the state and they include the university system.

He informed the committee that they handled the Karla White litigation as well; basically what the supreme court did there was reject the notion adopted by most states that immunity is not an equal protection question; our court decided that it was; and once it decided it was, it determined that just a rational basis for the statute was not sufficient, that a compelling state interest has to be demonstrated. He continued that basically what the court said was that the financial implications at the time simply do not warrant or justify the compelling state interest.

He indicated that it has since been suggested that the existing $300,000/$1 million limits could be reimposed and even had a proposed bill in it; the majority opinion indicates by implication that some limits might be justified; but it would be up to the legislature to determine some compelling state interest; so they have to look at what sort of things the legislature has considered over the years.

He said that the study that Senator Towe referred to had a number of different alternatives that the 1975-1977 joint

judiciary subcommittee looked at; they looked at a number of specific limits, examined the statutes of states all over this part of the country and, as Senator Towe indicated, there were so many specific immunities that even that was rejected. He continued that the 1977 legislature considered also setting up a separate court system like the workers' compensation, but that was rejected; finally they tried to propose legislation with a sense of balance for the inequities; and the fundamental thing they have to remember is that a state is not a business; there is language in the opinion that indicates that the state is a business and ought to be liable as a profit-making enterprise and one of the costs of doing business is its liability. He asserted that the shareholders of many corporations voluntarily assume that activity for a profit and know exactly what they are getting into; but the government has its duties imposed by law; very few of them would actually generate a profit on their own; and its aim is to protect society. He noted that you have to remember that the state is not some aimless thing out there that can be attacked; it is basically us and the people we represent and the taxpayers.

He commented that the claims information is so very interesting and the handout that was passed out is wrong already, as of today there are 564 claims and 146 lawsuits as two came in yesterday; out of that 564 claims they now have 146 existing lawsuits; and 258 claims and lawsuits have been won, paid or settled since the initiation of this program on July 1, 1977. He advised that it is a significant fact that a number of claims have prayer amounts in them for what the claim is for (that is the lawyers' term for saying what they want) and 44 per cent of all the claims filed have indicated an amount, and they are looking at just about $84 million; 56 per cent of the claims are bodily injury claims, which under some recently enacted legislation, you cannot plea a specific prayer for damages that comes later; that is primarily what that 315 claims consist of is bodily injury claims without a prayer. He explained that the $4,382,684 figure for reserved losses is their agency's estimate of what the remaining claims and lawsuits are worth if you apply the noneconomic and economic distinctions and the statutory limits of liability. He indicated that a number of people have asked them what those claims are worth now that the supreme court has

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knocked off the caps and they quite honestly cannot say; it would require an examination of each case; but the bodily injury blue sky ? portion of any major bodily injury claim could easily amount to a half million, he would suspect. He explained that he also gave them a rendition of their outside counsel fees and this includes the A.G.s and the attorneys' pool and it does not include the cases that are handled by the two full-time attorneys in their own office that do this work. He noted that they can see from the progression of attorneys' fees how litigation progresses costwise. He advised that on the end is out-of-pocket losses that they have actually paid with checks for claims and judgments in settlements to date and it comes up to just about $2,750.000.00; so that is where they are on that. See Claims Information - EXHIBIT B.

He noted that there were some trial lawyers here and a number of them have been in his office the last couple of days trying to get information and he is sure that they are going to try and convince the committee that this sort of legislation still is though it is probably better than what we had before; his reaction to that is that Montana is certainly not being unfair in comparison to our sister states; he did a survey yesterday by phone; and just for their information, Wyoming, which waived immunity last year, has a $500,000.00 cap on all claims for single occurrence; Colorado and Oregon have identical statutes - they are $100,000.00 per person with $300,000.00 per occurrence limit; and Oregon additionally has a $50,000.00 limit on property damage - the $100/300,000 only goes to bodily injury; the state of Nevada recently raised their limits from $25,000.00 to $50,000.00; and the attorney general in North Dakota informed me that they don't have any liability - they are at zero. He commented that all of these states that have these caps also in their court legislation have certain specified things that you can't sue for at all, which they do not have in this bill; for example, collecting taxes, highway design operations, national guard, use of unimproved natural lands of the state; many of them contain that type of exclusion. He felt that they should be able to see the seriousness of the problem and he would be happy to answer any questions.

MIKE STEPHEN, representing the Montana Association of Counties, said that they strongly support this bill; there should be a liability limit; that local governments are very interested through their elected officials and employees in providing a variety of services and activities for the public and also to the citizens of the community; and they feel that as a result of an act or omission in regard to an employee or an officer of the local government that there is fairness in this particular bill to the individual and there also should be fairness to the towns and local governments, as the citizen is providing the moneys and would be held responsible for paying the bills. He indicated that they feel this bill has fairness on both sides.

ALEC HANSEN, representing the Montana League of Cities and Towns, stated he wanted to talke about a compelling local interest; the average city in the state of Montana has a taxable value of about $3.4 million; in applying an average mill levy of 80 mills against that taxable value, you come up with a tax finance budget of the average city in Montana of about $275,000.00; and without an insurable on tort liability, one major case could totally devastate the average Montana city; one major case could wipe out the whole tax finance budget of $275,000.00; and for that reason, they support this bill.

CHIP ERDMAN, representing the Montana School Boards' Association, stated that they also strongly support this bill; he felt that everything has been said that is pertinent to the area; but he felt that by eliminating any limitation at all, it is virtually impossible now for any governmental entity to obtain insurance coverage for this, so any damage that is upheld would have to come out of the regular financing devices that that institute has and for many school districts, particularly our rural districts, that would be impossible; it would in effect shut down the school districts. He stated that they certainly feel that providing education in Montana is a compelling state interest.

BILL VERWOLF, representing the city of Helena, said that they support this bill.

There were no further proponents.

ERIK THUESON, an attorney with Hoyt and Trieweiler in Great Falls, stated that he was the attorney who represented Karla White before the Montana Supreme Court; he would like to talk to the committee about what the Montana Supreme Court really did say in the Karla White decision, because he thinks that what they said defines the power that this legislature has to pass additional legislation dealing with governmental immunity; he will leave the other policy references to other opponents of the bill.

He indicated that there were four separate areas that he would like to talk to them about; (1) he would like to talk about the bill's claim that there is a compelling state interest here served by the present legislation and he would like to match that against what the Montana Supreme Court stated; (2) he would like to talk about the language in the Montana Supreme Court case and the language says that they are dealing here with a fundamental constitutional right - exactly what did the court mean, what effect does that have on this body's right to act on past judicial legislation; and he stated he would discuss some of the limitations of their powers to clear that; and fourthly, he would just like to make some suggestions in light of the Montana Supreme Court decision as to what he thinks should be done by this committee and what he feels should be recommended by this committee.

He advised the committee that, first of all, there has been some claims and it is, of course, stated in the bill that we the legislature must find a compelling state interest; he would like to say to this body that all the language in the bill right now was also in the state's brief in the Karla White case, was also argued by Mr. Young to the Montana Supreme Court during oral argument; was also addressed by the Montana Supreme Court in their decision itself. He indicated that he would like to read to them what the Montana Supreme Court stated about the

compelling state interest that Mr. Young has indicated supports this bill. He quoted from page 6 of the decision, after reviewing what the state had to say in the White case and all the things that are in the present legislation, "Furthermore, at this point, the state has failed to demonstrate a compelling state interest which would justify any limitation." He repeated this; then commented that if the state has now drafted a bill putting in the same arguments that were made to the Montana Supreme Court and put in there expressed language doesn't make those reasons any more compelling now; and as Mr. Towe has told you the Montana Supreme Court is the law of the land. He stated that he is not saying that you can't put limits on for recovery, but he would like to discuss with them some of the limitations that they have to consider.

Secondly, he said that he would like to talk about fundamental constitutional rights, because that is what the Montana Supreme Court said was that a person's right to recover when they are injured, be it by the state's wrongdoing or a private party's wrongdoing, is a fundamental constitutional right. He contended that this has special significance and it has special significance to them as legislators and he went on to tell them about some fundamental constitutional rights. He continued that one fundamental constitutional right they all have is the right not to be discriminated against because of the color of their skin; another constitutional right is the right to not be discriminated against because of our race or because of our religious beliefs - those are fundamental constitutional rights - and the right to be compensated when you are injured by any person in this state is also a fundamental constitutional right; they are on the same par; and that signals something to the legislature about your power to act; it doesn't say you can't act; but signals that there are certain requirements to meet before you do act; and he would like to talk about those requirements. He asserted that there are basically three that he can see - the first one is that before you suggest legislation or pass legislation that infringes upon this right, you have to know from the facts put before you that it is absolutely necessary; not just a compelling state interest, but that it is necessary, absolutely necessary; or the wheels of government will grind to a halt if you don't have this limitation on government

liability; and that is requirement #1. He indicated that the second requirement is that legislation has to be tailored to meet the matter that you are trying to discourage; for instance, if there is a problem of local government entities needing tort liability, then that is where your legislation should go; that is where you should aim your legislation; you should say that these local government entities are going to have some problems meeting their obligations unless they have certain limitations; but you can't be overly broad because of the nature of this right; you can't say that also the state should have limitations; and you can't just have a blanket $300,000.00. He continued that Mr. Towe has indicated to you and Mr. Young had indicated to the Montana Supreme Court in his oral argument that he didn't see any problem with the state meeting its tort liabilities, but he had some concern that the local government entities would have some difficulties; so there is no reason here, first of all, to give the state any liability limits whatsoever.

He testified that the third thing they have to consider when they are passing legislation on such a sensitive area is that you have to balance what you are accomplishing against the rights that you are taking away; now here there is no problem with people that have suffered injuries under $300,000.00 and that is going to be about 90 per cent of the people that are injured by the state; (he felt that was pretty fair to say) you are talking about maybe 10 per cent that might have injuries above $300,000.00; but who are these people; they are a minority, that is true; but that is why they have constitutional rights to protect minorities; they are the worst injured; they are the quadraplegics - people who have lost limbs - they are the people who have been disfigured; these are the people that are going to have those high damages; so in considering this legislation, which doesn't grant to these people any compensation because their medical bills are going to be in the neighborhood of $300,000.00, you might consider the losses of those people and you might

ask yourself do we really have to do that to these people to justify a compelling state interest; are we really going to gain that much. He continued that along those lines, he has noticed that all the proponents told you how difficult it was for them to get liability coverage, but he is wondering here whether or not there would not be an umbrella policy available to state entities and local government entities; he wondered about the cost of that umbrella policy to cover that unique case - that minority case - where the damages do exceed $300,000.00; how much would it cost the government on an annual basis to have an umbrella policy; we don't know; that is one of the problems with this legislation; we don't know; perhaps it would only cost $500,000.00 a year to cover both local and state government for damages in excess of $300,000.00; if you take the local governments and you take the state governments (he is not an expert in this, but he would imagine that the total budgets exceed $1 billion) and if, in fact, the umbrella policy is only $500,000.00 to cover those unfortunate people that have been injured badly, then you are talking about something - what? .2 percentage points of the entire budget of all government entities to protect these people; and he wondered if it is necessary not to buy an umbrella policy in order to pass legislation to give the government some immunity. He asked the committee to consider that.

He indicated that there was a thing that bothered him about this legislation and that is that they are dealing with a sensitive area; if the committee was considering a bill right now that discriminated against a person because of his sex, or because of his race, he would bet that not one of you would consider passing that legislation the way that this legislation is going through the Senate and the House; you would want to know the facts not only from the proponents of the bill, but from the opponents of the bill; why do they have to discriminate against people because of their sex or race; you would want to give notice to all the people when you have something that is not very accurate here when you consider that this originated in the Senate less than a week ago; and there really has not been time for anyone to come before the committee to talk to the representatives and to say, "Hey, this is our opinion of this

sensitive and very important legislation"; and he guessed what bothered him this is a very sensitive area and it is going through awfully fast; this brings him to his fourth point.

He continued that this was his suggestion to take your time with this; you don't have any facts to work with right now; all you have are the assertions of the proponents of this bill as to why it is necessary; you have to take time; you have to get the facts before you pass legislation; you have to tilt your legislation, if necessary to those areas of government where it is impossible to get insurance or where their functions will be lost if you don't have some liability limits; but this bill doesn't accomplish that. He advised that they take their time and he suggested perhaps some interim committee to study the problem; now the state doesn't have liability limits right now and the problems are going to become readily apparent in the next two years; you are going to see if there are certain government activities that require limits and you are going to see areas that don't require limits; and you are going to know what will be the proper amounts - you are not going to have to pull something out of the hat like $300,000.00 - you are going to know just what the limits have to be. He asked them to take their time; maybe get a committee, study this problem, see what happens now that there is unlimited liability; and then, after that, maybe the next session, address that problem; if necessary, come up with some legislative plan that really addresses this problem. He said that was all he had to say and would be happy to answer any questions.

MIKE MELOY, practicing attorney in Helena, his practice is primarily in trying cases, a member of the board of the Montana Trial Lawyers Association, said that he also teaches constitutional law at Carrol College and has done so since 1973. He advised that he would like to say two things about this bill, because he thinks the committee would make a mistake in passing it; (1) to amplify just slightly the comments of his colleague who just spoke, the Montana Supreme Court has told us that

the right to a pain remedy for us as an injured party is a fundamental right; that is very significant to the annals of constitutional law, because there must be applied the most strict test before a state can interfere with that right; and he knew only one case in which the U. S. Supreme Court has ruled that an interference with that fundamental right is permissable and that was in the Korematsu case during World War II, when people of Japanese extraction were getting interned as a result of a fear that they might be harming national policy; there was a fear in the nation there based upon race; and the Supreme Court justified that only because of the circumstances that prevailed at that particular time. He emphasized that he knows of no other case where any state or federal government has yet to pass strict scrutiny; so if you are wrong by passing this bill; if the Supreme Court has said that there must be a compelling state interest, and if you don't have one, what is going to happen in the interim is that this bill is also going to be striken; and you either have to come back in special session; or you are going to have a period there where you have absolutely no insurance to cover a claim which some court or jury might award. He stated that it would seem to him rather than to put the eggs in the basket that is represented in this bill, that it would be better to start thinking about the kinds of insurance policies that state and local government would have to get in order to cover for those very rare claims and awards that are made in excess of the funds that are now available to cover most claims; it seems to him that that would be the better way of approach than try to rely on a bill which, in his opinion, will not meet and is very little different than the facts that were presented to the Supreme Court in arguing the Karla White case. He continued, notwithstanding the numbers that Mr. Young has given you and that Mr. Towe wishes to have amended into the bill, it would seem to him that the record you would be looking at to support the notion that governments are going to be bankrupt if you don't have a limitation like

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this are not the total number of claims or the total amount of claims, but the actual claims experienced; how much has actually been paid out in six years, since 1977; because that's the significant financial burden that the state and local governmental entity will assume should they not have these limits. He contended that that is the financial information that the Supreme Court is looking for in deciding whether there is a compelling state interest in imposing limitations; what are those numbers; it isn't going to do any good to ask a person who just came home from fishing how many fish he left in the river - the question is how many fish did he bring home.

He stated that he asked Mr. Young if he could tell him how many claims in excess of $200,000.00 have been paid since July 1, 1977; he tells him there are five; two of the claims arose out of the F-106 crash in Dillon; and the state paid the lady who was burned severly $200,000.00; and they paid the Dillon Elevator Company $249,000.00; those are two of the claims that are in excess of $200,000.00. He testified that the other one involved a case in Great Falls wherein a lady was injured which resulted in an embolism, which caused damage to her brain and caused her I.Q. to go down substantially; and the state settled that case for $250,000.00. He noted that the other case was the Jacques case; that is the National Guard case, in which the jurors and the Supreme Court affirmed a very tough $1 million - a little over $1 million. He indicated that in seven years, those are the substantial claims that have been settled or actually paid; he couldn't believe that you couldn't get insurance to cover those few instances where the claims are very large and subtract those numbers from the amount that was paid out; and divide that by the number of those cases, you come up with an average claim of about $2,300.00; those are the kind of claims that Mr. Young has paid; and it seems to him that those numbers are not substantial enough to make a compelling interest argument; and it seems to him that because

of that that this committee, the legislature and the Department of Administration ought to be looking for an alternative rather than imposing a bill, which he thinks is not constitutional and will leave the state without any insurance to cover claims should that happen.

PAUL SMITH, a practicing attorney in Boulder, Montana, stated that the main reason he chose to come in today is that although he is not a great trial lawyer, that he has in the past represented on one occasion a para-palegic; and he felt that that type of thing has to be addressed somewhat today. He testified that the thing that impressed him, and he has dealt with Mr. Young on some things before - he is a good attorney and protects the state's interest well - was when he was describing the difference between the corporate world and doing business out there in the state; he stated that the government is here mainly to protect society; and he agrees and he wants them to think about that; he contended that they have heard about these cases and they have read about them; and the corporate world and the automakers say, "Do we put this safety factor in and if we don't we put in how we are going to be sued or whatever, and if it is going to cost us less not to put it in, we are not going to put it in," so what about the injuries. He indicated that they are sitting here as a legislative body taking a look at this and the people out there with catastrophic injuries, they have a right to be heard too; and they have a right to be protected; what would happen if the example that Mr. Towe talked about if 150 people on a plane were not all killed - they were injured and maimed - there were people in there that had families; you are talking about, under the limits that are put there, about $6,600.00 per family; that has to be picked up somewhere - their own insurance policies, what they have lost in wages - that is going to come out of government somehow; it is going to come out of the local government; whether those families might be on welfare or food stamps or Medicaid or whatever; the cost to society has to be picked up somewhere. He asserted that it was more proper to do it under an insurance policy, under some sort of an

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umbrella coverage; we are not talking about a situation where the government is going to be broke; we are talking about the few instances that might be over $300,000.00. He contended that he did not see any figures as to what it is going to cost the state to buy that umbrella coverage above what they think they can afford on their own funding. He urged the committee to take a strong look at what the cost of protecting people in society is going to cost the state or the local governments as far as umbrella insurance coverage is concerned; he felt that the few instances that might be over $300,000.00 might be well served if they would look into purchasing that umbrella coverage.

JIM MOORE, a practicing attorney in Kalispell and the president of the Montana Trial Lawyers' Association, pointed out that he had no claims against the state or any other governmental entity at this time in excess of $300,000.00 or $1 million so he does not stand to benefit directly from any action by the committee here today. He stated that as trial lawyers they would be protecting themselves by testifying here today, but any of the members on this committee are a potential victim; they do represent these victims; they see these people in the context of their practice more frequently than the average person does; victims don't have an association or an organization; they don't have any group that would come before this committee to talk about the adequacy or the inadequacy of the system to take care of their needs.

He testified that he did not think that the act speaks to the real problems that Mr. Young has and the Department of Administration has; their experience and frustrations is the weight of litigation; and he thought that Mr. Young would concede that the weight of litigation is not ? in that $300.000.00 limit; in fact, 500 some cases are not going to be affected at all, because those 500 some cases would fall within the $300,000.00 limit or whatever limits this legislative committee proposes; and those cases will still bear an expensive investigative process.

He thought that in light of the Supreme Court case implied they were to look at the compelling state interest and, if there were a compelling state interest since 1977, which the Supreme Court says there was not, for the very reasons that it has now been placed in the bill establishing a compelling state interest today, it would have been much longer in 1977 than today, because to stand before this committee today and ask you to pass this bill without any information in the six-year span, you have been given some figures by the Department of Administration; (he had not seen those figures - he was given some others by Mr. Young; he would like to commend Mr. Young and the Department of Administration for providing them with this information, he was over there bothering them this morning and yesterday afternoon in an effort to find some information, and he appreciates the consideration that he was treated with over there, and the information was given to him; he did not know what is on this sheet yet,) but he would point out that he obtained no information of significance as to what is available today. He continued that he has listened to witnesses that got up as proponents of this bill, who said that there was not insurance coverage; frankly, he did not believe that; he thinks that there is probably excess coverage available and umbrella coverage available; if they had come out with facts and figures and said that this type of insurance is going to cost us some amount, that would be one thing; but they haven't come up with any figures; and he would submit that this thing has just simply not been looked at seriously. He indicated that so far as the availability of coverage or the availability of realistic alternatives to limitations in arbitrary situations is presented as theories; so he thinks the bill is most objectionable insofar as it is not based upon current information; and it is objectionable, as it has been pointed out, because it is based on claims as opposed to actual experience; like Meloy mentioned that given all the assertions that the Supreme Court indicated were not satisfactory to establish a compelling state interest

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in the White case; in fact, just a list of those have now been placed in this bill; so he thinks that this bill is extremely suspect insofar as the constitutionality is going to have to even if the state passes this bill out with these limitations, they would be well advised to go out and shop for an umbrella policy or for an excess coverage policy because if it is bolted down, there is going to have to be some way to pick up the bill reasonably and that is the most predictable means of doing that is through insurance. He pointed out, from his experience in handling these types of claims, previously a practical consideration is that being that juries are made up of twelve of your constituents, who are not, in fact, free with the money of the state; he found it extremely difficult to argue to those juries; in every case he found that they were very tight-fisted with the state's money; and, frankly, he guessed he believed that in his experience the only way he could obtain a judgment that would be in excess of $300,000.00 or in excess of $1 million is if he had a case that involved some real God-awful injuries; and that is what he thinks is the critical thing you have to look at in this bill. He contended that everybody is projecting this bill from the state's standpoint and obviously it is the state's line to place arbitrary limitations on the person's ability to be compensated for injuries that are imposed on that person; but nobody is looking at this from the victim's standpoint; and in the 150-person airline accident that $6,600.00 is not going to raise children or take care of a surviving spouse; what it is is that it is a second victimization of the victim. He continued that it seems to him that this bill would be a condemnation that says that Montana recognizes condemnation and the right of the landowner to be justly compensated for land taken, but they are going to put $100,000.00 limit on that, so that that process will take place without any regard to quantity of land taken or to the quality of land taken, whether it is lakefront or desert, abandoned railroad property, whatever it is, they would

just put on an arbitrary $100,000.00 limit. He indicated that this is what this bill does, except it goes a step worse and a step farther because it does it to a human being; and it says you owe him $300,000.00 and they are not going to recognize the damage or the loss; and to that extent, the state would be a party to making a victim out of the victim. He stated that he would very much appreciate your consideration in not passing this and looking into the fact of acquiring insurance and taking two years or four years experience and looking at the realities of the case and then looking at it from an agency by agency or department by department basis.

KARLA GRAY, representing the Montana Trial Lawyers' Association, said that she rose in opposition to this one last bill; she would like to make two comments with regard to some of the information that Senator Towe presented to them in regard to limits in the sister states and that sort of thing. She pointed out to the committee that there are other states - sister states here in the west - that have no limits, they being California, Washington and Arizona, and there may well be others. She also strenuously questioned whether these other sister states that have limits have the same state constitutional provison that we have here in Montana in Article II, Section 16, which requires constitutionally a remedy for every injured. She concluded asking the committee to do not pass this bill.

There were no further opponents.

SENATOR TOWE said that he would like to address some of the things that were stated; first of all, he must admit that he tends to be more inclined toward the same kinds of things that the trial lawyers spoke to and are concerned about; in fact, he was the one who did more speaking against all those soverign immunity bills than anyone else because it doesn't seem fair that they will limit people's recovery against the state; but when they got into that study, they did uncover some facts that

did change his mind; and let him give them a couple of those facts right now. He explained that much was made of the fact "Well, why don't you go out and get excess coverage?" or "Why don't you go out and buy insurance?"; well, before this bill was passed in 1977, the state of Montana let out two bids for just exactly that - no takers - nobody - with one exception, he thought it was the second time, Hartford Insurance came in and said for $1 million, they would give them $1 million worth of coverage. He commented a lot of good that does; they decided let us keep it and pay off that coverage ourselves; in other words, what he is saying is is that the activities of the state are so broad when you include all the National Guard activities, when you include all the Highway Patrol activities; when you include the police activities, the prison activities, taking care of the mental patients in Warm Springs; when you take all the state lands and all the activities in state government; now add to that all the same kinds of problems that the city governments and county governments have - nobody wants it; and they are not going to insure and that is why it is not like a business where your activities are at least limited to the business activities of that corporation; and that is why the state just can't get coverage. He continued as Judge Gulbrandson said in his concurring opinion, and he invites them to read that, that the activities of the state are so broad and yet we must do them; we can't say, "Well, I am sorry we can't get insurance coverage, we can't chase the criminals anymore, so we are not going to do it." He contended that the state has to do it anyway and that is what they are talking about.

He indicated that a couple of other comments he wanted to make is that there are a lot of cases still pending that are in excess of the $300,000.00 limitation; the 144 cases that you see that are still pending, those are the big ones; the little ones have gotten settled, but the big ones haven't; even in those cases where there has been a settlement, generally there has been a settlement because there was co-insurance, or somebody

else was liable; and the state says, "Well, we will pay this much economic damages and you can take care of the others." and they have been able to put a settlement together on that basis. He noted that there are some times when there is no offset; in fact, there generally is no offset at all; the elevator in Dillon got paid for three times; he didn't blame them; the guy that owns the elevator - he would do it too; but the federal government paid him; the state paid him and a private insurance company paid him; he paid his insurance; he was entitled to it; and he doesn't begrudge that; but the point is there is a reason and a need for the limit; and that is the significant thing.

The other thing he wanted to point out, he indicated, was that when Eric Thueson read that provision from the court case, he didn't read the first two sentences; and he followed up only with the conclusion. (?) The first two sentences, he stated, make it very clear that they are talking about the constitutionality of $300,000.00 and $1 million damages; and if there is any doubt about it read Judge Gulbrandson's concurring opinion, which says just exactly that; and consequently he thinks it would stand up. He continued that as Mike Meloy says (he stated he had great respect for Mike and he thinks he is absolutely right) that if we don't do the right thing, they will be into a special session or they will be without insurance. He suggested that if they don't pass this bill, that is exactly where they are going to be - without insurance and he does not know how long it would be before the governor calls a special session so they can come back and do it, because he just doesn't think they can afford to be exposed.

He advised the committee that there was one more thing that needed to be mentioned in addition to the fact that they are the most generous state in the nation - and he felt that was great, he is happy with that, he is glad they are generous - but North Dakota doesn't allow any or some of these other states allow $50,000.00 total - that is a pretty severe limitation compared to

our $300,000/$1 million; but don't stop there; the constitution of the state of Montana adopted by the people of the state of Montana very recently in Article II, Section 18, says the state subject to suit - states, cities, towns and all other local governmental entities shall have no immunity from suit for injury to a person or property except as may be specifically provided by law - by a two-thirds vote of each house of the legislature. He emphasized that unless they toss that out because the people did not know what they were talking about when they voted that in, we have authority to do what they are talking about here right now - that is why he thinks it should be up to the legislature.

REPRESENTATIVE BERGENE asked if Senator Towe could be more specific on page 6, line 6 where it says"$300,000 for each claimant and $1 million for each occurrence" and she wondered just exactly what does that mean. SENATOR TOWE responded that let's assume that there is an automobile accident involving a highway patrol car because of the negligence of the highway patrolman and there were five people injured; no one person can receive more than $300,000.00 for those injuries and the total of all five together could not receive more than $1 million.

REPRESENTATIVE ADDY asked Mr. Young how many cases do they have where the prayer is for more than $300,000.00. MR. YOUNG replied that he did not have that exact information with him, but they have many, many prayers - he would say that most prayers that are on the books are in excess of the $300,000.00 limit per person.

REPRESENTATIVE ADDY said that that fact would be suggested by the large number of amicus briefs in White vs. Montana. MR. YOUNG answered that that may be, but it probably suggested that most local governments are trying to look out for their taxpayers.

REPRESENTATIVE ADDY asked if he knew how many prayers they have for more than $1 million. MR. YOUNG answered that out of the roughly 240 some claims that have prayers

you are looking at $83 million, almost $84 million; there are a substantial number; he does not have the claims register with him, but they would be here all day looking at that sort of thing. He indicated that they have a number of prayers in the $3 million to $4 million range; they have a couple prayers in the $8 million range; they have a number of prayers between a half million and $8 million. He stated that he could not give him any specific number.

REPRESENTATIVE ADDY commented that it seems that they have to make a political decision in a legal context or vice versa; and the concern that he is hearing from the opponents is that if we reenact the $300,000.00 limit, that that limit is going to be challenged right away and they will be right back in the same place they are at right now. He wondered if they increased it to $500,000.00 or three-fourths of a million or a million per person, where do they begin to make the risk of their new statute to be declared unconstitutional a very slim one. MR. YOUNG responded that that is a possibility; what he would like to point out is what everyone is talking about here is that the Supreme Court did indicate, in a back-handed sort of manner, and particularly in the nonconcurring and dissenting opinions that the $300,000/$1 million was O.K.; the majority opinion specifically struck it out because they could not reconcile the economic/noneconomic thing and Justice Morrison virtually invited us to bring it back in. He stated that there are some things that you should be aware of - when the case was tried in Great Falls in a hearing in the fall of 1981, the state was not in any kind of a budget crunch that it is in today, which you can find by just reading the newspapers; he pointed out that they paid more money in claims and cases that have matured since January than they have paid in the last six years, so the trend is definitely growing; anytime you have a book of business and claims, it takes four to six years for any of your clients to hit your desk, get through the district court systems on into the supreme court and down, so he would submit that the 144 claims are considerably more valuable than what has been paid out today; in fact, his own figures would indicate

that they are exactly twice as valuable with the old limits, including no liability for pain and suffering or mental distress or emotional affliction. He advised that the state has set aside resources to pay this and the balance has gone from $9 million to $7 1/2 million in the last two months, so if you double our existing reserves for the 144 cases not including what is coming down every day, you are over the amount of resources that the state has set aside and you are now taking money out of the general fund and robbing the programs and that is a decision that they have to make. He thinks the bill is arguably constitutional; he thinks they will be right back in it in the Karla White case and he thinks they will be right back in it in a number of cases. He added some district judges uphold this law and a number of states have upheld it - similar; it is not simply a matter of insurance as has been suggested.

SENATOR TURNAGE said that he thought they should bear in mind that these figures $300,000/$1 million are not new; that is the law that was on the books in 1977; regardless of what figures you put in there - $5 million or $10 million - it is going to be challenged anyway; the court didn't strike the bill down because of the $300,000/$1 million; they would have struck it down if there had been any limit there; they based it on our segregating economic and noneconomic damages from the recovery category; that is what they were doing; and as he pointed out they invited us to bring this back.

He continued that as to insurance coverage, you have to keep in mind that local government are not self-insurers; and local government either has to go bare or buy it; if you raise the limits, it is going to raise the premiums.

MR. THUESON indicated that the proponents of this bill used the same grounds they used before the Montana Supreme Court to justify the current legislation and if the court didn't find a compelling state interest the first time around, they are not going to find a compelling state interest the second time. He stated that

there are two other things you should know about this bill: (1) there is an attempt to make it work retroactively and that is clearly unconstitutional; it can't affect substantive rights retroactively; otherwise, there is another thing you should know about this bill; Senator Towe mentioned that Judge Gulbrandson mentioned something about the government having certain governmental activities - that was the dissenting portion of Judge Gulbrandson's opinion; at least that was not where he was concurring; he was in a dissent there; he was in a minority - that is not the law of Montana; the majority opinion of the four justices is the law of Montana. He stated that it would be clearly unconstitutional because they are using the same grounds to try and justify this legislation as past legislation.

REPRESENTATIVE ADDY asked if anybody has any figures on what the difference would be on a premium for $300,000/$1 million versus $1 million/$3 million. MR. HANSON responded that he talked with the city of Missoula and they told him that they talked to their insurance carrier; currently they are paying $47,000.00; according to what they told him if the limits were increased to $3 million per occurrence and $1 million per claimant, their premium would go to $75,000.00.

REPRESENTATIVE ADDY commented $28,000.00 increase.

REPRESENTATIVE SPAETH said that he would like to ask Mike Young a couple of questions; we were talking about 44 per cent having a specific amount of damages; isn't it true that in the 56 per cent they are just asking for damages and those damages could be considerable as you get closer and closer to trial and probably will be. He stated that it has been his experience that that unspecified damages in the prayer by the time the trial gets closer becomes larger and larger and larger as opposed to being decreased and he asked if this was not the case. MR. YOUNG replied that the 315 cases for which there is no prayer are, of course, bodily injury claims that were filed since 1979 or 1981, when the legislature passed a law saying that claimants could

no longer file these enormous claims for damages with their case, so what you substitute this with is a request for statement of claim after the pleadings are filed and then you get a request in; and in his experience, the request for statement of claims again has 3 to 5 to $10 million and everything that you can possibly throw in the form book on top of it; and it is kind of a meaningless exercize.

CHAIRMAN BROWN asked what the committee's desire is as they are to meet on the floor in two minutes; do they want to be excused and finish or come back depending on what is going on on the floor.

REPRESENTATIVE RAMIREZ indicated that they have caucuses as soon as they go back in, so he thought that they probably ought to go back in.

CHAIRMAN BROWN indicated if that is the case then why don't they stay and if no one opposes, why don't they wait until they know that those caucuses are going on.

The committee agreed.

REPRESENTATIVE HANNAH asked if they were going to do that, was he going to ask all of these people to come back to answer questions at that time. CHAIRMAN BROWN replied that he would like to get the questions and answers over before they break and then go into executive action.

REPRESENTATIVE SPAETH said that he would cut his questions down to just one more question and he would like to direct this to Senator Towe; Representative Addy talked about our committee making a political decision (he thought they were talking about the legislature and since he is a part of that legislature) he does not view this necessarily as a political decision we are making here but we are essentially making a decision that may impact the overall activities of state government and how we function as a legislature; and he requested that he expand on that as political versus functions of

government. SENATOR TOWE replied that he would go back to the provision in the constitution that does say that sovereign immunity can be imposed on a two-thirds vote; and obviously, the people that drafted and got that passed and the people that voted for it contemplated that there would be those situations to allow unlimited liability to state and local government would be just more than they could afford. He thought that there is a real risk that they would grind some government activities to a standstill; how can a community or the organized city of Bear Creek possibly afford ? or Roberts or all of those other towns; how can they afford to have a police department; wouldn't it be much easier if they just simply said, "Hey, if we are going to have to pay $50,000.00 or $100,000.00 a year to get this kind of coverage, let's just not do it; we'll just abolish the police department." and he did not think that is what the citizens have a right to deserve, to ask of us. He felt that we have a responsibility of making the dividing line; he thought they did that in their committee; he was sensitive to that; and he thought the other committee members were sensitive to that; we don't want to just carve out areas and say, "Nothing that the National Guard does can prove any liability" because they can be just as liable and cause just as much harm and damages as anybody else; but, if they put an upper limit on the amount, they can allow everybody to recover, but they can put in some reasonableness on this, the situations of communities and cities .

REPRESENTATIVE RAMIREZ stated that he wanted to ask Mr. Meloy a question on compelling state interest from the constitutional law standpoint, (he doesn't remember the answer to this) and he asked if there was a different standard when the attorney for the state argues a compelling state interest as opposed to when the legislature makes a specific finding as it is going to do in this bill that there is a compelling state interest; in other words, will this carry more weight with the court after a legislative determination as opposed to

just an argument made in the appellate case without any factuary basis. MR. MELOY replied as he understands it the way in which a constitutional argument is made, the lawyer who would be intending to establish a compelling state interest would have to make a factual record upon which the court could make a determination that a compelling state interest did in fact exist; so what the legislature may put in its legislation is helpful only to the extent that it might conform legislative intent to the factual record as established at trial when a compelling state interest facts were put forward by the state; so irregardless of what they put in the bill with respect to why you think this is a good idea, there will still have to be record made in order to support the notion that governments are going to go broke. He thought that is where the test falls.

REPRESENTATIVE RAMIREZ indicated that he wanted to ask a general question, because it seems to him that they have a problem here in that a real compelling state interest is that they do not have any protection right at the moment; and they really do not have any facts upon which to base this decision; he really agrees with Erik that they don't have the facts upon which to base a decision, but they have to do something in the meantime until they can gather the information, if what Mr. Meloy says is accurate - the court isn't going to take our legislative determination of a compelling state interest at its face value and they are still going to look at the underlying facts and they really don't gain much by just saying that we have a compelling state interest; we still have to prove it. He commented that they did not have any kind of evidence here today to speak of, at least in his mind. He suggested and would like their reaction is that he thinks they have to pass something here, but he also thinks they should have some kind of a study - an interim study as suggested to look into this to see if they can tailor this a little bit more to what some of the problems are; he does think

there is a difference between local government and the state; he does think there is a difference in some of these activities, such as the National Guard on maneuvers versus the ordinary operations of the Motor Pool, or something like that, driving automobiles; maybe they should look into it a little more carefully if they are going to be able to hold it before the court; so he would throw that out.

MR. YOUNG responded that they had this same problem going into the hearing; his partner came into him and said, "What am I going to put on there about this compelling state interest question?" and what you have to remember is that most of the law in that area - the other cases out of other states under their constitution - say it is not a compelling state interest problem; that you use a different constitutional standard; that it is not equal protection; it is not due process; you go to ??indigenous article; that was basically the thrust of our case, because when we were looking at that issue, the state had a $50 to $100 million surplus; the Board of Investments was making money hand over fist and they seemed to have a large surplus in our own fund; and they couldn't see that they could do anybody any good by putting that type of evidence into the record. He continued that now he thinks they have an entirely different financial picture for the state and all the local governments today than they had in August or September of 1981; and he guesses it gets down to a fundamental question of, "Is the Supreme Court going to say you have to be bankrupt before you have a compelling interest, is there not some probability?". He felt that from some things that they have seen come into this session with Finance and Claims Committee evidence and House Appropriations and the fight over the pay plan and the fight over the executive budget, $26 million deficits and the financial information that is to be incurred between now and 1985 is an entirely different picture than the state's financial picture was in the last biennium; and that

is what they had to work with at the time and, of course, they were basically arguing their case that it wasn't even a protection issue; so you have before you now the deliberation of all of the finance bills, 447, the building programs and all of your agency budgets; and he thought that they can argue for you that you now have that information; we can put the House Bill 447; we can put the records of the Finance and Claims Committee, House Appropriations, your deliberations on the floor as to state finances and all the debates about surpluses, and if he has to listen all day to Judy Rippingale and report in a three-day hearing that they are going broke, he guessed that is what they will do. He thought that is what they are suggesting; and the Supreme Court did sort of suggest that; but what you are doing with this finding is lending some sort of credence that you understand what you are doing; and he thinks that is one of the common problems you have with the Supreme Court is they have this general notion that bills get passed and legislators don't have any idea what they are doing. He said that to answer Representative Ramirez's question, he did not know if they have to take your findings at face value, but they can take your findings together with what we can put on a demonstrable record and it was difficult to defend that economic/noneconomic business - extremely difficult to defend - he had a devil of a time with it and a number of cases where they had badly burned people who were not working and they really didn't like it either, so he thought they could all live with this; but that is basically where we are; and he hopes that answers their questions.

REPRESENTATIVE RAMIREZ said he had a quick follow-up and he was looking for a quick follow-up answer; the question he has is this; if we pass something (say, this bill, because they have to be protected) do you have enough confidence in your position that you feel that we should ignore this problem for two years until this bill is challenged, or should they go ahead and have an interim study, or look into something, (maybe, an interim study isn't the way to do it) and look into it; and the second part of that is, if we do it that way, will the very fact

that we are looking into it hurt your arguments in trying to . MR. YOUNG replied that his guess would be that they already had one exhaustive interim study and most of the data from that is still fairly valid; their thought is if they felt there was some message being sent to them when the Supreme Court came down with their opinion in the waning days of the session, they took that as meaning they should get something in right now as they could have very easily held this until you went home and then you would probably have wanted to have an interim study. He thought that they would have to make an attempt to treat this as a curative bill and retroactively apply it; and he fully understands the problems with that; they have looked into it; they don't think it is ex post facto; they don't think it impairs obligations of contracts; but they certainly recognize that there is a fight over that on vested rights; and he guessed they have to decide a number of legal questions there on what is a vested right, when it accrues, when it is effective; and the Supreme Court can't, and they have asked them on a petition for rehearing, to apply their ruling prospectively to give you a chance to act; they have also asked them not to apply the rule retroactively, so that it doesn't go back and impair all of these claims. He continued that they had a particular hearing filed Monday morning - yesterday - or whenever - and they haven't heard anything on it; so they are attempting by that means to allow you to do what they are trying to do here.

SENATOR TURNAGE commented that he gets very nervous when you talk about studies; that is obviously going to be an admission against interest; and you are inviting the court to say, "Well, obviously the , hasn't been able to identify; he did not think that would be wise; if you do a study, you better study it specifically on the question $300,000.00 or $1 million, not that there should be a cap, although he agrees on that, but
He contended that the Supreme Court divided on this four to three; and our existing statute is as naked as a jaybird as to a compelling state interest; this

one isn't; even though it may be self-serving, it is still in the statute.

REPRESENTATIVE RAMIREZ asked what is the reserve in the self-insurance fund right now. MR. YOUNG replied that it is about $7.7 million.

REPRESENTATIVE RAMIREZ asked if they were undertaking that study to determine whether they are actuarily sound - do you have adequate reserves. MR. YOUNG responded that they have had two of them and both of them felt that the reserves were adequate, but they both said to throw the studies out the window if they lose this case.

REPRESENTATIVE RAMIREZ said that is what he meant - how long would it take you to find that out in respect to the new proposed bill. MR. YOUNG replied that it is going to require every attorney to evaluate and identify the economic aspects of these 144 cases; we get them in and he does his own and take it off the actuaries and start all over again - it is a whole new ball game.

REPRESENTATIVE RAMIREZ assumed that they had already undertaken that. MR. YOUNG answered that they wanted to wait until their petition for a rehearing was acted on, before they start incurring costs for actuaries.

REPRESENTATIVE HANNAH asked Mr. Young if he said that the decision of the court was substantially influenced by the economic conditions of the state. MR. YOUNG replied that they basically couldn't show that the state was going to grind to a halt financially in the absence of the showing; there was one comment out of context with the rest of the opinion; but that was not

REPRESENTATIVE HANNAH questioned if he thought they were saying a compelling interest then is based upon the economic strength of the state. MR. YOUNG responded that that could be one item; ability to pay is certainly what they are getting at.

There were no further questions and the hearing on this bill was closed.

EXECUTIVE SESSION

SENATE BILL 465

CHAIRMAN BROWN declared that they have time to take care of this bill.

REPRESENTATIVE SPAETH moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE HANNAH.

REPRESENTATIVE ADDY moved to amend the bill on page 6, line 6, where there are limits by striking $300,000 and inserting $1 million and strike $1 and insert $3 so it would be $1 million for each claimant and $3 million for each occurrence. He asserted that he agreed wholeheartedly with Senator Turnage that if they don't pass something here, state and local government are going to be looking at a very difficult proposition for the next couple years; and he also notes that they are imposing sovereigh immunity as our present limits have been declared unconstitutional; so, therefore, it is going to take a two-thirds vote of each house to even get a bill through that is colorably constitutional. He commented that, otherwise, they just haven't done anything; the third thing is that if you are looking at $300,000.00 that is the same limit they had before and they will have the same pressure on that limit from a litigation point of view that they have had before; if they triple those limits, he thought they would divide the pressure of litigation by three, if not geometrically by nine. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE RAMIREZ said that he wanted to tell them exactly where he is because he does happen to have a case against the state, but unfortunately he doesn't think it is worth $300,000.00, but he is a little sensitive about some of these things. He indicated that

if they were talking about a lower limit, he would probably abstain; he is going to vote against this increase, because he thinks it is too high (he is not saying that it is too high from a philosophical standpoint or anything like that) he was just saying they have $7 million in their reserve; they don't have the vaguest idea of what the actuary basis is for the changes that were made; they are really in the dark; it seems to him that the real compelling state interest in all of this is that they are entitled to act on an emergency, which he considers an almost emergency basis, right now, simply because they don't have the time to get together the data to really determine just how this problem should be approached. He felt that it would be disastrous for them to raise the limits to that height; he just did not know that they had any idea of what the consequences would be; so he would have to resist that. He commented that some more modest raise might be appropriate.

REPRESENTATIVE EUDAILY advised that he was going to resist the motion too, because he thinks that they should put it through just as it is in the bill without amending it and take their chances from that point; if they start amending, it will delay the process a little bit; and from what he heard today, he is not sure that the $300,000/$1 million was the critical area that was determined by the court decision; and he thinks they should just leave it the way it is.

REPRESENTATIVE ADDY indicated that the emergency situation is exactly why you want to alleviate the pressure of litigation as much as possible; the argument that Representative Ramirez and Representative Eudaily are making against the amendment are exactly the arguments that are going to be made against the bill in court when it comes up; and he thinks that they aren't dealing with what they would like to do opposed to what they wouldn't like to do; they are dealing with minimizing the risk or reducing the risk as much as possible to local government. He continued on the

merits, too, why is somebody who has suffered a half million dollars in noneconomic or economic damages denied $200,000.00, whereas somebody .....; they are placing the burden on exactly the people who are least able to bear them.

REPRESENTATIVE SPAETH stated that he thinks it is a little deeper question; philosophically he doesn't see any value in changing the limits at this stage of the game on the basis of what Representative Addy has argued; and he thinks what he is saying is there will be less appeals; fewer people challenging it; and thus, maybe for the next two years, it will slip through the crack in the floor; and he doesn't think that is a logical argument for changing it here today; he thought they have to have more substantive arguments than that. He stated that he would beg to differ with him.

CHAIRMAN BROWN advised that he did discuss this with Senator Turnage just briefly before he left; he did not have any great problem with it; he thinks it means the difference between passing or killing this bill; and quite frankly, he would like to vote this bill out of here and the members of the committee to support the bill.

REPRESENTATIVE RAMIREZ asked if he would run that by him again; it is going to make a difference as to whether this bill passes or fails on the floor.

CHAIRMAN BROWN said that he really did not see any sense in going with the same limits that were in the bill when it was first brought down, because it doesn't seem to him that with the language that is put in here is going to make any difference if the court comes back to look at it again; it seems to him that their only chance of making this acceptable and of saving the state some of that liability question is by raising those limits. He stated that if the court throws that out then, there is no recourse that they have.

SENATE JUDICIARY
EXHIBIT NO. 1
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REPRESENTATIVE KEYSER noted that the court didn't necessarily say that the amount was the big hangup, did they; it was the compelling interest.

CHAIRMAN BROWN commented that he can't believe that the economic question is that big of a deal in the court's decision.

A vote was taken on the proposed amendment of Represenative Addy and passed with 10 voting yes and 9 voting no. See ROLL CALL VOTE.

REPRESENTATIVE RAMIREZ said that he did not know if this bill is going to pass with that high a limit; he thought they should be more realistic; he really does; he would like to move to reconsider our action; they have to be more realistic about what they are going to to do with this bill; they don't have much time; he doesn't think the Senate is going to buy that kind of an increase; they don't have any idea what they are doing financially with that increase; they don't even have any idea finanacially with the $300,000/$1 million limit; they have no actuary studies unfortunately; it is a very unfortunate situation; but what you are going to do ....it is true you could force everybody into whatever limits you want to because there probably has to be some limits; but this bill has to get a two-thirds vote in order to pass. He thought he was putting the legislature and the state into a real difficult position, because you put those of us who feel that they cannot afford that limit still in the position of possibly having to vote for it simply because we can't afford not to; and he thought that was really an unreasonable position to put the legislature in.

REPRESENTATIVE ADDY responded that rather than a motion to reconsider we have a bill that says $1/$3 million; and if you want lesser limits, maybe you should move to amend the bill further with lesser limits; if they are going to argue between $300,000/$ 1 million, he thought they would argue until the sun goes down. He said that he realized that people that voted against the amendment are faced with this kind of a choice - how are they going to vote for the bill.

REPRESENTATIVE KEYSER noted that there were a lot of members absent here that didn't even listen to the proposals.

REPRESENTATIVE RAMIREZ said that he thought Representative Addy was right, but what he thinks is unfair is that you are forcing people to vote for something that is, on one hand, almost fiscally irresponsible.

REPRESENTATIVE ADDY replied that fiscally irresponsibility falls on both sides of the argument; and from your view, it doesn't; and from his view, it does. He commented that if Representative Ramirez wants to offer an amendment, offer it.

REPRESENTATIVE JENSEN asked for the question.

There was no further discussion.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE JENSEN seconded the motion. The motion carried with 11 voting aye and 8 voting no. See ROLL CALL VOTE.

The meeting adjourned at 2:22 p.m.

Dave Brown
DAVE BROWN, Chairman

Alice Omang
Alice Omang, Secretary

STANDING COMMITTEE REPORT

April 19, 19 83

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

SPEAKER:
MR. .....

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 465

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE LIMITS OF RECOVERY IN TORT SUITS AGAINST THE STATE AND LOCAL GOVERNMENTS; AMENDING SECTION 2-9-101, MCA; REPEALING SECTION 2-9-104, MCA; PROVIDING FOR RETROACTIVE APPLICABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That JUDICIARY SENATE Bill No. 465

Be amended as follows:

1. Page 6, line 6.
Strike: "300,000"
Insert: "$1 million"

Following: "and"
Strike: "$1"
Insert: "$3"

AND AS AMENDED,
BE CONCURRED IN

~~DO PASS~~

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SB 465 DATE April 19, 1983

SPONSOR SENATOR TURNAGE

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Chip Erdmann	Helena	MT School Bd Assoc	X	
[illegible]	Helena	Dept of Revenue	X	
Alice Stanley	Helena	MT University Sys.		
Lade Goss	Billings	Yellowstone Co. Commission	X	
Alec Hansen	Helena	League of Cities	X	
Thomas E. Lee	Billings		✓	
Turnage	Tolson	Sponsor	✓	
Bill Verwolf	Helena	City of Helena	\	
Mike Stephens	Helena	MT Assoc of Co	+	
Karla Gray	Butte	MTLA		X

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SB 465
4/19/83

AMENDMENTS TO SENATE BILL 465
(Third Reading Copy)

1. Page 2, line 13.
Following: "FUND"
Insert: ". By April 15, 1983, for example, a total of 562 claims and legal actions for damages had been filed against the state and in only 247, or 44%, of these cases has a specific amount of damages been prayed for. Yet the damages prayed for in these cases amount to $83,956,446"

Exhibit B
SB 465
4/19/83

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

CLAIMS INFORMATION -- SENATE BILL 465

The following is a summary of self-insured claims activity against the State since July 1, 1977:

Total claims filed	562 (564)
Total amount - prayed claims	$83,856,446
Total claims - no prayed amount (56% of total claims)	315
Number of active lawsuits	144 (146)
Total claims - settled or dismissed	258
Total reserved losses with 2-9-104, MCA, limits	$ 4,382,684
Total reserved losses without 2-9-104, MCA, limits	Unknown at this time

Outside Counsel Fees by Fiscal Year

FY 78	FY 79	FY 80	FY 81	FY 82
$7,957	$11,999	$57,531	$80,309	$142,140

Total Claims Paid

July 1, 1977 through December 31, 1982	$1,237,558
January 1, 1983 through April 14, 1983	$1,502,961
Total	$2,740,519

WITNESS STATEMENT

Name Erik B. Thueson Committee On Judiciary

Address Great Falls Montana Date

Representing Hoyt & Trieweiler Support

Bill No. SB 465 Oppose ~~SB 465~~

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Meaning of White v. State & related to SB465

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

WITNESS STATEMENT

Name Paul Smith Committee On

Address Boulder Montana Date

Representing Support

Bill No. Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

Name James D Moore | Committee On Judiciary

Address Box 1198, Kalispell | Date 4-19-83

Representing Self | Support

Bill No. SB 495 | Oppose S.B. 495

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Arbitrary Classification.

2. Based on unresolved & inflated claims rather than actual experience.

3. And based upon six year old information & circumstances, respecting available ins. coverage.

4. Works a penalty upon the seriously injured.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

LAW OFFICES OF
HOYT AND TRIEWEILER
P.C., A Partnership
501 SECOND AVENUE NORTH • P.O. BOX 2807 • TELEPHONE 406/761-1960 • GREAT FALLS, MONTANA 59403

John C. Hoyt
Terry N. Trieweiler
Erik B. Thueson
Kurt M. Jackson

Whitefish Office:
233 Second Street
Whitefish, Montana 59937
Telephone 406/862-4597

April 25, 1983

Secretary of the House
Judiciary Comittee
Room 224A
Capitol Building
Helena, Montana 59623

Dear Sir/Madam:

I represent Karla White, who we believe was injured as a result of the government's negligence. In connection with this lawsuit, we need certain documents and electronic recordings pertaining to the House Judiciary Committee's hearing held on April 19, 1983.

Therefore, I have had the Sheriff serve you with a copy of the Subpoena Duces Tecum, which requests that you produce these documents. The law requires that I take your deposition, but it is nothing to get concerned about. Basically, all you have to do is turn over the documents and the recordings requested.

Please give me a call. I will be happy to change the time, place, or even the manner in which you provide the materials we have requested. Let me know what will be convenient for you and I will contact the government's attorney and see if we can work things out.

Feel free to call our office collect.

Sincerely yours,

HOYT & TRIEWEILER

By: Erik B. Thueson
Erik B. Thueson

EBT:gkm

TRIEWEILER
S, MONTANA 59403

2 12 21

Secretary of the House Judiciary Committe
Room 224A
Capitol Building
Helena, Montana 59623

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF CASCADE

* *

KARLA WHITE, Plaintiff,	)	No. BDV-80-836
vs.	)	SUBPEONA DUCES TECUM
STATE OF MONTANA, Defendant.	)	

* *

THE STATE OF MONTANA SENDS GREETINGS TO: Secretary or Custodian of records for the House Judiciary Committee of the Legislature of the State of Montana, Room 224A, Capital Building, Helena, Montana:

YOU ARE COMMANDED, to appear and attend the deposition in the the Courtroom of the Courthouse for Lewis and Clark County, Helena, Montana, on the 2nd day of May, 1983, at 1:00 o'clock p.m., then and there to testify in the above-entitled action, now pending in the Eighth Judicial District of the State of Montana, on behalf of the plaintiff, and that you bring with you and produce, then and there, all documents, of any nature, electronic recordings, of any nature, taken at or pertaining to the House Judiciary Committee's hearing on Senate Bill 465, which took place on the 19th day of April, 1983.

Disobedience of this subpeona will be punished as a contempt of said Court, and you will also forfeit to the party aggrieved the sum of One Hundred Dollars, and all damages which may be sustained by your failure to attend.

WITNESS, the Honorable John M. McCarvel, Judge of the Eighth Judicial District of the Courthouse in the County of Cascade, and the seal of said Court this 25th day of April, 1983.

ATTEST: My hand and seal of said Court, the day and year last above written.

FLORENCE McGIBONEY

By: _____
Deputy Clerk

SHERIFF'S OFFICE
STATE OF MONTANA)
: ss.
County of Lewis and Clark)

I HEREBY CERTIFY, That I received the within Subpoena Duces Tecum on the_____day of_____, 1983, and personally served the same on the_____, day of_____, 1983, on:_____

_____

by showing said Subpoena to and delivering to said person(s) a true copy of same in the County of Lewis and Clark, State of Montana.

Fees - - - - $_____ Helena, Montana,_____

Service - - $_____ 1983,_____,

Copies - - - $_____ Sheriff,

Mileage,
_____miles $_____ By_____
Deputy Sheriff.

Sheriff's
Fee TOTAL - $_____

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 6-26-86
BILL NO. SB-22

Montana Legislative Council

State Capitol
Helena, MT. 59620
(406) 449-3064

April 29, 1983

Mr. Erik B. Thueson
Attorney at Law
Hoyt and Trieweiler
501 Second Avenue North
Great Falls MT 59403

Dear Mr. Thueson:

This letter confirms our converation of April 28, 1983, in which you agreed that the enclosed certified copy of the House Judiciary Committee minutes of the April 19, 1983 hearing on Senate Bill No. 465 would be sufficient in lieu of and in satisfaction of the Subpoena Duces Tecum served on the secretary of that Committee on April 28, 1983, and that you will do all things necessary to quash or otherwise rescind the subpoena.

Sincerely,

Robert C. Pyfer

Robert C. Pyfer
Director of Legal Services

RCP:ee
Enc.
cc: Speaker Dan Kemmis
Alice L. Omang

PYFER/ee/Thueson 4/29/83

4828 Alice L. Omang

CERTIFICATE OF AUTHENTIC COPY

I hereby certify that I was secretary for the House Judiciary Committee, 48th Montana Legislature, that I was present at the hearing before such Committee on Senate Bill No. 465, which took place on April 19, 1983, that I prepared the minutes of such hearing, and that the attached are a true and correct copy of the minutes so prepared.

Alice L. Omang

Alice L. Omang, Secretary
House Judiciary Committee
48th Legislature
April 29, 1983

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 6-26-86
BILL NO. SB-22

TESTIMONY
THE ALLIANCE OF AMERICAN INSURANCE AND THE AMERICAN INSURANCE ASSN.
SENATE BILL 22
SUBMITTED JUNE 26,1986
BY BONNIE TIPPY, ALLIANCE COUNSEL
AND GLEN DRAKE, AMERICAN INSURANCE ASSN.

The Alliance of American insurers supports the intent of this bill. Generally speaking, in almost any state which caps liability limits for governmental entities, lawmakers can expect a loosening in the availability and affordability of liability insurance.

However, we must go on record as cautioning legislators that because of the serious constitutional question in this matter, companies could not be expected to change their current policies without judicial validation of this statutory language.

We most certainly believe that there is a compelling state interest here. This bill does attempt to deal with a very serious problem. If there is no constitutional amendment dealing with this question, this bill would allow the Supreme Court to reconsider its position and thus the insurance industry supports the bill.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

SUBCOMMITTEE ON JUDICIARY

Minutes of the April 17, 1975 Meeting

The organization meeting of the Subcommittee on Judiciary was called to order by Senator Tom Towe, Acting Chairman, in Room 442, State Capitol, Helena, Montana. Members of the subcommittee are: Representatives C.R. Anderson, Herb Huennekens, Earl Lory, and John Vincent; Senators V.E. Cetrone, Glen Drake, Thomas Towe, and Jean Turnage. All members were present except Senator Cetrone. Council staff, assigned to the subcommittee are: Dick Hargesheimer, Researcher, and Woody Wright, Attorney.

Senator Towe advised that nominations for chairman were open. Representative Vincent moved that Senator Towe be nominated as chairman and that a unanimous ballot be cast. The motion was seconded by Representative Huennekens and carried. Senator Towe was elected chairman.

Senator Towe called for nominations for vice-chairman. Representative Lory moved that Representative Huennekens be nominated as vice-chairman and that a unanimous ballot be cast. The motion was seconded by Representative Vincent and carried.

Copies of a summary of the priorities assigned to the subcommittee were distributed. The subcommittee then considered the following priorities:

Priority 1: Judicial Districts. Senator Towe stated that Jim Zion had done a study on the jucicial districts approximately two years ago. He requested that copies of this study be made and distributed to each subcommittee member. He also suggested that the staff update it if an update is needed. The study indicates case loads in each judicial district and is detailed in showing the number of civil and criminal cases, jury and non-jury trials.

The subcommittee discussed possible committees and individuals who might be interested in this study and requested that the following people be notified of the meetings: Senator Mike Greely, Representative John Scully, Montana Bar Association, District Judges Association (district judges), Supreme Court, County Attorneys Association, Clerk of the Courts Association, and the American Judicatory Society. It was requested that letters be sent to the above people advising them of the study and requesting any information or assistance they may be able to provide.

Priority 2: Sovereign Immunity. The subcommittee suggested that the staff contact other states regarding statutes on sovereign immunity and how they handle the problem. Senator Towe also suggested the some of the ideas in the last draft of Senate Bill No. 206 be considered and how other states handle those problems.

The subcommittee requested that Jack Crosser, Director of the

SENATE JUDICIARY
EXHIBIT NO. 3
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Department of Administration, Dan Mizner, and Dean Zinnecker be contacted as well as insurance companies.

Priority 3: Privacy Protection. The subcommittee agreed not to begin working on this subject until later in the interim.

The subcommittee then discussed how their next meeting should be conducted. It was agreed that the next meeting will be a hearing on judicial districts and at that time any interested persons will testify before the subcommittee.

The next tentative meeting date scheduled was September 6.

There being no further business, the meeting adjourned at 8:45 a.m.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

SUBCOMMITTEE ON JUDICIARY

Minutes of the September 6, 1975 Meeting

The meeting of the Subcommittee on Judiciary was called to order by Senator Thomas Towe at 9:00 a.m. in Room 432, State Capitol Building, Helena. All members of the subcommittee were present except Senator Glen Drake.

Also present at the meeting were: Socs Vratis; Judge Robert S. Keller; Judge Gordon R. Bennett; Judge W. E. Dowlin, Montana Magistrates Association; Mike Abley, Montana Justice Project; Judge Robert C. Sykes; John W. Larson; Ken Curtis and Virginia Griffing, Montana Board of Crime Control; Judge Robert J. Boyd; Chief Justice James T. Harrison; Representatives Jim Moore and John Scully; and Tom Maddox, Independent Insurance Agents.

Senator Towe explained that there are three priorities: (1) judicial districting; (2) sovereign immunity; and (3) privacy. The meeting today, he said, would focus upon court districting.

Senator Towe first asked Woody Wright to report briefly on the sovereign immunity study. Mr. Wright referred to his memo dated August 15, which was mailed to the subcommittee, and requested that the following correction be made: page 1, fifth line from the bottom of the page, strike the words "cause of action". Mr. Wright stated that Montana is not the only state that has abolished sovereign immunity. Illinois abolished sovereign immunity but the legislature reinstated it under its constitutional prerogative. Other states have made changes either by judicial decision or from legislative action. The memo distributed is an overview to point out what he considers to be the main alternatives and problems. Material to be presented to the subcommittee for the public hearing will include a history, constitutional convention materials, alternatives as to what can be accomplished under abolition of sovereign immunity, insurance coverage, material as to what other states are doing (constitutional setup), and tentative conclusions and recommendations.

As part of the explanation of the memo, Mr. Wright stated that sovereign immunity is not in effect as one might think from reading the memo. The asterisked material indicates how sovereign immunity was before the new constitution. He considers there are two basic approaches to reinstatement of sovereign immunity: categorical and damages.

In conclusion, matters to be considered are a date for the public hearing; and suggestions from members or persons who would be interested in testifying or who would have materials of importance to the discussion. Written statements from those testifying will be requested.

Senator Towe stated that there may be a larger problem than the subcommittee realized. The next meeting date was tentatively set

for the end of November (public hearing on sovereign immunity).

Senator Towe then asked Mr. Hargesheimer to present his findings and information on Montana's judicial districts. Mr. Hargesheimer distributed copies of his remarks, entitled "Montana's Judicial Districts: Considerations for Improvement and for Future Study", to the subcommittee (Appendix A).

Mr. Hargesheimer suggested that the subcommittee consider legislation to create the office of court administrator. A court administrator could implement a uniform system of statistical reporting; gather and evaluate judicial data on a continuing basis; establish guidelines for determining judicial manpower needs; recommend needed changes to the legislature; be responsible for assigning judges on a temporary basis to congested districts; act as a liaison between the courts, the legislature, and the public; institute a continuing education program for judicial personnel; and many other functions.

Mr. Hargesheimer also suggested that the subcommittee consider the following areas: (1) financing of the court system and the possibility of a centralized budgetary process; (2) a continuing education program for district judges and possible judicial training prior to their assumption to the bench; (3) the impact of the disqualification procedure on judicial workloads; (4) the use and effect of pre-trial conferences; and (5) administrative duties performed by judges that clerks of court could handle.

Mr. Hargesheimer then distributed copies of a letter received from John Van, Clerk of the District Court in Flathead County. This letter points out the problems in gathering accurate judicial statistics (Appendix B). He also distributed a copy of a letter dated September 3, 1975, from Senator Mike Greely, Great Falls. Senator Greely noted several areas in court organization he hoped the subcommittee would consider (Appendix C).

Senator Towe then opened the meeting up to public testimony. Chief Justice Harrison was the first to speak to the subcommittee.

The Chief Justice stated that he was pleased to be contacted and working with the subcommittee. He briefly reviewed the data collected by the Supreme Court in 1972 on district court caseloads. The 1972 survey revealed that 23,387 cases were filed, or an average of 841 cases per judge. The report also showed that 5,137 cases were tried or 188 per judge. Due to the number of questions asked, the survey failed to include an analysis of district court record-keeping. In order to have an accurate picture of court workloads, a uniform system of reporting should be implemented, the Chief Justice said.

Chief Justice Harrison stated that he believes that the only way to find out what is actually going on in court is to study the court minutes. The Anzion-Zion study revealed that in 19 working days a month a judge is in court for 8 days, conducts administrative work for 6 days, researches for 2 days, travels for 2½ days, and has ½

day left for education.

Chief Justice Harrison then showed the subcommittee his proposal for restructuring the judicial system (Appendix D). The Chief's plan would leave judicial district boundaries unchanged. The plan would, however, divide the 18 districts into 8 divisions for administrative purposes. Each of the 8 divisions would have a chief judge who would be elected by the judges in that division. The chief judge would be responsible, among other things, for assigning judges on a temporary basis to congested courts. Each division could also have a court administrator who might perform the tasks of collecting data and assigning judges to particular areas under certain conditions.

The Chief Justice stated that the Supreme Court is making arrangements to hire a court administrator. Elaborating upon his plan (Appendix D), he proposed that within each of the 8 divisions there should be a chief judge -- he could handle the matter of assigning judges around to the various counties in the division. He suggested that the chief judge be elected by the district judges. There would be no additional costs other than perhaps for a secretary or clerk. The chief judge would know schedules of other judges from calendars submitted by them showing their days of free time, law and motion days, calendars, etc. If this suggestion were adopted, the replacement for a disqualified judge could be named by the chief judge.

He also suggested that district lines not be changed so that judges are competing against other district judges. If district lines are changed, there should be a grandfather clause so that it is not effective until the present judge dies, resigns, or retires.

Senator Towe than opened up the meeting to questions. Representative Anderson asked, if under the Chief Justice's proposed plan, the judges have to run in the divisional area (composed of several of the present districts) or would they run in the present individual districts. The Chief Justice replied that he would run from the same district as he does now. The proposed plan would pertain to administrative duties only -- nothing to do with terms, tenure, etc.

Representative Vincent asked whether the Chief's proposal required legislation. Could the Supreme Court establish administrative divisions under its rule-making powers? Chief Justice Harrison replied that he thought legislation would be necessary.

Senator Turnage asked what other duties a divisional chief judge would have in addition to the assignment of judges. The Chief Justice replied that his main function would be to arrange for additional help, if it is needed by a particular judge.

Senator Towe asked what functions a court administrator would handle if he did not handle scheduling. The Chief Justice replied that he could handle training schedules for the justices of the peace, collect statistics, conduct educational seminars and training sessions, plan state judges' meetings, calculate budget needs, audit and approve

judges'claims for travel, and prepare budgetary matters for the legislature.

Senator Turnage asked whether it would be possible to have a court administrator as well as the Chief's proposed plan. Chief Justice Harrison replied that the money is already available for the court administrator and the two ideas would not conflict.

Senator Towe asked whether the subcommittee or the legislature should spell out the qualifications and duties of the court administrator. The Chief replied that he did not think it necessary. The Supreme Court will adopt a rule showing the duties and qualifications when one is chosen.

Senator Towe asked what type of qualifications they were looking for in the court administrator. Chief Justice Harrison replied that they were interested in someone who could do statistical work, had some knowledge of personnel work, and some knowledge of finance. This person would be an employee of the Court directly under the Chief.

Senator Towe than requested comments from the district judges.

First to speak was Judge Robert Sykes, 11th judicial district. Judge Sykes reported that he will submit a written statement at a later date. Judge Sykes reported that in 1960, the caseload for the 11th judicial district was 670 cases, while by 1974 the total number of cases filed was 1,579. Facts and figures show that the number of cases will continue to increase. Judge Sykes also reported that in 1967 there were 25 practicing attorneys in Flathead County while there are now 52 attorneys practicing, two of whom are semi-retired.

Judge Sykes reported that he is attempting to establish a juvenile court workshop, through the Board of Crime Control, for judges, probation officers, law enforcement, and institutional staff. He is also exploring possibilities of establishing a seminar on rural courts in the state.

Judge Sykes reported that in his district there are more cases than two judges can handle. They have attempted to carry out legislative intent; they approve marriage licenses (have required pre-marital counseling); and hope to establish a conciliation court. They are also concerned about ADC.

Judge Sykes strongly urged that an additional judge be appointed to the 11th judicial district. He also stated that there is a need for a court administrator and for the use of magistrates.

Senator Towe thanked Judge Sykes for his testimony and requested that Judge Keller appear before the subcommittee. Judge Keller is also from the 11th judicial district.

Judge Keller stated that he has studied Senate Bill 377 and feels that the only good thing about the bill is the intentions behind it. He and Senator Towe agreed to discuss the problems in Senate Bill 377 at a later date.

SENATE JUDICIARY
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Judge Keller stated that he does not believe in looking at caseloads to determine how busy a judge is. He agreed with the suggestion that an administrator could go from district to district, see what each judge does, and on a continuing basis get a realistic approach regarding the caseload for each district judge. He also suggested that the problem be analyzed from the standpoint of who is doing the job right and how much time is required to do it. As for determining how many judges are needed in the state, this should be determined by the needs of the people and not the needs or caseloads of the individual judges.

Chairman Towe thanked Judge Keller and Judge Sykes for their testimony and opened up the meeting to questions from subcommittee members.

Representative Huennekens asked if there were a regionalization as proposed in Appendix D, and there were "free" judges who could be assigned to the various districts, would this help the situation in Flathead County? Judge Sykes stated that he did not believe it would help the problem looking at it from the economic standpoint. Also, most judges don't like to travel any more than necessary.

Representative Anderson asked if it would be possible to have an attorney act as the judge for certain types of cases. Judge Keller stated that they do not consider cases as individual cases but that they are considered in a block and thus it would not be feasible to assign simply one case. Judge Sykes stated that he believed that regardless of the competency of the attorney, they are not qualified to sit as a judge for particular cases. One additional point to be considered is the cost factor and whether that attorney would be acceptable to the other attorneys to act as judge.

Representative Anderson asked whether the district judges had people hired who were qualified to do research. Judge Keller replied that some judges use interns to do research work but for the most part they do not have anyone.

Senator Towe asked whether the district judges believed the legislature was giving adequate attention to administrative staff of the courts. It was stated that many judges do not have any clerical or secretarial help. Judge Sykes also stated that he felt it important that a behavioral scientist be on the staff of each judge to do the follow-up work required in instances where there are juvenile problems, family problems between parents and children, problems between husband and wife, etc.

Senator Towe then asked whether they felt that these people (secretary, clerk of court, court reporter, and juvenile probation officer) should be paid by the state rather than the county. Judge Sykes said he felt they should be paid entirely by the state or paid on the same basis as the county attorney's office.

Senator Towe asked, that assuming the funds were available, would the concept of magistrates be an answer to the problem (one who would consider criminal arraignments, noncontested divorces, probate, etc.). Judge Keller stated he felt it would be worth considering and might

provide a better quality of justice. However, you would have to consider the financial standpoint of the idea -- whether the state would support and pay for the program as well as the idea that you only get what you pay for.

Senator Towe asked what the district judges thought about including the court administrator in scheduling. Judge Keller stated he felt it would be a good idea if you could call the court administrator to determine which judges might possibly be free and then call that district judge himself. Judge Sykes stated that the law would have to be flexible but that he thought a great deal would depend on the administrator. One would also have to consider disqualifications and whether the administrator or judge should contact a certain judge about a trial. He stated that he believed the attorneys should also have something to say about the judge.

Judge Sykes also stated that he believes the state needs three or four additional judges.

Representative Huennekens asked what was thought of each judge contacting the court administrator and let him call and pick the judge who would sit in. Judge Keller stated that he would have no objections.

Judge Robert Boyd, 3rd judicial district, then testified before the subcommittee. He serves in a rural district composed of three counties. His district also houses three state institutions. Judge Boyd reported that he did not have any problems keeping up with the workload itself until SB 377 was passed. Now however, because of the necessity of holding hearings under SB 377, he envisions having to have judges assigned to his district to help with the workload.

Judge Boyd also suggested that the subcommittee consider the disqualification statute in single judge districts. He feels it denies due process to litigants because it prevents getting a judge into the district within a reasonable period of time. Perhaps we should permit disqualification for actual bias rather than imputed bias. He suggested that in civil proceedings it be cut to one disqualification rather than two.

Judge Boyd also suggested that in reference to the statute which requires a judge to apportion part of the court expenses to the county, he recommended that that be done on a fiscal year basis rather than a calendar year basis.

He also suggested that the clerk of the court not be a separate elected office or position. This sometimes causes more administrative problems and responsibilities for judges. He would rather see the clerk under direct supervision of the court.

Senator Towe asked what Judge Boyd thought of the court administrator and having him do the scheduling. Judge Boyd replied that he was in favor of the court administrator but mentioned that the attorneys should also be considered in scheduling. For that reason, the scheduling should in all probability be left to the judge.

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The meeting was recessed at 12:00 noon and reconvened at 1:30 p.m.

Judge Bennett then testified before the subcommittee. He stated that he felt the only problem with a court administrator would be the fact that they wouldn't know who might serve as chief justice. At this time there would be no problem, but if there were a change, there could be some very bad problems. He said he does believe we need a court administrator in the Supreme Court. Judge Bennett further stated that he thinks redistricting is necessary. He suggested that flexibility be built into the law so that districts could be reapportioned from time to time by the Supreme Court.

Judge Bennett stated that he felt Montana needs fewer judges if judges do judging work. They should not be involved in the welfare, schools, police officers, sheriffs, etc. He noted, however, that judges need some assistance. He proposed that each judge have a clerk (paid from $12,000 to $15,000 per year). He also suggested that the court operations should be funded entirely by the state. Judge Bennett stated that he also thinks some consideration should be given to the disqualification statute -- perhaps a rule could be made that disqualification must be made within fifteen days after filing. He also stated that the system could be made to work better on the principle that you get what you pay for in the administration of justice. You can have an ideal system but it won't work any better than any other system unless you have a high quality of judges. He emphasized that there should be mandatory judge training such as that sponsored through the LEAA. He feels all judges do not take advantage of the educational programs offered; continuing education should be made a requirement of holding the office.

Chief Justice Harrison explained that there are two ways that you can disqualify a judge: (1) the attorney can file an affidavit stating he does not believe that his client can get a fair trial from the judge (this can be done twice); or (2) the judge can disqualify himself.

Chief Justice Harrison stated that his plan for the court administrator is that he would ascertain what judges were available; he would not be concerned about what particular case was being tried.

Mr. Mike Abley, Montana Justice Project, then appeared before the subcommittee. He reported that he is attending the meeting only as an observer but that they hope to incorporate the findings of the subcommittee into their final report.

Ms. Virginia Griffing, Board of Crime Control, appeared before the subcommittee. Copies of a memo from Mike Lavin, Administrator, were distributed to subcommittee members and is attached and made a part of these minutes (Appendix E).

Representative Jim Moore stated that he agreed with previous statements that in order to get a good quality of judge, they must be paid more and that more judgeships should be created.

Representative Scully stated that he believes there is a serious shortage of judges.

Judge Wyn Dowlin, President of the Montana Magistrates Association, also appeared before the subcommittee. Judge Dowlin stated he would recommend that the Supreme Court be given not only an administrator but also a staff for that administrator. He further stated that there are no qualifications for justices of the peace; some trouble results from this because they usually are not a lawyer, and have no bookkeeping or record-keeping experience. The staff of the court administrator could show justices of the peace how to keep their books, how to maintain records, etc.

Senator Towe asked Judge Dowlin what he thought about the magistrates proposal (solve overload problem by allowing judges to select magistrates). Judge Dowlin replied that because the constitution did not abolish justice courts,the ideal method would be to pass a small claims court bill with an attorney-judge for the civil side, and a magistrates bill with an attorney-judge for the criminal side.

Senator Towe complimented Judge Dowlin for the fine work he is doing in attempting to convince people that higher qualifications are needed for justices of the peace.

Senator Towe introduced Dr. Ellis Waldron, University of Montana, to subcommittee members. Dr. Waldron indicated that he is also doing some work on the district judges and would like to coordinate his work with that of the subcommittee. Dr. Waldron reported that by coordinating his work with that of the subcommittee he may be able to get some funding (not from the Council or the state) to complete the work. Representative Lory moved that Dr. Waldron be appointed as Research Consultant to the Subcommittee on Judiciary (judicial districting). The motion was seconded and carried.

Senator Towe then requested that the subcommittee consider the following items in addition to those items noted on the list of tentative issues: (1) state payment for assistance to judges; (2) provision for more clerical help; (3) question of using a roving judge; (4) question of magistrates; and (5) disqualification procedures.

The subcommittee then considered judicial districting and/or creating new district judgeships.

Senator Towe made a tentative suggestion that the subcommittee take the position that they do not want to make major changes in the boundaries of the judicial districts but that they may want to make some minor changes to correct obvious problems at the present time.

Representative Lory stated that he felt the subcommittee should support the idea of the court administrator prior to making any changes in the districts. Representative Vincent also suggested that perhaps it would be better to hold off making minor changes in case major ones are required.

Representative Huennekens moved that the subcommittee recommend that at the present time they find that only relatively minor changes in district boundaries are necessary, and that the subcommittee might recommend that major changes be made after more statistical data is available. The motion was seconded and carried.

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The subcommittee considered the question of the number of judges. Representative Huennekens moved that the subcommittee tentatively conclude that additional district judges appear to be needed. The motion was seconded and carried.

The subcommittee considered the question of the state absorbing the costs of district court operations. Representative Lory moved that support personnel for the district courts, such as court reporter, juvenile probation officer, clerical help, law clerk, and administrative assistant be state supported. The motion was seconded and carried.

The subcommittee then considered the problem of clerical help. Representative Anderson moved that the subcommittee recommend that legislation authorizing and encouraging district judges to make maximum utilization of clerical help and research assistants within their budgetary authority in order to free the judge from non-judicial tasks that could be done by other persons. The motion was seconded and carried.

Senator Towe stated that he felt that the most important thing which could help some of the congested districts is to give judges the authority to appoint a highly trained and qualified person who could sit on minor details that require little judicial decision-making. Representative Huennekens asked if he was referring to a full-time attorney. Senator Towe stated he felt that an attorney would be selected and designated according to the district judge (similar to federal magistrate).

Representative Huennekens asked whether the state would also furnish office supplies, space, etc. Senator Towe stated he would suggest that those items still be paid by the county.

Representative Huennekens moved that the subcommittee recommend authorizing the appointment of magistrates in judicial districts where needed by the district judges to perform such duties as the district judges shall designate and within the budgetary limitations of state appropriations. The motion was seconded and carried.

The subcommittee briefly discussed the disqualification procedure. Senator Towe reported that Judge Nat Allen is presently working on that problem by asking the Supreme Court to rule. No action was taken at this time. The subcommittee requested Mr. Hargesheimer to prepare some information on the background of the disqualification procedure.

The subcommittee discussed the idea of a court administrator. Representative Lory moved that the researcher be authorized to prepare several alternative proposals outlining and delineating both duties and qualifications of a court administrator in consultation with the chief justice. The motion was seconded and carried.

Senator Towe suggested contacting lawyers as to what kind of backlog they have in their individual districts for jury trials and non-jury trials, and the number of attorneys in each district (contact the Bar Association in each county). Senator Towe also stated that he felt the questionnaire on weighted cases does have merit and should

be sent out in a month or so. Representative Huennekens stated he felt the statistics would be of assistance in presenting this entire package to the legislature.

The subcommittee discussed the next meeting and set a tentative date of either November 15 or 22. There being no further business, the meeting was adjourned at 5:00 p.m.

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Appendix A

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MONTANA'S JUDICIAL DISTRICTS:

CONSIDERATIONS FOR IMPROVEMENT AND FOR FURTHER STUDY

Remarks to

the Subcommittee on Judiciary

September 6, 1975

by

Richard Hargesheimer
Montana Legislative Council

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Six months ago the Committee on Priorities accepted the Judiciary Committee's request to study Montana's district court system. Testimony presented to the Judiciary Committee during the 1975 legislative session had indicated that Montana's judicial districts were neither adequately organized nor sufficiently staffed to handle the burgeoning caseloads imposed upon the courts.

The Judiciary Committee's stated objective in studying the district courts was to increase the efficiency of the judicial system. One of the suggested approaches for accomplishing this objective was to study the possibility of reorganizing the judicial districts to account for increases and shifts in caseloads and in population.

RESTRUCTURING THE JUDICIAL DISTRICTS: THE NEED FOR GUIDELINES AND JUDICIAL STATISTICS

A cursory glance at district court statistics for 1966 and 1972 -- the only district court statistics now available -- suggests that Montana's judicial districts are ill-proportioned. In nearly every measurable respect (e.g., population, population density, physical area, caseloads), the judicial districts reflect a wide ranging spectrum. These statistics also indicate that between 1966 and 1972 judicial district populations and caseloads have shifted. In some districts the changes in population and caseload have been rather dramatic.

I hesitate, however, to propose a plan for restructuring the judicial districts based upon the 1966 and 1972 statistics. These statistics, representing total caseload filings, are insufficient measurements for restructuring the district court system, whether the restructuring involves increasing the number of judges or altering judicial boundaries. Too many variables are unaccounted for by these statistics. These statistics do not reveal differences in judge time for various types of cases. These statistics do not reflect workloads, travel time, preparation, administration, etc., etc. While these statistics may <u>suggest</u> the need to change the district court structure, they are unrevealing regarding what changes should be considered.

The importance of adequate and accurate statistics in determining judicial manpower needs cannot be overestimated. Changes ought not to be made in the court structure to increase judicial <u>efficiency</u> until the <u>effectiveness</u> of the existing system is known. And the effectiveness of the present system cannot be determined without adequate statistics. Moreover, statistics must be gathered on a continuing basis. Predicting judicial trends and needs on the basis of two years of statistics is, at best, hazardous.

In order to gather more statistical information, Montana's clerks of court have been asked to complete a questionnaire for the years 1960, 1964, 1970, and 1974. When compiled, this statistical information may provide a basis for establishing caseload trends over the past ten years in Montana's judicial districts.

The value of the statistics gathered from the caseload survey depends, in part, upon the guidelines established as indicators of judicial manpower needs. At present, no authority in Montana has established guidelines that are recognized as indicators of judicial needs. Should adjustments to the judicial system be related to caseload figures? To population? To population density? To district area? To workloads as opposed to caseloads? To a weighted caseload system? Or to some combination of the factors above? Without guidelines, the judicial data collected is almost valueless.

The data being collected is, unfortunately, limited in another respect as well. The survey is not very sophisticated. The survey does not ask (and will not reveal) how much time a judge spends on a particular case, how many hearings are involved in a particular case, etc. The survey suffers from the weakness of lending to all cases equal weight. Not all cases require equal amounts of preparation, courtroom work, travel time, jury time, etc.

The survey suffers because (1) I am not a statistician and (2) because no uniform system of reporting judicial data exists in Montana. And because of (1) and (2) above, the accuracy of the statistics gathered cannot be guaranteed.

A COURT ADMINISTRATOR: BEGINNING THE IMPROVEMENT OF THE DISTRICT COURT SYSTEM

In my preliminary report I suggested that the subcommittee consider legislation to create the office of court administrator. The reasons for this suggestion should be apparent by now.

A court administrator could implement a uniform system of statistical reporting, and gather and evaluate judicial data on a continuing basis. A court administrator could establish guidelines for determining judicial manpower needs. A court administrator could recommend needed changes to the legislature. A court administrator could, under the direction of the Supreme Court, be responsible for assigning judges on a temporary basis to congested districts. A court administrator could act as a liaison between the courts, the legislature, and the public. A court administrator could institute a continuing education program for judicial personnel. A court administrator could perform these and many other functions, all of which would contribute to an increase in judicial efficiency.

Appended to these remarks are some materials relating to the office of court administrator. These materials include the National Advisory Commission on Criminal Justice's and the ABA's recommendations for a court administrator, and the statutues of four states that have court administrators.

COURT FINANCING BY THE STATE

At present, the state of Montana finances the salaries of district court judges. The counties bear the costs of district court operations. Consequently, courtroom facilities, law libraries, clerical [illegible] to county and from district to

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district. A centralized budgetary process for the courts would appear to be more efficient than the present system. A court administrator or other authority could study the issue of state-local court financing and report to the legislature.

OTHER CONSIDERATIONS

The considerations listed below could be considered apart from the court administrator or as functions which the court administrator could be responsible for.

Continuing Education

Few judges receive any judicial training prior to their assumption to the bench. Only a few more can afford the time and the expense of participating in judicial education programs after becoming judges. Provisions should be considered for providing educational materials to judges and for participation in seminars and conferences. In addition, consideration might be given to providing for an annual conference of Montana's district judges; at such a conference, attention could be given to the identification of problem areas and to the establishment of a means to improve the system.

Disqualification Procedure

Further study could be made of the impact of the disqualification procedure or judicial workloads. How many states allow for disqualification? What effect does it have on workloads? Is there any relationship between the lack of use of pre-trial conferences in Montana and the disqualification procedure?

Pre-Trial Conferences

Further study could be made of the use and affect of pre-trial conferences. Are pre-trial conferences archaic or are the pre-trial rules of procedure ineffective? Why are there so few pre-trial conferences?

Administration

Are there any administrative duties performed by judges that clerks of court could handle? (e.g., gun permits)

The areas mentioned above may appear to be relatively minor compared to the considerations of expanding the judiciary and redistricting the district courts. However, these areas may be sources of inefficiency. Improved upon, and taken in the aggregate, these relatively minor matters could contribute to an improvement of the system. In part, the opinion survey to district judges is aimed at these areas.

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MATERIALS RELATING TO THE OFFICE OF COURT ADMINISTRATOR

COMMISSION STANDARDS

I. National Advisory Commission on Criminal Justice Standards and Goals

II. American Bar Association Commission on Standards of Judicial Administration

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NATIONAL ADVISORY COMMISSION STANDARDS

RELATING TO STATE COURT ADMINISTRATION

Source: Taken from the volume, Courts, pp. 176-177.

Standard 9.1--State Court Administrator

An office of state court administrator should be established in each State. The state court administrator should be selected by the Chief Justice or Presiding Judge of the State's highest appellate court, and he should be subject to removal by the same authority. The performance of the state court administrator should be evaluated periodically by performance standards adopted by the State's highest appellate court.

The state court administrator should, subject to the control of the State's highest appellate court, establish policies for the administration of the State's courts. He also should establish and implement guidelines for the execution of these policies, and for monitoring and reporting their execution. Specifically, the state court administrator should establish policies and guidelines dealing with the following:

1. Budgets. A budget for the operation of the entire court system of the State should be prepared by the state court administrator and submitted to the appropriate legislative body.

2. Personnel Policies. The state court administrator should establish uniform personnel policies and procedures governing recruitment, hiring, removal, compensation, and training of all nonjudicial employees of the courts.

3. Information Compilation and Dissemination. The state court administrator should develop a statewide information system. This system should include both statistics and narrative regarding the operation of the entire state court system. At least yearly, the state court administrator should issue an official report to the public and the Legislature, containing information regarding the operation of the courts.

4. Control of Fiscal Operations. The state court administrator should be responsible for policies and guidelines relating to accounting and auditing, as well as procurement and disbursement for the entire statewide court system.

5. Liaison Duties. The state court administrator should maintain liaison with government and private organizations, labor and management, and should handle public relations.

6. Continual Evaluation and Recommendation. The state court administrator should continually evaluate the effectiveness of the court system and recommend needed changes.

7. Assignment of Judges. The state court administrator, under the direction of the Presiding or Chief Justice, should assign judges on a statewide basis when required.

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AMERICAN BAR ASSOCIATION COMMISSION ON STANDARDS OF JUDICIAL ADMINISTRATION STANDARDS RELATING TO COURT ORGANIZATION

1.40 Court Administrative Services: General Principle. The court system should have administrative services to facilitate the making and implementation of administrative policy, including calendar management, selection and management of non-judicial personnel, budgeting, management of auxiliary services, monitoring of court operations through records and statistics, and planning for future needs. The administrative services should be organized into a central office for the court system as a whole and district or divisional offices for each court unit in the system, including the state's highest and intermediate appellate courts. The central administrative office should be primarily responsible for assisting in development of policy, budgeting, development of records systems and statistics, and planning for the court system as a whole. The administrative offices for the individual court units, corresponding to the organization of the court system itself, should be primarily responsible for assisting with calendar management, office and housekeeping operations, and the management of auxiliary services in the courts that they serve.

Commentary

The importance of capable and efficient administrative assistance for an effective court system is second only to the importance of having competent judges. A modern court system is especially dependent on auxiliary staff, because its large volume of business requires that judges delegate as many non-judicial responsibilities as possible. At the same time, the complexity of modern court operations requires that the persons to whom these responsibilities are delegated be able to discharge them efficiently and intelligently. The administrative office is the organization through which this assistance is provided.

The organizational structure of the administrative services provided to the courts should correspond to the organizational structure of the court system itself. Within this framework, basic policy and procedure, financial supervision, and planning should be done from a central point, while direct administration should be delegated to points as close to daily operations as possible. These considerations should define the allocation of responsibilities between the central administrative office serving the court system as a whole and the administrative staffs attached to each operating unit within the court system. Variations should be made according to the particular circumstances in each jurisdiction. Thus, where the primary financial support of the courts of original proceedings is provided by local government, the responsibility for budgeting should be shifted in the direction of the administrative offices serving those courts. Similarly, if the jurisdiction is relatively compact geographically, it may be possible to concentrate direct operating responsibility more heavily in the central administrative office.

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1.41 Court Administrative Offices

(a) Central administrative office.

(i) Executive director. The central administrative office of the court system should be headed by an executive director. The executive director should be appointed by the chief justice with the advice and approval of the judicial council referred to in Section 1.32(a), and should hold office at the pleasure of the chief justice. The executive director should have such deputies, assistants, and staff as may be necessary.

(ii) Responsibilities. Under the authority of the judicial council and the supervision of the chief justice, the administrative office should perform the following functions:

(1) Preparation of standards and procedures for the recruitment, evaluation, promotion, inservice training, and discipline of all personnel in the court system, other than judges and judicial officers.

(2) Financial administration of the system, including budget preparation and administration, accounting and auditing.

(3) Management of the court system's continuing education programs for judges, judicial officers, and non-judicial personnel.

(4) Promulgation and administration of uniform requirements concerning records and information systems and statistical compilations and controls.

(5) Secretariat, including acting as secretary to the judicial council and judicial conference and their committees, arranging meetings of the judiciary, disseminating reports, bulletins, and other official information, and rendering annual and other periodic reports on behalf of the court system.

(6) Liaison for the court system as a whole with the legislature and the chief executive, and with the bar, the news media, and the general public.

(7) Supervision of construction of major physical facilities and establishment of standards and procedures for acquisition of equipment, incidental facilities, and purchased services.

(8) Research and planning for future needs.

(9) Management of the staff of the central administrative office.

(b) Administrative officers for individual court units.

(i) Subordinate court executives. The administrative office of [illegible] individual unit of the court system should have an executive. The exec[illegible] should be appointed by the presiding judge of the court in which he

serves, with the advice and approval of the judges of that court, and should serve at the pleasure of the presiding judge. The executive should have such deputies, assistants, and staff as may be necessary.

(ii) Responsibilities. Under the authority of the judges of the court and the supervision of the presiding judge, the administrative office of each court unit should be responsible for:

(1) Management of the court's calendar.

(2) Administration of all its staff services, including the functions traditionally performed by the clerk of court, courtroom clerks and bailiffs, court reporters, law clerks and secretaries, probation officers, court-affiliated caseworkers, professionals such as doctors and psychologists retained by the court to perform diagnostic or consultative functions, and all other comparable officials.

(3) Personnel, financial, and records administration, subject to the standards of the central administrative office.

(4) Secretariat for meetings of the judges of the court that it serves.

(5) Liaison with local government, bar, news media, and general public.

(6) Management of physical facilities and equipment and the purchase of outside services.

(7) Reporting to and consulting with the central administrative office concerning the operations of the court.

The allocation of responsibilities as between the central administrative office and the administrative offices of individual court units implements the principle stated in Section 1.40. Administrative policy, including such matters as calendaring rules and practices, court records and forms, and statistical reporting procedures, should be established for the court system as a whole through the central administrative office. Lack of uniformity in administrative policy results in differences in treatment of litigants, judges, lawyers, and court personnel from one place to another. It also makes it difficult or impossible to compare the operation of one subordinate court unit with another within the system, and on that basis to make adjustments that may be required for balanced efficiency. Lack of uniformity in matters of records, forms, and statistics may make it impossible to obtain any reliable information concerning the operation of a particular court within the system. At the same time, decentralized administration of daily operations improves the opportunity for making decisions and adjustments quickly and with full appreciation of the relevant facts. It also reduces paper work and administrative formalities.

Between them, the central office and the subordinate administrative offices should assume responsibility, under the direction of the judiciary, for the administrative aspects of all operations of the court system. In certain functions, the administrative staff should serve an assisting role to the judges and judicial officers, who must themselves actually perform the functions involved. These include all functions that entail the exercise of judicial discretion and judgment and all administrative tasks that cannot effectively be delegated to persons who are not judges. In the latter category are calendar management, the assignment of judges and judicial officers within the courts themselves, and maintaining relationships between the judiciary and the co-equal legislative and administrative branches. In the performance of these functions, the administrative and clerical staff should help prepare and present the information, the proposed or possible courses of action, and the supporting analyses, on the basis of which the judges carry out their responsibilities.

With respect to other administrative functions, the administrative staff should have direct responsibility for their performance, under the supervisory authority of the judges who have administrative charge of the court unit that is involved. These functions should be performed by staff personnel and not judges because such an arrangement conserves scarce judicial time and energy, and because in many instances staff personnel can be obtained with training and experience which enables them to do a better job than judges can. In this connection, it should be noted that neither legal training nor the professional experience of most people who have been in the practice of law develops any special skill or insight into the problems of managing and coordinating the work of others. Functions of this distinctively administrative character include personnel matters, finance, court housekeeping, maintenance of court records and information systems, the various tasks of a secretariat, assisting with outside liaison, and conducting research and planning in relation to court operations. No court system can operate efficiently unless these vital tasks are performed by a competent and well-managed staff of administrators, non-legal professionals, and clerical and supporting personnel.

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SELECTED STATE STATUTES

I. Iowa

II. Idaho

III. Kansas

IV. Utah

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IOWA COURT ADMINISTRATOR

Source: Code of Iowa, 1975, Vol. II.

COURT ADMINISTRATOR

685.6 Court administrator appointed. There is hereby established the position of court administrator of the judicial department. The court administrator shall be appointed by the supreme court and shall hold office at the pleasure of such court.

The court shall fix the compensation of the administrator and the employees of the office. The supreme court is authorized to accept federal funds to supplement the funds appropriated to the court. [C58, 62, 66, 71, 73,§685.6; 65GA, ch 2,§3]

Referred to in §685.10
Federal funds appropriated, 66GA, ch 2,§4

685.7 Assistants. The court administrator, with the approval of the supreme court, shall appoint such assistants as are necessary to enable him to perform the powers and duties vested in him. While holding such position, neither the court administrator nor his assistants shall practice law in any of the courts of this state. [C58, 62, 66, 71, 73,§685.7]

Referred to in §685.10

685.8 Duties. Under the direction of the supreme court the court administrator shall be the administrative officer of the court and in addition his duties shall be to:

1. Collect and compile statistical and other data and make reports relating to the business transacted by the courts;

2. Collect statistical and other data and make reports relating to the expenditure of moneys for the maintenance and operation of

3. Obtain reports from clerks of court judges and magistrates, in accordance w... law, or rules prescribed by the supreme ... as to cases and other judicial business in wh... action has been delayed beyond periods ... time specified by law or such rules, and m... report thereof;

4. Examine the state of the dockets of ... courts and determine the need for assistan... by any courts;

5. Make reports concerning the overload... and underloading of particular courts;

6. Make recommendations relating to ... assignment of judges where courts are in ne... of assistance;

7. Examine the administrative methods ... ployed in the offices of clerks of courts, ... tion officers, and sheriffs, and mak... mendations regarding the improvement of same;

8. Formulate recommendations for the ... provement of the judicial system with re... ence to the structure of the system of ... their organization, their methods of opera... the functions which should be perform... various courts, the selection, compen... number, and tenure of judges and ... cials, and as to such other matters as the ... justice and the supreme court may direc...

9. Attend to such other matters as m... assigned by the chief justice and the supr... court. [C58, 62, 66, 71, 73,§685.8]

Referred to in §685.10

685.9 Co-operation of court officers. ... judges, district associate judges, judicial ... istrates, reporters, clerks of court, pro... officers, sheriffs, and all other officer... and local, shall comply with all requ... made by the court administrator ... sistants for information and statisti... bearing on the state of the dockets ... courts, the progress of court bus... such other information as may reflect ... ness transacted by them and the ex... of moneys for the maintenance and o... of the judicial system. [C58, 62, 66, ... §685.9]

Referred to in §685.10

685.10 Courts affected. Sections ... to 685.9 apply to the supreme court ... district court. [C58, 62, 66, 71, 73,§685.10]

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IDAHO COURT ADMINISTRATOR

Source: Idaho Code.

1-611. Administrative director of courts—Appointment by Supreme Court—Term—Compensation.—There is hereby established the office of the administrative director of the courts of the state of Idaho. The Supreme Court shall appoint and fix the compensation of the administrative director, he to devote his full time to the duties of such office and to serve at the pleasure of the court. [1949, ch. 93, § 1, p. 168; am. 1967, ch. 39, § 1, p. 61; am. 1974, ch. 14, § 1, p. 300.]

Comp. leg. U. S. U. S. C., tit. 28, §§ 601-604.

1-612. Duties of administrative director.—The administrative director, acting under the supervision and direction of the Supreme Court, shall:

(a) Procure data from time to time and as of the close of each calendar year with respect to these matters: the business transacted by the various courts of Idaho; the state of their dockets; the needs, if any, for assistance to expedite the handling of judicial business pending in the courts; and such other matters as, in the judgment of the Supreme Court, bear on the work and the administration of the judicial system of the state.

(b) Report to the Supreme Court from time to time concerning the need for assistance in the handling of pending business in any court of Idaho, and recommended means for meeting the need.

(c) Report to the Supreme Court and the governor for each calendar year, as of the close of the year, concerning the data procured as provided in (a) above and as to the work of the administrative director's office, one (1) copy of each report to be made public by filing with the clerk of the Supreme Court, one (1) to be furnished to the board of commissioners of the Idaho state bar, and one (1) to the legislative counsel; and report to the Supreme Court on these data at such other times as may be requested by the chief justice.

(d) Examine the administrative and business methods and systems employed in the offices of the judges, clerks and other officers of the courts related to and serving the courts, and make recommendations to the Supreme Court for improvement.

(e) Formulate and submit to the Supreme Court recommendations for the improvement of the judicial system. [1949, ch. 93, § 2, p. 168; am. 1967, ch. 39, § 2, p. 61; am. 1974, ch. 14, § 2, p. 300.]

Sec. to sec. ref. This section is referred to in § 1-614.

IDAHO COURT ADMINISTRATOR

SENATE JUDICIARY
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Source: Idaho Code.

1-611. Administrative director of courts—Appointment by Supreme Court—Term—Compensation.—There is hereby established the office of the administrative director of the courts of the state of Idaho. The Supreme Court shall appoint and fix the compensation of the administrative director, he to devote his full time to the duties of such office and to serve at the pleasure of the court. [1949, ch. 93, § 1, p. 168; am. 1967, ch. 39, § 1, p. 61; am. 1974, ch. 14, § 1, p. 300.]

Comp. leg. U. S. U. S. C., tit. 28, §§ 601-604.

1-612. Duties of administrative director.—The administrative director, acting under the supervision and direction of the Supreme Court, shall:

(a) Procure data from time to time and as of the close of each calendar year with respect to these matters: the business transacted by the various courts of Idaho; the state of their dockets; the needs, if any, for assistance to expedite the handling of judicial business pending in the courts; and such other matters as, in the judgment of the Supreme Court, bear on the work and the administration of the judicial system of the state.

(b) Report to the Supreme Court from time to time concerning the need for assistance in the handling of pending business in any court of Idaho, and recommended means for meeting the need.

(c) Report to the Supreme Court and the governor for each calendar year, as of the close of the year, concerning the data procured as provided in (a) above and as to the work of the administrative director's office, one (1) copy of each report to be made public by filing with the clerk of the Supreme Court, one (1) to be furnished to the board of commissioners of the Idaho state bar, and one (1) to the legislative counsel; and report to the Supreme Court on these data at such other times as may be requested by the chief justice.

(d) Examine the administrative and business methods and systems employed in the offices of the judges, clerks and other officers of the courts related to and serving the courts, and make recommendations to the Supreme Court for improvement.

(e) Formulate and submit to the Supreme Court recommendations for the improvement of the judicial system. [1949, ch. 93, § 2, p. 168; am. 1967, ch. 39, § 2, p. 61; am. 1974, ch. 14, § 2, p. 300.]

Sec. to sec. ref. This section is referred to in § 1-614.

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EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

KANSAS COURT ADMINISTRATOR

Source: Kansas Statutes Annotated.

JUDICIAL DEPARTMENT REFORM ACT (1965)

20-318. Judicial department created; division of state into six sections; departmental justices assigned; position of judicial administrator created; appointment, compensation, authority and duties of administrator. There is hereby created within the state of Kansas, a judicial department for the supervision of all district courts in the state of Kansas. The chief justice, along with the other justices of the supreme court, shall immediately, upon the adoption of this article, divide the state into separate sections, not to exceed six (6) in number, to be known as judicial departments, each of which shall be assigned a designation to distinguish it from the other departments. A justice of the supreme court shall be assigned as departmental justice for each judicial department.

There is created hereby, the position of judicial administrator of the courts, who shall be appointed by the justices of the supreme court to serve at the will of the said justices. Compensation of the judicial administrator shall be determined by the justices, but shall not exceed the salary authorized by law for the judge of the district court, including any other compensation which the judicial administrator may be drawing from the state of Kansas. The judicial administrator shall be responsible to the supreme court of the state of Kansas, and shall perform such duties as are provided by law or assigned him by the supreme court. Expenditures from ap-

propriations to district court judges and stenographers shall be made on vouchers approved by the judicial administrator. All claims for salaries, wages or other compensation to be paid from appropriations to district court judges and stenographers shall be certified as provided in K. S. A. 75-3731 by the judicial administrator.

It shall be the duty of the judicial administrator to cause clerks of district courts of this state, to submit full reports on all causes pending in each district court in this state, on, or before the first day of January of each year, and the said judicial administrator shall analyze and study such reports and determine what districts courts are in the need of additional judges to assist the said courts, so that the litigants of this state shall receive just, speedy, and inexpensive determination of all causes pending in the respective courts throughout the state. Within a reasonable time thereafter, it shall be the duty of the judicial administrator, under such rules and regulations as shall be promulgated, or adopted by the supreme court, to notify the chief justice in writing, of all causes pending which are at issue and cannot be tried because of accumulation of business, or for other reasons cannot be tried speedily, and such chief justice shall immediately upon receiving said report summon a conference of the justices, and assign such cases to some other judge of a district court or call in for assistance any retired judge of a district court or justice of the supreme court qualified by law to try the said case. [L. 1965, ch. 215, § 1; L. 1973, ch. 132, § 1, July 1.]

Cross References to Related Sections:

Appointment of appraisers by judicial administrator of certain real property to be purchased by state, see 75-3043a.

Law Review and Bar Journal References:

Cited, article concerning delay in the courts, George S. Reynolds, 12 W.L.J. 12, 21, 22 (1972).

CASE ANNOTATIONS

1. Act does not violate any provision of Kansas Constitution. State v. Schroeder, 201 K. 811, 823, 443 P.2d 284.

2. Act mentioned, written report required by rule No. 126 not filed in contract action. Dudley v. Patrick, 212 K. 772, 773, 512 P.2d 442.

20-319. Same; powers and duties of departmental justices; reports and information. (a) A justice assigned to each department [illegible] district courts in his department, and make report and recommendations thereto, to the chief justice.

(2) Assemble the judges of the district courts within his department, at least once yearly, to discuss such recommendations and such other business as will benefit the judiciary of the state, and when so summoned the judges of the district courts in the various departments shall attend such conferences at the expense of the state. Such judges shall be entitled to their actual and necessary expenses while attending such conferences, and shall be required to attend the conferences unless excused by the departmental justice for good cause.

(b) Departmental justices shall have authority within their said department to assign any district judge, to hear any proceeding or try any cause in other district courts. An departmental justice may request the assistance of any district judge from another department if such are available to aid in the trying of any case within his department if no judges are available within his department.

(c) The departmental justices shall supervise all administrative matters relating to the courts within their department, and require such reports periodically, covering such matters and in such form as the supreme court may determine on any such matter which will aid in promoting the efficiency, or the speedy determination of causes now pending, and shall have the power to examine the dockets, records, and proceedings of any courts under their supervision. All judges and clerks of the several district courts of the state, shall promptly make such reports and furnish the information requested by any such justice or judicial administrator, in such manner and form as may be prescribed by rules adopted by the supreme court. In each judicial district presided over by more than one judge, the departmental justice shall assign to the presiding judge such duties as are necessary to carry out the intent of just, speedy and inexpensive litigation for the litigants of the state. [L. 1965, ch. 215, § 2, June 30.]

Law Review and Bar Journal References:

Mentioned as combating delay, George S. Reynolds, 12 W.L.J. 12, 22 (1972).

20-320. Same; duties of chief justice; records and report. The chief justice shall analyze and study such reports as are submitted to him and promptly [illegible] many thereof and the recommendations of the judicial departments and judicial districts, and shall receive a copy of all [illegible]

dations to be filed as public record in the office of the clerk of the supreme court and shall, at the beginning of every legislative session, submit a written report to the governor of the state, and to the judiciary committees of both houses of the legislature. [L. 1965, ch. 215, § 3; June 30.]

Law Review and Bar Journal References:

Mentioned as combating delay, George S. Reynolds, 12 W. L. J. 12, 22 (1972).

20-321. Same; rules and regulations; assistants. The chief justice of the supreme court and each judicial department justice shall adopt such rules and regulations as they may deem necessary to carry out the provisions of this article, and shall assign such duties and shall appoint such assistants to the judicial administrator as they deem necessary, to promptly and efficiently carry out the intent of just, speedy, and inexpensive litigation for the litigants of the state. [L. 1965, ch. 215, § 4; June 30.]

Law Review and Bar Journal References:

Mentioned as combating delay, George S. Reynolds, 12 W. L. J. 12, 22 (1972).

20-322. Same; name of act; citation. This act shall be known and may be cited as the "judicial department reform act of 1965." [L. 1965, ch. 215, § 5; June 30.]

CASE ANNOTATIONS

1. Act does not violate any provision of Kansas Constitution. State v. Schroeder, 201 K. 811, 823, 443 P. 2d 284.

20-323. Same; act supplemental to existing laws. This act shall be construed as supplemental to existing statutes pertaining to the selection or appointment of a judge pro tem of the district court. [L. 1965, ch. 215, § 6; June 30.]

CASE ANNOTATIONS

1. Act does not violate any provision of Kansas Constitution. State v. Schroeder, 201 K. 811, 823, 443 P. 2d 284.

20-324.

Revisor's Note:

For rules of the supreme court relating to judicial administration, formerly appearing under this section number, see 60-2701 (Rule No. 14).

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UTAH COURT ADMINISTRATOR

Source: Utah Code Annotated.

78-3-23. Administrator of the courts—Appointment—Qualifications—Salary.—The Supreme Court shall appoint a chief administrative officer of the council who shall have the title of the administrator of the courts and shall serve at the pleasure of the council and/or the Supreme Court. The administrator shall be selected on the basis of professional ability and experience in the field of public administration and shall possess an understanding of court procedures as well as of the nature and significance of other court services. He shall devote his full time and attention to the duties of his office, and shall receive a salary equal to that of a district judge.

History: C. 1953, 78-3-23, enacted by L. 1973, ch. 202, § 6.

Compiler's Notes.

Laws 1973, ch. 202, § 6 repealed old section 78-3-23 (L. 1967, ch. 222, § 7), the title of the Court Administrator Act, and enacted new section 78-3-23.

78-3-24. Administrator of the courts—Powers, duties and responsibilities.—Under the general supervision of the chief judge and within the policies established by the council, the administrator shall have the following powers, duties and responsibilities:

(a) Organize and administer all of the nonjudicial activities of the courts,

(b) Assign, supervise and direct the work of the nonjudicial officers of the courts,

(c) Implement the standards, policies and rules established by the council,

(d) Formulate and administer a system of personnel administration, including in-service training programs,

(e) Prepare and administer the district court budget, fiscal, accounting and procurement activities, and assist city and justices' courts in their budgetary, fiscal and accounting procedures,

(f) Conduct studies of the business of the courts, including the preparation of recommendations and reports relating thereto,

(g) Develop uniform procedures for the management of court business including the management of court calendars,

(h) Maintain liaison with the administrator of the juvenile courts, governmental and other public and private groups having an interest in the administration of the courts,

(i) Establish uniform policy concerning vacations and sick leave for judges,

(j) Establish uniform hours for court sessions throughout the state and may, with the consent of the chief judge and with the consent of retired justices of the Supreme Court, or retired judges of the district, juvenile or city courts, or an active juvenile or city court judge, call said judge

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to serve temporarily as a district judge and fix reasonable compensation for such services.

(k) Schedule trials or court sessions and designate a judge to preside at said trials or court sessions.

(l) Change the county for trial of any case if no party to such litigation files timely objections thereto.

(m) Assign judges within courts and throughout the state, and reassign cases to judges, and

(n) Perform other duties as assigned to him by the chief judge, or council.

History: C. 1953, 78-3-24, enacted by L. 1973, ch. 202, § 7.

Assignment of judges.

City judge assigned as district judge was not judge pro tempore and parties were without power to limit the cases he could hear. State v. McGee, 24 U. (2d) 396, 473 P. 2d 388.

78-3-25. Assistants to administrator of the courts.—The administrator of the courts, with the approval of the chief judge or council, shall be responsible for the establishment of positions and salaries of such assistants as are necessary to enable him to perform the powers and duties vested in him by this act.

History: C. 1953, 78-3-25, enacted by L. 1973, ch. 202, § 8.

78-3-26. Courts to provide information and statistical data to administrator of the courts.—The judges, clerks of the courts, and all other officers, state and local, shall comply with all requests made by the administrator or his assistants for information and statistical data bearing on the state of the dockets of the courts and such other information as may reflect the business transacted by them and the expenditure of public moneys for the maintenance and operation of the judicial system.

History: C. 1953, 78-3-26, enacted by L. 1973, ch. 202, § 9.

78-3-27. Annual judicial conference.—(1) There shall be established an annual judicial conference for all courts of this state, the purpose of which shall be to facilitate the exchange of ideas among all courts and judges and to study and improve the administration of the courts.

(2) The administrator of the courts and the administrator of the juvenile courts, under the supervision and direction of their respective council and board, shall be responsible for the planning and supervision of the conference.

(3) All elections provided in this act shall be conducted during the conference except the initial elections if said conference is not held within sixty days from the effective date of this act.

History: C. 1953, 78-3-27, enacted by L. 1973, ch. 202, § 10.

Appropriation.

Section 11 of Laws 1973, ch. 202 provided: "There is appropriated to the council out of the general fund the sum of $134,085 for the [illegible] fiscal year. These [illegible] judicial council, the office of the administrator of the courts, and the judicial conference established herein."

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APPENDIX B

RECEIVED
SEP 5 - 1975
MONTANA LEGISLATIVE COUNCIL

OFFICE OF THE
CLERK OF THE DISTRICT COURT
FLATHEAD COUNTY
KALISPELL, MONTANA 59901

755-5300
PHONE ~~752-4281~~
BOX 897

JOHN VAN
CLERK
BLOSSOM WHITE
CHIEF DEPUTY
MARGARET FARRIS
DEPUTY
MAMIE RUTLEDGE
DEPUTY
LYNNE MILLER
DEPUTY
LAURIE REPNAK
DEPUTY

Dick Hargesheimer
Lesgislative Researcher
Montana Legislative Council
Helena, Montana 59601

Dear Mr. Hargesheimer:

I have completed the attached survey of judicial district caseload filings as requested by you. I have a number of reservations in submitting the survey as it does not reflect the workload of either my office or the district judges. In looking at the survey one would wonder what people are talking about in wanting to establish additional judicial districts, changing the present ones or adding additional judges.

I do not mean to criticize the survey, yourself, nor try to imply anything, but I do feel there should be an explanation. The number of cases tried in any given year does not show a true picture of the actual workload. I feel that out of the various 56 counties you are going to get a number of different interpretations. There were hundreds of actual trials which I did not report as they were handled as ex parte matters. There were hundreds of others which I did not report as a trial, yet many of these matters took hours and even days to hear. They were such things as criminal pre-sentence hearings, orders to show cause relative to support or custody, evidentiary hearings, revocation hearings on criminals, citations, writs, aftermath hearings such as modifications of divorce decrees, dependent and neglected children, juveniles or adoptions.

Another item which was not reported under pre-trial conferences was demurrers, motions and oral arguments. Many of this type of hearings are heard between the attorneys and the judges prior to a pre-trial conference just getting a case in condition to be tried. Countless other cases are settled as a result of these hearings and never come to trial.

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Under domestic relations I included divorces, annulments, separate maintenance, custody, support and dependent and neglected children. Some of the counties may not have reported the same type of cases and listed them under matters not otherwise classified.

I have personally spent many, many days in Court in which we have handled up to seven or more divorces, a number of debt actions, quiet title actions, many probates, two or more criminal arraignments and while many of these are actually trials, none will show up on the survey as they were done under law and motion. Twice in the past two months one of my deputies has come to work at 8:00 a.m., put in her eight hours and has then been asked to stay and clerk a trial or hearing and both lasted until midnight. Othertimes I have clerked a single trial which has lasted a number of days, yet is only classified as one trial having been held.

I do not show us having held any criminal trials other than jury trials. Normally, in the event of a "guilty" plea there is no trial. There is, however, a pre-sentence hearing in aggravation or mitigation of sentencing. In the event of a "not guilty" plea there is a jury trial held.

Another item I feel I should mention is that cases which have been filed over a number of years are those which are trial during a certain year. In other words, cases which are filed in 1970 are tried in a later year. There can be a number of attorney conferences in one particular case which are held over a number of years and the case is settled through pre-discovery work.

In Flathead County each of the two district judges orders all of his inactive cases brought up on a show cause order relative to dismissal. Those cases are either brought current, show excusable cause or are dismissed for lack of prosecution. I would say that we are as current as any county in the state in any category except probates - I feel we are probably ahead and more current in this department. Countless hours are spent between the judges and attorneys working on a particular case which will not be shown as an attorney's conference or pre-trial conference as the attorneys just show up and ask for the judge's help.

In conclusion I know that I can seldom pass the Courthouse at night without seeing lights in one or both judge's chambers. As president of the Montana Association of Clerks of Court I know from traveling throughout the state, talking with fellow clerks and other judges that we are all busy with an ever increasing workload.

Respectfully submitted,

John Van

JOHN VAN
Clerk of the District Court

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86 APPENDIX C
BILL NO. SB-22

The Big Sky Country

MONTANA STATE SENATE

SEN. MIKE GREELY
DISTRICT NO. 20

COMMITTEES.
STATE ADMINISTRATION, CHAIRMAN
JUDICIARY
BUSINESS AND INDUSTRY
RULES

BUSINESS ADDRESS
409 STRAIN BUILDING
GREAT FALLS, MONTANA 59401
PHONE: 761-7300

September 3, 1975

Senator Thomas Towe, Chairman
Sub-committee on Judiciary
c/o Dick Hargesheimer
Montana Legislative Council
State Capitol
Helena, MT 59601

Dear Chairman Towe:

Since I will be unable to attend the public meeting on Montana's Judicial Districts scheduled September 6, 1975, I would appreciate your committee considering this letter as written testimony.

As you know, I was instrumental in defeating proposed legislation to increase the number of judges and the number of judicial districts in the State of Montana during the last legislative session. I am confident that this sub-committee will prepare legislation which will address itself to the current problems. I would hope that your recommendations would include and consider the following:

1. The first priority is to develop a system for gathering judicial statistics, now and in the future. This should include a court administrator statewide, preferably under the guidance and direction of the Supreme Court. He should have direct contact with the Clerks of Court and compile information monthly concerning the number of cases filed for each district and/or county, both criminal and civil, the type of case, e.g. felony burglary, divorce, adoption, personal injury, etc., the disposition of each case concluded that month and the nature of the judgment or conviction.

2. The judicial districts should be reapportioned according to population and case load. Probably there should be fewer districts than 18, and more judges per district.

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3. Your sub-committee should contact the Montana Justice Project and coordinate your efforts with that of the Court's Task Force, whose chairman is District Judge Paul Hatfield. In this regard, since I am the chairman of the council and project, I will continue my efforts and communication between our two groups.

4. There should be a number of district judges appointed under current Montana law who would be available to hear cases in any part of Montana. This would include original jurisdiction and the taking of jurisdiction in cases where a district judge is disqualified by an attorney or who disqualifies himself. These judges should be assigned with the approval of the Supreme Court on the recommendation of the Court Administrator. The number of these judges will depend upon the need and the success of reapportionment. These judges could be specialists, such as the current Worker's Compensation Judge, a juvenile judge, criminal law judge, a family judge, etc.

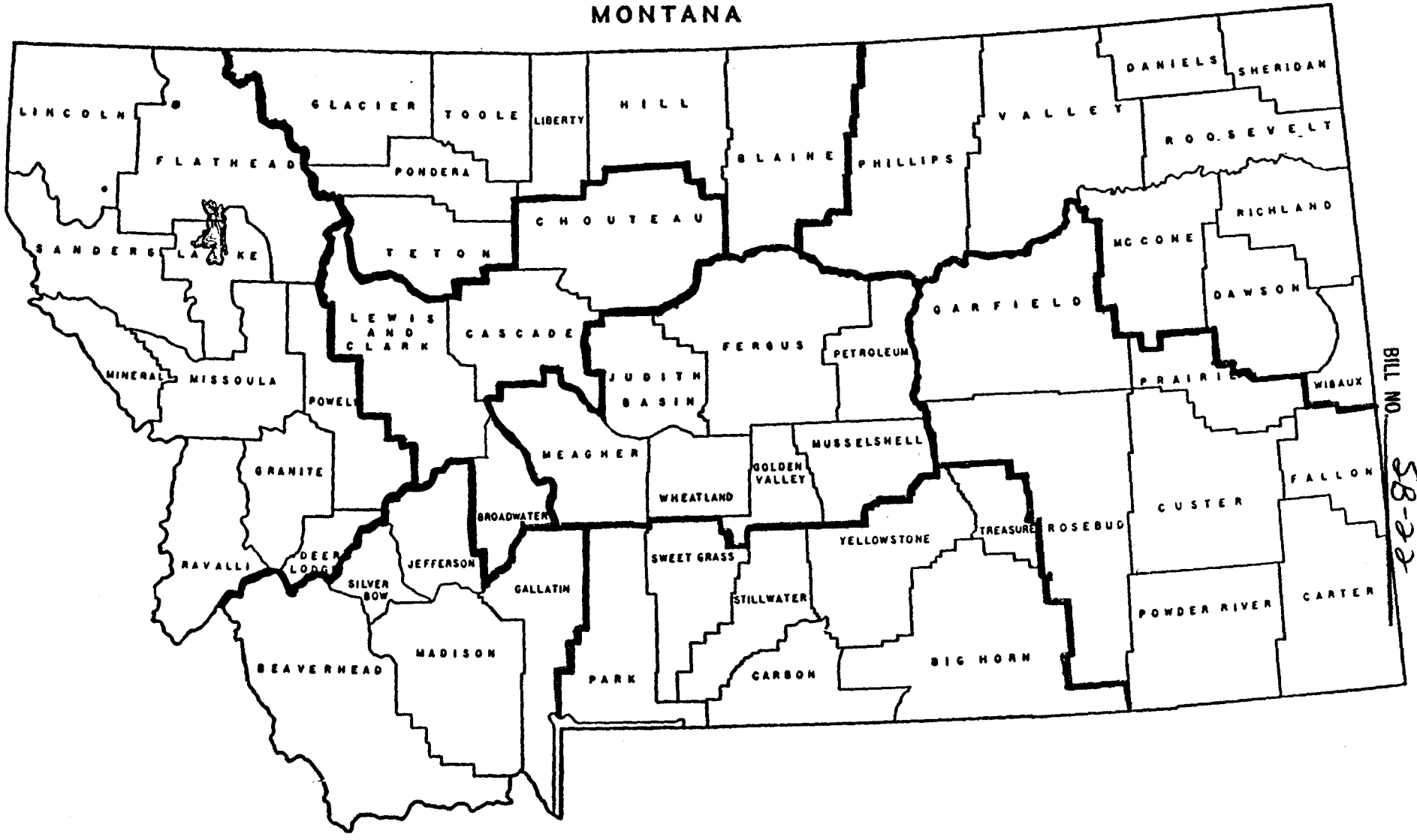
5. In addition to the above problems, your committee may want to consider what administrative responsibilities each district judge should have. Should the district judges be required to hire, fire and set the salaries for such persons as probation officers, court reporters, juvenile probation officers and clerks of court?

These suggestions are offered for the purpose of consideration during your deliberations. I hope to be available at your future meetings to discuss these in detail and answer any questions you may have. Your consideration of this testimony is deeply appreciated and I look forward to reviewing the information and conclusions arrived at by your committee prior to the next legislative session.

Very truly yours,

Senator Michael T. Greely

MTG/md



No. 1050 — County Outline Map

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APPENDIX D

APPENDIX E

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

BOARD OF CRIME CONTROL
1336 HELENA AVENUE
HELENA, MONTANA 59601
TELEPHONE NO. 449-3604

September 5, 1975

IN REPLY REFER TO:

TO: Dick Hargesheimer
Montana Legislative Council Staff

FROM: Michael A. Lavin
Administrator

SUBJECT: Testimony of the Montana Board of Crime Control to the Public Hearing on Montana's Judicial Districts Conducted by the Subcommittee on the Judiciary of the Legislative Council, September 6, 1975.

Certain areas touched on by the tentative issues outlined in the agenda for the public hearing on Montana's judicial districts are of significant and ongoing interest to the Montana Board of Crime Control (MBCC). Among those areas are issues II, III, and IV -- i.e., the collection of judicial statistics in Montana, a description of MBCC activities in the courts area, and the possible functions of a court administrator or coordinator. Our subsequent discussion in these areas follows the numbers and letters of tentative issues as these were framed by the Subcommittee in preparation for the hearing.

The MBCC is concerned about the scope of the study as it relates to the juvenile justice system in Montana. It appears that this aspect of the district court system was ignored by the preliminary report. The committee should be aware of the juvenile justice system and the impact redistricting would have on this system.

II. *Judicial Statistics in Montana*

A. How can the collection and analysis of judicial statistics be improved.

As far as we can determine, there is no systematic collection and analysis of judicial statistics in Montana. We see a need for such collection and analysis from the MBCC viewpoint in order to be able to provide intelligent and meaningful assistance to the judicial branch and to prosecutors and defenders in their individual and joint efforts to improve the quality of the administratio of criminal justice in Montana.

If a decision should be made that court data collection and analysis would serve the interests and needs of the judiciary and citizenry of Montana, then, of course, a uniform reporting and record-keeping system would be required, as would a central office (probably that of a court administrator or coordinator) and staff, including a professional statistician.

The MBCC is currently in the process of implementing a Juvenile Probation Information System that will provide accurate caseload, dispositional, and demographic information on the juvenile court population.

B. What kinds of statistics should be collected?

Statistical data that might be collected should include, but not be limited to: filings and dispositions, monthly backlog, time periods between major steps in adjudication, judges' weighted caseload, continuances, sentencing, appeals, jury and witness utilization, release information (such as bail, release on own recognizance, etc.), and court facilities and personnel.

III. *What is the Montana Board of Crime Control doing in relation to district courts?*

The existence and continued functioning of the Montana Board of Crime Control, and that of similar agencies in the other states, reflects the concern of Congress, of the Department of Justice, and of the membership of the Montana Board and its regional advisory councils in the improvement of the administration and effectiveness of criminal justice at the state and local level. To that end, we engage in a cooperative effort with citizens, elected and appointed officials, and professional law enforcement personnel in allocating available federal funds and technical assistance in the general areas of law enforcement, courts, and corrections. Our budget is divided into broad funding categories for programs and projects designed to assist in providing manpower, training and education, equipment, facilities and services to each of the three areas in the criminal justice system mentioned above, including courts. Our "courts" area encompasses the entire judicial branch plus all criminal prosecution and defense operations.

Currently, projects funded by the Board of Crime Control and activities of the Board's staff specifically related to the operation of district courts include the following: funding for the yet-unfilled position of Courts Coordinator; financing of training sessions and conferences, both local and out-of-state, for judges; funding of law interns for some judges; the improvement of some physical facilities and equipment for courtrooms; the financing of the production of a code of rules of evidence for Montana courts; funding the publication of a handbook on uniform procedures for clerks of district courts; the collection and analysis of certain information from clerks of courts in regard to caseload and disposition of criminal cases; an initial examination of court-related expenditures by counties and districts; and funding for the development of a statewide Juvenile Probation Information System.

IV. A *Court Administrator*

A. Should Montana have a court administrator?

As noted in passing above, the Board of Crime Control has awarded a grant to fund the position of a Courts Coordinator who is to be appointed by the Chief Justice of the Montana Supreme Court. It is anticipated that some of the functions of this office would be similar to those of a court administrator.

B. What duties should a court administrator have?

This subcommittee has no doubt availed itself, by means of testimony or otherwise, of the recommendations as to duties of a court administrator made by the District Judges' Association in connection with its resolution to the Montana Supreme Court requesting the establishment of such a position. These recommendations encompass many of the standard duties of a court administrator. In addition to those mentioned in the DJA resolution, some functions of a court administrator which should be considered include: (1) the design of uniform courts information and record keeping systems; (2) the collection and analysis of courts data; (3) research into and evaluation of the administrative needs of Montana courts; (4) liaison with public and press in regard to judicial administration; and (5) administrative duties with respect to juvenile courts.

Respectfully submitted,

BOARD OF CRIME CONTROL

Mike Lavin
Administrator

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

SUBCOMMITTEE ON JUDICIARY

Minutes of the November 22, 1975 Meeting

The meeting of the Subcommittee on Judiciary was called to order by Senator Thomas E. Towe at 9:15 a.m. in Room 432, State Capitol, Helena, Montana. All members of the subcommittee were present except Senator Gene Cetrone.

Also present at the meeting were: A.W. Kamhoot, Rosebud Treasurer, representing Rosebud Co., City of Forsyth, and School District No. 4, and County Hospital Association; Michael Young, Executive Branch, State Government; B. Dean Holmes, Mayor of Miles City and Third Vice-President, League of Cities and Towns; Edward Mares, Montana Association of Counties, Helena; Al Meyers, Lake County Commission; Ray Conger, Independent Agents Association of Montana; Arnold C. Kerenning, Independent Insurance Agents Association of Montana; Tom Maddox, Independent Insurance Agents of Montana; Robert Borland, City Council, White Sulphur Springs; John G. Eamonds, City Council, Hamilton; Duane W. Reagan, Victor School District; George Rummel; Chad Smith, Montana School Boards Association; Harry Elliott, Pondera County Commissioner, Jim Beck, Department of Highways; and Dan Mizner, League of Cities and Towns.

Senator Towe explained that the primary purpose of the meeting would be to consider testimony on sovereign immunity and that the subcommittee would also briefly consider judicial districts.

Senator Towe then asked for the report from Dick Hargesheimer on judicial districts. Mr. Hargesheimer reviewed his progress report on judicial districts. Copies of this report were issued to subcommittee members. Mr. Hargesheimer suggested the subcommittee may want to consider several ideas: (1) the issue of establishing an office of court administrator; (2) the possibility of changing judicial boundaries; (3) the feasibility of a magistrate system and the position of the clerk of court; and (4) the procedure for allowing for disqualification of judges. Senator Towe requested that Mr. Hargesheimer keep in mind any obvious changes that should be made in district boundaries. Mr. Hargesheimer stated that he would wait until the other survey has been completed before considering any boundaries.

Senator Towe then asked Mr. Wright to give his presentation on sovereign immunity.

Mr. Wright distributed copies of two letters received: (1) a letter received from the Hartford Insurance Company; and (2) a letter from the Montana Trial Lawyers Association. A copy of these letters is attached and made a part of these minutes (Appendices A and B).

Mr. Wright then reviewed his preliminary report with the subcommittee which included: (1) history and practice prior to 1972;

(2) constitutional convention, new provision and amendment;
(3) alternatives of specifically providing sovereign immunity, including no immunity, immunity based upon traditional categories, immunity from certain types of damages, and a worker's compensation type system for tortious governmental actions.

Senator Towe distributed copies of letters from Mr. Eugene Mack, Superintendent of Schools in White Sulphur Springs and from the Office of the Attorney General. A copy of these letters is attached and made a part of these minutes (Appendices C and D).

Mr. Mike Young, Office of the Governor, testified before the subcommittee. A copy of his remarks are attached and made a part of these minutes (Appendix E). Mr. Young stated that he would also like the subcommittee to consider immunity for two additional items: punative damages and torts by state employees. Mr. Young further reported that at present the insurance company, the Department of Administration, and Attorney General's office are all concerned with the settlement and negotiation of a claim and suggested that perhaps this could all be under one agency. He stated that in 1973 the state paid about $315,000 for comprehensive general liability, errors and omissions, and personal injury; this did not include automobile liability insurance. In 1974, the combined costs (including automobile) was about $356,000. The company that was covering the state then discontinued that coverage and the state now pays approximately $1 million dollars per year for coverage (including automobile). The state is presently covered by Glacier Assurance Company in Missoula.

Senator Towe opened the meeting up to discussion.

Representative Huennekens asked that if the subcommittee does adopt the proposed revision for SB 206, would the Department of Administration favor it. Mr. Young replied that the department originally proposed SB 206; however, it does attempt to use the discretionary ministerial function which he does not believe is constitutional for Montana.

Representative Huennekens asked if the statutes presently provide coverage to state employees. Mr. Young replied that section 82-2324 immunizes the state employee from personal liability and also requires the governmental entity to be joined and to pick up the costs of legal fees and bear the judgements.

The subcommittee discussed the proposal by the Department of Administration. Senator Turnage suggested that the Department of Community Affairs or Department of Administration see what could be done to gather information on local governments.

Mr. Dan Mizner, Montana League of Cities and Towns, testified before the subcommittee. He reported that his office has prepared a questionnaire for cities and towns inquiring about liability insurance, premiums charged, preference as to whether the legislature should reinstate sovereign immunity, whether the state should carry an umbrella type insurance and whether local governments should participate under that type of insurance, or if city and

towns should carry self-insurance with a limited immunity. He reported that 126 cities had been sent the questionnaire with 76 reporting to date. Statistics were compiled on the 76 reports, copies distributed to subcommittee members and reviewed.

Mr. Duane Holmes, Mayor from Miles City, then testified before the subcommittee. Also in attendance with him were Dell Borg, Dick Tobin, Don Hart, and Tom Clark, President of the Montana Association of Insurance Agents. Mr. Holmes distributed copies of his remarks to subcommittee members. A copy of those remarks are attached and made a part of these minutes (Appendix F).

Senator Towe asked how Mr. Holmes felt about the proposal previously discussed with Mr. Young -- that of a state self-insurance system which municipal governments could join if they so wanted. Mr. Holmes replied he would favor it if the city were given the option to join (depending on whether it would be to their benefit).

Senator Towe asked whether he favored a reinstatement of sovereign immunity which has been abolished. Mr. Holmes replied that the city of Miles City does not favor a reinstatement -- they believe some limitations on judgments to be much wiser than sovereign immunity.

Mr. Robert Borland, City Council of White Sulphur Springs, testified before the subcommittee. A copy of Mr. Borland's remarks are attached and made a part of these minutes (Appendix G).

Mr. John Eamonds, City Council of Hamilton, testified before the subcommittee. He stated he disagrees with the idea of the government going into the insurance business and believes cities the size of Hamilton would be better off carrying their own insurance. Some of the problems encountered by removing sovereign immunity as far as Hamilton is concerned is that it has forced a raise in limits on liability which is now 26% higher than the previous year.

Mr. Jim Beck, Department of Highways, testified before the subcommittee. Mr. Beck distributed copies of his remarks to subcommittee members. A copy of those remarks is attached and made a part of these minutes (Appendix H).

Mr. Edward Mares, Montana Association of Counties, testified before the subcommittee. Mr. Mares distributed copies of his remarks to subcommittee members. A copy of those remarks is attached and made a part of these minutes (Appendix I).

Senator Towe asked if Mr. Mares felt the counties were more interested in the amount of judgments or types of claims presented. He replied that he felt counties are concerned about both.

The subcommittee recessed for lunch and reconvened at 1:30 p.m.

Mr. Al Meyers, Lake County Commissioner presented a statement to the subcommittee. A copy of that statement is attached and made a part of these minutes (Appendix J).

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Mr. Chad Smith, Montana School Boards Association, testified before the subcommittee. He stated that the school board association recognizes the dilemma being considered and concurs in the viewpoint that there should not be a calloused attitude on the part of government. They are concerned about questions of who should pay, what they should pay, and how much they should pay. It is obvious to school districts that they are not in a position to self-insure themselves since they cannot develop any type of reserve nor can they recuperate from a large judgement. They do not see any solution by going to a state type fund. They are not alarmed about the situation as it exists up to now but they are concerned as to what would happen if a large judgment were imposed against them.

Mr. Smith stated that he has advised the School Boards Association to research all avenues of insurance and to insure against eventuality as they see it. It is difficult to determine on the basis of coverage what is governmental and what is proprietary. They do feel a dollar amount limitation would be a good idea. They would not be favorable toward a statewide liability fund unless it was shown that there will be areas that the insurance companies would not or could not cover. Three hundred thousand dollars would seem to cover almost any type of claim brought.

They also feel consideration should be given against exemplary or punitive damages -- damages should relate to real loss of litigant. They don't believe a workman's compensation type system will solve the problem either.

Senator Towe asked how they felt about a state self-insurance plan that would be available to local governmental units. Mr. Smith replied they would be interested in it only if they found they could not get coverage or for lack of competition in the field; however, they would rather not have a statewide fund.

Mr. Duane Reagan testified before the subcommittee. He stated that he feels schools need some protection of sovereign immunity. He also thinks the subcommittee should consider the position of school boards and teachers and the position they would be in if they were pressed with a law suit.

Mr. Art Kamhoot testified before the subcommittee. He is presently a county commissioner from Rosebud County and also served in the Constitutional Convention. During the convention, the majority of the delegates felt government should be responsible for what they do. He feels government is people and they should not have the direct power over what an employee may do. He then presented some figures on Rosebud County: In 1975 the county paid $13,467 for liability insurance; $7,070 in 1974; and $5,054 in 1973, on a million dollar liability policy -- there have been very few increases in the units added to it.

Mr. Kamhoot then read a letter to the subcommittee from the city council of Forsyth. The biggest concern in Rosebud Co. now is the operation of their hospital. It is owned by the county but leased

to a hospital association. He read a letter from the hospital board expressing their concern in regard to professional liability insurance that covers the operation for their hospital and nursing home. They presently operate without medical malpractice insurance because of the great financial cost.

Mr. Kamhoot also reported that the liability has increased three-fold over the past three years for Powder River County. He suggested introducing some law that has been on the law books for the past year and does not blame the insurance companies for increasing their rates.

Mr. Harry Elliott, Pondera County Commissioner, testified before the subcommittee. He stated that he agrees with Art Kamhoot. The concern of elected officials is great because of their broad exposure in carrying out duties mandated by state level government. He stated that they are also faced with the problems in having a county hospital.

Chairman Towe opened the meeting to testimony from the insurance industry. First to testify was Mr. Ray Conger, chief counsel for the Public Risk Management Council which was hired to provide risk management services to the state of Montana. A copy of Mr. Conger's remarks are attached and made a part of these minutes (Appendix K).

Mr. George Rummell, Independent Insurance Agent from Hamilton, testified before the subcommittee. A copy of Mr. Rummell's remarks are attached and made a part of these minutes (Appendix L). Mr. Rummell also stated that he feels that in talking about setting up an insurance department for the state, it is impossible to visualize the enormous cost in setting it up as well as making it actuarially sound. Representative Anderson asked whether the cost of liability insurance for ranchers and farmers has seen the same rise as that for state, county, and city government. Mr. Rummell replied that there has been some increase in their rates but it is due to inflation more than it is due to the problems of liability.

Mr. Tom Maddox, Independent Insurance Agents of Montana, spoke to the subcommittee. He stated that the Association of Retired Persons is also very interested in this subject and offered to provide any further resource material to the subcommittee.

Senator Towe asked whether the problems the state has encountered in trying to negotiate with an insurance carrier for 1975-76 will again be encountered and whether the insurance industry can be depended on. Mr. Conger replied that he felt that it was an unusual situation which arose because of the passage of the constitution. He also feels the passage of the constitution gives a broader type of insurance coverage which should be considered in looking at the increase in premiums. Prior to passage of the constitution, liability insurance was written for premises (slips and falls), operations incidental to the operation of the county, and vehicles. After the passage of the constitutional amendment, all operations were added, professional liability.

errors and omissions, employer's liability, all employees of the entity were listed as additional insureds, completed operations, and generally an umbrella liability policy. Because of these increased coverages, it caused a raise in the premiums for entities.

Senator Towe asked that of all areas opened up because of no sovereign immunity, which area is most expensive to the state. Mr. Conger replied that professional liability (engineers, lawyers, doctors, hospitals and institutions) are the most expensive.

Mr. Reagan stated that he also is subject to additional liability because of the extra functions which are held in the schools (school activities, church organizations, Boy Scouts, adult education, etc.). Senator Towe replied that these examples would be covered by the regular building policy which is carried by the school district and would not in any way be effected by sovereign immunity.

Mr. Louie Forsell, Chief of the Legal Division for the State Auditor, testified before the subcommittee. He stated that he feels the legislature can restrict the types of suit that can be brought against the state (for instance, punitive damages, pain and suffering, mental anguish, wrongful deaths, intentional tort, and a situation where an agency is following what appears to be a valid statute).

Senator Towe opened the meeting to comments and suggestions which need further research.

After testimony by all the witnesses, the subcommittee decided that they wanted to give the Legislative Council staff enough guidance that they could come up with some draft legislation for the next subcommittee meeting.

Representative Huennekens felt that the first thing to be decided is are we going to produce a bill with limited sovereign immunity something like the shopping list in the proposed version of 206. He asked if we were going to have any limited sovereign immunity, or go back to blanket immunity.

Senator Drake moved that the subcommittee exclude the Workmens' Compensation type approach to sovereign immunity. The motion was seconded and carried.

Senator Towe then opened the meeting to discussion of the pre-1972 type arrangement of sovereign immunity.

Senator Towe suggested that there be two areas of limitation: (1) the operation of government discretion - immunity for any executive, legislative, or judicial officer who was exercising discretion and that discretion is directly related to the function of his government (discretion exercised at the highest level), and (2) protecting agencies who are acting by direction of a statute considered valid at that time. With those two items then go a

limitation of damages. He felt that the subcommittee should look at 100% recovery of damages - all doctors' bills, all wage losses and all services that must be compensated that weren't otherwise paid for. The Senator said that at that point then we can look at limiting recovery for other types of injury (generally a $50,000 limit on every type of intangible loss), but that we should eliminate all punitive damages.

Senator Towe then stated that there was another area that the subcommittee might want to consider and that was the situation of state insurance.

The subcommittee discussed whether liability limits could be imposed by the legislature. The question was raised whether it was unfair practice to limit those suits against the state as opposed to e.g., the Anaconda Company.

The subcommittee concluded that the legislature does have the power to do so, the state of Washington has such a policy.

Senator Towe stated that if we can prohibit recovery altogether and that is clearly allowable under the equal protection clause, it seems to be clear that we can limit the amount of recovery.

Diana Dowling stated that the words "unless specifically provided" refer to immunity of suit. We are not immune from suit unless specifically provided which means we can provide the cases when we are immune from suit. She felt that the subcommittee was not doing that by setting a ceiling on a suit.

Senator Drake stated that unless otherwise unconstitutional we would have a prerogative to put a limitation on all suits and there was that possibility.

While some members felt that there would have to be some type of limitation put on to protect the state, Senator Towe believed this not to be the case, except in the case of policy making decision when immunity should take effect. Once the decision has been made, however, and someone is injured because of negligence, the state should be just as liable for that action as the next person.

Senator Towe stated that he was afraid of the definition of "high level" and should not have immunity at that level if it is based on negligence or willfulness.

The question was raised whether the Legislature was immune from negligence. Woody was asked about the background for his report and his statement that liability did not apply when it actually interferes with the function of government. He explained that this was personal and he held that view based on the "Daylight Case" the first Supreme Court decision on what discretion was, which stated that government has the right to govern and included in that is that the Legislature may legislate - judiciary may judge - and the executive may use some form of discretionary act. Based on that and based on the fact that Montana has no case law on that

subject then his conclusion that certain legislative, judicial and executive acts were not included in that concept.

The Kent State Case was discussed and Senator Towe pointed out that the Governor of Ohio was not immune from negligence when he called out the National Guard, therefore, if that high a level of a discretionary act may constitute negligence, and if a Governor can be negligent then certainly the legislature can be negligent too.

It was agreed by the subcommittee that when there was willful wrong or negligence then it should be compensated even at the highest level decision except for legislative and judicial.

Senator Turnage then moved to preserve the right to recover for negligence or intentional wrong except in situations which arise out of an act or omission of an employee exercising due care in the execution of a statute or regulation, whether or not the statute or regulation is valid, and except claims against the legislature and the judiciary. The motion was seconded and carried.

Senator Drake then noted that passage of this last motion shouldn't preclude consideration of the rest of the "laundry list". The consensus was that this would not preclude consideration of other immunities.

Representative Huennekens moved to reinstate immunity from punitive damages. This passed unanimously. Representative Huennekens explained that punitive or exemplary damages should be eliminated in the case of a sovereign because you are really not punishing the state and that is the purpose of punitive damages.

Discussion was held about an individual committing the tort and whether he should still be held liable for the tort and the consensus was that he should be held so liable.

Senator Turnage said he felt that the consensus of the subcommittee was that Plaintiff should recover for economic loss and damages but could not recover special damages, such as, pain and suffering, that there should be no limit on the recovery for hospital bills, work loss, property damage or replacement services.

Representative Lory made that into the form of a motion that, subject to definitions, the bill should provide for complete recovery for economic loss.

Then the subject of intangible loss was discussed. The subcommittee discussed putting a limit on the amount that may be recovered for intangible loss. Senator Drake said that the limit should be per injury and not per occurrence. Because if you ended up with a case where many many people were injured, and you had a limit per occurrence, each person would get very little.

Senator Turnage stated that we should look into limiting each claim.

It was the consensus of the committee that pain and suffering awards are a problem. Senator Turnage moved that the bill eliminate recovery for pain and suffering, loss of consortium and other similar general damages, i.e., loss of reputation, emotional distress, etc. They asked that the researcher look into the possibility of spelling out the various general damages that should be included.

The subcommittee felt that for all practical purposes there should be no recovery at all for any intangible damages.

On the motion to provide for no recovery for intangible damages - Huennekens abstained, Vincent and Towe voted against it and all others voted for.

Then there was a request that the researcher look at all alternatives, i.e., research the fact of looking at a ceiling in certain cases rather than bar all recovery. Representative Vincent said that he wants something done on establishing limits, and wanted information from other states as to the various types of suits against the government and what types of limits are established in other states.

Senator Drake noted that if we provide for a ceiling on certain actions we must modify the original motion that all economic loss would be recovered and the original motion would be modified that all economic loss up to a certain dollar amount would be compensable and so moved. This passed unanimously.

It was requested that the researcher get some information on what would be a logical ceiling on economic loss.

Representative Lory moved that we put an overall limit per person and per occurrence in the bill. Representative Vincent said that he had problems with this concept in that if actual costs were more than the limit, this didn't seem fair to the person who was injured.

Senator Drake suggested that we insert a provision in the bill that those kind of cases would be reviewed by the legislature or by the executive or county commissioners, etc.

Senator Turnage suggested that one possibility in coming up with a limit would be to find the average earnings for the average lifetime and see what we come up with. Senator Turnage also noted that we needed to come up with a realistic ceiling figure in order to cut insurance premiums.

Representative Lory's motion was discussed and it was pointed out that it did not include property damage. It was strictly personal injury.

Senator Turnage moved that a limit be investigated, an all-over occurrence limit with appeal to the legislature, county, commissioners, city council, etc. Senator Turnage said that we should also investigate the state having a higher limit than local government. This motion passed unanimously.

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Representative Huennekens asked if a researcher could find out what effect the federal tort claims limit has on attorney's fees and look into the possible limitation of attorneys' contingency fees. This passed unanimously.

The subcommittee next discussed self-insurance.

Senator Drake stated that he was opposed to establishing another state agency although right now we "self-insure" for $25,000, but that in reality that is merely a deductible and the insurance company does the investigating and the state reimburses up to the amount of the $25,000 deductible.

The subcommittee questioned whether or not the state needed statutory authority to set up contingency funds. They were under the impression from Mr. Young's earlier testimony that some sort of authority might be needed or it might need to be clarified.

It was discussed that if the state pays their own claims do we need to set up a state agency to handle it. The subcommittee was against setting up a new state agency. Senator Towe pointed out the possibility of no insurance company covering the state next year.

Representative Huennekens asked whether all discussion thus far included subdivisions, counties, cities, towns, etc. It was the opinion of the subcommittee that they were so included.

Senator Turnage pointed out that in relation to counties, the bill shouldn't say that they should be able to levy a tax but should have an option to issue bonds and should contain the things that Mr. Congers mentioned in his testimony, that is: prohibit sale of real property to satisfy a judgment, put a maximum limit on the mill levy, prohibit interest on a judgment, and provide that the counties or cities cannot execute on a judgment.

The subcommittee reiterated that they wanted draft language of a bill prepared before the next meeting on sovereign immunity.

Senator Towe then stated that he would like to request the Legislative Council that the subcommittee hold a hearing on privacy at a February meeting while waiting for the council researcher to come back with a good job done on sovereign immunity and on the judicial districting study.

Representative Marks, Chairman of the Legislative Council, was present at the meeting and responded that it appears this subcommittee has several more meetings just to consider sovereign immunity and that the Council had decided in the past that the first and second priorities must be finished before the third priority is considered.

Senator Towe again reiterated that the subcommittee wouldn't be having any meetings for 2-3 months because there was no staff member assigned to the sovereign immunity study since Mr. Wright had left the Council and Mr. Hargesheimer had stated that it would

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be some time before he would be able to put all of his statistics together.

Mrs. Dowling pointed out that there would be no staff member available for a hearing on privacy as that was the problem with the other studies. Senator Towe responded that the subcommittee would need only someone to send out the meeting notice. The subcommittee could use his report on privacy because he had done much background work and he didn't feel the subcommittee needed a staff report on privacy.

The subcommittee agreed to request the Legislative Council for an additional meeting on privacy. A tentative date of February 21 was set for the privacy hearing if it is ok'd by the Council, barring any other conflicts such as with the Code Committee hearing.

Senator Drake suggested that a rough draft of today's proposal be made and sent out to all the people who testified today and invite them for further comments. He asked that a draft report be ready in January so that people could come back in February. Mr. Wright said that it would not be possible to get a draft report out that soon.

Representative Huennekens moved that the subcommittee request the Legislative Council to reconsider their prior decision and allow the subcommittee to hold a meeting on privacy in February. The motion passed without objection.

The meeting adjourned at 6:10 p.m.

Stephen I. Martin
Assistant Vice President

Hartford Plaza
Hartford, Connecticut 06115

THE HARTFORD

November 14, 1975

Mr. F. W. Wright
Staff Attorney
Montana Legislative Council
State Capitol
Helena, Montana 59601

Dear Mr. Wright:

Re: Montana Tort Claims Legislation

Our response to your inquiries merely reflects our views and should not in any way be construed as a commitment to provide a market. We can assess our willingness to provide a market only in a context in which the total operating environment is known to us, and then only on an individual risk basis.

1. The applicable Montana law, Chapter No. ~~58~~ 380, Laws of 1973, should be amended as follows:

   a. Strike Section 7 (1) and Section 8 in their entirety, and amend subsection (2) of Section 7 to read:

      "Section 7. The limits of liability, the amounts of insurance, and all terms and conditions of the insurance provided shall conform to the specifications provided by the department of administration."

      Limits of liability and the terms and conditions of the policies should be left entirely to the discretion of the risk manager (the department of administration). The latter's comprehensive insurance plan can be developed to meet both the needs of the state and the exigencies of the private market. By permitting the widest possible latitude to the risk manager, the latter's professional expertise in consultation with the private market should be able to tailor a plan which will assure the highest desired degree of private market participation. The present statutory strictures appear to have given the private market

great pause, yet those strictures do not appear to be essential from the standpoint of the state's interests. In any event, the risk manager should be relied upon to develop a plan which best meets the state's needs both in terms of desired acceptability to the private market and cost to the state.

b. In Section 3, strike "in amounts not less than the minimum specified in Section 7 of this act. See reasoning above.

c. Amend Sections 18 and 19 to read (new material underlined, omitted material bracketed):

"Section 18. The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any uninsured claim allowed by this act [, subject to the terms of the insurance, if any].

"Section 19. The department of administration may compromise and settle any uninsured claim allowed by this act [, subject to the terms of insurance, if any]."

This is intended to avoid any direct conflict between the settlement authority otherwise necessary in the absence of insurance, and the need for insurers to control settlements of insured claims involving their assets.

2. If jury awards are not otherwise limited in Montana, there is no operable limit of possible liability with respect to the State's possible liability in a jumbo award case. Under acceptable circumstances we do offer very high limits of coverage. The higher the limits the greater our exposure and our rates reflect this in terms of higher insurance costs to the purchaser. If Montana limited its liability by statute, and if the limitation were constitutional (a big if) Montana could reduce either its insurance costs if it purchased insurance to cover the exposure, or its own exposure to loss if it did not.

3. If Montana was not liable for intangible damages it is very probable that its loss costs (and hence the costs of its liability insurance) would be significantly less than where it is liable for them. It is not clear that such a limitation is possible without amending your state constitution.

4. To the best of our knowledge other states which have abrogated their sovereign immunity do not have laws which seem to create conflicts between insurance usage and apparent statutory requirements.

5. Liability limits and deductibles must be tailored by the risk manager (the department of administration) to meet the requirements of its various constituencies. Unless the risk manager is itself adequately staffed, we would suggest that consideration be given to authorizing the risk manager to obtain professional expertise and guidance through reliable licensed producers. Competent producers can and do provide technical advice and guidance which can effectively augment the basic functions of the risk manager. The Hartford prefers to do business through professionals who provide such advice and guidance for their clients. The Hartford does not itself provide advice or guidance to risk managers with respect to their liability limits and deductibles.

6. State by state variations make comparisons generally unreliable. We have no basis for making such comparisons.

7. If elimination of sovereign immunity means that the state and its subdivisions can be sued as if they were private entities, it would appear to require a constitutional amendment to deprive claimants of the right to trial by jury by requiring them to pursue claims against the state in a claims court. We could not assess the matter of feasibility without knowing more about the details.

8. See item 5, above.

9. Item 1 appears to us to be of fundamental importance to the interest of the state.

Sincerely,

Stephen I. Martin
Assistant Vice President

Appendix B

Montana Trial Lawyers Association

Officers:
James T. Harrison, Jr.
President
C.W. Leaphart, Jr.
President-Elect
Milton Datsopoulos
Vice-President
Richard V. Bottomly
Secretary-Treasurer

Executive Office
1431 Eleventh Avenue
Helena, Montana 59601
Tel: 442-6361

Directors:
Richard W. Anderson
Richard V. Bottomly
Roland V. Colgrove
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Milton Datsopoulos
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Harold L. McChesney
Frank B. Morrison, Jr.
Lloyd J. Skedd
William R. Taylor

November 7, 1975

Woody Wright
Legislative Council
Capitol Building
Helena, Montana 59601

Dear Woody:

It is my understanding that there is some consideration being given to the possibility of reinstating sovereign immunity within the Council. We're all familar with arguments to the effect that Montana is such a small state, or that we're such a poor state, and on and on. However, in spite of all these positions, I would hope that the Council would see fit to postpone consideration of change for a significant length of time, sufficient that we could evaluate the practical results of what was accomplished in the new Constitution.

Certainly the abolition of sovereign immunity is a fair and socially desirable concept. The arguments both pro and con are well known. But the inescapable fact is that the doctrine as it now exists has not had a fair trial period so that anyone can fairly judge the results. In short, I guess I'm advocating that Montana not change its position again, until we find out where we are now.

Best regards.

Very truly yours,

James T. Harrison, Jr.,
President

sr

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

White Sulphur Springs Schools

MEAGHER COUNTY, DISTRICT 8
WHITE SULPHUR SPRINGS
MONTANA 59645
HIGH SCHOOL TELEPHONE 547-3351
ELEMENTARY TELEPHONE 547-3351

EUGENE MACK
SUPERINTENDENT
ROY C. SWAN
ELEM. PRINCIPAL

GERALDINE A. EAST
CHAIRMAN
PATRICIA M. McGUIRE
CLERK

Nov. 19, 1975

The Honorable Tom Towe
Chairman Joint Senate-House
Judicial Committee on General Liability
%Legislative Council
Capitol Station
Helena, Montana 59601

Dear Senator Towe:

By direction of the Board of Trustees, School District #8, I am to urge you and your committee to give careful consideration to the potentially serious consequences unlimited liability thrusts upon us and all the Boards of Trustees in the State of Montana. We are in agreement that governmental bodies should be responsible for their negligent acts to citizens; however, with the present attitude of "sure", unlimited liability for governmental agencies tends to place them in the very vulnerable position of "sitting ducks" for indiscriminate law suits.

We worry that School District #8 can afford, or even buy, the coverage to protect us against each and every potential claim. With bigger judgements coming every day from the courts and the tendency of the courts to write social legislation, insurance protection can be priced out of sight. Without this protection the cost of defense and unfavorable judgements would have to be paid from millage levies in future years seriously decreasing monies available to educate our children.

The absolute abolition of sovereign immunity by the 1972 Montana Constitution was qualified by an amendment of July 1973 which allowed the legislature to limit governmental liability. Therefore, we ask you to support a limit, one that in your discretion would be equitable to the citizens and government alike, on governmental liability.

Sincerely,

Eugene Mack

Eugene Mack
Superintendent

EM/mdb

State of Montana
Office of The Attorney General
STATE CAPITOL
HELENA, MONTANA 59601

ROBERT L. WOODAHL
ATTORNEY GENERAL

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

November 20, 1975

The Honorable Thomas E. Towe
Chairman, Subcommittee on Judiciary,
Montana Legislature
State Capitol
Helena, MT 59601

Dear Senator Towe:

In response to the notice of public hearing on sovereign immunity scheduled for November 22, 1975, and the invitation extended by the Legislative Council, I would like to offer a few observations regarding this controversial topic.

It appears to me that the primary task facing your committee is the truly formidable one of defining the outer limits of sovereign liability. Neither reestablishment of the traditional rule of sovereign immunity nor continuation of the present state of open-ended liability seems warranted by legal theory or popular sentiment. In approving the original Article II, Section 18 of the 1972 Montana Constitution, the electorate obviously recognized the justice and benefits of sovereign liability. This concept was not rejected by them in amending Section 18 in 1974; rather, the Legislature was merely given authority to prevent excesses within the new system.

I think the Legislature ultimately will have to adopt a tort claims act modeled after the Federal Tort Claims Act and state versions thereof such as California's. While by no means perfect, such an enactment would treat injured parties fairly as well as relieve the state of Montana from a chaotic situation. It is almost impossible to efficiently plan governmental activities when the threat of immense but unascertainable tort obligations hangs like a dark cloud on the horizon. This danger, if allowed to go on unchecked, may become so serious a burden as to actually interfere with essential governmental functions. A comprehensive legislative solution therefore appears to be the only realistic method of dealing with this problem. The development of such a solution essentially involves identification of specific problem areas and an analysis of relevant policy considerations. For example, the Legislature must confront such hard issues as (1) whether and to what extent public officers should be granted immunity during performance of their official duties; (2) whether procedural devices should be employed to discourage litigation

which is particularly susceptible to abuse; (3) whether in some instances limitations upon liability might be appropriate; and (4) whether and how risk of loss should be distributed between the public treasury and other financially responsible sources, such as liability insurance. It is not my intent now to exhaustively explore these problems, but only to illustrate the nature of the chore ahead and to suggest a logical approach.

I trust that your Committee will give firm consideration to such a proposal that would serve Montana and its citizens well.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

RLW:cnl

Appendix E

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

State of Montana
Office of The Governor
Helena 59601

THOMAS L. JUDGE
GOVERNOR

MEMORANDUM

TO: Subcommittee on Judiciary

FROM: Office of the Governor

DATE: November 18, 1975

SUBJECT: Sovereign Immunity and State Liability Insurance Coverage

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This memorandum is to inform the Legislative Subcommittee on Judiciary of the views of the Administration with regard to the tort liability of the State of Montana, and to suggest areas of immunity for consideration by the next regular session of the legislature. In order to implement the 1974 amendment to Article II, section 18, Constitution of Montana, 1972, which allows the legislature to provide governmental immunity in specific instances, the Montana Legislative Council has called for discussion of the following alternatives to the unrestricted liability that currently exists:

I. NO IMMUNITY FROM SUIT FOR INJURY TO PERSON OR PROPERTY

This alternative is the present situation for the State of Montana and all of its political subdivisions pursuant to Article II, section 18, Constitution of Montana, 1972, which provides:

> "STATE SUBJECT TO SUIT. The State, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a 2/3 vote of each house of the legislature." (1974 amendments)

It is the opinion of this Administration that total liability is as unacceptable and unrealistic as the opposite alternative of complete sovereign immunity. It was clearly the intention of the Constitutional Convention delegates to abolish the outdated concept of sovereign immunity. Although the voters approved the constitutional amendment allowing the legislature to immunize certain specific activities, the amendment can hardly be construed as a carte blanche invitation to return to the medieval concept of sovereign immunity. This Administration believes that a balance should be struck between the two extremes which allows State officers and employees to enforce the laws and perform the necessary, hazardous undertakings unique to the operation of State government. The total lack of immunity has also had a definite impact on the ability of the State to procure adequate liability insurance at reasonable rates. For example, between fiscal years 1974-1975 and 1975-1976 the combined premiums for comprehensive general liability, auto liability, personal injury, and errors and omissions coverage increased over 100%. In addition, only two companies submitted quotations on the State's line for the current fiscal year and nearly every major carrier in the United States expressed no interest in underwriting the State's coverage.

II. IMMUNITY BASED ON TRADITIONAL (PRE-1972) CATEGORIES

Numerous approaches to sovereign immunity exist throughout the United States. Generally speaking, sovereign immunity is available as a defense except when specifically waived by a state legislature. For instance, section 130-11-6, Colorado Revised Statutes, 1963, expressly

immunizes all public entities from all liability claims except the following:

* * *

"(b) The operation of a motor vehicle, owned or leased by such publice entity, by a public employee, while in the course of his employment, except emergency vehicles operating within the provisions of section 13-5-4 (2) and (3), C.R.S. 1963;

"(c) The operation of any public hospital, penitentiary, reformatory, or jail by such public entity, or a dangerous condition existing therein;

"(d) A dangerous condition of any public building;

"(e) A dangerous condition which interferes with the movement of traffic on the traveled portion and shoulders or curbs of any public highway, road, street, or sidewalk within the corporate limits of any municipality, or of any highway which is a part of the federal interstate highway system or the federal primary highway system, or of any paved highway which is a part of the federal secondary highway system, or of any paved highway which is a part of the state highway system, on that portion of such highway, road, street, or sidewalk which was designed and intended for public travel or parking thereon;

"(f) A dangerous condition of any public facility, except roads and highways located in parks or recreation areas, public parking facilities, and public transportation facilities maintained by such public entity. Nothing in this paragraph (f) or in paragraph (e) of this subsection (1) shall be construed to prevent a public entity from asserting the defense of sovereign immunity to an injury caused by the natural condition of any unimproved property, whether or not such property is located in a park or recreation area, or highway, road, or street right-of-way;

"(g) The operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility by such public entity, or a dangerous condition existing therein."

* * *

This approach is the reverse of that prescribed by Article II, section 18, Constitution of Montana, and would therefore be impossible to implement in accord with the new constitution.

Sovereign immunity existed in the Common Law of England and was carried over into the original American colonies. However, in the absence of legislation waiving such immunity, various common law judicial doctrines evolved as exceptions to sovereign immunity. Many courts seized on the distinction between governmental and proprietary functions and granted immunity to the former while prohibiting the doctrine as a defense to the latter. In our opinion, this distinction is not a viable alternative in Montana for two reasons. First, the distinction is based on broad, generalized classifications lacking any precise definitions to apply to any particular activity. Furthermore, this approach would probably be in violation of Article II, section 18, supra. The constitutional amendment is clear--sovereign immunity must be specifically provided by the legislature. It does not appear that the governmental-proprietary distinction is sufficiently specific to pass constitutional muster. Secondly, there exist many examples in which numerous courts have reached opposite conclusions as to whether the same activity by government agencies is governmental or proprietary. Indeed, there are cases in the same jurisdiction which reached such conflicting conclusions. For example, compare Claitor v. City of Commanch, 271 S.W. 2d 465 (1954) which held that maintenance of city parks was a proprietary function, and Vanderford v. City of Houston, 286 S.W. 568 (1926) which held that the maintenance of such parks was a governmental function.

Another distinction used by American courts in attempts to limit the defense of sovereign immunity was the discretionary--ministerial

dichotomy. In essence, the government officer would be protected if the circumstances under which the claim arose required decisions to be made which involved the exercise of judgment rather than ministerial decisions not requiring the exercise of judgment. In our view, the discretionary--ministerial classification suffers from many of the same infirmities as the governmental--proprietary distinction outlined above. It appears to be too general and imprecise in definition to meet the requirements of Article II, section 18, supra, and many differing results have occurred in applying the doctrine to substantially the same activities. See: Adams v. Schneider, 124 N.E. 718 (1919) and Smith v. Hefner, 68 S.E. 2d 783 (1953). The Court in Adams held that bodily injury resulting from repairs to school property was a ministerial function while the Court in Smith held such action to be discretionary. It cannot reasonably be expected that government officers and employees will be able to rationalize such legal distinctions in evaluation the liability of their day-to-day decisions, and this office recommends that such metaphysical distinctions should not be adopted in Montana.

The traditional application of sovereign immunity in Montana waived the defense up to the extent of liability insurance carried by a government agency. The original section 83-701, R.C.M., 1947, provided in part:

> "The district courts of the state of Montana shall have exclusive jurisdiction to hear, determine, and render judgment to the extent of the insurance coverage carried by the state of Montana on any claim against the state of Montana for money only, accruing on or after the passage and approval of this act, on account of damage to or loss of property, or

> on account of personal injuries or death caused by the negligence or wrongful act or omission of any employee of the state of Montana, while acting within the scope of his office or employment, under circumstances where the state of Montana, if a private person, would be liable to the claimant for such damage, loss, injury or death, in accordance with the law of the state of Montana. . . ."

A return to this method of handling tort claims is not feasible, not only because it is probably unconstitutional under the 1972 Constitution, but also because it allows the Executive Branch to escape liability by simply not purchasing insurance.

It is the recommendation of this office that the Subcommittee on Judiciary should consider for immunity, if it is deemed necessary, the unique, discretionary and governmental functions that must be performed in order for State government to operate effectively. The following examples are suggested:

(1) Acts or omissions of employees of governmental entities in the execution of a statute or regulation whether or not the statute or regulation is lawful.

(2) Acts or omissions concerning the assessment or collection of a tax or fee, or the detention of goods or merchandise by law enforcement officers.

(3) Acts or omissions concerning the imposition of quarantines by governmental entities.

(4) Acts or omissions concerning the activities of the Montana National Guard when acting under call of the Governor, or when engaged in rescue and evacuation activities, or when engaged in activities responding to an emergency or disaster, or engaged in combat activities in time of war.

(5) Lawful acts or omissions of government officers concerning the prevention of riots, unlawful assembly, mob violence, civil disturbances, or public demonstrations.

(6) Any acts or omissions concerning the planning, design, construction, maintenance, or improvement to highways, roads, streets, bridges, buildings, or other public property where

such plan or design was prepared in conformity with existing standards of design, construction, or maintenance at the time of said construction, and previously approved in advance of construction by the legislative body of the particular governmental entity.

(7) Claims arising out of or caused by the natural conditions of any unimproved public property, whether or not such property is located in a park or an established recreation area.

(8) Acts or omissions connected with the activity of a governmental entity when engaged in firefighting, or when engaged in rescue and evacuation activities, or when engaged in activities responding to an emergency or disaster.

III. IMMUNITY FROM CERTAIN TYPES OF DAMAGES

One alternative to the reinstatement of sovereign immunity is to limit the amount and types of damages that can be awarded to persons injured by the State. Many states have opted in the name of fiscal solvency to limit the amount of damages that may be recovered from any single occurrence. Such statutes borrow terminology from ordinary auto liability insurance policies and allow a stated maximum for injury to one person arising out of any single occurrence, and another stated maximum for injury to two or more persons stemming from any single accident or occurrence. Few states prescribe a ceiling for property damage. Section 130-11-14, Colorado Revised Statutes, 1963, specifically limits personal injury damages in the above manner to $100,000 for a single person and $300,000 for injury to two or more persons arising out of a single accident or occurrence. Likewise, the State of Oregon limits liability for injury to one person with a maximum of $50,000 and $300,000 for all claims arising out of a single occurrence. In addition, Oregon limits property damage to $25,000 per claimant per

single accident or occurrence. See: section 30.270, Oregon Revised Statutes. Another alternative is to allow the claimant only compensatory damages up to the stated maximums and either eliminate or limit intangible damages such as pain and suffering, loss of consortium, affection, companionship, and mental anguish and distress.

Our recommendation is that the legislature consider allowing only actual, compensatory damages for medical and hospital bills, loss of income or earnings and any other tangible, pecuniary loss which can be proven with limits of $300,000 per single person injury and $500,000 for injury to two or more persons arising out of a single accident or occurrence. It is further recommended that property damage be limited to $50,000 per person excluding claims for inverse condemnation of realty for which damages should be proven in a similar manner to eminent domain proceedings.

IV. WORKERS' COMPENSATION SYSTEM

This alternative proposes the establishment of an administrative agency to have sole jurisdiction over all claims against the State of Montana and its political entities. This agency would serve a twofold purpose:

(1) It would hold hearings to determine whether or not the government was legally liable to the claimant in the first instance, and;

(2) It would then determine the extent of damages for any liability.

Both of these functions would be performed in accord with the current laws of Montana concerning tort liability unless special standards of

negligence and damages are created simultaneously with the Workers' Compensation type of system. It is difficult to see where this method would result in either streamlining the procedure for making claims against the State or reducing the expense of investigating and defending such claims. The entire process would be nearly identical to a district court trial and the result subject to judicial review by either the district courts or the Supreme Court or both. Indeed, the study recently conducted by the Committee on the Office of Attorney General surveyed this problem and arrived at the following conclusion:

> "The standard procedure for allocating funds for tort claims is an annual legislative appropriation. Protection against catastrophic occurrences is provided by special insurance coverage. Processing tort claims becomes significantly more expensive, however, when a state chooses to establish a special Court of Claims, rather than using the courts of general jurisdiction. The State of New Jersey, for example, considered the New York Court of Claims and the California Governmental Liability Act in an effort to determine how to provide for state liability. The decision was to follow the California example, which utilizes the regular court system."[1]

In addition, the district court dockets in Montana are noted for their relatively efficient and timely processing of law suits and, at this time, are apparently capable of the increased workload occasioned by the abolishment of sovereign immunity. In our view, the alternative of an administrative agency to handle tort claims against the State is

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[1]Ben A. Rich, Sovereign Immunity: The Liability of Government and its Officials, The National Association of Attorneys General Committee on the Office of Attorney General, Jacksonville, Mississippi, January, 1975.

a needless expenditure of money with no corresponding increase in efficiency. For the long term, it is recommended that the legislature finance a retention account to fund ever-increasing deductibles on present insurance policies, and gradually increase the self-assumption of liability by the State to the point where only broad umbrella liability coverage is necessary to pay catastrophic losses. However, at the present time no State agency is sufficiently funded to assume the entire tort liability for all State agencies and employees.

Hopefully this information is of assistance to you.

Appendix G

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

Robert Borland
City Council of White Sulphur Springs

It is my desire to address the problem from the view of the small town and less populous county.

Our town council, county commissioners and school board have discussed the potential problems brought on by the lack of sovereign immunity. We see a real need for some way to control what would happen to us in the event of a substantial judgement, insured or not, because of the resulting increased taxes. The legislature could do us much good by taking action to limit the financial impact of such an event. Our school boards and other public boards are a pretty tight fisted group. They make no pretense of trying to insure against every single thing that might happen. They know they can not insure against everything, and they know they could not pay the bill if insurance were available against everything.

The requirement, later modified, that one million dollar single limit of liability on every insurance policy, plus the lack of sovereign immunity, tended to make targets of our little water and ditch districts, airport, and other governmental units. The result is increased cost of operation and increased taxes.

The suggestion has been made that all public risks could be put into some sort of a pool, and thus obtain insurance at better rates. Let me assure you that we in the small counties can take care of ourselves, and spare us from such help. We always suffer from the help big brother brings us. I would point out one of the axioms of the insurance business is the pooling of like risks. Meagher County's governmental subdivisions and the big population counties are not like risks. Our White Sulphur Springs schools, with 150 kids are not analogous to schools with 150 teachers. The only thing this kind of pooling can do is bring us troubles we do not now have, and insurance rates we can not afford. The only proof needed for this statement is the difficulty the State of Montana is now having with their liability insurance. We do not have this difficulty in my town or county. Further, you would take business away from the local community and the people who pay the local taxes. We don't need the kind of help that takes business from the local tax base.

Please do not help us by taking the insurance business away from the locality. The situation with insurance for small towns is well known to the insurance companies, and many companies are vigorously looking for this business, while shunning the same offering in the larger communities. This is further proof that the insurance companies know we should not be pooled with the larger towns. Even hospital liability insurance is available to small towns from companies that will not go near a large town in the state.

We do ask that you help us by legislative action to limit the tax burden in the event of a large judgement. We ask that you do not help us by handling our insurance problems for us.

Dept. of Highways
J. Beck

The Department of Highways is very interested in the problem of sovereign immunity. As an agency that employs almost two thousand people and operates many vehicles both off and on the highways, there is always a possibility of one of our employees becoming involved in an accident. In addition to this, there is also exposure to suits arising out of allegations of negligent design, construction and maintenance.

The Transportation Research Board has published two studies on the question of liability, which studies we are submitting to the subcommittee. While these studies do not suggest proposed legislation, we are submitting them with the idea that they may assist the subcommittee with its research.

During the last session of the legislature, S.B. 206 was introduced. This bill was reviewed by the Department of Highways and it was felt that it would provide the Department and its employees protection and at the same time would insure that the public would be adequately protected. The Department was particularly interested in subsection (7) of proposed section 83-701.4 which reads as follows:

> "83-701.4. Scope of immunity. A governmental entity or its employees acting within the scope of their office and employment shall be immune from liability for any claim which:
>
> * * * * *
>
> (7) arises out of a plan or design for construction or improvement to the highways, roads, streets, bridges, buildings, or other public property

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where such plan or design is prepared in conformity with standards in effect at the time of construction, previously approved in advance of the construction or approved by the legislative body of the governmental entity or by some other body or administrative agency, exercising discretion by authority to give such approval; * * *."

The Department of Highways would suggest that the underlined word "construction" be changed to "preparation." Such change is desirable due to the fact that design standards are constantly changing. Once a design is completed, it is some time before construction can be commenced. During this period of time right of way is acquired and the project is advertised for bids and let to contract. Once this occurs, it is difficult to change the design of a project, especially where the change of standards is minimal. In those instances where such a change is major affecting the safety of the motoring public, the design, of course, would be changed to conform to the new standard.

Montana Association of Counties
TELEPHONE (406) 442-5209
1802 ELEVENTH AVE. HELENA, MONTANA 59601

TESTIMONY OF EDWARD MARES, PROJECT DIRECTOR

BEFORE THE
INTERIM SUBCOMMITTEE ON JUDICIARY OF THE MONTANA LEGISLATURE
NOVEMBER 22, 1975, HELENA, MONTANA

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE --

As you are well aware, the county governments of Montana had also enjoyed the right of Sovereign Immunity prior to our new constitution. Article II, Section 18, however, provides that governmental units are subject to suit. This change has resulted in many drastic increases in liability insurance rates for county governments. These increases have been passed along to taxpayers through additional levies placed on an already over-burdened property tax. Prior to adoption of the new constitution, governmental agencies were liable only to the extent of the insurance coverage carried. Counties did purchase liability insurance coverage for such things as equipment, buildings and airports. These expenditures were, however, much less than they are today. It seems that the statement, "the smaller the entity - the easier it is to obtain insurance", isn't necessarily true. Seventh class counties, as the smallest, have shown average increases of nearly 133% for fiscal years 1974-76.

The following tabulation of 34 counties shows the premium rates for liability insurance for the two year period between fiscal years 1974-76. Based on average premiums paid, the county governments of Montana paid a total of $654,466 in FY '74, $788,945 in FY '75, and $1,127,474 in FY '76 for liability insurance. The premium nearly doubled in a two year period. The greatest rate increases and policy costs involved malpractice insurance covering county hospital and nursing home employees. (Much of the insurance data for the present fiscal period is not as yet available because of periods of coverage, payment dates, etc.)

ACTUAL LIABILITY INSURANCE COSTS FOR THIRTY-FOUR MONTANA COUNTIES

COUNTY	FY 1976	FY 1975	FY 1974
Beaverhead		17,870	15,412
Broadwater	5,339	2,771	
Carter	14,871	7,934	4,615
Cascade	93,332	28,145	
Custer	29,380 (est.)	22,600	
Daniels	4,211	4,110	3,569
Dawson	32,253	29,091	26,904
Deer Lodge	13,631	10,000	
Fallon	11,424	11,342	
Fergus		16,082	15,045
Flathead	118,000	108,000	
Garfield	4,053	3,268	
Glacier	15,945	7,763	7,763
Hill	19,309	9,707	
Lake	19,084	9,000	
Lewis and Clark	24,727	18,318	
Liberty	13,019	11,220	9,655
McCone	8,775	10,112	
Meagher	3,615	3,000	
Mineral	8,828	4,263	
Park	9,114	3,800	
Petroleum	4,245	2,921	
Powder River	9,830	5,994	5,443
Powell	16,465	9,662	
Prairie		17,689	14,264
Ravalli	27,084	25,749	22,988
Richland		14,000	12,000

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COUNTY	FY 1976	FY 1975	FY 1974
Roosevelt		9,600	8,176
Rosebud		13,467	7,070
Silver Bow	80,000 (est)	51,600	
Stillwater	9,140	9,470	
Sweet Grass		4,563	
Treasure		3,684	3,034
Yellowstone			36,328

In obtaining this county liability insurance information, the maze of actual county liability policies with various amounts of coverage, premium rates and effective dates, caused difficulty. Even smaller counties have several liability policies with different limits of coverage, for different premium rates and with several different insurance companies. Liability insurance covering courthouses, hospitals, airports, roads and bridges is hard to find under one policy. The County Clerk and Recorders, Treasurers and bookkeepers responsible for maintaining insurance accounts often lack insurance knowledge. It is extremely difficult for counties to determine if they have adequate insurance coverage at reasonable rates. Many counties must rely heavily on their local insurance agencies for assistance in this matter.

What alternatives are available? We realize that blanket immunity is impossible and does not comply with the Constitution's intent. Maintaining the present situation with steadily sky-rocketing liability insurance rates is not the answer. With the number of insurance companies underwriting coverage for counties decreasing, it will be a short time before coverage will be impossible to obtain. In the past year several counties were dropped by insurance companies while damage awards and claims were minor. Many insurance companies simply have initiated policy changes to no

longer provide coverage for governmental entities. The growing number of law suits involving governmental entities may be a partial reason for this.

Generally, the Montana Association of Counties would favor legislation providing immunity from certain types of damages. Immunity should be provided from liability related to governmental functions of counties. "Governmental functions" are those services mandated by state law that counties are required to perform in promoting general public welfare. Examples of governmental functions would be law enforcement, road maintenance and tax collection. The more discretionary functions of counties or "proprietary" services would not be immune from suit. These would be services not imposed by the state and directly benefiting only the citizens of the county. Examples of county proprietary functions would be county parks, fairs, golf courses, or recreation centers.

The present review of local government process in Montana and revision of local government laws will result in additional discretionary powers and proprietary services for local governments. In addition to allowing sovereign immunity from suits involving governmental functions, the proprietary functions of which counties would be liable, could be handled through a "self insurance" program. This alternative would be somewhat similar to a workmens compensation-type system. All counties, cities and the State of Montana, under a "self insurance" program would contribute to one large pool for smaller tort liabilities. A blanket liability insurance policy with a $1 million deductible would apply to large claims. The premium for this blanket policy would be paid jointly by the State, cities and counties.

Another favorable alternative for counties would allow immunity from tort claims involving"governmental functions". This would be coupled with a provision for damage compensation up to a specified limit for "proprietary function" damages. Thus,

counties would continue to purchase liability insurance, but only to a coverage ceiling of possibly $300,000. Tort claims, injuries, etc., could only be settled up to the maximum limits of the liability policy.

A final alternative regarding the issue of sovereign immunity would be state financing of insurance coverage for mandated county functions. After all, counties function as subdivisions of the state and administer state laws. Why shouldn't the state contribute to the protection of local government officials and services?

If legislative action is not taken regarding liability insurance and sovereign immunity for governmental entities, the counties of Montana will continue to face the heavy burdens of costly insurance premiums. These expenditures will continue to deplete already strained county budgets and increase local property tax levies.

Local government services provide both direct and indirect benefits to the taxpayer for his property tax dollars. Liability insurance payments, however, do not provide any benefit to the taxpayer or improve the quality of life in Montana.

TO: Members - Interim Judiciary Committee

FROM : Lake County Commissioners

SUBJECT : Sovereign Immunity

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

Making local government responsive and ~~responsible to the~~ taxpayer is a laudable objective. Disenchantment with government at all levels has reached a point where many taxpayers no longer make any effort to participate. Reaching the objective of public involvement by removing immunity for elected officials is an illusion that will stand no scrutiny.

Even though it has been effective only a short time the horrendous side effects far outweigh the desired results that are no closer to achievement. Insurance companies with their twenty years of bad experience with Mal-practice are not waiting to develop case histories. The premiums are even now reflecting sky-rocketing costs that can be readily anticipated. Aside from the cost, consider the sheriff who must always think about the future of his family as he makes an arrest, or subdues a riot. Remember, the sheriff is responsible for the actions of all his deputies. Having additional coverage only makes it easier for juries to award damages. Having enough insurance to cover any eventuality has already been proven a fallacy.

Lake County with its unique relationship with the Flathead Indians once cross deputized tribal police. That is no longer tolerable because no company will insure for liability. The District Court has ruled that the reservation is a sanctuary for Tribal Members alone.

How will the public be better served when any person of substance must first (if they can) protect their personal assets before they can serve? Must our public offices be held by people either invulnerable or destitute? Will the taxpayer be better served by adding this tremendous cost to his taxes? Must the best interests of the community be completely subjective to the rights of the individual? Have the consequences of Mal-practice insurance taught us nothing about liability? I think the answer to all of these questions is an emphatic No!

A letter from our Insurance Agent is attached. He leaves no doubt that liability insurance rates will continue to sky-rocket. A look at our own records show more than 100% increase in one year from $9000 to 19,084 for the same coverage. The previous company declining to renew at any reasonable rate. The three suits already filed against Lake County indicate that coverage will become even more difficult to obtain.

Surely a better means to provide redress to the individual wronged by government can be found. A means that is less costly in tax money as well as anxiety to the elected official. Failure to find a better means can only result ultimately in degraded service to the public.

Lake County Commissioner

AM/rh

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

Bishop
INSURANCE
SERVICE

P. O. Box 367 • Phone 883-5372 • Polson, Montana

November 19,1975

Montana Association of Counties
Helena
Montana

Re: Sovereign Immunity and Liability Insurance

We are writing on behalf of the Lake County Commissioners in response to your inquiries in the November issue of MACo NEWS.

First: Lake County is now paying $16,397 for comprehensive liability insurance for this year. In addition, Errors and Ommissions coverage, a type of liability protection, costs $2,687 per year. Thus the total for all forms of liability is $19,084. This is in addition to fire-type coverages and vehicle physical damage protection.

Second: The same liability coverage cost exactly $9,000. last year. And, as a matter of fact, the previous Company declined to renew at any remotely reasonable price.

Third: The total amount of claims for the last year is hard to determine. Several suits have been filed against the County. One in particular seems to have some merit and is in total amount of $157,954. The Northwestern National Insurance Company has reserved a substantial fraction of the claimed amount for possible payment.

Speaking for ourselves as insurance agents and on behalf of and in support of our clients, the Commissioners of Lake County, we sincerely hope that some means can be found to replace the total loss of sovereign immunity we now experience in this State with some more reasoned and logical method of imdemnifying individuals wronged by public entities. Our present situation will, we are sure, cause liability insurance costs to skyrocket even further, and we in the

Insurance business realize that this is extremely counter-productive. The Montana Association of Insurance Agents, to which we belong, is mounting a campaign to attempt to convince the legislators of the need for remedial action, and our agency will assist in their effort.

Please let us know if we can be of further assistance.

Very truly yours,

Charles A Bishop

Note: The following copy was prepared for presentation to the Montana Legislature's Joint Senate-House Judiciary Subcommittee on general liability of the state, public entities and property taxpayers, at 9 a.m., Saturday, November 22, 1975, in the Capitol House committee area, by Ray Conger, CPCU, of Missoula, Public Risk Management Chief Counsel for the Independent Insurance Agents of Montana.

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We appreciate this invitation as an opportunity to address the issues involving Montana's waiver of sovereign immunity and the public liability ultimately payable by property taxpayers for tortious acts of their governmental entities. It is important to properly qualify and identify our position socially and economically, to provide the true base for our beliefs and recommendations, and to fully understand them. Our statement here is offered as taxpaying Montana citizens, and on behalf of all fellow taxpayers. You may identify us as Independent Insurance Agents and this is true. However, it has been our experience with some members of the news media and of the legislature that we are identified with, or as part of an insurance company or their related trade organizations, and this is not true. The Independent Insurance Agent is independent of any insurance company. The state of New York has just enacted a statute making this distinction legally clear. The interests of the Independent Insurance Agent are identical with the interests of his neighbor, his fellow taxpayer, his school district, his home town and his county. This all becomes clear when it is understood that the Independent Insurance Agent is successful only when he provides the satisfactory protection for his neighbor, his local business community and his fellow taxpayers. (Continued on next page)

We are here, therefore, speaking very sincerely for all taxpayers — speaking out for them because our professional knowledge of the matters before us makes us qualified to speak responsibly for them.

SUMMARY — POSITIONS AND RECOMMENDATIONS:

Details will be offered for the committee as addenda or in a question session.)

The state of Montana, her taxpayer-supported entities, all property taxpayers individually, their families and their futures are in a perilous position. This jeopardy to economic security arises from a combination of two factors:

First — the total waiver of sovereign immunity from tort liability in our 1972 constitution;

Secondly, and now important — the unfulfilled need for corrective action by the legislature, for which our state constitution provides.

This is not a problem created by the insurance industry. As the problem stands, it is not one which the insurance industry can solve for government — beyond our urging that the legislature promptly provide relief for taxpayers.

The economic impact of creating limitless liability for property taxpayers has reached staggering proportions since the problem began July 1, 1973. The total of all losses incurred by all government entities in Montana, of all judgments and claims pending against governmental entities has run into many millions. The ultimate cost to Montana property taxpayers will not be known for a long time. Lawsuits continue, at state and local levels. We know of some administrators of some local governmental entities elected not to transfer certain of their risks to any insurance carrier, thus subjecting their taxpayer constituencies to significant jeopardy from lawsuits which may arise years hence from this limitless liability period. A survey would be necessary to

better evaluate the total number. Potentially under Montana law, the very homes and businesses of taxpayers could be sold at sheriff's sale to satisfy an uninsured liability judgment against their school district, city, county, airport, irrigation district or other public entity. All citizens are urged to read Article II Section 18 of our constitution and the implementing statutes. Section 83-4326 states that a political subdivision shall levy and collect a tax at the earliest time possible to pay any portion of a judgment not covered by insurance. If this section prevails, it appears a taxpayer unable to pay such levy would, as a delinquent taxpayer, have his property subject to public sale to satisfy the assessment. Section 11-1502 would authorize a city to fund a judgment by bonding if voters approve (section 11-2306). (The "earliest time" element of the statute of 1973 (82-4326) seems to deny the three-year grace under section 11-1502.)

The state of Montana is the only government known to us to have constitutionally waived sovereign immunity without providing safeguards for the property taxpayers. While this subcommittee and its study may have been authorized due to the problem of the state of Montana, ramifications to the combined local entities are of far greater concern to local taxpayers. A similar condition was recognized after the state of Illinois adopted a new constitution. At the first session thereafter, the Illinois legislature restored all immunities prevailing prior to the current constitution.

RECOMMENDATIONS:

Morally and philosophically, we concur with the 1972 Montana constitution that any governmental entity should be responsible for any tort – wrongful act

or damage — its agents or employees cause, insofar as making whole all actual losses to citizens. However, we also believe certain practical facts of economic life must be recognized to make this principle workable and affordable.

We recommend positive legislative consideration of the following proposals:

Prohibit sale of real property to satisfy any uninsured judgment against any governmental entity, thereby protecting taxpayers against loss of homes or businesses;

Establish a limit on the maximum mill levy which may be assessed in any year in the event any public entity elects to fund an uninsured judgment through bonds or to directly assess property taxpayers.

Prohibit interest from being assessed any governmental entity for late or delayed payment of an uninsured loss.

Establish limits for recovery of losses to actual physical or monetary losses payable by governmental entities, and provide for an appeals course for an injured person to seek further recovery he can justify through petition to the legislature on alleged torts at the state level, to the council at the city level, to commission for a county, or board for recovery from another appropriate public entity.

Eliminate statutory limits of deductible amounts for insurance negotiations, and eliminate individual and aggregate loss limits, allowing negotiations to obtain the most favorable terms and conditions available in the marketplace.

(End summary. Further supportive details and professional personnel are offered to this committee, to be responsive to the committee's interests and requests.)

ADDITIONAL DETAIL offered the Montana Legislature's Joint Senate-House Judiciary Subcommittee on public entities' liability problems, by the Independent Insurance Agents of Montana, a nonprofit organization dedicated to consumer and professional education:

Nationally few constitutions challenges of tort reform law have been made or resolved but a momentum is beginning. However, in these few cases it appears that the courts are not likely to look favorably upon tort limitations in dollars or time. In early cases a dollar limit has been held to be constitutionally discriminatory. Full and complete remedy is provided for all whose injuries and losses fall within a dollar limit. Contrariwise, a limit attempts to deny constitutionally assured full redress and total remedy for anyone whose true losses exceed an arbitrary limitation fixed by statute.

Concurring with our Montana constitution Article II Section 18, to make the principle workable, we believe the legislature should make it possible for any governmental entity to assume as much financial liability as its taxpayers can afford reasonably, and no more; and at the same time avoid creating conditions making it difficult for negotiating economical insurance techniques. For example, our 1972 constitution creates impossible areas for insurance: the National Guard liability, and total liability for design of roads and bridges built many years ago. The sovereign immunity waiver has since July 1, 1973 made the state and other governmental entities liable in areas beyond which a private person is liable. This is because government functions in areas which the private citizen does not. Examples: Private persons do not build roads for general public use, do not operate prisons or custodial institutions, or field military forces but governments do. Public entities should be liable for torts as much as a private citizen is, but no more so.

Our state and local governments must be dynamic forces to cope with social changes, both unstoppable and to be encouraged in positive directions. Similarly, the complex technique of insurance must be a changing, positive dynamic force if it is to continue to constructively serve people and industry — and governments of people.

In totally waiving sovereign immunity, our 1972 Montana constitution created a posture of government 180 degrees opposite to a centuries old principle: the historic acceptance that the "king can do no wrong." This concept continued into the development of our United States 200 years ago. Thus for most of our country's history, sovereign or state immunity has prevailed. And it still does for the preponderant majority of our thousands of public entities nationally.

Insurance has its beginnings in ancient civilizations, with trade insured early among Chinese shippers, among the early Guilds, and in the 1600s Lloyd's of London became famous for insuring ships and cargoes. Thus, insurance has long been an acknowledged technique used to assure progress of civilizations, minimizing what otherwise would have been catastrophic, regressive losses for men and mankind.

In the dynamics of insurance, areas once uninsurable now may be insured. As recent as the 1960s legislators of Montana determined that the state of Montana should elect to obtain insurance against risks which had long been insurable but which our state had elected not to insurance against. These risks are earthquake and vandalism and malicious mischief in an era of campus riots. Representing Montana citizens and the insurance industry, the Independent Insurance Agents Association accomplished the necessary research and obtained insurance of both areas at the most economic costs available. Another example

of progress: Computers are being used increasingly as government tools, and now are insurable, in varying ways. Certain risks still are deemed uninsurable. Examples are: war losses, and losses from effects of nuclear energy. If the historic ability to change continues, insurance may resolve the nuclear threat on some scale of loss.

It will continue to be difficult, or impossible, to insure certain risks which public entities incur and which do not exist at the level of private citizens, under total waiver of sovereign immunity, at least in our forseeable future. Nonetheless, public entities may continue to obtain insurance within negotiated limits for named perils, to provide all protection to taxpayers available.

PRACTICES:

Since every function of the public entity can be legislated, and should not be, the administrators of public liability responsibilities at the state and local levels are fortunate in Montana to have licensed agents who are dedicated to study of risk management and insurance. State and local administrators call upon these professional persons for counsel and guidance in developing techniques of treating and insuring risks in their jurisdictions. Such personnel are available to arrange education and training in life safety and loss control for state and local entities' employees, and thus minimize risk.

The practice of state and local entities of placing insurance through associations of agents or through locally licensed agents where associations have not developed is more than 50 years old in the United States. Insuring community property and risks in their trust fulfills the stewardship of the responsible public officials for their constituents. Utilizing the professional persons most knowledgeable in the subject marshals into public service the

most competent talents in the state or community. The practice transfers this stewardship to a high level above and beyond politics, and removes even the suspicion of political favoritism or patronage.

The Independent Insurance Agents of Montana, a nonprofit organization dedicated to consumer and professional education, has negotiated the fullest and best insurance service for the state of Montana at the least cost. Going beyond the basic service, the Independent Insurance Agents have provided life safety and loss control programs — state safety inspections and engineering on a continuing basis, and seminars for state supervisors and their employees. Additionally, the Independent Insurance Agents have engaged highly qualified professional counsel in risk management and insurance, arranged consultation with state insurance administrators, and encouraged call at any and all times on professional counsel at no added expense as a public service.

To ascertain state of Montana exposures of risks under the current general liability laws, the Independent Insurance Agents funded the best counsel available, based upon other state governments' references, to develop an independent engineering survey of state government properties and operations everywhere.

The Independent Insurance Agents Association has persistently used its resources to improve the professional competence of all Montana insurance personnel, who provide risk management and insurance counsel and services to citizens in all 56 counties. This has resulted in the formation of the Montana Society of Chartered Property and Casualty Underwriters. Society members hold the highest professional designation (CPCU) in the field or industry. This is a level above that of only university education in the complex, highly specialized area of risk management and insurance. CPCU-designated persons are engaged

by the association to serve the state of Montana, and the association is confident its trust and that of the state are in the most competent hands. This IIAAM team serving the state keeps posted on insurance developments nationally.

On a continuing basis, the knowledge developed in serving the state is offered to all insurance agents in Montana. For example, a comprehensive educational program on public entities' risk and insurance now is under way, and workshops are scheduled early in 1976. These will be open to all agents, without limitation to members of the Independent Insurance Agents Association.

Thus, the state of Montana, her communities and taxpayers benefit from this public and professionally oriented educational effort. In addition, Montana citizens benefit from the Independent Insurance Agents' support of highway and traffic safety programs, antitheft projects for motorists, grants to universities and colleges for scholarships and libraries, and for career development through institutes for high school and junior college teachers and a student on the job intern program.

All these services are performed at no profitable compensation to any Independent Insurance Agent Association member. Servicing commission for the state is calculated at the minimum handling costs. It would cost the state of Montana many times more, in salaries and administrative costs, to administer such a program internally.

Note: The foregoing was prepared by the Independent Insurance Agents Association of Montana, a nonprofit organization, P. O. Box 1 2 3, Helena MT 59601. Telephone (406) 442-1582.

Supplementing the presentation to legislators: Roster, with officers, and assignments of members to areas of responsibilities, and related exhibits. —TM110975

Members of the committee, my name is George Rummel. I'm an Independent Insurance Agent in Hamilton. My appearance here is prompted by my interest as a citizen, taxpayer and as a small businessman.

Based upon what I've read and heard of various proposals to cope with our property taxpayers' peril under limitless liability, I want to speak to one particular line of thought. Some individuals propose that all of our local government insurance problems could be solved with a state centralized insurance purchasing office. This line of thinking if carried out would lead to one more government agency, and one more substitution of government for private business. Such a move would further erode our tax base by eliminating an area of taxpaying income from the business community.

Such a move would fly in the face of all experience in history of failures by government in taking over from private enterprise.

But there is another practical reason why your small businessmen in communities throughout Montana ask that centralized state funding of insurance be rejected: And that is, it won't work, and there is no need for it.

Insurance carriers have been accepting liability insurance among our local public entities, our cities and counties, especially the smaller ones. Where the state has had few carriers interested in underwriting so large a risk, you will find that cities, counties and schools have had little trouble in obtaining liability insurance. And at as reasonable a rate as can be found anywhere

The idea that the state could make a single purchase of liability insurance for all local governmental units is erroneously based on the concept of buying it wholesale. This simply does not operate in insurance where underwriters must examine and evaluate every individual public entity's exposures to risks.

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Background:

In the 1930s the legislature placed local public entities into a centralized state insurance scheme and it was a disaster.

Cascade county for example found it was paying $8,500 more into the state fund than it would have paid to private carriers for the same coverage on a local basis. For state property, the rate increased nearly 100 per cent. A legislative committee investigated the 1935 state insurance fund. Investigators determined that the state could have purchased three years of insurance for what it was costing for one year on a state funded plan.

On top of this Helena-administered state operation, the state and most of the local public entities had to be re-insured with private carriers. This led to discovery that one Butte agent benefitted from the re-insurance.

In 1936, the Montana voters ended the centralized state insuring plan with a large majority .

The state board of examiners called upon the licensed insurance agents to propose an insurance plan which would take the whole business out of politics. Thw two statewide property and casualty agents' associations did propose a plan, and it has operated for the taxpayers' benefit since then.

Other examples of centralized government insurance plans which have failed include: the state of Maryland, the provinces of Manitoba, Saskatchewan and British Columbia. Others which are proving extremely costly to operate include our federal social security system. There is a great deal of research material to support the position that government cannot function as an insurance carrier econcomically, and without dual expense to the taxpayers.

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SUBCOMMITTEE ON JUDICIARY

Minutes of the February 28, 1976 Meeting

The meeting of the Subcommittee on Judiciary was called to order by Senator Thomas E. Towe, Chairman, at 9:30 a.m., in Room 432, State Capitol, Helena. All members of the subcommittee were present with the exception of Senator Glen L. Drake, who was excused.

Also present at the meeting were: Edward Mares, Montana Association of Counties; Mike Young, Insurance and Legal Division, Department of Administration; Cap Bryant, Sheriff and Peace Officers Association; Arnold C. Kuenning, Independent Insurance Agents of Montana; Ray Conger, Independent Insurance Agents of Montana; Tom Maddox, Independent Insurance Agents of Montana; Steve Butcher, Local Government Commission; Lee Heiman, Local Government Commission; Ken Curtiss, Board of Crime Control; Ray Stewart, Court Administrator, Supreme Court; Judge Jack D. Shanstrom, 6th Judicial District; Judge C.G. Sande, 13th Judicial District; Allen F. Cain, 1st Judicial District Bar Association; Judge Frank E. Blair, 3rd Judicial District; Judge Edward Dussault, 4th Judicial District; Judge Nat Allen, 14th Judicial District; and members of the press.

Senator Towe explained that the morning session of the Judiciary meeting would be devoted to discussing Sovereign Immunity and the afternoon session would be devoted to discussing judicial districts.

Approval of Minutes

Senator Towe asked if there were any objections or additions to the minutes of the last meeting, held on November 22, 1975. No objections being raised, the minutes were approved.

Senator Towe then asked Robert Person, Legislative Council Researcher, to give his report on sovereign immunity. Bob Person stated that Senator Towe had received correspondence from Mr. Jack A. Lambert, Mayor of the City of Wolf Point in which Mayor Lambert stated that the City of Wolf Point was in favor of full reinstatement of the doctrine of sovereign immunity for governmental entities in the state of Montana. A copy of Mr. Lambert's letter and Senator Towe's response was provided. Senator Towe stated that the City of Wolf Point did feel very strongly about this matter, because the insurance premium for the city had increased from $3,774.00 in 1975 to $14,860.00 in 1976.

Mr. Person went over a proposed final report outline for the sovereign immunity study stating that the outline provides the framework for a report that will adequately relate the subcommittee's findings and policy determinations to the balance of the Legislature. Mr. Person stated that he has been able to obtain a study from the state of California by the California Law Revision Commission and done on contract by a UCLA Professor

Van Alstyne which outlined sovereign immunity topics considered by the state of California. He stated that the subcommittee might benefit from reading this material, and if anyone was interested they could contact Mr. Person.

Mr. Person told the subcommittee that he has requested a computer search of the section of the codes containing forms of the word "liability" in combination with forms of words "civil action", "injury", or "tort", and has received a printout containing these sections. He stated that it is very important for the subcommittee to look at the existing sections of law before drafting new legislation. Senator Towe stated that it is very important for the new legislation to be consistent with what is already in the code and felt that it was important to have the researcher continue to go through these laws, picking out anything that might be inconsistent with the proposed draft. Senator Towe asked that the researcher provide the subcommittee with recommendations of his findings in advance of the next meeting.

Mr. Person stated that a question has been raised as to what effect the new constitutional changes have on existing sections of law related to sovereign immunity -- the 1972 Constitution has abolished sovereign immunity, however, there are several statutes still on the books that recognize this doctrine and there is a question of the validity of these statutes. There are two views on this matter: (1) neither the adoption of the 1972 Constitution nor the 1974 amendment effected a repeal of statutes relating to sovereign immunity and thus those statutes remain in force; (2) the Montana Supreme Court has held that statutes inconsistent with, or repugnant to, a subsequently adopted constitution are repealed by the adoption of that constitution, and are inoperative or void from that date. Mr. Person felt that if there is a question of validity then the wise thing to do would be to repeal these sections and then reenact the ones that the subcommittee would want in force.

Mike Young, Department of Administration, stated that he felt any statute dealing with sovereign immunity on the books at this time, would be deemed unconstitutional by the courts. Mr. Person stated that some of the old statutes could have been implemented to meet certain problems that still exist and could be used as a guideline to draft new legislation.

At this time, Senator Towe went over the memo written by Bob Person dated February 10, 1976, entitled Bill Sections Related to Sovereign Immunity. (Attachment 1) The following decisions were made.(Detached minutes for this protion of the meeting are available in the Legislative Council Office.)

I. Provisions for Immunity from Suit

A. Immunity from suit for legislative acts and omissions

1. Senator Cetrone moved that language be drafted to the following effect:

a. Any legislator, and any officer or agent of the legislature is also immune from suit for any claims arising as a result of any votes or official

action taken by either house or by any of its committees when that action is taken as a body.

b. Any legislator is immune from any claim from damage for defamation and is immune from any claim for harm or any damage caused by official action taken by the legislature as a result of any of his statements or activities actually conducted during the course of enacting legislation.

The motion was restated to propose that the subcommittee adopt language relating to defamation and other actions of legislators.

Motion Carried

2. Senator Turnage moved that consideration of extending immunity to legislative activities at local government level be passed.

Motion Carried

B. Immunity from suit for judicial acts and omissions.

1. Senator Turnage moved that language like the following be added to the section:

a. The officers and agents of the judiciary are immune from suit for any official actions taken by the court.

Motion Carried

Comment: Concerning the Governor in his legislative function.

1. Senator Cetrone moved that the Governor be immune from any action taken officially as a part of his legislative function in vetoing or approving bills or in calling sessions of the legislature.

Motion Carried

C. State immune from suit for punitive damages.

1. Chairman Towe recognized a consensus to add the word "exemplary" to this section.

II. Establishing a Defense of Good Faith Enforcement of a Law or Rule.

1. Senator Turnage moved that the language "or rule adopted according to law" be stricken from the section.

Motion Carried

2. A vote demonstrated a consensus to add language like the following to the section:

"If any officer, agent, or employee of the state, or

of a county, municipality, taxing district, or of any other political subdivision of the state acts in good faith and without malice or corruption under the authority of a regulation, ordinance, or other rule duly promulgated and that regulation, ordinance or rule is subsequently declared invalid, neither he nor his superior is civilly liable in any action in which he or his superior would not have been liable had the law been valid."

3. Senator Turnage moved that instead of "neither he nor his superior" the section should read "neither he nor any other officer or employee of the governmental unit, nor the governmental unit he represents, is civilly liable..." and then that the last four lines be stricken.

Motion Carried

III. Limitation on Liability for Damages

1. Senator Cetrone moved that recovery for noneconomic damages be limited to $25,000.

For the motion: Senator Cetrone, Representative Vincent

Against the motion: Senator Turnage, Representative Huennekens, Representative Anderson

Not voting: Representative Lory

Motion Failed

2. Senator Turnage moved that definitions of "economic" and "noneconomic" damages be drafted considering the following language:

   a. "Economic damages" means tangible damages such as out-of-pocket pecuniary losses.

   b. "Noneconomic damages" means those damages not included as punitive damages or economic damages and includes pain and suffering, loss of reputation, etc.

Motion Carried

3. Representative Huennekens moved that a limit of $300,000 per occurrence be established on the condition that recourse be available to the legislature. He amended the motion to limit liability to $100,000 per person and $1,000,000 per occurrence.

   Representative Vincent moved in substitution of Representative Huennekens motion that limits of

$300,000 per person and $1,000,000 per occurrence be established.

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Substitute Motion Carried

Tom Maddox stated that no matter what limitations the subcommittee chose to put on the damage suits, you still are faced with double digit inflation which will change the value constantly. He suggested that perhaps it could be fixed to the taxable value.

Senator Towe asked the subcommittee if they would want more time to consider these proposals. The subcommittee agreed that they needed more time. Representative Vincent stated that the job before the subcommittee was overwhelming and in order to do a thorough job the subcommittee would need at least one extra meeting before considering any further action on the proposed items.

Tom Maddox extended an invitation to the subcommittee on May 5 in Billings, Montana, to attend a meeting on Local Risk Management Problems, and a personal invitation to Senator Towe to speak at the meeting.

Senator Towe stated that he would like to have attached to the minutes of this meeting a finalization of the proposed wording for the bill. The meeting adjourned for lunch at 12:30 p.m.

The Subcommittee on Judiciary reconvened at 1:45 p.m. The afternoon session was devoted to judicial districts. Senator Towe stated that a report by Ray Stewart, Court Administrator, would be added to the agenda. Senator Towe then asked Mr. Dick Hargesheimer to present his report on judicial districts.

Mr. Hargesheimer stated that he wanted to discuss three things: (1) what we do know and what we do not know about judicial districts, (2) some suggestion for redistricting, and (3) the concept of administrative districts. Mr. Hargesheimer felt the key to problems in the courts is not redistricting but court administration. To call the district court system a "system" is a misnomer -- we have had 28 different systems for the past 50-60 years, and within those 28 systems are other systems, i.e., the funding situation, etc. Mr. Hargesheimer stated that the district judges have no statutory authority or control over the clerks of court. They are the only state agency that have no control over their clerical staff. Mr. Hargesheimer stated that there is a definite lack of uniformity between the district courts -- in all areas, travel, caseload, etc. He found that it was difficult to determine just what a reasonable caseload was for a judge because each judge is different. Mr. Hargesheimer had sent out a questionnaire to the district judges and the responses varied greatly concerning the "ideal" caseload for a judge. He stated that it was hard to equate caseload with workload because of the variables that exist in each case. He felt that we really need a better system of collecting statistics for the district courts. There has been

no administration over the entire court system, creating a lack of uniformity between the districts. Mr. Hargesheimer handed out some alternative suggestions for redistricting (Attachment 2). He stated that if caseload is an indicator of workload, then districts 13, 8, 1, 4 and 11 would need some kind of assistance -- either an additional judge, law clerks, support staff, or redistricting. He discussed the legislative history of redistricting stating that there has been 18 legislative changes in the districts, including either taking away or adding additional judgeships. However, in only one instance was there any study done before redistricting. Mr. Hargesheimer then discussed the concept of administrative districts. This would divide the state up into 8 districts, i.e., urban districts would have judges dealing with urban problems. There would be a chief administrative judge in each district that would help equalize the caseloads if they got too heavy at any given point in time. Mr. Ray Stewart, pointed out that for purposes of election the existing districts would stand, this system would be superimposed on top of the existing system.

Senator Turnage asked what the function of an administrative judge would be. Mr. Hargesheimer stated that one of the functions would be to see that the workload was more evenly distributed.

Mr. Ray Stewart passed out a Courts Planning Proposal, a copy is attached and made a part of these minutes (Attachment 3). Mr. Stewart stated that he has given the same proposal to the Supreme Court Judges and is waiting for their reaction. Senator Towe asked Mr. Stewart to explain what he meant by a court planning unit. Mr. Stewart stated that under the constitution the Supreme Court has supervisory responsibilities for the court system -- this is a new system. The court planning unit would add three people to the staff -- a planner statistition, a budget evaluator, and a general researcher -- who would support the court administration project and the court planning commission (which would be comprised generally of judges and lawyers) in efforts to develop statistical information concerning the courts.

Judge Sande, Yellowstone, felt that prior to this year, the Judges Association had not taken enough interest in the judiciary. This year there is an interim committee of five judges who will meet about every six weeks. He stated that a few years ago two university professors took the task upon themselves to draw up a whole redistricting plan, the judges looked it over and found that it would not work at all. He felt that there is no real crisis with the present system. However, he stated that some study should be done on the subject and from that study a better plan could be drawn up. He felt that population growth was a very important item to be considered in redistricting. He stated that the Judges' Association will be taking a good look at this redistricting plan and will be having some input in it.

Judge Shanstrom stated that he also felt that the problem is not as critical as it might appear. There is a great difference between caseload and workload. The judges are pretty well satisfied with the present system. He would be in favor of the court administrator working with the Judges' Association for any future redistricting.

Judge Allen stated that he has the smallest district in Montana with the lightest caseload. He felt that you could ~~not use caseload~~ to determine workload.

Judge Blair stated that Beaverhead County is current; that by May 1, Madison County will be current; and Jefferson County will be current in a short time, which brings the 5th Judicial District up to date. Therefore, the 5th Judicial District does not need an extra judge. It is functioning well, there is no complaint whatsoever, and the district is perfectly satisfied with the present system. They do not want is dismanteled.

Judge Dussault felt that members of local bar associations should be fully aware and work with the subcommittee on any plans for redistricting. The members of the bar are the ones that should have the greatest input into any changes that the legislature wants to make. He stated that the judges want to work with the subcommittee but the members of the bar must also be considered.

Senator Towe explained that the reason the study came about in the first place was because of the bar associations in three counties: Lincoln County, who came to the last legislature to petition the legislature to create a new judicial district in Lincoln County; Yellowstone County which had a bill introduced, at the request of the bar association, to add a new judge to the 13th Judicial District; and from Gallatin County who wanted a new judge added to the 18th Judicial District. He stated that the legislature rejected all three of those claims primarily because they felt it was important enough to take a closer look at and study the whole situation. Senator Towe pointed out that this was the third judicial meeting to take place and he was pleased with the response received so far. At the second meeting the subcommittee decided to send some tentative conclusions to the judges, the bar, and the public to see if the subcommittee was headed in the right direction. The subcommittee had decided at that time to not make any major overhaul of the present districts in Montana but that some minor adjustments were necessary. They also decided to suggest that the court reporters be paid by the state -- they would be on the same system as the district judges are now. Included in that would be funding to pay for secretaries where needed, and also law clerks. He felt that it may make more sense to add these types of services rather than adding new judges.

Judge Sande felt the subcommittee would be wasting its time to come up with any conclusions until the Judges' Association had a chance to meet and discuss alternative solutions. Senator Towe asked if it would be helpful to the Judges' Association if the subcommittee drew up some tentative proposals for their reaction or would it be better to wait until the Judges' Association drew up some proposals before acting. Judge Sande felt that it would be much better for the Judges' Association to discuss a plan. He felt that the subcommittee was not as aware of the situation as are the judges and lawyers who work with the system every day. But if the subcommittee wanted to make suggestions, the Judges' Association would be happy to look at them and let the subcommittee know what they thought.

Allen Cain, President of the 1st Judicial District Bar Association, stated that their association would like to have some input into any legislation that might affect their area. It would be helpful if the subcommittee would send the local bar associations any proposals made and let the members respond to them. It would be important to find out what the proposals will do to the individual lawyers who must practice every day, however, the opinion of the Judges' Association would be the most important.

Mr. Ray Stewart stated that in 1908, after Park County split off from Gallatin County, it was hard for the people to get to the county seat and they wanted their own county seat. The legislature passed a law that stated the people could create their own county by petition as long as they did not bring the county line within 10 miles of the existing county seat. Immediately, the number of counties jumped from 26 to 56. Ever since that time the executive branch of government, and now to some extent the legislative branch, has been trying to manage this critter. One of the results of the county busting period was that some of the more rural counties sent a man to the legislature, and he served ten terms, in time created himself a judge -- and that is how we got at least 17 of the present judicial districts. The point he was trying to make is that the subcommittee could create another judicial district, but it may solve the problems equally as well by adding another judge to the 11th Judicial District with the proposal that the third judge must reside in Libby. Mr. Stewart also stated that the administrative district approach has been used in North Dakota, and has worked out very well. Under the administrative district system, an administrative judge would take care of all the administrative tasks that keep a court operating while the others would be free to devote their time to the judicial work. The intent is not to infringe upon judicial independence, but rather to alleviate the other judges of the workload associated with management tasks.

Senator Towe stated that the people of Libby were concerned about the heavy caseload and the amount of work that two judges must handle at the present time in their district and that the judge only is in Libby just one day a week. Mr. Stewart felt that by adding a third judge to that district and having him reside in Libby would alleviate the problem. Senator Towe stated that the people oppose that alternative because they felt that with the present election system the judge would end up back in Kalispell and put the people out of Libby back in the same situation they are in now.

Senator Towe asked Judge Sande to respond to the possibility of taking away the outlying counties in his district and adding them to other districts versus adding a new judge. Judge Sande stated that he does not have the problem with driving, that his problem lies with some of the new laws passed that require so much more time.

Senator Towe stated that the suggestion had been made to place Treasure County in District 16. Judge Sande felt it was easier for the present judge to drive 25 miles to Hysham than to bring someone

in from Billings which is 80 miles. He was not in favor of any change for that district.

Representative Huennekens asked the judges' opinion of adding law clerks and assistants to the courts. Judge Sande stated that a law clerk or secretary would just be in his way. He is satisfied with his present system. Judge Blair stated that there is nothing in the law that requires his court reporter to do his secretarial work and felt that some provisions should be made to provide judges with secretarial help. Judge Shanstrom stated that he was not in favor of law clerks or researchers, etc.; they would be no help to him.

Judge Dussault stated that his court reporter will not take depositions and he cannot force him to do this. He would be in favor of a person to do letter writing, etc.

Representative Anderson asked if there was anything in the law that mandates the relationship between clerks of court and the judges. The judges replied that there is nothing in the law about it, however, traditionally they have always cooperated.

Senator Towe asked the judges' opinion of having the state pick up the financing of the court reporters rather than splitting it between the counties as it is done now. Judge Dussault felt it was the state's function to provide the financing for court reporters. The other judges agreed.

Disqualification

Judge Allen stated that the Judges' Association has asked him to draw up a bill on disqualification. He stated that he has met with the Supreme Court and with Duke Crowley from the law school to draft a bill. The Supreme Court has agreed to adopt this bill. The Supreme Court has made one minor change and that is eliminating the JP courts from the bill. Senator Towe asked if the court had the authority to issue this as a rule without further legislation. Judge Allen stated that under the new constitution, they have the power to draft any statute. However, the legislature has the power to throw it out if they so choose during the next session. Senator Towe stated that if the court plans to do something in this direction, the matter would be considered settled as far as the subcommittee was concerned. Ray Stewart stated that the Acting Chief Justice Castles had indicated to him that this would be the number 1 priority for the court to consider just as soon as the Chief Justice could return to the bench. Senator Towe asked the judge whether the disqualification procedure would have to be made within 10 days after the judge was appointed to the case. Judge Allen stated that was correct. Senator Towe felt that is was not necessary for the subcommittee to consider this matter further. Judge Allen is in favor of disqualification. Senator Turnage also favored revising the present disqualification procedures.

Representative Huennekens felt that any minor changes in redistricting

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would not be received very well at the present time. Senator Towe felt that if some tentative changes were proposed, that would cause some reaction. Representative Huennekens felt that if changes were proposed they should be considered on the basis of population rather than caseload.

Senator Cetrone felt the situation in Libby should be taken care of by the subcommittee, the statistics justified some kind of change for that area. Senator Towe stated that he received a call from Joe Roberts who wanted to attend the meeting, weather permitting. Mr. Roberts was very much concerned about the situation and stated that the people in the Libby area are also very concerned -- they need something done.

Senator Towe stated that Judge Ludke needed some help in his district also, that his area was very overloaded.

Senator Cetrone thought that the subcommittee should propose some sort of change in order to get some type of reaction -- negative or positive -- form the judges, from practicing attorneys and from the public. Representative Huennekens felt that we have four problem areas that need specific attention: Yellowstone County, Flathead County, Helena and Bozeman. These are the areas that need some relief now. They are also the four areas that will have the highest population growth in the state. Senator Towe stated that another judge could not be justified if the problem could be solved by adding a law clerk or secretary. Representative Vincent suggested making the program voluntary -- give them the funds for a law clerk or secretary if they wanted them.

Representative Huennekens moved that legislation bedrafted to provide a fund for the Supreme Court to use in providing law clerks and secretaries for judges, to be allocated by the Supreme Court upon request as the need is determined by the Supreme Court. The motion carried.

Senator Towe asked if the subcommittee would want to include an appropriation bill with that motion.

Representative Huennekens moved that an appropriation of $100,000 be alloted for district courts only for the Supreme Court to use in providing law clerks and secretaries to judges as requested and the need is determined by the Supreme Court. The motion carried.

Court Reporters

Senator Towe stated that the court reporters would prefer to be under state funding; first, it is a hassle for them to come to the state legislature every year to ask for funding; second, it is a hassle between the counties because they have to figure out how their counties can all participate in the payment of salaries -- in district 13 there are 5 counties. The court reporters do not want to come under a court administrator, they want to remain under the reigns of the judges.

Mr. Hargehseimer questioned whether there would be a conflict with court reporters working on the side under a fee basis if they become salaried state employees. Senator Towe stated that if it is a conflict with the state then it should also be a conflict for the county. The subcommittee did not decide whether a conflict existed or not.

Senator Turnage moved that the court reporter be placed under state financing the same way the district judges are now. The motion carried.

Court Administrator

Representative Lory stated that the court administrator is now operating under a grant. He felt that an appropriation should be made for a court administrator. Mr. Hargesheimer was sure that the court would make this type of appropriation request to the next legislature. Mr. Hargesheimer stated the court has no objection to introducing a bill to establish a court administrator. However, the court would like to have some input into any proposed legislation. He felt that they would be very much in favor of a resolution. Senator Towe stated that it was within the purview of the subcommittee to propose legislation on this subject because it effects the obtaining of statistics and necessary information which the legislature needs to make more informed decisions. Also a court administrator may be able to smooth the workload problems thus, fewer new judges would be needed. Senator Cetrone stated he was in favor of a court administrator.

Representative Huennekens moved that the following language be drafted as a bill:

> There is hereby established a court administrator to be under the supervision of the Supreme Court, whose function will be to collect, analyze, and report statistics and other pertinent information about the work of the judicial branch to the Supreme Court and to the Legislature and to do any and other functions that might be assigned to him by the Supreme Court and the Court Administrator shall not have any authority to do any scheduling or handle any scheduling of any courts or any judges or any court reporters.
>
> The Clerks of Court are hereby directed to cooperate with the court administrator in obtaining the statistics that are necessary for the use of the Supreme Court and the Legislature, in better administering the court system with the state of Montana. The qualification and salary to be determined by the court.

The motion carried.

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Redistricting

Senator Turnage favored waiting to make a decision until he received some information from the Judges' Association. Senator Towe felt that to make sure the Judges' Association does not ignore the situation, the subcommittee should give them some type of proposed legislation for their reaction. He felt that we needed an additional judge in district 13, and 11, either that or make a new district and elect a judge in Lincoln County. He felt that Lewis and Clark County could get by with a law clerk rather than an additional judge. Possibly add another judge to district 18.

Representative Lory moved that the following questions be drawn up and sent to the Judges' Association and the Bar Association asking that they respond in time for the subcommittee's April meeting.

1. Should there be a new judge added to the 13th judicial district?

2. Should there be a new judge added to the 18th judicial district?

3. Should there be a new judge added to the 11th judical district with the requirements that he be a resident of Lincoln County?

4. Should Treasure County be transferred from 13 to district 16?

The motion carried.

Representative Huennekens stated that he was concerned about district 14. There have been less than 200 filings in the district, and possibly in consideration of an extra judge in Yellowstone County they could also pick up Musselshell and Golden Valley. The possibility of putting Townsend in with Gallatin County was discussed, but it was decided that Townsend would be much happier being left in the 1st judicial district. Senator Towe felt that the alternative for redistricting that was proposed by Mr. Hargesheimer should be considered by the subcommittee and also considered by the Judges' Association. The subcommittee decided that they would not discuss any further action on redistricting until after they heard from the Judges' Association.

Senator Towe instructed Mr. Hargesheimer to also send any material on redistricting to the Bar Association and the Supreme Court as well as the Judges' Association.

Lee Heiman, of the Local Government Commission, stated that his commission was studying a proposal of total state assumption of court costs. They have not put it all together yet, but he wanted to be sure that the subcommittee, by passing the motion to have the state fund court reporters, was not rejecting state assumption of all other court functions. Senator Towe stated that the subcommittee had not ruled out any other state assumption of court costs.

Senator Turnage moved that the subcommittee give further consideration to total state assumption of court system except for the housing facilities of the courts. Representative Huennekens was in favor of that. The motion carried.

The date of the next meeting was discussed. It was set for May 8. The morning would be devoted to districting and the afternoon to sovereign immunity.

The meeting adjourned at 5:05 p.m.

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Montana Legislative Council

State Capitol

Helena, 59601

February 10, 1976

TO: Subcommittee on Judiciary

FROM: Robert B. Person

RE: Bill Sections Related to Sovereign Immunity

This memo presents sections of a bill to manage the state's sovereign immunity situation. The sections have been designed to accomplish the goals established by the subcommittee during its November meeting. Upon conclusion of subcommittee deliberations, these sections might form a nucleus for one or several bills. In developing a critique of these drafts one should bear in mind how they should relate to one another and whether one or more bills should be drawn to accomplish these goals.

The drafts address the following points:

1. Immunity from suit for the Legislature and Judiciary is provided.

2. The state is granted immunity from suit for punitive damages.

3. A defense against tort liability for good faith actions under the color of the law is established.

4. Recovery for actual economic loss within established limits per claimant has been provided with a recognition of an appeal procedure.

5. Provisions for satisfaction of judgments by local government units through insurance, taxes, and bonds have been made, and property exemptions from execution have been drafted.

I have not drafted these sections in the form of a bill because I do not believe the coverage of the problem is yet comprehensive.

The commentary below the draft sections will indicate some alternatives and additional provisions that should be considered. In addition, I will have information available by the meeting date that will answer some of the research questions posed by the subcommittee and provide a basis for further discussion.

I. Provisions for Immunity from Suit

A. Immunity from suit for legislative acts and omissions. The state is immune from suit for an act or omission of the legislature or of an officer or agent of the legislature. The legislature is that body vested with legislative power by Article V of The Constitution of the State of Montana.

B. Immunity from suit for judicial acts and ommissions. The state is immune from suit for an act or omission of the judiciary or of an officer or agent of the judiciary. The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

Comment: As drafted, these sections do not immunize the officers of the legislature and judicial branches for their official acts. Legislators and judges may be immune from suit nevertheless. Precedent for judicial immunity in the United States may be found in such statements as, ". . . judges are not liable to civil actions for their judicial acts, even when such acts . . . are alleged to have been done maliciously or corruptly." Further research would undoubtedly disclose similar immunities for the discretionary acts of legislators in legislating. If legislators and judges are immunized in either statute law or case law for discretionary acts, it is reasonable the governor should be also. This would apply at least insofar as his use of discretion in approving or disapproving acts of the legislature.

C. State immune from suit for punitive damages. The state is immune from suit for punitive damages.

II. Establishing a Defense of Good Faith Enforcement of a Law or Rule.

Actions under unconstitutional law or rule - same as if constitutional, - When. (1) If any officer, agent, or employee of the state, or of a county, municipality, taxing district, or of any other political subdivision of the state acts in good faith and without malice or corruption under the apparent authority of a law, or rule adopted according to law, and that law or rule is subsequently declared unconstitutional as in conflict with the Constitution of Montana or the Constitution of the United States, neither he nor his superior is civilly liable in any action in which he or his superior

would not have been liable had the law been constitutional. (2) As used in subsection (1) of this section, superior includes any superior officer, agent, or employee and any superior county, municipality, taxing district, other political subdivision of the state, and the state.

Comment: This section would accomplish the subcommittee's recommendation to manage the problems that might arise from what one writer called the "oversimplified and unsophisticated notion" that an act declared unconstitutional is void from the beginning. An official acting under the law would often be in the vulnerable position of having to act under the law and later being held personally liable for his actions with no defense. The question of correct or incorrect discretion under the law and the question of negligence remain available for argument. The section does not cover unconstitutional applications of constitutional statutes, nor in cases where an action is performed as a result of indirect statutory authority, such as duty under a contract.

III. Limitations on Liability for Damages.

Limitation on governmental liability for damages in tort - appeal for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for: (a) noneconomic damages suffered as a result of an act or ommission of an officer, agent, or employee of that entity; nor (b) economic damages suffered as a result of an act or omission of an officer, agent, of employee of that entity in excess of _____ Dollars ($) for each claimant for each occurrence.

The legislature or the legislative governing body of the county, municipality, taxing district, or other political subdivision of the state may authorize payments for economic damages in excess of the sum authorized in subsection 1(b) of this section upon appeal of plaintiff from a final judgment in the amount stated in that subsection.

Comment: An effort to control the liability of an entity in the absence of immunity from suit depends for success upon proving the motion that liability can be separated from suability. These arguments are available generally. Whether they are applicable under Montana's present dituation deserves additional study and discussion.

IV. How Judgment Against Governmental Entities May be Satisfied.

Tort judgments against governmental entities except state - how satisfied. (1) A county, municipality, taxing district, or other political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

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(a) Insurance;

(b) A property tax, levied and collected at the earliest time possible, in an amount necessary to pay the judgment, except that the levy may not exceed _____ mills; or

(c) Proceeds from the sale of general obligation bonds issued for the purpose of deriving revenue for the payment of judgment. Property taxes levied to satisfy bonds issued to pay judgment may not exceed _____ mills.

No penalty or interest may be assessed against any governmental entity as a result of a delayed payment of an uninsured tort liability.

V. Exemption of Public Property From Execution of a Judgment By Attachment.

Public property exempt from execution. All property owned by the state, a county, municipality, taxing district, or other political subdivision of the state is exempt from attachment or execution.

Comment: This section would be added to Title 93 as Section 93-5820.1. Chapter 58 concerns the execution and placing this provision at 93-5820.1 would place it at the end of another series of exemptions. In addition, section 93-5814 should be amended to remove the following language from subsection 10:

> All courthouses, jails, public offices, and buildings, lots, grounds, and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state, and all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining , owned or held by any town or incorporated city, or dedicated by such city or town to health, ornament or public use, or for the use of any fire or military company organized under the laws of the state.

This monumental sentence fragment covers many of the properties concerned but is misplaced in a section primarily concerned with exemptions for debtors who are married or heads of families. It should therefore be stricken from the statute.

VI. Liability of Individuals for Their Own Torts.

Governmental entities immune from suit arising from corrupt or malicious acts. The state, a county, municipality, taxing district, or other political subdivision of the state is immune from suit arising from the corrupt or malicious acts of its officers, agents or employees.

Comment: Abrogation of sovereign immunity would normally mean the employer of a government employee would be responsible for the torts of the employee unless some provision to the contrary exists. The subcommittee asked that individuals be made responsible for their "own" torts. I interpreted this language to mean torts committed on behalf of the employee himself for his own benefit rather than trying to draw a distinction between intra and ultra vires acts, negligent and non-negligent acts, or discretionary and ministerial functions, all of which suffer some inadequacy in this area. Given the goals of the tort law system, it is reasonable for the employer to stand behind the official except to the extent it is proven that acts that were tortious were not "honest" mistakes.

Professor VanAlstyne of UCLA advised the California Legislature on this subject that if an official is to maintain liability for torts committed as a result of bad-faith action and the state is to remain liable for other actions, there must be a way to guarantee successful operation of the system and reduction of frivolous suits. He proposed the following possible procedural techniques:

1. Require the posting of bonds by Plaintiff to guarantee payment of costs and a reasonable attorney's fee.

2. Limit recovery to actual damages incurred.

3. Preclude recovery of exemplary or punitive damages.

4. Establish a rule demanding detailed evidentiary pleading in a verified complaint of the facts upon which the claim of malice or intentional wrongdoing is predicated.

5. Place the burden of rebutting the presumption of legality and regularity on the Plaintiff.

This memo has been distributed to all interested parties on the mailing lists at the Legislative Council Office. Oral or written comments prior to the February 28 meeting date are encouraged. All comments received at the Legislative Council Office will be provided to subcommittee members.

Attachment 2

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FEBRUARY 1976

JUDICIAL DISTRICTS ALTERNATIVES:

BOUNDARIES & JUDGESHIPS

Note: The population figures below are for 1970. The casefiling figures are for 1974.

The cost for each additional judgeship is approximately $28,125 per year (salary plus fringe benefits).

ALTERNATIVE #1

Remove Treasure County from District 13 and place in District 16.
Remove Stillwater and Carbon Counties from District 13 and place them in District 6.
Add one (1) judge to District 13; retain two (2) in District 16, and one (1) in District 6.

Before Redistricting:

Casefilings per District -- 3,599 in 13; 591 in 16; 396 in 6.
Casefilings per Judge -- 1,200 in 13; 296 in 16; 396 in 6.
Area per District -- 12,510 sq. miles in 13; 23,212 in 16; 4,466 in 6.
Population per District -- 110,205 in 13; 30,622 in 16; 14,177 in 6.

After Redistricting and addition of 1 judge:

Casefilings per District -- 3,168 in 13; 620 in 16; 748 in 6.
Casefilings per Judge -- 792 in 13; 310 in 16; 748 in 6.
Area per District -- 7,665 in 13; 24,197 in 16; 8,326 in 6.
Population per District -- 97,424 in 13; 31,691 in 16; 25,889 in 6.

ALTERNATIVE #2

Remove Treasure and Big Horn Counties from District 13 and place in District 16.
Remove Stillwater and Carbon Counties from District 13 and place them in District 6; eliminate District 18 and add Gallatin County to District 6.
Retain three (3) judges in District 13; two (2) in District 16; and two (2) in District 6.

Before Redistricting:

See the same section under Alternative #1.

After Redistricting:

Casefilings per District -- 2,867 in 13; 921 in 16; 1,714 in 6.
Casefilings per Judge -- 956 in 13; 461 in 16; 857 in 6. (Adding an additional judge to District 13 would make the casefilings per judge 717).
Area per District -- 2,642 in 13; 29,220 in 16; 10,843 in 6.
Population per District -- 87,367 in 13; 41,748 in 16; 58,394 in 6.

ALTERNATIVE #3

Remove Treasure and Big Horn Counties from District 13 and add them to District 16.
Remove Garfield and Prairie from District 16 and add them to District 7.
Remove Stillwater and Carbon Counties from District 13 and add them to District 6.
Retain three (3) judges in District 13; two (2) in District 16; and one (1) each in District 6 and 7.

Before Redistricting:

Casefilings per District -- 3,599 in 13; 591 in 16; 569 in 7; 396 in 6.
Casefilings per Judge -- 1,200 in 13; 296 in 16; 569 in 7; 396 in 6.
Area per District -- 12,510 in 13; 23,212 in 16; 7,946 in 7; 4,466 in 6.
Population per District -- 110,205 in 13; 30,622 in 16; 25,446 in 7; 14,177 in 6.

After Redistricting:

Casefilings per District -- 2,867 in 13; 885 in 16; 605 in 7; 748 in 6.
Casefilings per Judge -- 956 in 13; 443 in 16; 605 in 7; 748 in 6.
Area per District -- 2,642 in 13; 23,035 in 16; 14,131 in 7; 8,326 in 6.
Population per District -- 87,367 in 13; 38,200 in 16; 28,994 in 7; 25,889 in 6.

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ALTERNATIVE #4

Move Broadwater County from District 1 to District 18.
Add one (1) judge to District 18.

Before Redistricting:

Casefilings per District -- 1,360* in 1; 966 in 18.
Casefilings per Judge -- 680* in 1; 966 in 18.
Area per District -- 4,669 in 1; 2,517 in 18.
Population per District -- 35,807 in 1; 32,505 in 18.

After Redistricting and addition of 1 judge:

Casefilings per District -- 1,230 in 1; 1,096* in 18.
Casefilings per Judge -- 615 in 1; 548* in 18.
Area per District -- 3,476 in 1; 3,710 in 18.
Population per District -- 33,281 in 1; 35,031 in 18.

* Assumes 130 casefilings in Broadwater County.

ALTERNATIVE #5

Remove Jefferson from District 5 and place in District 1.
Eliminate District 18 and place Gallatin in District 5.
Add one (1) judge each to District 1 and District 5.

Before Redistricting:

Casefilings per District -- 1,360* in 1; 449 in 5; 966 in 18.
Casefilings per Judge -- 680 in 1; 449 in 5; 966 in 18.
Area per District -- 4,669 in 1; 10,731 in 5; 2,517 in 18.
Population per District -- 35,807 in 1, 18,439 in 5; 32,505 in 18.

After Redistricting and addition of 2 judges:

Casefilings per District -- 1,511* in 1; 1,415 in 5.
Casefilings per Judge -- 504 in 1; 708 in 5.
Area per District -- 6,321 in 1; 11,605 in 5.
Population per District -- 41,045 in 1; 45,706 in 5.

* Assumes 130 casefilings in Broadwater County.

ALTERNATIVE #6

Remove Sanders and Lake Counties from District 4 and add to District 11.
Add one (1) judge to District 11.

Before Redistricting:

Casefilings per District -- 3,623* in 4; 2,049 in 11.
Casefilings per Judge -- 1,208 in 4; 1,025 in 11.
Area per District -- 10,509 in 4; 8,851 in 11.
Population per District -- 97,168 in 4; 57,523 in 11.

After Redistricting and addition of judge:

Casefilings per District -- 2,832* in 4; 2,840 in 11.
Casefilings per Judge -- 944 in 4; 946 in 11.
Area per District -- 6,237 in 4; 13,123 in 11.
Population per District -- 75,630 in 4; 79,061 in 11.

* Assumes 2,200 casefilings in Missoula County.

ALTERNATIVE #7

Remove Chouteau from District 8 and place in District 10.

Before Redistricting:

Casefilings per District -- 2,910 in 8; 301 in 10.
Casefilings per Judge -- 970 in 8; 301 in 10.
Area per District -- 6,588 in 8; 7,777 in 10.
Population per District -- 88,277 in 8; 15,953 in 10.

After Redistricting:

Casefilings per District -- 2,602 in 8; 455 in 10.
Casefilings per Judge -- 867 in 8; 455 in 10
Area Per District -- 2,661 in 8; 11,704 in 10.
Population per District -- 81,804 in 8; 22,426 in 10.

ALTERNATIVE #8

Remove Chouteau from District 8 and add it to District 12.

Before Redistricting:

Casefilings per District -- 2,910 in 8; 699 in 12.
Casefilings per Judge -- 970 in 8; 699 in 12.
Area Per District -- 6,588 in 8; 8,631 in 12.
Population per District -- 88,277 in 8; 26,444 in 12.

After Redistricting:

Casefilings per District -- 2,602 in 8; 853 in 12.
Casefilings per Judge -- 867 in 8; 853 in 12.
Area per District -- 2,661 in 8; 12,558 in 12.
Population per District -- 81,804 in 8; 32,917 in 12.

State of Montana
Supreme Court
HELENA

February 27, 1976

TO: Acting Chief Justice Wesley Castles

FROM: Ray Stewart, Court Administrator

RE: Courts Planning Proposal

Need

Saturday's Judiciary Subcommittee will consider staff-developed alternatives for the Judicial Branch in the areas of judicial districting, courts management, disqualification rules, etc. Its study is based on a 1975 legislative resolution to review Montana's judicial districts. The subcommittee found the factors affecting judicial districts so complex and varied that its review necessarily considered several additional areas. This review process has probably been more complete than any previous legislative analysis of Montana's Judicial Branch. But those who became involved in the review, would be first to point out the dearth of judicial information on which to base either knowing changes or assured solutions.

This experience cries for the analysis and statistical information a planning process comprises. Put simply, we need to know first where we are before we can chart our course for where we should be. At least one alternative mentioned during discussion of each subcommittee-studied area suggested the subcommittee defer the particular problem to the Court for its court administrator to research preliminary to its formulating a recommendation. Possibly the alternative is for the Montana Judiciary to again become the victim of legislative good intentions. For some past judicial statute changes cannot be said to have enhanced the court systems' overall efficiency and economy. Witness Montana's 18 judicial districts which have unequal caseloads, unequal mileage between courts, unequal numbers of judges, unequal trial timeliness, unequal research facilities and personnel, and unequal numbers of other support facilities and persons.

Urgency

If the subcommittee is willing to seek the knowing recommendations of the Judiciary, should we not expeditiously proceed with a courts planning project to develop such knowing recommendations?

Just as the Chief Justice is the chief budget officer for Montana's Judicial Branch, usual management hierarchies would consider him the chief planner for the Judicial Branch. Until the court administrator project began (October 1975) he had no management/research staff to lay groundwork for judicial planning. The matter is compounded by each district judge who holds his different view of Montana's court problems. So to insure that any solution addresses more than just one judge's problem requires cooperative analysis and synthesis. Even now the court administrator and research assistant are only thinly spread over the basics essential to the planning process. And the results of their work at the current two-staff effort is too slow to help the Court plan to meet these problems with knowing recommendations before the 1977 Legislature convenes.

In November the Montana Board of Crime Control reported discretionary money was available for courts planning projects. I relayed that information to the Chief Justice, suggesting it might bear further scrutiny.

At the Chief's suggestion, I informed the Crime Control Board that the Court might be interested in pursuing discretionary funds for a court planning project. But in that the court administrator project was just underway, many other urgent matters first had to be attended.

I discussed courts planning again with the Chief Justice in late January, after discovering minor financial report irregularities (Exhibit), and suggesting some possible solutions. At that time I suggested a courts planning unit could include an internal auditor, who would be directly responsible to the Chief and could help develop the financial information base about the Judiciary. This would be an essential corollary to uniform, accurate judicial statistics.

About this same time the court administrator project began preparing for a statistical collecting and reporting effort (Exhibit). This, properly carried out, would collect monthly

trial court statistics in Montana, thereby providing an information base on which planning could begin. The problem with the current statistical collecting and reporting effort is that it only begins January 1976 and goes forward. It will not offer a historical base covering the past several years. Therefore, a courts planning effort could provide a one-shot effort in collecting uniform judicial statistics over the past several years, as well as snythesizing and recording them as a logical base for developing knowing courts recommendations.

Approach

Courts planning would follow the philosophy that the Chief Justice is the chief planning officer for the Judicial Branch. It requires a Courts Planning Commission comprised of judges and lawyers who would spend approximately two days every other month reviewing staff work and developing recommendations for the Supreme Court. This in turn, would offer a knowledgeable basis for requests of the next legislative session aimed at improving efficiency and economy of Judicial Branch operations. (Suggesting that the economy of the Judicial Branch would be improved is not to suggest the cost of the Judiciary to the state General Fund would be reduced. For instance, one likely recommendation may be that the state General Fund actually pick up more of the cost of District Court operations, because by relieving the counties of judicial costs it could help equalize the cost of justice across the state.)

The Courts Planning Commission might comprise representatives* of the following judicial and court officer organizations:

Chief Justice - chief planner
Associate Justice (appointed by Chief Justice)
President, Montana Judges' Association (elected)
Chairman, Montana Judges' Legislative Committee
(appointed by President - MJA)
CLC Commissioners, Montana Judges' Association
(elected-at-large by MJA)
President, Montana Magistrates' Association
(elected)
CLC Commissioner, Montana Magistrates' Association
(elected-at-large)

*Citizen participation occurs either during formal commission hearings or when the Legislature acts on Judicial recommendations.

President, State Bar of Montana (elected)
President, County Attorneys' Association (elected)
President, Montana Trial Lawyers (elected)
Chairman, Judicial Standards Commission (appointed by Chief Justice)
Chairman, Lower Courts Commission (appointed by Chief Justice)
Dean, University of Montana Law School (appointed by Reagants)

1) Clerks of Court, Attorney General, optional
2) Court administrator could serve as commission secretary.

Budget

The Chief Justice and the Courts Planning Commission would require some staff, likely a planner/statistician, a budget evaluator/internal auditor, and a program evaluator/research assistant (please see Exhibit), as well as parttime summer help to accomplish the initial caseload surveys and a parttime secretary to expedite the flow of paper and reports from the staff to the commission. This could be included in a budget request to the Law Enforcement Assistance Administration for an $80,000 discretionary courts planning grant for each of the next two years.

One requirement is that the Court would request the next Legislature to continue the Court's planning function with a state General Fund appropriation.

A suggested budget would provide $51,750 for personnel including a court's planner/statistician at $13,000 a year, a budget evaluator/internal auditor at $12,000 a year, planning evaluator/research assistant at $11,000 a year, three survey specialists at $150/week for ten weeks of the summer session for a total of $4,500 for the summer, and a half-time secretary for $4,500. Total salaries and benefits, figured at 15 percent, would equal $51,750. These are low salaries nationally, but in that the burden of final evaluation of data and initiation of recommendation would fall on the Courts Planning Commission, support personnel at these levels would only provide the necessary input to the commission without requiring the stature or experience to lead it. These salaries

also would fit the Montana Judicial Branch existing salaries structure.

Consultant services ($1,250) are requested to include two-day visits from the court planner or court administrators of five nearby states, North Dakota, South Dakota, Wyoming, Colorado and Idaho. Each of these states has been ahead of Montana in court administration and courts planning so visits by their key personnel to Montana would lend sufficient outside expertise to the Montana effort to assure its productivity and accuracy without subverting the Montana style. These five are figured at $125 a day, two days each visit.

Travel and per diem covers ten courts' planning commissioners, six two-day meetings, and an average per meeting mileage, meals and lodging of $115. 13 commissioners are planned total, but only 10 would be involved in out-of-residency travel. There is also a figure for three one-week staff training sessions, at $600 each, and the survey specialists and professional staff at 60 days each and staff at 40 days each, average of $37/day for 100 miles a day, meals and lodging.

Equipment required (costing $2,400) will include desks, executive chairs, visitor chairs, files, bookshelves, etc., as necessary, for the three staff who would be covered under the two-year project at approximately $400 to outfit each of the three staff persons. We would need to add one selectric typewriter ($400) and at least one additional 1450-8 option calculator ($600) on a lease-purchase agreement.

Operating expenses ($4,200): Communications would require possibly an average of $30 per month for postage and $70 per month for phone. Office supplies and materials (general) would be about $80 a month, printing of forms approximately $600 (these are statistical and financial reporting forms) and printing of a final report to the Judiciary, the Legislature, and the people. Other expenses would include subscriptions, conference fees, and tuition for staff training, approximately $1,000 for that first year.

This amounts to a $79,500 project. The L.E.A.A.'s share would be $71,550, and the Court would be required to match that with $7,950, a 9 to 1 match ratio.

Action Required

If this general approach meets with the Supreme Court's approval, we should formally notify the Montana Board of Crime Control of our intention, subject to Chief Justice James T. Harrison's modifications upon his return to the bench. We must make a commitment shortly, I am told, or there may be no discretionary funds left for courts planning in Montana. Incidentally, North Dakota has thus far received the largest courts planning grant at $125,000/ year for each of two years.

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Brief Position Title Descriptions

1) Courts Planner/Statistician:

Develops and proposes strategies and plans that will enable the courts to function more efficiently and to provide more effective justice, through uniform development and accurate analysis of the courts system statistical information base. Considerable education and experience in government planning and management.

2) Budget Evaluator/Internal Auditor:

Assists Courts throughout the state in budget preparation and budget requests. Evaluates prior judicial costs, recommends financial management standards, shows how to carry out court-approved standards.

3) Research Assistant/Evaluator:

Conducts research in court planning and management matters, develops narratives to report statistical and financial information, aids commission in drafting recommendations. Requires broad educational base, emphasis in public administration.

PROPOSED COURTS PLANNING PROJECT BUDGET

A. PERSONNEL

Professional positions 3	$ 36,000	
Paraprofessionals 3-6 parttime	9,000	
Employee Fringe Benefits at 15%	6,750	
	Total	$ 51,750

B. CONSULTANT SERVICES

10 days court planners at $125/day	$ 1,250	
	Total	$ 1,250

C. TRAVEL and PER DIEM

Courts Planning Commission 6-2 day meetings	$ 6,900	
Staff training and supervisory	6,340	
Field Survey	6,660	
	Total	$ 19,900

D. EQUIPMENT

Office furniture for 3 professional staff	$ 1,200	
Electric Typewriter	400	
1450-8 option calculator	600	
	Total	$ 2,400

E. OPERATING EXPENSE

Communications	$ 1,200	
Office supplies, materials & printing	2,000	
Other expenses	1,000	
	Total	$ 4,200

F. Total Project Budget (Combine totals of A,B,C,D,E above) $ 79,500

G. MBCC Share of Total Project Budget 90 % Dollar Amount $ 71,550

H. Applicant Share of Total Project Budget 10 % Dollar Amount $ 7,950

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SUBCOMMITTEE ON JUDICIARY

Minutes of the May 8, 1976 Meeting

The meeting of the Subcommittee on Judiciary was called to order by Senator Thomas E. Towe, Chairman, at 9:00 a.m., in Room 432, State Capitol, Helena, Montana. All members of the subcommittee were present with the exception of Senator Drake and Representative Vincent, who were excused.

Also present at the meeting were: Virginia Griffing, Data Systems Specialist, Courts Planner, Montana Board of Crime Control, Ken Curtiss, Board of Crime Control; Ray Stewart, Court Administrator, Supreme Court; Justice John C. Harrison, Supreme Court; Judge Edward Dussault, 4th Judicial District; Judge Gordon Bennett, 1st Judicial District; Arnold C. Kuenning, Independent Insurance Agents of Montana; Tom Maddox, Independent Insurance Agents of Montana; Lee Heiman, Local Government Commission; Dean Zinnecker, Montana Association of Counties; Professor Ellis Waldron, Department of Political Science, University of Montana.

Mr. Hargesheimer distributed copies of the second half of the draft of the final report. He proposed that when the committee concluded its deliberations, he will complete the section on committee deliberations and mail it to committee members for their approval. He pointed out that there is a need for a system of on-going reporting on judicial data. It is almost impossible for the legislature to consider year after year and session after session what to do about the judicial districts. It was in 1929 that the legislature last commissioned a study of the judicial districts. It was also the last time that a real reorganization of the judicial districts occurred. A special legislative committee that was commissioned at that time also recommended that a permanent committee be established for the purpose of collecting and reporting statistics. That recommendation was not heeded or passed and we do not have any agency in Montana collecting judicial statistics.

Mr. Hargesheimer then distributed copies of bills drafted for consideration for the committee. The first bill would establish the office of court administrator; the second would appropriate funds for law clerk and secretarial assistance for district judges; the third would amend sections 59-904 and 93-1906 to provide that the state pay the salaries and travel and lodging expenses of court reporters. Mr. Hargesheimer pointed out that the third bill has some problems, especially the second section (93-1906) because the original statute determining the court reporter's salary, etc., is not entirely clear.

Another bill would amend sections 93-301 and 93-302 to alter certain judicial district boundaries and to change the number of judges in certain judicial districts.

One other bill would provide that the chief justice report to the legislature upon the business transacted by all the courts. Three alternative possibilities were suggested to accomplish this. Mr. Hargesheimer said he had consulted with Chief Justice Harrison on this proposed bill, and he suggested the committee consider saying something like "within sixty (60) days after the legislature convenes" concerning statistical reports.

The final bill would provide some manner of judicial training for appellate and trial judges. Mr. Hargesheimer stated that a number of judges responding to the survey commented that they felt this was very important. Next to salaries, many of them thought it was the second most important thing. Twenty states mandate this training.

Senator Towe asked if the material sent out earlier would be the first half of the committee study and the material given to the committee today would be the second half of the report. Mr. Hargesheimer said yes.

Senator Towe then introduced Judge Bennett, Justice Harrison, Judge Dussault, Ellis Waldron, Ray Stewart, Virginia Griffing, and Ken Curtiss.

Virginia Griffing from the Crime Control Board reported to the committee on studies they are doing in connection with the mandate of the Board of Crime Control to improve the criminal justice system in the state. She said they will look at court functions and see in what way they can be of assistance to the judicial branch, mainly in terms of money, also in terms of technical assistance. One of the things looked at this year in conjunction with this committee is legal research in Montana. It seems to have become clear that this is one of the needs that has been expressed by the district court judges, as well as by prosecutors and defenders and, to a certain degree, by lower court judges. She continued, I don't know how many of you are familiar with the essential part legal research plays in the quality of justice generally and the amount of time that it takes. I might mention that legal research is important at every stage of the court proceeding, especially when one is dealing with a complex legal problem. In order to have adequate legal research you have to have an adequate law library. What is or is not an adequate law library may be a matter of dispute to some extent, but it seems to be clear that they are only two reasonably good law libraries in Montana that are not in private firms. One is at the University Law School in Missoula and the other is in the capitol here. An adequate collection probably runs to 100,000 volumes. The updating cost is quite high because you get supplements coming in every time a case is decided anywhere. The updating costs alone at the University of Montana library are about $50,000 a year. Some special expertise is necessary to run a law library. It requires a law librarian, someone specially trained to handle the kinds of requests -- obviously, to use the resources of this library by a judge or prosecutor or defender, either the attorney or the judge has to do the research himself, which takes considerable time and takes a reasonably good law library or even someone to do it for him. What is happening in Montana is that the existing resources for legal research are minimal. The judges with the heaviest caseloads probably do have access to better libraries than those who have

lower caseloads. On the other hand, those who have heavier caseloads have very little time for legal research. Either way you look at it, the legal research problem is a severe one. There is a gap in Montana. The county libraries are, I think with slight exaggeration, inadequate.

In response to a questionnaire that we sent out, and to other surveys we carried out, about twenty-five people have had about three meetings in regard to legal research assistance. The things that we have been talking about, direct manpower assistance, it also becomes increasing clear that a law clerk is not going to do a lot of good to a judge or even a law intern to a prosecutor or defender in an area where the law library itself is inadequate.

There needs to be an inventory and survey of county law libraries and the legal research assistance that is available. In addition to case load, we are talking about law explosion where more and more procedures are required. This adds to whatever problem existed in the past.

There are several means of filling this gap, looking at improved resources available to judges, prosecutors and defenders. One is a provision of clerks or researchers and adequate law libraries and adequately trained law librarians. For example, Maryland gives $20,000 a year to each of its rural law libraries for four years with the agreement from the county that they will pick up the updating services. That way you get a reasonably good law library. There are private research organizations for any lawyer, public or private. These usually charge about $15 an hour. There is a law school research project in Montana and there are similiar ones in almost every state where a lawyer may write a request to the law school and some student, if he has time, or if he is assigned to the job, will produce a memorandum. The fourth thing we have been looking at, which is something new in the United States but seems to be developing a great deal of interest, is a legal information center. The first one, and in my opinion the best, was developed at Creighton University Law School at Omaha, Nebraska. Nebraska has much the same kind of difficulties in legal research problems that we do. They have 93 counties instead of 56, and so the resources per county are sometimes even smaller than they are here. The Legal Information Center serves 91 of the counties. It provides a toll-free hot line for judges, prosecutors or defenders in the criminal justice area. The center employs two or three staff members and about 14 law students who respond to queries with a memorandum or with raw materials, say xeroxes of cases, articles, etc., or pro and con memorandum and neutral memorandum, or memorandum that takes a point of view. They do not intend to, nor do they ever write a brief for an attorney. They simply give him the sources that are available, the minority and majority views of a certain question, and if he wants more material he can find that. This is a free service; they put out a newsletter. They have a highly organized intake and output system. This has been in operation since July, 1974, and has responded to over 1,000 inquiries. The memoranda they produce are then available to anybody who has the same kind of question through a bibliography that is published by the center.

Another possibility is the kind of thing that is run by the Royal Crime and Justice Institute in Minnesota which is connected to the law school but does not use student help. It uses full-time lawyer-clerk assistance. The Minnesota operation involves only lower court judges.

A third operation is run by the Missouri bar, which is a service to all members of the bar. It is based on an automated legal research system which, upon making the proper query, brings up the full text of all the cases that have to do with the questions that are asked. A legal information center like the one at Creighton could, and in my view should, also include an automated legal research component. West, the largest publisher of textbooks and lawbooks of all kinds, has a system on-line now. It has to be based on a good law library which is different from the Lexis system. However, it brings up headnotes, it brings up citations, it does pretty much its own shepherdizing. The people who have used it that I have talked to have been very pleased at the amount of speed that it gives to a search on a legal question. Basically, what it does is lead you into the materials. It does not answer the question.

Lexis is a computerized system with a video terminal, and a printer. It has the key words highlighted on the tube.

If that were in Montana, would there be one outlet or several outlets? Ms. Griffing said the system costs $125,000 a year. The object is to supercede a need for a law library.

She went on to say that there are probably 15 other state operations in Montana that are going to automated information retrieval. One of the considerations it would seem sensible to look at is that when one moves into the area of automated information retrieval, it would seem to make sense that the hardware involved be compatible; that we try to consolidate it as much as possible. Somewhere down the road one might look at a state central information center.

You could not use SIRS if you brought in Lexis, but Westlaw could use the same kind of terminal. Westlaw costs $30,000 - $35,000 a year, or $1,200 a month and $250 a query. Apparently it takes very little training.

Ms. Griffing stated that they are looking at estimates of cost of the project, and it appears that you could run such a service for around $100,000 a year, about the kind of costs you are looking at for law clerks. She pointed out that there are several possible sources of funding, and their final meeting is on May 21 to try to determine or choose among the alternatives. She invited members of the subcommittee to attend that meeting.

Senator Towe observed that this is probably beyond the subcommittee's scope, but they may want to make a recommendation in that direction.

Judge Bennett commented that he thought a system such as this would be particularly useful in the outlying areas of Montana, although it would also be useful in urban areas.

Judge Dussault observed that this subject is up for discussion at the Five-State Judicial Conference in Coeur d'Alene.

Representative Huennekens felt that the committee should consider an approach to redesign the judicial district system. He proposed that the committee think a little bit further on the question of really doing something about judicial districts.

Senator Towe reminded the committee that the original decision they did make was that they would not make an overall change in the districts, but he added that he thought it would be proper to reopen that discussion. However, he felt that the study would be doomed to defeat if the committee followed Representative Huennekens' approach. He said he would like to see the committee put in some band-aid approaches--adding some judges where there have to be judges and indicate in the report, perhaps in a separate bill or a separate resolution, that the committee feels more information should be obtained for a more major overhaul in the future.

Judge Bennett inquired what kind of statistics will be available by the first of January. Ray Stewart replied that he could not answer that right now, but that they have three proposals before the Supreme Court and when their will is known, he will move. What they propose, however, is that they go to a clerk of court case-reporting system to Helena so they know the kinds of cases being filed, the date they filed on, when they are disposed, how they are disposed, the date they are disposed, so they can see two or three kinds of things--what judge is trying what cases, how many cases, what kinds of cases and how long it is taking the cases to get tried. There is a provision to see if the attorneys are causing the delays, which attorneys are doing it.

They plan to go back through last July, so by January they will have statistics for one and one-half fiscal years. This has not been decided by the Court yet either, but we are proposing that we have our reporting coincide with the fiscal years because that is the financial base of information that the legislature or judges have to make decisions on.

Mr. Stewart went on to say that they have modeled their draft after the North Dakota system which has been in operation for about two years and has proved successful and also acceptable to the judges. We have provisionally proposed another approach which our clerks of court told us flat out they did not want to do. We have taken a 180° turn from where we started at their request. What we have requested the Court to approve now is a tentative approach that the courts would try for a month and we get their response and then make the necessary modifications. The second part of it is we have some money left over in the court administration that we are asking to spend on summer interns who would go around training the clerks of court on how to use the new system and collect last year's data.

Senator Cetrone stated that he agreed with Representative Huennekens. He felt the most important and significant aspects of what the committee is doing would fall in the area of setting up a court administrator, setting up a method by which distribute judges

regularly get together and discuss problems. He also stated that he agreed with Senator Towe that we should solve the problems in the areas of most pressing need at this time, and also set up a basis for solving problems permanently at a future time.

Justice Harrison felt that it should be impressed upon the judiciary that there is a need for a change. Representative Huennekens said he thought it is possible to write a bill for district changes so that, even if in the committee and the legislative process it would be amended, the bill would not necessarily be lost. He felt the matter of additional judges could be handled separately in that bill. Representative Anderson agreed with Representative Huennekens and said that the committee would also be laying the foundation through the coordinator for the future of these districts.

Senator Towe said he did not see the committee successfully changing the boundaries at this time unless we have the judiciary and the bar behind us. He said he did not feel that they are behind any one system at all. He did feel, however, that the committee can make some changes that will help a great deal, and he would not want to jeopardize those changes and make all the actions of the committee unpopular by trying to change those boundaries.

Representative Huennekens withdrew his suggestion.

The committee then considered tentative recommendations regarding district courts. Judge Dussault commented that the Judges Association Legislative Committee would go along with adding a judge to the 13th Judicial District; they would go along with adding a judge to the 18th Judicial District providing that the appointment does not become effective until two years from now because the county has to prepare an addition to the courthouse for chambers; there was no recommendation from the association relating to adding one judge to the 11th Judicial District and requiring him to reside in Lincoln County. Judge Dussault did suggest that there might be some problems in stating that the judge has to reside in Libby -- it may be unconstitutional.

Representative Huennekens moved that a 19th Judicial district be created consisting of Lincoln and Sanders County. The motion carried unanimously.

Representative Huennekens moved that one judge be added to the 13th Judicial District, the law to take effect on July 1, 1977, and the vacancy to be filled by gubernatorial appointment according to law. The motion carried.

Representative Lory moved that a bill be introduced creating a new judgeship in the 18th Judicial District on July 1, 1978, The motion carried.

Regarding the recommendation that Treasure County be removed from the 13th District and placed in the 16th District, Justice Harrison felt it should be left to the Supreme Court to decide how often the judges in that district should have law and motion days; as it stands now, the judge is scheduled to visit Hysham once every six months, and there have been complaints because of this.

Senator Towe suggested that no action be taken on this matter at this time, but perhaps with a letter to the Supreme Court asking if they could look into the matter of whether or not there is in fact a problem of not sufficient attention being given to Treasure County. Representative Huennekens moved that the committee not follow the tentative conclusion made on moving Treasure County from the 13th District to the 16th District, but instead write a letter to the Supreme Court requesting them to look into whether or not there is a problem of judges not visiting Treasure County frequently. The motion carried. Senator Towe requested Mr. Hargesheimer to draft such a letter.

The next item on the agenda was that salaries and travel expenses of court reporters be paid by the State.

Ms. Griffing noted that there are audio recordings in courtrooms and computer-assisted transcriptions that are taking the place of the court reporter. She said this is one of the current trends that might be considered by the committee and that she has a great deal of reference material on this if the committee would like to have it.

The committee discussed various aspects of the recommendation that salaries and travel expenses of court reporters be paid by the State. Representative Huennekens moved that the state take over the matter of payment of salaries and travel of court reporters, and that hours of employment be determined by the district judge for whom the court reporter works; and that with respect to the assignment to the personnel classification schedule, additional research be conducted. The motion carried.

The next item for discussion was legislation to provide $100,000 to the Supreme Court to fund law clerks and secretarial assistance to district judges who request such assistance. The Supreme Court would determine the validity of each request for such assistance. Mr. Stewart presented an estimate of the cost of this program in an amount of $600,000 based upon 20 law clerks and 20 secretaries. It was pointed out that this amount could probably be halved if a legal information center were established.

Representative Huennekens observed that until a decision is made on the legal research information project, it would be difficult to arrive at anything positive regarding law clerks. He said he thought the committee could deal with the secretary part now.

Senator Towe suggested setting up a fund which would make available law clerks to judges who requested them.

Representative Huennekens moved that the law clerk item be stricken, and that the sum be maintained at $100,000 per year and be restricted to secretarial assistance, and defer action on court reporters until later.

Senator Turnage said he would like to hear from the judges after they have had a chance to discuss this. Judge Dussault said the judges are meeting with the bar in Livingston and are hoping to take a poll of the judges who are going to the Five-State Conference during July; maybe the judges can meet at that time and discuss these matters.

There was some discussion concerning county commissioners' reaction to the appropriation of $100,000. It was suggested that if this amount were available, the county commissioners might want to let the state take over. Justice Harrison said that if the allocating of this $100,000 would be discretionary with the Supreme Court that would do away with the pressure on the county commissioners.

Senator Towe requested that Judge Dussault come back with a firm recommendation from the judges. The motion carried.

The last item for discussion in this category was the bill draft providing for a court administrator.

Mr. Hargesheimer relayed comments of Chief Justice Harrison. He said the Chief Justice has no quarrel with the bill. Associate Justice Harrison felt that the majority of the Court feels this legislation is really not necessary. He stated they could do this within rules of the Court and handle it on their own. Mr. Stewart said the Chief Justice also felt that it is not really necessary.

Chief Justice Harrison asked that the committee consider rewording Section 3(4) to read "perform such other duties as the chief justice may assign" or "perform such other duties as the supreme court may assign" rather than divide that authority. He also suggested that Section 4, second sentence, be changed to read "prohibited from scheduling the calendars of all judges."

Senator Turnage suggested that the bill consist of one sentence as follows: "There is hereby established a court administrator," and leave all the rest out because under the constitution the Supreme Court has powers of administration. This would just create a statutory position.

Representative Huennekens moved that the words "the chief justice and" be stricken from Section 3(4) of the draft bill. The motion carried.

Senator Towe Proposed that Section 3(2) be amended by adding after the word "courts" the following words: "and to make such information available to the legislature upon request." It was so moved. The motion carried.

Representative Lory moved that Section 4 be deleted. As a substitute motion, Senator Cetrone moved that Section 4 be left in and a severability clause be added. Representative Huennekens was opposed to leaving Section 4 in. Senator Towe divided the motion. Senator Cetrone's motion was to leave Section 4 in. A roll call vote was requested. The motion failed on a tie vote. The second part of the motion was to add a severability clause as Section 7. The motion carried.

Representative Lory's motion that Section 4 be deleted carried on a roll call vote, 4-2.

Representative Lory moved that the draft as amended be approved. The motion carried.

Professor Ellis Waldron presented a statement to the committee (copy attached).

He recommended that one sentence be added to the judicial ballot statute as follows:

> "Section 23-4510.3. The ballot for any supreme court justice or district judge who is unopposed for re-election will provide the opportunity for the voter to vote either "YES" or "NO" without regard to the department or office sought within the court."

After some discussion, the committee recessed for lunch at 1:15 p.m.

The meeting reconvened at 2:15 p.m. The first order of business was sovereign immunity.

Mr. Heiman from the Commission on Local Government advised the committee that the proposed local government code will define "governing body" down through all branches of government. Senator Turnage then moved to strike the word "legislative" in the first sentence of Paragraph 2, Section III.

In discussing satisfaction of final judgments by counties, municipalities, taxing districts, or other political subdivisions, the committee decided the goal is to give to local government the authority to use any legally available funds to satisfy a judgement against it. It was argued that the local government should be given the option of deciding what money can be used without jeopardizing normal operation.

Tom Maddox called to the committee's attention that they had oversimplified this and jumped from insurance into the judgment area. When you get to the judgment area you have said a court action has occurred. Under "Insurance" a couple of things could occur; one, a settlement could occur which is within the insurance and could be happily satisfied provided you have first dollar coverage. You have overlooked the satisfying of the deductible area. Senator Towe said he thought the answer to this would be a separate section. He suggested that this be noted and considered at a later time.

Senator Towe suggested that Mr. Person check with the bonding companies to see whether bonds to satisfy a judgment could be sold without a vote of the people.

After further discussion, the committee moved to adopt the following language in Section IV:

IV. How Judgment Against Governmental Entities May be Satisfied.

> ~~Tort~~ judgments against governmental entities except state - how satisfied. (1) A county, municipality, taxing district, or other political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:
>
> (a) Insurance;

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(b) The general fund or any other funds legally available to the governing body;

(c) A property tax, collected by a special levy in additio to any other levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills; or

(d) Proceeds from the sale of bonds, issued for the purpose of deriving revenue for the payment of the judgment. The governing body is hereby authorized to issue such bonds. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

No penalty or interest may be assessed against any governmental entity as a result of a delayed payment of judgment liability.

In discussing (V), Senator Towe asked Mr. Maddox if he would research the question of whether or not "private property" should be enumerated in this section.

After this discussion, (V) was amended to read as follows:

V. Exemption of Public Property From Attachment and Execution of a Judgment by Attachment.

(1) Public property exempt from attachment or execution. All property owned by the state, a county, municipality, taxing district, or other political subdivision of the state is exempt from attachment or execution.

Section 93-5814 (10) was left as is.

The committee decided they would not use the language in (VI) Liability of Individuals for Their Own Torts as no legislation is needed to accomplish it.

Limitation of Attorney Fees

Mr. Person summarized his memo on attorney fees for the committee. He pointed out that there are a broad range of possibilities. He mentioned the Federal Tort Claims Act, which limits attorney fees to 25 percent of the judgment in cases where a suit is filed and to 20 percent of any compromise, award, or settlement made administratively. These limits were raised from 10 to 20 percent for administrative settlements and from 20 to 25 percent for fees in cases after suit was brought. He also mentioned the Montana Uniform Probate Code which limits attorney compensation generally to 1½ times the compensation allowable to a personal representative. Personal representatives are limited to 3 percent of the first $40,000 of the value of an estate as reported for estate or inheritance tax purposes and 2 percent of the value in excess of $40,000. In the termination of life estates and joint tenancies, attorney fees are limited to 3% of the life estate or interest passing. A minimum fee of $100 is allowed.

He suggested the following factors for consideration in cases or claims against the government:

1. Should a fee limitation be set as a fixed percentage or sliding scale percentage of any judgment, award, or settlement?

2. Should an allowable attorney fee be paid out of the judgment, award, or settlement or should it be added to it?

3. Should the actual amount of the fee, within the limits established, be set by the attorney and his client, by the court, or through some combination?

4. Should compensation in excess of the fee limitation ever be allowed?

Senator Turnage asked what was intended to be accomplished by limiting the fees? Representative Huennekens replied that he thought what we are trying to do is restore a little confidence in the legal profession, since there seems to be distrust of lawyers in court cases.

The committee felt that the fee should be included in the judgment and not added on.

Senator Towe pointed out that since they have put an occurrence limitation of $1,000,000 and per person limitation of $300,000, there could be some pretty large judgments, and the public may have the idea that the law could be abused.

Senator Towe suggested that the court could approve a fee, but Representative Huennekens disagreed.

Representative Huennekens moved that the contingency fee be limited to 25 percent up to $50,000 and 20 percent on any sum in excess of $50,000. The motion was seconded.

Representative Huennekens withdrew his motion and moved that the contingency fee arrangement on judgments above $25,000 shall not exceed 20 percent, subject to amendment by members of the committee.

Representative Huennekens withdrew this motion. Representative Lory moved that attorney fees for awards in excess of $50,000 must be approved by the court. In this regard the court may approve a fee only if it is reasonable with due regard to the time spent by the attorney, the complexity of the case, and the skill of the attorney in his presentation, such fee to be paid out of the judgment. The motion carried.

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Contingency Fund

The committee discussed the question of whether there is authority for a contingency fund, self insurance, authority to pay a deductible, limitation on deductible and authorization to collect a reserve fund out of which this deductible can be paid, at least for state government.

Senator Towe instructed Mr. Person to review the authority to make a settlement prior to judgment, that the entity is authorized to negotiate any deductible and that they may pay up to that deductible in pre-judgment settlements, and authorized to collect a reserve fund out of which the deductible may be paid, for both state and local entities. Mr. Zinnecker suggested that local governments may not levy in excess of 2 mills annually for this reserve fund. Representative Huennekens suggested that this limit be eliminated. Senator Towe asked Mr. Person to find the section that authorizes a levy for insurance and make sure there is a cross reference to providing funds for the reserve fund from the same authority.

May - optional

It was the consensus of the committee that they wanted to state that appropriations for a fund for this purpose by the state of Montana must be included in legislative appropriations for the state Department of Administration. In other words, the state cannot draw a slush fund for this purpose from all sorts of sources; they have to have it approved by legislative appropriation. At the present time they are probably doing it without legislative authority and we are going to give them that authority to build that reserve fund, but they are going to have to get an appropriation out of the regular existing budget to do so, so they don't steal it from some other source. The Department of Administration right now is levying on all other departments a certain sum, saying you have to put this money into a reserve fund and buy liability insurance. The other departments are complying--probably without authority to do so. We want to build it into the appropriations system so that we know what is going on.

It was also suggested that authority be granted to join several units in the same reserve fund. It was thought there should be a fourth provision on the reserve fund, which would be that the fund cannot be diverted to wholly unrelated purposes, and that interest earned is credited back to the fund. It was decided to change the provision that the fund cannot be diverted to wholly unrelated purposes to "the fund cannot be diverted except for actual and necessary costs of administering the fund."

Senator Towe summed up the action of the committee on the contingency fund question. It was decided that Mr. Person draft language to:

1. Authorize payments of claims prior to judgment by both the state and local units.

2. Authorize insurance policies with a deductible.

3. Authorize the creation of a reserve fund which would be optional, not mandatory, subject to five conditions:

   (1) Obtained from the same sources as funds for liability insurance are now obtained.

   (2) The state fund would have to be approved by legislative appropriation.

   (3) There would be authority to join several units into the same fund.

   (4) All interest would be returned to this fund.

   (5) It could not be diverted except for actual and necessary costs of administering this fund.

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Representative Huennekens moved that this language be approved. The motion carried.

Mr. Maddox asked if the committee were going to extend sovereign immunity to local governing bodies. This had been deferred from a previous meeting for further study.

Representative Huennekens stated that at the present time the functioning of the county government is a little vague in that they are not technically a legislative body. County commissioners are also administrators, and he felt that the committee would have to spell out this immunity carefully enough so that it would apply only to their legislative actions. Your city councils are legislative, so there need not be too much qualification there. Under the new local government governing charter approach, if it passes, many of your county governments will become legislative, and it should be worded that there are essentially three categories -- school boards, town councils or city commissions, and county commissioners. Mr. Zinnecker suggested that airport boards also be included.

Senator Towe suggested that the language be as follows: "The governing body of any county, city, or school district shall be immune from its official legislative acts."

After further discussion, it was moved that the language be as follows: "The governing body of any city, county, or school district shall be immune from any of its official legislative acts that are made in the good faith belief that such action is lawful." The motion carried.

Definition of Economic and Non-Economic

Mr. Person stated that, as used in this section, "economic damages" means tangible, out-of-pocket pecuniary losses. "Damages" is defined in the RCM as "every person who suffers detriment from the (loss of reputation is included in the concept of non-economic damages) unlawful act or omission of another may recover from the person in fault the compensation therefor in money which is called damages."

Senator Towe stated that the two definitions "economic" and "non-economic" may be alright when used together.
--"Means those damages that are non-economic, explanatory of punitiv damages, including without limitation, damages for pain and suffering, loss of ?, mental distress, and loss of reputation." He said he could search and find out every kind of similar sort of thing that has awarded in Montana.

Representative Lory moved that the committee adopt the definitions of "economic" and "non-economic" damages as presented by Mr. Person. The motion carried with Senator Cetrone dissenting.

It was pointed out that these definitions be used for the purposes of this act only.

Legislative Functions of the Governor

Senator Turnage moved that the committee add to the previous legislative actions of the governor, vetoing and calling special sessions, which bring about absolute immunity, the governor's function of submitting a budget and other appropriate messages.

After further discussion, Senator Turnage withdrew his motion.

Mr. Person also handed out a memo concerning privilege in the law of defamation. He advised the committee that the language, when he has revised it, will not have to include anything for the legislature because it is already covered.

There was nothing further on sovereign immunity.

Report on Privacy

Senator Towe announced that the committee now has full authority to proceed on privacy, and Mike Williams has been assigned to this study, and will outline for us the direction he has been moving in his research.

Mike distributed a memo, the substance of which basically is a very brief background of privacy and privacy legislation in the state. He observed that part of Senator Towe's article published in the Law Review dealing with the judicial and legislative districts on privacy is included in the memo. Article II of the 1972 Constitution of Montana deals with the right to privacy. At this point there is no specific act implementing that section of the constitution. He believed the intent of the study on privacy will be to see what sort of things can be done in regard to creating legislation. He asked the committee to consider the following strategies:

1.0 Assumption: That Article II, Section 10 is adequate in and of itself to guarantee the right to individual privacy. Existing statutes dealing with matters of individual privacy will be identified and suitably amended or repealed.

2.0 Assumption: That a Privacy Act will be developed based upon further research. A secondary assumption is that existing research is insufficient.

3.0 Assumption: That a Privacy Act will be developed based upon present information and research. A secondary assumption is that the present research is adequate and further study would be redundant.

3.01 Assumption: The role of the Legislative Council research staff would be to prepare a summary dealing with the problem of the right to individual privacy, prepare a lengthy bibliography and accumulate this material in the Council's library for purposes of study by Subcommittee members and later for legislation during the session.

4.0 Assumption: That a Privacy Act will be developed based upon existing information and research. This is based upon the secondary assumption that research is sufficient except in the area where conflict between the public's right to know and the right to individual privacy is perceived as unresolved.

4.01 Assumption: Same as 3.01 with the exception of the stated sub-problem area in 4.0.

Senator Towe suggested that Assumption #4 makes the most sense. He felt that this would be the proper approach. Mr. Williams agreed and stated that the Criminal Information Advisory committee of the justice project is considering some of the problems in regard to insuring that there is a right to privacy within the area of criminal information systems, and he went on to say that the press, for example, is still unhappy with the fact that they feel their First Amendment rights are being restricted when privacy is being invoked. That has not been satisfactorily resolved to both parties.

Senator Towe felt that it would not be a wise use of the resource funds available to this committee to ask the researchers to do a lot of research in this area. There has been a lot of research done, and there is obviously a lot more that could be done. But we are not prepared to finance a big research study in the area of privacy. We should be aware of the fact that the Criminal Justice Information Systems Task Force is preparing legislation at the present time, and he felt it would be helpful for this committee to review that when it is completed. He suggested that this committee not spend a lot of time worrying about criminal information systems, and that the researcher go over the two things within the call originally, and that is the privacy acts that have been introduced in Montana, and the privacy act of 1974 that the federal government adopted. Pick out things in those acts which seem to have generated the most discussion. Make a notation of those that can be sent out to as broad a list of people as we possibly can to encourage them to come to a hearing and have the various views discussed at a committee hearing. See

if we can, as a result of that hearing, come up with language that makes sense and that we can recommend to the next legislature. He felt that the emphasis should not be on researching for a big report, but should be on trying to get out as many people who have divergent views on this as possible and encouraging them to come and make their views known and get a consensus of what the people want in this state.

The emphasis should be more on a public hearing of this committee than on a report.

Representative Huennekens said he would appreciate, when there are alternative positions on some of these items, seeing some of the alternatives used by other states or the federal government.

Senator Towe said there is almost nothing in other states except in two areas: computerized documents of state and local government, and very little on that; the other area is criminal justice information systems in the criminal justice area only, and there are a large number of states which have explored that area, primarily because LEAA has been pushing people in that direction. That area is being pretty well covered by our task force right now, and there ought to be a full report from that task force to this committee. He asked Mr. Williams to update what has been done by trying to find as much as he can from other states.

Senator Towe went on to say that the big problem right now is the public's right to know versus the right to privacy, and our constitution spells that out better than any constitution in the United States right now. He suggested that the Michigan Law Review story on the Freedom of Information Act for the library.

Doyle Saxby has an update on statutes from other states.

Mr. Person observed that instead of a final report on this subject, probably it would be better to summarize the information in their library and make it available to legislators.

It was the consensus of the committee that at the next meeting they should have a major hearing on privacy and that the committee should have Mr. Williams make an extensive list of persons to be invited to that meeting and ask them for participation in the hearing. The invitation to the hearing should outline the types of things that the committee would like to discuss and that have been discussed in the bill. Send it to law enforcement people and outline those problems that have caused a problem in the past and get them to comment specifically on those things. It should pinpoint specific problems.

Another thing has come up--generally the law enforcement community was unhappy and the business community was unhappy because of the privacy protection that has been proposed. Now, since that time, the press association has become unhappy because they are afraid

they are going to have a difficult time getting into public documents

The next meeting was set for July 17, 1976. Senator Towe said at that time the committee will have to approve the report on judicial districting and we need to have the feedback on the $100,000 fund for the Supreme Court on law clarks and secretaries, we have some language to approve. We can start the hearings at 11:00 a.m.

The meeting adjourned at 5:35 p.m.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

SENATE JUDICIARY
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Montana Legislative Council

State Capitol
Helena, 59601

June 3, 1976

TO: Subcommittee on Judiciary

FROM: Robert B. Person Bob

RE: Attached drafts.

I have attached drafts of language relating to immunity from suit as it has been proposed to date. I am now working on the insurance fund area and will send a draft as soon as it is ready.

MADE FEBRUARY 28 AND MAY 8, 1976

PRELIMINARY DRAFT

AMENDED DRAFT
(Changes Made Feb. 28)

I. Provisions for Immunity from Suit.

Immunity from suit for legislative acts and omissions. The state is immune from suit for an act or omission of the legislature or of an officer or agent of the legislature. The legislature is that body vested with legislative power by Article V of The Constitution of the State of Montana.

Immunity from suit for legislative acts and omissions. (1) The state is immune from suit for an act or omission of the legislature or of an officer or agent of the legislature.

(2) Any legislator and any officer or agent of the legislature is immune from suit for damages arising from his proper discharge of an official duty associated with the introduction or consideration of legislation.

(3) The legislature is that body vested with legislative power by Article V of The Constitution of the State of Montana.

Immunity from suit for judicial acts and omissions. The state is immune from suit for an act or omission of the judiciary or of an officer or agent of the judiciary. The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

Immunity from suit for judicial acts and omissions. (1) The state is immune from suit for an act or omission of the judiciary.

(2) Any officer or agent of the judiciary is immune from suit for damages arising from his proper discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

CHANGES IN SOVEREIGN IMMUNITY DRAFT SECTIONS
MADE FEBRUARY 28 AND MAY 8, 1976

PRELIMINARY DRAFT	AMENDED DRAFT (Changes Made Feb. 28)
	Added:
	Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from proper discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.
State immune from suit for punitive damages. The state is immune from suit for punitive damages.	State immune from suit for exemplary and punitive damages. The state is immune from suit for exemplary and punitive damages.

II. Establishing a Defense of Good Faith Enforcement of a Law or Rule.

Actions under unconstitutional law or rule - same as if constitutional - when (1) If any officer, agent, or employee of the state, or of a county, municipality, taxing district, or of any other political subdivision of the state acts in good faith and without malice or corruption under the apparent authority of a law, or rule adopted according to law, and that law or rule is subsequently declared unconstitutional as in conflict with the Constitution of Montana or the Constitution of the United States, neither he nor his superior is civilly liable in any action in which he or his superior would not have been liable had the law been constitutional.	Actions under invalid law or rule - same as if valid - when. (1) If an officer, agent, or employee of the state, or of a county, municipality, taxing district, or of any other political subdivision of the state acts in good faith and without malice or corruption under the authority of law, and that law is subsequently declared invalid as in conflict with the Constitution of Montana or the Constitution of the United States, neither he nor any other officer or employee of the governmental unit he represents is civilly liable in any action in which he or such other officer would not have been liable had the law been valid.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

CHANGES IN SOVEREIGN IMMUNITY DRAFT SECTIONS
MADE FEBRUARY 28 AND MAY 8, 1976

PRELIMINARY DRAFT	AMENDED DRAFT (Changes Made Feb. 28)
(2) As used in subsection (1) of this section, auperior includes any superior officer, agent, or employee and any superior county, municipality, taxing district, other political subdivision of the state, and the state.	(2) If an officer, agent, or employee of the state, or of a county, municipality, taxing district, or other political subdivision of the state acts in good faith and without malice or corruption under the authority of a duly promulgated regulation, ordinance, or rule and that regulation, ordinance, or rule is subsequently declared invalid, neither he nor any other officer, agent, or employee of the governmental unit he represents is civilly liable in any action in which no liability would attach had the regulation, ordinance, or rule been valid.
III. Limitations on Liability for Damages.	
Limitation on governmental liability for damages in tort - appeal for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for: (a) noneconomic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity; nor (b) economic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of _____ Dollars ($) for each claimant for each occurrence.	Limitation on governmental liability for damages in tort - petition for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for: (a) noneconomic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity; nor (b) economic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $300,000 for each occurrence and $1 million for each occurrence.

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EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

CHANGES IN SOVEREIGN IMMUNITY DRAFT SECTIONS
MADE FEBRUARY 28 AND MAY 8, 1976

PRELIMINARY DRAFT	AMENDED DRAFT (Changes Made May 8)
The legislature or the legislative governing body of the county, municipality, taxing district, or other political subdivision of the state may authorize payments for economic damages in excess of the sum authorized in subsection 1(b) of this section upon appeal of plaintiff from a final judgment in the amount stated in that subsection.	(2) The legislature or the governing body of the county, municipality, taxing district, or other political subdivision of the state may authorize payments for economic damages in excess of the sum authorized in subsection 1(b) of this section upon petition of plaintiff following a final judgment. (3) As used in this section: (a) "Economic damages" means tangible pecuniary losses. (b) "Noneconomic damages" means those damages not included in economic, punitive, or exemplary damages including, without limitation, damages for pain and suffering, loss of consortium, mental distress, and loss of reputation.
How Judgment Against Governmental Entities May be Satisfied.	
Tort judgments against governmental entities except state - how satisfied. (1) A county, municipality, taxing district, or other political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources: (a) Insurance; (b) A property tax, levied and collected at the earliest time possible, in an amount necessary to pay the judgment, except that the levy may not exceed _____ mills; or	Judgments against governmental entities except state - how satisfied. (1) A county, municipality, taxing district, or other political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources: (a) Insurance; (b) The general fund or any other funds legally available to the governing body;

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EXHIBIT NO. 3
DATE 6-26-87
BILL NO. SB-22

CHANGES IN SOVEREIGN IMMUNITY DRAFT SECTIONS
MADE FEBRUARY 28 AND MAY 8, 1976

PRELIMINARY DRAFT	AMENDED DRAFT (Changes Made May 8)
(c) Proceeds from the sale of general obligation bonds issued for the purpose of deriving revenue for the payment of judgment. Property taxes levied to satisfy bonds issued to pay judgment may not exceed _____ mills.	(c) A property tax, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills; or
No penalty or interest may be assessed against any governmental entity as a result of a delayed payment of an uninsured tort liability.	(d) Proceeds from the sale of bonds issued for the purpose of deriving revenue for the payment of the judgment liability. The governing body is hereby authorized to issue such bonds. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.
	(2)No penalty or interest may be assessed against any governmental entity as a result of a delayed payment of a judgment liability.
V. Exemption of Public Property from Attachment and Execution.	
Public property exempt from execution. All property owned by the state, a county, municipality, taxing district, or other political subdivision of the state is exempt from attachment or execution.	Public property exempt from attachment or execution. All property owned by the state, a county, municipality, taxing district, or other political subdivision is exempt from attachment or execution.
V. Liability of Individuals for Their Own Torts.	
Governmental entities immune from suit arising from corrupt or malicious acts. The state, a county, municipality, taxing district, or other political subdivision of the state is immune from suit arising from the corrupt or malicious acts of its officers, agents, or employees.	Delete entirely.

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EXHIBIT NO. 3
DATE 2-26-86
BILL NO SB-22

CHANGES IN SOVEREIGN IMMUNITY DRAFT SECTIONS
MADE FEBRUARY 28 AND MAY 8, 1976

PRELIMINARY DRAFT

AMENDED DRAFT
(Additional Proposals Made May 8)

Limitation of Attorney Fees.

Attorney fees in tort action against governmental entities to be reviewed by the court when award in excess of $50,000. If an award in excess of $50,000 is granted in any tort suit against the state or a county, municipality, taxing district, or other political subdivision of the state, the fee of plaintiff's attorney shall be approved by the court. The court may approve a reasonable fee with due regard to the time spent by the attorney, the complexity of the case, and the skill demonstrated by the attorney in the case.

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BILL NO. SB-22

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EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

SUBCOMMITTEE ON JUDICIARY
MEETING AND PRIVACY HEARING
July 17, 1976

The Subcommittee meeting was called to order by Senator Towe at 9:30 a.m. in the Senate Chambers of the State Capitol, Helena. All members of the subcommittee were present except Representative Vincent.

Senator Towe noted there were three items for discussion at this meeting. They are sovereign immunity, judicial districts, and the privacy hearing, which will start about 11:00 a.m. Material furnished by the researcher on creation of an insurance reserve fund, risk retention, self-insurance and risk management will be discussed later if time permits.

The subcommittee discussed the draft sections relating to sovereign immunity and approved the following language:

I. Provisions for Immunity From Suit.

Immunity from suit for legislative acts and omissions. (1) The state or other governmental unit is immune from suit for an act or omission of the legislature or of an officer or agent of the legislature.

(2) Any legislator and any officer or agent of the legislature is immune from suit for damages arising from his ~~proper~~ lawful discharge of an official duty associated with the introduction or consideration of legislation. The immunity provided for in this section shall not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation.

(3) The legislature is that body vested with legislative power by Article V of The Constitution of the State of Montana, or the legislative body of any local government unit.

Immunity from suit for judicial acts and omissions. (1) The state, or other governmental unit, is immune from suit for an act or omission of the judiciary.

(2) Any officer or agent of the judiciary is immune from suit for damages arising from his ~~proper~~ lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from ~~proper~~ lawful discharge of an

official duty associated with vetoing or approving bills or in calling sessions of the legislature.

State or other governmental unit immune from ~~suit for~~ exemplary and punitive damages. The state or other governmental unit is immune from ~~suit for~~ exemplary and punitive damages.

II. Establishing a Defense of Good Faith Enforcement of a Law or Rule. Actions under invalid law or rule - same as if valid - when. (1) If an officer, agent, or employee of the state, or of a county, municipality, taxing district, or of any other political subdivision of the state acts in good faith and without malice or corruption under the authority of law, and that law is subsequently declared invalid as in conflict with the Constitution of Montana or the Constitution of the United States, neither he nor any other officer or employee of the governmental unit he represents, nor the governmental unit he represents, is civilly liable in any action in which he, such other officer, or such governmental unit would not have been liable had the law been valid.

(2) If an officer, agent, or employee of the state, or of a county, municipality, taxing district, or other political subdivision of the state acts in good faith and without malice or corruption under the authority of a duly promulgated regulation, ordinance, or rule and that regulation, ordinance, or rule is subsequently declared invalid, neither he nor any other officer, agent, or employee of the governmental unit he represents, nor the governmental unit he represents, is civilly liable in any action in which no liability would attach had the regulation, ordinance, or rule been valid.

III. Limitations on Liability for Damages.

Limitation on governmental liability for damages in tort - petition for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for: (a) noneconomic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $300,000 for each ~~occurrence~~ claimant and $1 million for each occurrence.

(2) The legislature or the governing body of the county, municipality, taxing district, or other political subdivision of the state may authorize payments for economic

damages in excess of the sum authorized in subsection 1(b) of this section upon petition of plaintiff following a final judgment.

(3) As used in this section:

(a) "Economic damages" means tangible pecuniary losses.

(b) "Noneconomic damages" means those damages not included in economic, punitive, or exemplary damages including, without limitation, damages for pain and suffering, loss of consortium, mental distress, and loss of reputation.

IV. How Judgment Against Governmental Entities May Be Satisfied.

Judgments against governmental entities except state - how satisfied. (1) A county, municipality, taxing district, or other political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(a) Insurance;

(b) The general fund or any other funds legally available to the governing body;

(c) A property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills; or

(d) Proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

(2) No penalty or interest may be assessed against any governmental entity as a result of a delayed payment of a judgment liability.

V. Exemption of Public Property From Attachment and Execution.

Public property exempt from attachment or execution. All property owned by the state, a county, municipality,

taxing district, or other political subdivision is exempt from attachment or execution.

VI. Liability of Individuals for Their Own Torts.

Delete entirely.

VII. Limitation of Attorney Fees.

Attorney fees in tort action against governmental entities to be reviewed by the court when award in excess of $50,000. If an award in excess of $50,000 is granted in any tort suit against the state or a county, municipality, taxing district, or other political subdivision of the state, the fee of plaintiff's attorney shall be approved by the court. The court may approve a reasonable fee with due regard to the time spent by the attorney, the complexity of the case, and the skill demonstrated by the attorney in the case.

Add severability clause.

Add: This act shall be effective for all claims arising subsequent to July 1, 1977.

Senator Drake moved that Mr. Person investigate and check into the definition of "governing body" or "governmental agency" as used by the Commission on Local Government so that the same term can be used in the draft bills. The motion carried.

The subcommittee suggested that wording in the draft bills be coordinated with wording used by the Commission on Local Government.

Senator Towe suggested that Mr. Person rewrite the bill providing for self-insurance and also cover the following subjects:

(1) authority for payment prior to judgment;

(2) authority for deductible;

(3) option of local government;

(4) provision for self-insurance if funds are appropriated by legislature;

(5) specific authority for local government units to join if they wish, with costs of administration spelled out a little better.

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The subcommittee discussed judicial districts and approved five draft bills (attached).

Bill No. 1 creates a new judicial district, alters certain judicial district boundaries, and changes the number of judges in certain judicial districts.

Bill No. 2 establishes the office of court administrator.

Bill No. 3 provides for state payment of court reporters' salaries and expenses, and provides that court reporters' hours are set by the district judges.

Bill No. 4 establishes annual judicial training standards for appellate and trial judges.

Bill No. 5 is a joint resolution requesting a statistical report of the business transacted by the district courts to be submitted to every legislative session.

Note: On Bill No. 1, all members voted yes with the exception of Senator Turnage, who voted no.

On Bill No. 3, the final vote was as follows: Senator Towe, No; Senator Cetrone, No; Representative Huennekens, No; Senator Drake, Yes; Senator Turnage, Yes; Representative Anderson, Yes; and Representative Lory, Yes.

On Bill No. 4, all members voted yes with the exception of Senator Turnage, who voted no.

Consideration of a draft bill providing for law clerks was passed for the present time.

Senator Turnage moved that the report of Mr. Hargesheimer be approved. The motion was seconded and carried, and the subcommittee commended Mr. Hargesheimer for his report.

PRIVACY HEARING

Senator Towe opened the privacy hearing by pointing out that the subcommittee was asked to consider two things: (1) the legislation that was introduced in the past, namely SB 400; and (2) the Federal Privacy Act of 1974. He said there was no limitation on what the witnesses wanted to address themselves to and suggested that it may be more appropriate to address matters related to criminal justice information to the other committee studying that area unless they are matters related to the Federal Privacy Act or to SB 400.

Dorothy Eck, State-Local Coordinator, was the first person to testify. She said she was speaking as a member of the Bill of Rights Committee of the Constitutional Convention, and she thought there were two sections in the Montana Constitution to be considered and she did not think they could be considered separately. The first one is Section IX, the Right to Know. She noted that in their committee's deliberations during the Constitutional Convention they really emphasized that unless

privacy were clearly violated that documents and meetings should be open. They determined at that time that citizen action and the press would be sufficient to enforce this. It was discussed that if there were problems that legislation might be required which would put the burden on the state agency, on the legislature, on the board of regents, on the school board or whoever, to show that privacy was required and the meetings were closed. For the most part, this part of the legislation has been very well written, although she still hears quite frequently where meetings are closed for executive session where there does not appear to be just cause. She didn't know that she would recommend legislation; she felt that the press of citizens and of the press probably is sufficient to implement this section.

Section X is the Right to Privacy. Here again they emphasize "compelling state interest." The many comments they get say that the only firm command is that the right to privacy may be infringed following the showing of a compelling state interest. There were a lot of people who argued that the courts would be the ones who would provide case law for this interpretation. The comments went on to say that the legislature will have occasion to provide additional protection of the right to privacy in explicit areas where safeguards may be required. She then read some dialogue from the Constitutional Convention. She stated that she thought there were a good many points in Senator Towe's bill that are needed in legislation in order to assure privacy. She thought that most people in the state realized that with modern technology it is almost impossible to protect privacy and that we might have laws on the books which cannot be enforced. She mentioned tests that were possibly an infringement on a person's privacy, that may be required in order to obtain employment, or papers that one may have to sign that are really an infringement on privacy.

She thought that we have a problem on what the view of privacy is and that this is important and should be determined. She stated that in reviewing the Federal Register it is appalling to note the amount of federal regulation that has been promulgated in the area of privacy. She thought the burden needs to be on the state agency; that they need to look at their procedures, their applications, and the kinds of papers that they keep in their files so that they don't keep more than what is absolutely required in the privacy area. Rather than separating out their files so that there are files that are open and files that are private, they probably would be better off in most cases not to maintain files that require privacy.

Mr. Rich Cronen, coordinator of the County Attorneys' Association, was the next speaker. He stated that the association would like to make the comment that they feel privacy legislation should not be enforced by the use of criminal sanction. The added burden to law enforcement is a long involved and expensive process, and a heavy burden. For these reasons they feel it would be better handled administratively with the civil penalties

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that are already included in past legislation. The only other comment of the association is that there are currently three studies underway on this subject. It is their feeling if all of these studies result in bills being introduced to the legislature, this will mean a fragmentation of the basis for such legislation. They suggested that all people who are currently working in this area get together and see if they can't produce one workable piece of legislation to present to the legislature.

Senator Towe asked Mr. Cronen what the three studies are. Mr. Cronen replied that there is the Criminal Justice Information System study, the study by this subcommittee, and another study mentioned by the County Attorneys' Association but he wasn't sure what it was.

Senator Towe said he is on the criminal justice committee and is familiar with their work so he can inform this subcommittee of this and avoid duplication. He does not see how all the information they are working with on that committee and what they are working with in this subcommittee could be combined and put into one bill; it would be too large a piece of legislation. He asked Mr. Cronen if he would agree. Mr. Cronen said that this is a possibility.

Senator Towe then asked if the County Attorneys' Association would support the bill, and if so, what amendments are they asking for?

Mr. Cronen said he has heard of no specific recommendations but would find out and let the subcommittee know.

The subcommittee recessed for lunch and reconvened at 1:35 p.m.

The first speaker at the afternoon session was Mike Voeller, editor of the Helena Independent Record. He said he did not know about the hearing until he read it in the newspaper. The news media were invited to testify, but didn't know what to testify about. He felt that the subcommittee did not give him enough notice to prepare for the hearing, and he stated that he would like to be specific but hadn't had time to prepare the information. He would like the subcommittee to hold another hearing at a later date so that the news media could testify and be specific.

He stated that there is no difference between the press and the public; the press is a servant of the public. He was bothered that someone would want to differentiate between the press and the public. When it comes to the right to know, it is the public's right to know. He then asked again for the subcommittee to give the general press another opportunity to respond to the questions in more detail and after more thought at another hearing.

Senator Towe stated that the subcommittee will be having another hearing and that the news media would have the opportunity to testify again. He pointed out that SB 400 is the main piece of legislation to be considered, and that it had gone through at least four public hearings in the legislature; and that Sam Gilluly, Secretary-Manager of the Montana Press Association, had attended some of those hearings and is aware of some of the items brought up at the hearings. A statement by Mr. Gilluly is attached to these minutes.

Senator Towe then asked Mr. Voeller to make sure that the members of the press get all the material and that if they have any comments at all, would he gather them and make sure that they are given to the subcommittee. Mr. Voeller said he would do this. Then he went on to say that the only thing he could really comment on at the time was subsection 10, page 21, of SB 400, Informed Consent. He said that he thought that it was a bit unreasonable because the way that he interpreted it, every time someone appeared in a picture that was going to be published (especially in an advertisement), the photographer would have to run around getting signatures on releases that he had that person's permission to publish his picture. This could be a real hassle, especially with athletic teams, and advertising. He suggested the subcommittee take a long hard look at this section. One other point he made was that the researcher inform the press as to what was taking place with the subcommittee.

Senator Towe admitted that more research should be done on Informed Consent.

Senator Turnage asked Mr. Voeller if he would consider in his response the question of sanctions. There has been an issue raised about criminal sanctions being improper as opposed to civil sanctions.

The next speaker was Verle Rademacher, editor of the paper in White Sulphur Springs. He said that he had been asked by the president of the Montana Press Association to represent the community or weekly press. He felt that instead of closing some loopholes here they are opening some greater ones with this privacy bill. The whole question of privacy since the new Constitution was adopted has brought problems to the community press. He said they are finding it virtually impossible to get honor rolls from the schools any more because many superintendents will not release them.

He also wanted to reinforce, as a commercial printer, some of the questions of consent. He referred to a basketball tournament bulletin and stated that to obtain consent of each and every person in that bulletin would be virtually impossible within the framework of time involved with the production of the bulletin.

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He felt that this was forcing too much upon the ~~community press~~, the printer, who is also working hard, and he felt that subsection 10, page 21, should be struck entirely.

The next speaker was Allan L. Lucke, Director of the Computing Center, Montana State University. Mr. Lucke stated that he is not representing anyone but himself and would like to address some of the questions in the material sent out prior to this hearing. One question asks whether personal data systems should include only automated systems or manual systems as well. As SB 400 stands now, it doesn't refer to either. An automated system is no different from a manual system, and Mr. Lucke felt that the bill should be inclusive of both. Automated systems may or may not include optical systems, such as microfilm, microfiche, etc.

In regard to Section 5 of the Federal Privacy Act, which establishes a two-year, independent privacy study commission to consider whether Congress should entertain similar legislation regarding state and local government and the private sector, Mr. Lucke felt that someone should keep track of what that commission is doing. He also recommended that the federal act be incorporated by the state.

In regard to SB 400, he recommended that on page 17, line 18, the word "mechanical" be stricken. This word also appears elsewhere in the bill and should be altered. He also suggested that (8) on page 19 should probably contain some reference to "political party beliefs."

Mr. Lucke stated again that he felt it makes sense to pass legislation such as the federal privacy act to impose on the state and also on the private sector.

Mr. James Zion, President of the American Civil Liberties Union of Montana, addressed the subcommittee.

Mr. Zion stated that, essentially, SB 400 is a good bill, and he felt that the policy decisions about privacy of communications, privacy of mind or personality, and privacy of familial or marital communications are something that we can all accept as being basics in our society. These are the kinds of privacy that we all want. As far as the question of computers, he felt that you decide what areas are going to remain private in the public sector and the private sector, and once you set those areas, the technology will follow.

Mr. Zion went on to say that the main problem with SB 400 is how we are going to enforce it. He agreed that criminal penalties should probably be a last resort. He felt that in our complex society we are trying to solve too many problems with criminal penalties. He said he would prefer to see administrative remedies and private remedies. Along those lines, some of the

things we need to consider are statutory remedies. There is a provision in the Freedom of Information Act that if a federal official willfully and abusively withholds information, then that person can be disciplined either by a reprimand or maybe even fired. Perhaps in state government the subcommittee would want to consider something like that in the privacy area.

Mr. Zion said what he would like to see in the enforcement provision is a gradation of sanction depending upon the kind of violation so that if you have a negligent violation of the act you have a very light sanction; if you have a knowing violation of the act, you have a heavier sanction; and where you have a willful violation, perhaps there you might want to start thinking about your criminal sanction or fairly large punitive damages. The remedies section can be spelled out much more clearly.

Mr. Zion likes the attorneys' fee section of the bill because it does very effectively give someone a sanction. He thought that maybe there should be some sort of an appeals procedure for the person if he was refused the information he asked for from an agency, and this procedure should be simple and inexpensive. He stated that overall the act addressed itself to the problems that we would all like to see something done about, and he would just like to see some practical and inexpensive enforcement of the act.

Senator Towe asked Mr. Zion if he was suggesting that the principal thing that can be gotten out of the 1974 Federal Privacy Act was the concept of access by individuals to documents about themselves in the state. Mr. Zion replied that yes, for the private citizen the right to access and the right to appeal was the most important thing.

Jim Hughes from Mountain Bell testified next. (Copy attached.) He had some articles that he passed out to subcommittee members. (On file.)

Senator Towe asked Mr. Hughes if he was referring to the Federal Privacy Act of 1974, or the 1968 Crime Control and Safe Streets Act, when he referred to the Federal act. Mr. Hughes replied that he was referring to both.

Senator Towe asked Mr. Hughes if he thought there should be criminal penalties for violation of privacy and interception of wire communications? Mr. Hughes replied he thought both types of penalties would be needed.

A letter mailed to the subcommittee from the Missoula County Attorney is attached as part of the minutes.

Mr. Lucke called attention to Section 10(a), page 38 of SB 400, and suggested that this section include a reference to "electronic means."

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Senator Towe thanked the participants and invited anyone who wishes to come to the next meeting with additional testimony. He suggested that the subcommittee be furnished with a copy of the bill prepared by the committee studying the Criminal Justice Information Systems. He also suggested that the subcommittee study the federal law and see what parts they want to pull out and use in SB 400.

Senator Towe requested Mr. Person to prepare a new copy of SB 400, incorporating all the suggested amendments, for consideration at the next meeting. This bill should be sent to all persons requesting a copy and who wish to testify at the next meeting. It was also suggested that agencies that would be involved with this bill be contacted and invited to the next meeting for their comments.

After further discussion, the next meeting was set for 9:00 a.m. on September 18. The final meeting of the subcommittee was set tentatively for November 13.

The meeting adjourned at 4:10 p.m.

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SUBCOMMITTEE ON JUDICIARY

Minutes of September 19, 1976 Meeting

The Subcommittee on Judiciary met on September 19, 1976, at 9:00 a.m. in Room 405, Capitol Building, Helena. Chairman Towe called the meeting to order and all members were present except Senator Drake and Representative Lory who were excused. The minutes from the previous meeting were deemed read and adopted.

Other members present were Frank H. Kelly, Butte; Jack Lane, Equifax, Billings; Alexander K. Ciesielski, American Council of Life Insurance, Washington D.C.; Mike Voeller and George Remington, Montana Press Association; Bob Merrill, Montana Broadcasters Association; Dean Zinnecker, Montana Association of Counties; Russ Livergood and Socs Vratis, Montana Retail Association; J. E. Burnham and Jim Hughes, Mountain Bell Company.

Dick Hargesheimer, researcher, presented information on judicial districts. He said district judges would like to have secretarial assistance eliminated. They roughly estimated $326,000 needed for law clerks. The judges thought additional secretarial service could be provided through the counties.

Representative Huennekens wondered if the list for law clerks was still valid. Mr. Hargesheimer said yes. The August 4, 1976, memo explains how the judges arrived at $326,000. Chairman Towe said he had some real questions about the memo which was based on a survey of the judges by the Court Administrator, Ray Stewart. They estimated a need for 10½ law clerks. Each law clerk would receive $13,000 to $14,000 annual salary.

Senator Turnage asked if this idea had come from the district judges, or was suggested to them. Chairman Towe said this committee had suggested this to the district judges as being a cheaper method of securing more help rather than putting in more district judges. Chairman Towe said they had originally suggested a $100,000 appropriation. Representative Anderson said he thought it looked like "well, here's the offer and if you're going to hand one out, I'll take one". Representative Huennekens said he thought the crux of the matter was whether better justice would be rendered. Senator Turnage didn't think so because if a judge was inclined to be indolent he would do less work than he ever did before. Senator Towe didn't think this would be the case with every one. Representative Anderson asked if there was a way in which they had to prove the need for an additional

law clerk. The need is shown to the court administrator who proves it to the chief justice. This won't eliminate a lazy judge but might help him if he had a good law clerk. This might also add to the strength of someone who is very thorough and does lots of research but takes months to decide cases in that it could speed up the process. Representative Huennekens wondered if the committee could depend on the chief justice to turn down the district judge when asking for a law clerk if he doesn't really need one. Senator Towe thought this matter would be carefully handled. He was mostly concerned about the original $100,000 concept being blown into $326,000. A law student out of college shouldn't receive $13,000 to $14,000. It was discussed whether a new law clerk could use this position as a career stepping stone. In addition, the law clerk would receive 15% in benefits.

Representative Huennekens moved that $150,000 be appropriated for the biennium and add a Section 4 with a sunset clause that this self-destruct after fiscal year 1979. The motion was seconded. This would be enough to hire six law clerks instead of the original 10½ requested. It was felt that without the sunset clause in the bill the legislature would never drop this otherwise. Mr. Hargesheimer said the committee had never taken any action on this bill. He will draft a new Section 4 for the bill to include the self-destruct clause. The motion was passed with Representative Anderson voting no.

An appropriation for secretaries was discussed. It was felt that secretaries could do some of the jobs judges do now for less than the judges' salary. Some counties now are paying for secretaries, and if an appropriation was put in, those counties would demand the money and use all the appropriated money for the existing situation. Representative Huennekens said this committee had kind of gone along with full funding and were aborting the issue. In the future, the state might be expected to pay for this. Chairman Towe said he expected a bill to be introduced which would take all the costs of the courts out of the counties and let the state handle this. Chairman Towe said he thought there were only two secretaries in judicial districts in the state. Representative Huennekens wondered if the work was being done by the judges or court reporters. He thought that $5,000 to $7,000 work annually shouldn't be done by a person receiving $25,000. Dean Zinnecker, Association of Counties said they thought the state should pay for the whole thing. Representative Anderson said that the court administrator should come in with a requested budget and according to their needs, not the committee's needs, they could ask for money for additional secretaries. The court reporter presently handles most of the duties. Senator Turnage said the committee had found a need and the judges would pick up the need until the money runs out. The

probate law hasn't added much responsibility to the law clerks' jobs. Chairman Towe said that for three secretaries (at $600 per month with 15% benefits) it would cost $25,000 per year. The local government committee wasn't totally receptive toward reimbursing the counties for use of the courthouse, etc. Chairman Towe thought the committee was taking a piecemeal approach. Senator Cetrone thought nothing should be said about secretaries. Senator Towe said if nothing were said we lose the chance to encourage judges to utilize secretaries more. Representative Vincent thought a short trial period should be given and this would be a reasonable approach. Senator Cetrone didn't think something should be forced onto the judges when they didn't feel a need for secretaries. He felt that by providing more clerks the need for secretaries would be increased. Senator Towe suggested a resolution be drafted that it is the sense of the legislature that prior to any requests for any additional judges above and beyond the judges we are providing here that all avenues should be explored including the use of law clerks and secretaries.

Senator Turnage moved that no provision for secretaries be made in this bill. The motion was seconded. The motion passed with Representative Huennekens and Representative Vincent voting no. Senator Towe suggested to Mr. Hargesheimer that he include an explanation as to the committee's feelings. The consensus of the committee is that before any further requests are made for new judges over and above these requests that a thorough explanation of assistance in terms of law clerks and secretaries be made. There are existing means of financing by requests to the county commissioners and requesting an appropriation. Representative Huennekens didn't feel that the appropriations committee had ever had enough input from the standing committees who had the expertise on the subjects.

Representative Huennekens moved that a resolution be drafted stating that before any additional requests are made for judges that use of law clerks and secretaries be considered. This could be considered a message to the judges and law clerks who might come in and ask for a new law clerk in their district. This could be a basis for the Court Administrator to come to the legislature and say that they need an additional secretary. It would also give the judges authority to go to the county commissioners and ask for additional funding for a secretary. The motion was seconded and passed. Representative Huennekens said that he wouldn't mind saying that the committee wasn't in favor of paying for the facilities. Representative Anderson said he thought each community would have enough pride in furnishing their own facilities. This might be explored by another committee.

Chairman Towe then moved on to the privacy legislation. He explained to possible witnesses that the bills being discussed were

merely mark-up bills and that they were nothing but a guideline to get the committee into the subject. It would be a mistake for the committee to approve or disapprove of anything that is not or is in the draft bills. The committee has taken no action on the bills. At a previous meeting, the committee discussed Section 11, page 19, advertising and the use of a person's name or likeness, and it should be deleted from the draft bill, LC 0105. This paragraph should be addressed only if a witness feels it should be retained in the draft bill. There is existing common law on this subject already. Chairman Towe also reminded witnesses that another committee was considering criminal justice information systems, and not to address the subject to this committee.

Mr. Alexander K. Ciesielski, Assistant General Counsel, American Life Insurance Association, Washington, D.C., testified first. (see attached testimony) He said that the insurance business is inter-state in nature. He also said that the committee should consider the constitutional aspect of LC 0105. This bill is so general that a list of prospects would be considered illegal under this bill. The 1975 Legislature enacted a Fair Trade Reporting Act. This takes care of cases of potential abuse. He said no state has adopted this kind of privacy legislation, and he didn't think it was the time to do so now.

Chairman Towe asked Mr. Ciesielski if he was aware that the committee had a mandate from the Constitution of 1972 that says privacy shall be protected in the state and nothing has been implemented yet. Mr. Ciesielski replied no. Senator Towe also asked him if he was aware that the "Vratis Amendments" were in this bill. Mr. Ciesielski had this clarified. Senator Towe was interested in his thoughts in this regard particularly as it relates to a bona-fide concern that perhaps the federal Privacy Protection Commission will not come up with a recommendation. Their mandate is for two years which is up at the end of this year. If they don't make a recommendation, where does that leave Montana with their constitutional provision. Mr. Ciesielski said perhaps they could impose a number of negative prohibitions without having to have such a broad scope as this draft bill. Chairman Towe then asked him if he could provide the committee with a list of problems as it relates to the computer and data processing problems. He replied that some of these problems have already been solved by the 1975 Montana Fair Trade Law. He thought that this legislation is implementation of the Constitution.

Representative Huennekens asked him if insurance companies operating only within the state of Montana (state has two) were affected by the federal regulations since Mr. Ciesielski thought the federal regulations were enough. He thought the state

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regulations governing these companies would have to conform with the federal regulations. Mr. Ciesielski said there was a very small number of policies issued by these companies when compared nationwide. Representative Huennekens said the individual is still paramount, however. Representative Huennekens also asked him if there were civil suits involved with privacy, did he feel that Montana's law would be stronger in providing for privacy with Bill LC 0104. (Whether existence of a criminal statute would support a civil suit.) Mr. Ciesielski said damages should be shown. Sometimes proper data can't be found on a person who has molested a child, etc. Data should be provided here. The insurance company already has sufficient regulations.

Senator Turnage said that he understood that no other state has regulated the private sector in this concept. Mr. Ciesielski replied yes. However, it was pointed out that Wisconsin, California, Ohio, and other states have proposed legislation along this line. Oregon has passed this but later repealed the legislation. Mr. Ciesielski said that they wanted to gather information so that they could sell insurance in the cheapest way.

Chairman Towe asked him if there was no interference in their collection of necessary information under the strictures of the Fair Credit Reporting Act and after it is in your file, what do you recommend that the law should say as to who should be able to obtain that information collected by you. Mr. Ciesielski said if another company wanted the same information for the same purpose, he couldn't see why the individual would object to it. It was a matter of philosophy. There is a medical information bureau. It would make it cheaper. It should only be done for a legitimate business purpose.

Representative Huennekens said he would strenuously object to a company passing his file around to someone else. Mr. Ciesielski said this is regulated because a person has to give consent for this to be done. Representative Huennekens said then a burden is being placed on him because he has to take his time and effort to go and verify that file. Mr. Ciesielski said this is a matter of complexity. The medical information bureau exists and the underwriters use this.

Chairman Towe asked if he gave information to one of Mr. Ciesielski's insurance companies when obtaining a policy could he be assured when he gave that information that an opponent in a political campaign wouldn't have access to that information. Mr. Ciesielski said yes, because this data is stored in an area where only persons with authorization can enter. Chairman Towe said that the medical information bureau wasn't compelled to do this by any state or federal regulation. Mr. Ciesielski said that they

exclude anybody involved with external activities. Chairman Towe asked him if he thought a law was needed to govern this, and he replied when the time warrants it. The federal study that is taking place is still in process.

Representative Anderson wondered how the information on Senator Eagleton's health had been obtained during the last political election. Mr. Ciesielski didn't know.

Chairman Towe said he didn't feel private information given should be given out, and perhaps in twenty years it might jeopardize someone's job situation. Mr. Ciesielski said that the right of the federal government to enact the right of privacy at any cost or not at any cost is a basic question. Should the laws be adjusted for the majority of the people or because one person was jeopardized fifty years ago. Who would pay for this?

Mr. Ciesielski said he wouldn't see any problem with the restricting of use of information to be passed out to anyone. He was concerned with the information gathering and transferring of information from one insurance company to another.

Chairman Towe asked Mr. Ciesielski to supply any specific comments he might have regarding this complex subject of privacy and data processing. Mr. Ciesielski said that this law wouldn't apply to any organization covered by the 1975 Consumer Privacy Law. The legislators themselves shouldn't make any decision.

Frank Kelly, Butte, testified next. He was a concerned citizen as well as the parent of an 18-year old mentally retarded son. The son is trainable, lives at home, has never been institutionalized, has an IQ of less than 50, and attends special education classes in Butte. At a meeting he and his wife attended awhile ago on proposed rules and regulations relating to special education for the state of Montana, they discussed possible bills. In a proposed draft there is (Public Law 93-380, Section 513, 514, and 515), which says that after the age of 18 consent shall be required only of the student except in the cases of an individual who is legally declared by the court to be incompetent to make such a decision for himself and for whom legal guardianship is required beyond the age of majority. Mr. Kelly said he thought that anyone could come in with a form for his son to sign that would supply them with necessary school information. His son would sign the form. Unless Mr. Kelly goes to court and is appointed his guardian, there is nothing else he can do about this. Is he correct?

Chairman Towe told Mr. Kelly that he was referring to the Buckley Amendment of the Education Act of 1974. This is a comprehensive

federal statute controlling the privacy of students. There wasn't anything that could be done in regard to the federal statute except to be sure not to duplicate the same problems Mr. Kelly was referring to. Chairman Towe said Mr. Kelly could write his congressman and see if the Buckley Amendment could be amended to specifically provide for a person who meets the definition of mentally retarded and make them an exemption. Before the Buckley Amendment, however, there was no protection at all. The school could release all information to any one at any time. Representative Huennekens suggested that in Montana law it say "informed consent". Chairman Towe said if informed consent were defined, it would solve the problem. Senator Turnage said all consent implies it is informed and he didn't think it would make any difference to say "informed consent".

Senator Turnage said it wasn't necessary under existing law to have someone declared incompetent in order to have conservatorship or guardianship. It has been liberalized a great deal from the old guardianship law. One doesn't have to be incompetent in order to have a guardian. Letters of conservatorship could be obtained from a lawyer for around $25.

Jack Lane, Equifax Services, Billings, testified next. Equifax is a national company headquartered in Atlanta, Georgia. They are classified as an investigative reporting consumer agency. (See attached testimony.) His home office will also supply a testimony. This company is the largest information gatherer in the United States. They go far beyond the letter of the law. He is not required by law to show anyone his file, but Mr. Lane will do so and also run off a copy for the individual. Anyone wishing to stop by 1015 Broadwater, Billings, can look over their operation.

Representative Vincent asked if other firms in the field used the same policies as Equifax. Mr. Lane didn't know. If Equifax makes an investigation for an insurance company, that information goes into his file and that information can't be passed on to any other person. The information can only be seen by persons authorized to do so.

Chairman Towe asked Mr. Lane if after a customer obtains the information Equifax has no control over the individual's use of that information and whether he is properly using it. Mr. Lane said they have a written contract with the person requesting the information saying that the information will be used only for legitimate purposes and for no other purpose than for which it was requested. Mr. Towe wondered if competitors passed information on for illegitimate reasons. Mr. Lane said he didn't know about the competitors, but according to the Fair Credit Reporting Act if information is used for illegitimate purposes they are subject to the penalties under the act.

Representative Anderson asked what kinds of persons require Equifax services and for what reasons. Mr. Lane said they are used by insurance companies. Any person requiring information about an individual for a legitimate reason can use Equifax. "Adverse" information means anything that would cause the user of that report to increase the cost or deny a benefit. Mr. Lane said Equifax investigates their customers before they sign a contract with them. If a customer uses them for other than legitimate reasons, both parties have recourse. Chairman Towe pointed out that the recourse of the existing statute is simply to misuse the information. Chairman Towe also pointed out that unless that person has been denied a job or benefit no one would have any idea of whether the information was being spread all over the country or not. Mr. Lane replied that if it was adverse he would find out about it somewhere along the line. Chairman Towe said that this bill (LC 0104) would not allow computerized information to be passed on unless the individual is informed.

Bob Merrill, Montana Broadcasters' Association, Billings, testified. Since Section 11 has been deleted, his entire presentation has almost been thrown out. He was concerned with LC 0105, page 23, Section 7, lines 3-12. He said all broadcasting stations must have their licenses renewed every three years. If a license is not renewed, there is several million dollars worth of tubes and wires in the station that isn't being used. The cost of a radio station is about $50,000. He didn't want anyone coming in and destroying his equipment or station because they had violated the law. That would be too expensive.

Chairman Towe pointed out that the section Mr. Merrill was referring to was in violation of Section 4-6 of this bill (violation of wiretapping or eavesdropping). This is a verbatim copy of the federal law. Mr. Merrill didn't think that then the broadcasters had a problem with the proposed bill.

Senator Turnage asked what would happen if a $200,000 camera broke a window somewhere and if it had a tape recorder on it, what would happen. Chairman Towe said on page 9, lines 8-15, explained this. If the equipment was being used only for wire tapping or eavesdropping then it could be confiscated.

Senator Turnage wondered if two persons had a private conversation and later one person turned the information over to the press. Was this a crime? Senator Towe replied no, it wasn't unless it comes under the second provision that is privileged confidential communication such as doctor-patient information. Interception and revealing of information at a later date was discussed. Mr. Merrill said that today the public demands and expects more

information, not less, and that is what they were concerned with. You don't want to be so concerned with the right of privacy of one individual that you don't exclude the right to know of the general public. Chairman Towe thought this legislation would accomplish that very thing since privacy would be more fully explained and made clear.

The committee recessed for lunch. The committee resumed at 1:30 p.m.

George Remington, Publisher of Billings Gazette and Vice-President of the Montana Press Association, testified next. His purpose in testifying was not to oppose the bills but to get some clarification on various points in the bills. He referred to LC 0105, page 3, line 3, regarding trespass. He wondered about the term "proper adult person". He also wondered about consent in regard to privacy. Mr. Remington was thinking about a raid where photographers and newspaper people accompany the law enforcement officials and gather information or pictures. Does he have to have consent of the owner of the premises to do this? He had recently heard a speaker on the matter of privacy and consent in this matter. A police photograph was used with white drawn in to show a child's body after a fire. The owner of the property brought an action against the newspaper for using this photograph. He cited another example of a surfer interviewed by Sports Illustrated who told of his life style in a surfing colony in California. After thinking about it, he notified Sports Illustrated that he withdrew consent for the story. They printed it anyway and it was found to be actionable. Mr. Remington thought the committee should consider "withdrawn consent" as they put the bill in final form.

Mr. Remington also commented about pages 5 and 6 dealing with interception. He assumed the newspaper people didn't have to get consent of everyone in a public meeting in order to run a tape recorder throughout the meeting. He wondered about "or other device". He cited a case in Billings where a letter about a public official was received which seemed to imply a conflict of interest regarding the official. He hoped that type of communications would not be barred.

Mr. Remington's next question involved page 9, line 11, regarding the advertising for sale of electronic, mechanical, or other device. He thought an unfair burden was being put on newspapers to know when somebody advertises something what it is exactly going to be used for. There are many electronic devices on the market today and it is hard to tell when they are going to be used for legitimate purposes or not. Representative Huennekens asked if when the term "primarily useful for" would solve the problem. Mr. Remington thought that might modify it enough to be helpful.

Mr. Remington stated he was glad that paragraph 11 had been deleted from the proposal.

Mr. Remington referred to LC 0104, page 3, paragraph 5a, lines 3-5, and page 4, line 24 through line 3 on page 5, and wondered how this would relate to newspaper "morgues". He wondered if they printed something from their "morgue" files and someone else picked this up, what would happen and would they be accused of transferring this data. Representative Huennekens said this was largely computer data. Chairman Towe said that if the newspaper knew when the person got the information from them and that they were going to put it on the computer it would be okay.

Mr. Remington also questioned page 6, lines 24 and 25, regarding the transfer from one system to another. It is feasible that sometime Montana newspapers will have morgue information on a computer in some kind of a storage device. That would be a transfer from one system to another. Who will decide what the conditions of assurance are?

Representative Huennekens wondered about transfer of information within companies or a group of companies that were subsidiaries. He wondered if this was referred to at all in the proposed bill. The "Vratis Amendments" would change this, and would be a substantial change. Safeguard 1 changes the language substantially. It means that if you request the transfer of information from one data bank to somewhere else you can safely do that if you have written assurance from the data bank. If a newspaper wanted to buy information from a data bank, this is allowed for in Safeguard 6. The committee should be working from the yellow bill as it includes these "Vratis Amendments" and safeguards.

Senator Turnage commented on page 5, line 6, sub paragraph c, LC 0105, that defines "intercept". It means the acquisition of a letter by any means. On page 6, line 8, sub paragraph 2, refers to consent without the receiver or sender of a letter. Paragraph 3, line 16, makes it unlawful for anyone to disclose the contents of a letter that was obtained in violation of 2. Suppose a sheriff who was a candidate for office wrote a letter to a friend saying he had been convicted of murder for hire, but that he is now retired and will be a good sheriff. If the friend takes the letter to the newspaper and shows it to someone, both the friend and newspaper person could go to jail. Chairman Towe said the interception relates to a sealed letter, but Senator Turnage said it says "or otherwise". The act is in effect only when the mail is in progress, and not after delivery. The communication is protected only while in progress. The committee will clarify the point "or otherwise" and change or delete this on page 5, line 9.

Chairman Towe also referred to "proper adult" on page 3, line 3. The committee suggested changing this to "authorized adult" and delete the word "proper".

Chairman Towe also suggested that newspaper people accompanying people on a raid should be added. The common law has affected this, and perhaps should be changed. He wondered if the news media were at a place legally when accompanying policemen who had a warrant. Representative Huennekens didn't feel there was any justification for a member of the press to walk in a house and take a picture when a policeman had entered legally. If the public just comes to look at some place where suspected gambling, etc.,is going on, that is not legal. The press would be safe, however, if the public had been invited to that place at prior times. Mr. Remington wondered where the line is drawn between the public being invited or only certain individuals invited. The committee didn't have any objections to the press accompanying the law officials when making a lawful arrest. On page 3, line 14, paragraph c, it should say "authorized members of the media accompanying".

Representative Huennekens said there were many search warrants issued that produced no results. He objected to that part of it and the invasion of his privacy. Senator Turnage said if a hotel room was broken into and pictures were taken of roulette wheels even though the culprits weren't there, he thought that should be allowed. Representative Huennekens didn't object to this and said that "possession is an offense" if it is conclusive. Mr. Remington agreed with this. Chairman Towe said "when arrest or crime committed in that location" should be added. Representative Huennekens wondered if a child was authorized to invite someone into a home. Chairman Towe said that is why "authorized adult" is used, and a child is not authorized.

Chairman Towe commented on "withdrawn consent" and he thought this should be clarified in the bill. Once consent has been given, one can't retract it. Mr. Remington could easily understand "withheld consent" but he wondered how this matter could be put in legislation. He thought there was already common law on the subject. In the case of the surfer with Sports Illustrated, the courts upheld the plaintiff and said the man had a right to withdraw his consent. A provision should be added to this bill clarifying that point.

Chairman Towe said there was no question in his mind as far as it being legal to use electronic devices in public meetings. Page 5, lines 14-17 on oral communication clarify this point.

Representative Anderson thought that a reporter who accompanies a policeman into a house for arrest was in the house without

consent. Representative Anderson thought the reporter should be invited in. Senator Cetrone agreed with Representative Anderson. Chairman Towe discussed whether a person who was in a neighbor's house and arrested whether the neighbor should suffer the indignity of having the arrest made in his home. Mr. Remington didn't think this was a troublesome problem that would happen every day. He was thinking more in terms of raids, etc. Representative Anderson suggested that if there was a warrant it could be written so that reporters could enter with police. Chairman Towe suggested an exception where news media could be present in any location where a crime has been committed on that location. This would exclude them from the neighbor's house.

Representative Huennekens thought the crux of the matter was where do you draw the line for legitimate public interest and not an individual's public interest. Chairman Towe thought maybe we would have to look at whether the location of the arrest had anything to do with the crime or evidence. Mr. Remington agreed.

Mike Voeller, Editor of The Independent Record, spoke on behalf the Montana Press Association and as President of Montana Associated Press. Mr. Remington had expressed his thoughts well. If he is notified of the next meeting, he'll attend.

Mr. Bob Person, Legislative Council, presented information on the sovereign immunity study (see following list). The checked items were discussed last February.

Representative Huennekens moved that Sections 1-502 and 1-822 be repealed. The motion was seconded. Chairman Towe said he had obsolete written all over this part. If something happens to the recodification, these motions will be shown in the committee report. The motion passed unanimously.

Representative Vincent moved that Section 11-1301 through 11-1306 relating to sovereign immunity be repealed, subject to committee approval when the whole section can be looked through. The motion was seconded. The local government committee is considering this too. Chairman Towe didn't think Section 11-1307, 1308, and 1309 pertained to the judicial committee. Mr. Person will go through these sections and make sure they don't repeal existing law. Mr. Person will bring back to the committee suggested amendments for committee discussion. The amendment will delete all matters pertaining to sovereign immunity in these sections. The motion was carried.

Senator Cetrone moved that Section 11-1409 (4) be deleted. It was seconded and carried.

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Sections 11-2248, 11-1941, and 16-1610 were ~~not considered~~ by the committee as they were not relevant to this committee. This does not apply to government entity but only to persons who voluntarily report fires. This is not a subject for the committee to be concerned about. If a volunteer volunteers, he can be made an agent, not an employee. The eminent domain section does not apply to this committee.

Senator Turnage moved that Section 16-1801 through 16-1811 be amended so that this section does not pertain to any section under the Tort Claims Act. It was seconded and passed.

Representative Huennekens moved that Section 16-2731 and 16-2732 be repealed. The motion was seconded. This is a policy question of whether or not we want insurance companies to insure to the maximum limit rather than the limit of $100,000. Mr. Zinnecker said he would like to see "self-insurance" on an organized fashion. During testimony in the legislature, they can hear from county sheriffs and county commissioners. Mr. Zinnecker, Montana Association of Counties, said they have been looking at self-insurance for the last two years. Senator Turnage said he didn't think this should be repealed until there is a positive self-insurance program. There is no guarantee that the mechanism for self-insurance will be used. All of the 56 counties have the sheriff covered in a blanket bond. The motion was carried with Senator Turnage abstaining.

Section 16-2914 was not considered by the committee.

Senator Turnage moved that Section 17-205 be amended. As the proposed bill before the subcommittee, an exception should be mentioned. The motion was seconded and carried.

Senator Turnage moved that Section 28-603 (4) be amended and put in the statute "including chief and authorized deputy protecting the district as well as the chief or authorized deputy". This pertains to fighting range fires. Chairman Towe said he thought this was a sovereign immunity situation, and might require a 2/3 vote. He said the committee could include this in the statute with an amendment or put it in intact and either way it would receive a 2/3 vote. Under the local government proposal, some counties may be doing this locally. In some places, the first person on the scene of a fire is the chief deputy. Representative Huennekens wondered if we were establishing precedence again by allowing immunity for a certain person, and Senator Towe replied yes. Representative Huennekens wondered if this should be covered in the proposed bill under emergency actions. Senator Turnage said emergencies were hard to define because it means something different to each individual. The language in this section stands by itself. Mr. Person was

directed to research this subject. If this is a law at the present time, it might be that this is needed and not jeopardize the law that we have by changing it. Senator Towe thought things should be gone over one-by-one rather than making a blanket emergency provision. This would have to be changed in the bill title. Chairman Towe thought this matter should be in this bill. The motion was seconded and carried.

Representative Huennekens moved that Section 31-172 be repealed. The motion was seconded. This section says that the highway patrol can issue licenses to people who are blind or deaf and can't drive but need a license for other things (identification cards). The motion was carried.

Senator Turnage moved that Section 32-4722 which has the part that pertains to immunity be stricken. It was questioned whether there is any liability for performance of legal duty. It should be amended so that they have the right to enter land. The motion was seconded and carried.

Senator Turnage moved to amend in part Sections 40-4401 and 40-4402. It should be rewritten to carry out the effect that contract should waive right to raise defense of sovereign immunity. This then would be an expansion of sovereign immunity. The fire district then will still have the option of insuring against damage done to someone by going across someone's land they can still do so. It was seconded and carried.

Senator Turnage moved to repeal Section 46-243. The motion was seconded. There is another clear statute that grants the duty upon those people to do so. Senator Turnage replied yes. If the duty is done properly, there is no liability. The motion was never voted upon.

Representative Vincent moved to repeal Section 69-6405. The motion was seconded. If there is voluntary sterilization, there can be no liability. If they are negligent (physician performing act of sterilization), they are liable. The motion carried.

The committee decided to leave Section 75-5939 alone. Senator Turnage pointed out that this authorized the district to buy the insurance and also make the sovereign immunity defense unavailable if the insurance was bought.

Senator Turnage moved that Section 75-5940 be repealed. The motion was seconded. This is in conflict of what the proposed bill is saying now. The motion carried.

The committee decided to leave Section 75-6723 and 6724 alone. This is needed. This section is authorizing a school district

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to change a budget if authorized by a district court in order to pay a judgment.

The committee decided to leave Section 75-7011 alone. If a school district wants to insure for $5,000,000 instead of $1,000,000, let them do it. The section deals with minimum figures only. The committee was faced with the question of whether they can mandate school insurance to all districts.

Senator Turnage moved to amend Section 75-8310 to take out all reference referring to the school district and leave in all except to children and parents and guardians. Senator Towe didn't think this was a matter of sovereign immunity since school patrol people were volunteers for the most part. Representative Anderson said this was a function of the school program. Senator Towe didn't think the whole school should be immunized. If the school district was negligent in showing children how to be school patrol leaders they should be liable. Senator Turnage also moved that there should be something added to the section that adds limitation to gross negligence. The motion was seconded and carried with Representative Anderson abstaining.

Mr. Person pointed out to the committee that Diana Dowling had a requirement that "willful" be replaced with "purposeful". Senator Turnage said there was quite a difference between the two. Senator Towe said "purposeful" means one really intends to do it. "Willful" means you will it to be done, and you can imply a willfullness but not a purposefulness. It was pointed out that "willful" is not defined in the criminal codes. The words "intentionally, purposefully," are used instead.

Senator Cetrone moved to amend Section 77-2308 to spell it out to say it is only during national disasters or actual emergency where immunity will apply. This will require a 2/3 vote of the legislature in order to pass. Civil defense refers to national disasters or emergencies. The question is whether we want to give broad immunity to the states or representatives or agents of the state. Representative Huennekens said the state should be liable for these activities. Disasters could mean a dam breaking causing flood, earthquake, explosions, etc. Civil defense practice drills involve many people and it was discussed whether these people should be exempted when performing the duties. Chairman Towe didn't want to see someone's child hurt if the national guard said they had to go through that yard to get to the practice civil defense exercise. However, if an earthquake happened and people were evacuated and someone died as a result of that, those people in charge of the evacuation

should be protected. In an actual disaster situation, not in training, these people should be protected. People are liable for their negligence in training. It was questioned when preparation begins and lets off. Senator Turnage moved that we say "as used in this chapter, the term civil defense means during an actual emergency or ....". Therefore, any negligence occuring during an actual emergency will be given immunity. The motion was carried.

Mr. Person was instructed to prepare all the suggested amendments, and the committee will meet again to look at the amendments. Mr. Person will work with Senator Turnage as far as writing up the actual amendments. They will work on the ones not considered by the committee and decide which ones need work or an amendment and this will be sent out to everyone before the next meeting.

The next meeting will be Friday, November 12, 1976, at 7:00 p.m. and carry on through November 13.

The meeting was adjourned at 5:05 p.m.

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AMERICAN
LIFE INSURANCE
ASSOCIATION

1730 PENNSYLVANIA AVENUE, N.W. WASHINGTON, D. C. 20006
(202) 872-8750

ALEXANDER K. CIESIELSKI
ASSISTANT GENERAL COUNSEL

September 14, 1976

Honorable Thomas E. Towe, Chairman
Subcommittee on Judiciary, Legislative
Council
State Capitol
Helena, Montana 59601

Re: Draft Bill L.C. 0104, Right of Privacy
Subcommittee Hearing of September 18, 1976

Dear Senator Towe:

This statement is submitted on behalf of the American Council of Life Insurance, formerly known as the American Life Insurance Association for whom I appeared before your standing and interim committees on previous occasions. We now represent 239 insurance companies doing business in Montana which provide life and health insurance protection to the majority of Montanans. Since insurance by its nature necessitates a large scale collection and analysis of data affecting millions of individuals, our industry is vitally interested in Draft Bill No. L.C. 0104 considered by your Subcommittee for introduction to the 1977 Montana Legislature.

We are in agreement with the purpose of your proposal, to protect the privacy of the individual's personal data. We are deeply concerned, however, about the effect of this bill on day-to-day insurance operations. The infrequent occasion of misuse or misinformation of personal data must be weighed against the cost and effective administration of insurance operations for the majority of Montana citizens. Overreaction will benefit no one. Draft Bill L.C. 0104 attempts to impose rigid control over the gathering and use of personal data information in both the governmental and private sectors. The events of the past several years may indicate the need to protect the individual from wrongful use by the government of information obtained under the force of governmental authority. We seriously question, however, whether adequate study has been made of the impact of the proposed statute on the innumerable types and use of information systems, both automated and manual, in private business.

The dearth of this information caused the United States Congress to veer away from

regulation of private data systems at this time. The Privacy Act of 1974, Public Law 93-579, as originally introduced, applied to both government and private records. One of the strongest advocates for imposing controls was Dr. Alan F. Westin, of Columbia University, who served as director of the 1972 National Academy of Sciences project, which examined the privacy of the individual in relation to the need of personal information data banks. While endorsing coverage of intergovernmental computer systems, Dr. Westin opposed the total coverage of the original bill. He cited "impracticality and dangers involved in trying to regulate and register many tens or hundreds of thousands of files of every kind." He recommended "an instrumentality to lead private organizations to adopt codes of fair information practice as their voluntary policy", and proposed creation of a 'National Commission on Private, Interstate Personal Data Systems."

As a result of Dr. Westin's and other testimony, the Privacy Act of 1974 was limited to the activities of federal, governmental agencies. The act also established a Privacy Protection Study Commission to conduct a two-year study of "data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures enforced for the protection of personal information." Medicine and insurance head the list of areas to be examined in the private sector. The Commission's task is to determine whether the controls imposed by the Privacy Act on federal agencies should be extended to private organizations by additional legislation, and to recommend what is "necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information."

The federal Privacy Protection Study Commission has been conducting hearings throughout this year. In particular, three days of hearings with respect to the insurance companies were held in May and informal discussions have since continued between the Commission staff and representatives of the insurance industry. A report of findings and recommendations is expected to be completed by the federal Commission early next year.

We urge your committee either to withhold action on any privacy legislation until the results of the federal study are announced, or to limit the impact of Draft Bill L.C. 0104 solely to agencies of the state of Montana. We are not aware of any in-depth studies that have been made of the data collection systems of the business community in Montana, and we question whether the controls imposed by Draft Bill 0104 can properly be evaluated at this time in regard to their impact on costs and the efficiency of day-to-day business operations. The effect of "stagflation" on government budgets and the consumer's pocketbook makes it essential that the dollar costs of any new controls imposed on business be thoroughly evaluated and balanced against the benefit to be derived from the controls. As we understand it, the federal Office of Management and Budget has already expressed concern over the budgetary effects of the new privacy legislation. The taxpayer and the consumer will ultimately pay the bill.

Our plea for further study is not designed to avoid or delay privacy controls over the insurance industry. You are well aware that insurance is one of the businesses most heavily regulated by government. Such regulation already extends to the privacy of personal data.

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It is in the nature of insurance to require personal information about the lives and health of individuals. This ranges from solicitation and underwriting to claims and benefits administration. Forms used by insurers contain written authorization by an applicant on an insured to obtain data and to use it in granting and administering his or her insurance protection. Such data is frequently obtained through independent reporting agencies. Both the reporting agencies and the insurance companies are regulated thoroughly by the federal Fair Credit Reporting Act and by the Montana consumer reporting law, enacted by Chapter 547, Laws 1975 and codified as Mont. Rev. Codes Sections 18-501 through 18-521, which became effective on July 1, 1975. Notification that such outside agencies are being used, the nature of the information to be obtained, and the right of the individual to challenge the data is required by law in the existing procedures and forms related to credit, employment, applications for insurance and claims for insurance benefits. If credit, employment, insurance coverage or insurance benefits are denied, the individual must be informed if the action resulted from information from a reporting agency so that he or she will have an opportunity to challenge the report under the procedures prescribed by law. In fact, a federal Health, Education and Welfare Advisory Committee report noted that fair credit reporting legislation already provides greater protection in a number of areas than the safeguards of most privacy bills being proposed.

Accordingly, we respectfully submit that the existing strict regulation of personal data systems in the insurance industry makes further regulation unnecessary and burdensome. Disparate legislation by the 50 states, disregarding the existing nationally uniform pattern, would make compliance extremely difficult and increase the cost enormously.

I am looking forward to seeing you at the September 18 hearing and will be happy to elaborate on our suggestions or answer any questions your subcommittee may have.

Cordially,

Alexander K. Ciesielski
Assistant General Counsel

KC/jcg

Jack Lane
Equifax

LC0105
SB 404
SB 389
[LC0104]

"complaints" (in the broadest definition of the term) had been received by the FTC over a period of five years for the entire consumer reporting industry. Consumer witnesses appearing to testify in favor of amending the current law merely demonstrated how effectively the law was working.

The Fair Credit Reporting Act provides very specific consumer protections in the area of collection, maintenance, and distribution of personal information by consumer reporting agencies. These include:

-- That a reporting agency may issue a consumer report only for one or more of the permissible purposes set out in the Act.

-- That whenever an individual is denied a benefit, or pays more for that benefit, because of information supplied by a reporting agency, he is notified of that fact by the user, and supplied the name and address of the reporting agency. If credit is denied or costs more because of information from a source other than a consumer reporting agency, the consumer must be so informed and told of his right to obtain disclosure of such information.

-- That a reporting agency is prohibited from reporting adverse information over seven years of age. The exceptions are bankruptcy information which may be reported for 14 years, and when credit or insurance transactions exceed $49,999, or for employment when the annual salary is equal to $20,000 all information may be reported.

-- That a reporting agency must follow reasonable procedures to assure maximum possible accuracy of report information.

-- That public record information must be down to date which is likely to have an adverse affect in a report for employment purposes.

-- That reports may be submitted to a governmental agency only for one or more of the permissible purposes enumerated in the Act.

-- That a consumer can obtain disclosure of information from the consumer reporting agency.

-- That a reporting agency must reverify, when necessary, file information that is disputed by the consumer.

-- That information which cannot be reconfirmed must be deleted and a corrected report sent to previous recipients of the information within the previous two years for employment purposes and the previous six months for any other purpose.

-- That a consumer has the right to make a written statement concerning reconfirmed information, and that statement must be included in all future reports.

-- That a consumer who feels that he has received incomplete disclosure or who has suffered some other abuse may file a complaint with the Federal Trade Commission, which has responsibility for the enforcement of the Fair Credit Reporting Act.

-- The consumer is entitled to monetary compensation for any reporting agency's willful abuse of these provisions.

FCRA COMPLIANCE

The FCRA codified significant provisions for protecting the right of the individual to confidentiality and fair treatment which, while compatible with many of the philosophies and practices of consumer reporting agencies which already existed, nevertheless demanded a good deal of my immediate attention during the first half of this decade.

As soon as the FCRA was passed, we as a company worked diligently and spent significant sums of money to com-

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SUBCOMMITTEE ON JUDICIARY

Minutes of November 12-13, 1976 Meeting

The Subcommittee on Judiciary met November 12, 1976, at 7:30 p.m. in Room 432, Capitol Building, Helena. All members were present except Senator Cetrone and Senator Drake.

Other persons present were Dean Zinnicker, Montana Association of Counties; Mike Young, Department of Administration; Tom Maddox, Independent Insurance Agents; Dan Mizner, Montana League of Cities and Towns; and Bob Person, Legislative Council.

The minutes from the previous meeting were deemed read and approved.

Dean Zinnicker, Montana Association of Counties, testified. He commended the committee for a job well done. He thought the committee should consider immunity from suit by the governor in the state or discharging his duties in vetoing a bill. This should all be extended to a local government executive if the case ever arose. The 120-day limitation for filing an action should be left in the bill. The limitations of occurence should be based on the locality and ability to pay.

Dan Mizner, Montana League of Cities and Towns, testified. His convention passed a resolution which said the limitation should be $300,000 instead of $1,000,000. A lower limitation for local units of government should be considered. He was still concerned about the filing deadline.

Mike Young, Department of Administration, said from the executive department's point of view, the bill was very good.

The committee agreed that the summary of recommendations was very good, and should be the first page of the committee report.

The committee discussed the draft sovereign immunity bill. Mr. Young explained Section 2 to the committee as it related to existing law and old statutes. This whole chapter has not been used since 1973 since the tort claims act literally repealed by implication the chapter. This section merely says there are certain cases where immunity exists where they are now provided for. Mr. Young referred to the underlined portion of the draft bill on page 2 and said there might be a problem here since it is a jurisdictional statute. The whole section is stated elsewhere in the tort claims act.

Senator Turnage moved that Section 2 be deleted in its entirety. The motion was seconded and passed. All sections thereafter should be renumbered.

Senator Turnage wondered why Article II, Section 18, was necessary in the underlined portion on page 1 of the draft bill. He thought it was redundant. Chairman Towe thought a good reason to keep it in the bill was for a lawyer who wasn't familiar with the whole question of sovereign immunity to be able to see the reference therein. It was decided to leave Section 1 as written.

Senator Turnage moved that Chapter 7 of the Title 83 (repealer bill) in the second bill be deleted. The motion was seconded. Mr. Young pointed out that this chapter has no use because of the tort claims act. It is a source of conflict and confusion. The motion was passed unanimously.

The committee approved Sections 3 and 4 as written.

Section 5 was discussed. Representative Lory wondered if a separate section would have to be put in to include local government officials. Chairman Towe said he thought the committee had already discussed this matter, and decided not to include local government executives. If Mr. Zinnicker's suggestions were adopted, a county, city or town, and city or town executives and county executives would be immune from suit. Representative Huennekens said this would also include appointed officials as well as elected officials, and he objected to that. Mr. Zinnicker said they would be satisfied to limit this just to elected executives.

Representative Huennekens moved that a new Section 6 be added to read as follows: "Immunity from suit for certain actions by local elected executives: A local governmental entity and the elected executive officer thereof are immune from suit for damages arising from lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of that unit's legislative body." Representative Lory seconded the motion, and it was passed unanimously. Subsequent sections should be renumbered.

The committee noticed and changed the following typographical errors:

On page 4, line 3, after "exemplary" add "and punitive".
On page 4, lines 9 and 10, after "faith" insert a comma, and change the following to read: "faith, without malice and or corruption and"
On page 4, (2), lines 21 and 22, the same change as above: "faith, without malice and or corruption and".

Section 8, pages 5 and 6, of the draft bill were discussed by the committee.

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Representative Vincent asked if there were any formulas or methods of apportioning this by using taxable valuation, etc.

Mr. Mizner said they had been thinking of many different ideas such as limitations on taxable valuations, etc. His board had suggested a limitation of $300,000 for counties; $200,000 limitation for a single case or $500,000 for each occurrence. This would be for a local government unit. No distinction would be made among towns and cities. The section applying to automobile insurance is not operable anymore. Representative Huennekens said in today's age when people have to carry automobile insurance up to $500,000 it seemed cheap for counties to do less. Mr. Zinnicker said he would like the figures as low as possible. The cost for liability insurance is really very little as compared for $500,000 to $1,000,000. Mr. Young said the constitutional problem here was whether one could discriminate between local governmental entities. Is such a distinction denying equal protection of the law?

Representative Anderson asked if most communities and school districts weren't insured up to $1,000,000 now. Mr. Zinnicker said that Stillwater County couldn't get $1,000,000 worth of coverage this year. Their agent couldn't find a company to write a $1,000,000 policy. Mr. Maddox said this was a very interesting situation. His association had been watching the impact of this bill on the market and said the limits wouldn't have any effect on the market. To have lower limits makes self-insurance more feasible. Mr. Maddox said they have a positive approach on this proposed bill presently. Stillwater County's premiums jumped from $9,000 to $19,000 and reduced coverage of $1,000,000 to $500,000. Representative Huennekens said he thought it should be left as is, but watch Stillwater County and others to see if that was a trend within the insurance industry. Government should carry the same load that industry and private individuals do. Mr. Maddox said he would check on the Stillwater County situation and report back to the committee. If there is a serious problem, an amendment could be made.

The committee noted another typographical error on page 5 and it should read on line 7, after "for:" "(a) noneconomic damages; or (b) economic damages....".

Representative Vincent commented on Section 8 regarding "damages for pain and suffering" and "loss of reputation". To him, under certain circumstances, those can be just as damaging as pure and simple economic loss. He thought some inclusion should be made in the bill for pain and suffering.

Representative Huennekens wondered if a reasonable limit for economic damages of $25,000 to $30,000 was put in if every suit would automatically put a claim up to that limit. He also wondered if

past experience tells us that in most cases the jury would be inclined to grant noneconomic damages up to that limit.

Senator Turnage said that if a person was laying in a cast for months from an injury with no provable economic damage the jury would be inclined to reward something even though there wasn't any loss other than pain and suffering.

Representative Huennekens wondered if a noneconomic damage amount was included in this bill would insurance premiums increase and how much?

Chairman Towe said there would probably be a general trend toward awarding more damages. The limit might lead to an upper award of damages than if there was no limit at all. This would substantially affect the premium rates. There is a tendency for lawyers to claim the full maximum amount. In automobile accidents, the general rule of thumb is three times the actuals for the settlement sum. One can file for pain and suffering for a deceased person prior to his time of death, but this is hard to prove.

Representative Vincent asked about blindness and whether that involved pain and suffering. Chairman Towe pointed out that this was actual damage. To a child it would be calculated relative to income expected over a period of time. It is easier to settle a case based on a measurable claim.

Mr. Young commented that this might not simplify anything, but in fact might make all lawyers to do considerable mental gymnastics to get a pecuniary loss into everything. It is very easy to turn this into arguable economic claims. Equity will always stop one from a statutory defense.

Representative Vincent said he thought the committee was on thin ice and had made a value judgment when stating the only kind of redress involved a tangible amount. He thought there were other values involved.

Senator Turnage said that in Representative Vincent's argument one still has to go back to the dollar to measure the loss you say isn't measurable.

Representative Huennekens wondered what kind of basis there was for exempting the government from noneconomic damages when private citizens are liable for action to noneconomic damages.

Chairman Towe said the answer is that the government can't afford it.

Representative Huennekens said he can afford it, and he is also the one who supports the government.

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Representative Anderson asked why this law wasn't put to all citizens, all accidents, and all damages.

Chairman Towe said that this logic was irrefutable. However, for purposes of getting our society to operate somewhat amicably, we've got to say the government can't afford it. At least now, we're saying that the government can afford economic damages which is a big step. Maybe that's a big step and we better take that and at some later time maybe more can be done.

Representative Vincent moved that we include the present noneconomic damages within the main body of the bill ($200,000 per occurrence and $50,000 per individual). This is in addition to the $1,000,000 and $300,000 already in the bill.

Mr. Maddox said he didn't know what this would do to insurance premiums. They would probably go up. Most of the cases would probably fall under this area and would keep the premiums up.

Chairman Towe said that the way it is presently designed it has a substantial effect on reducing premiums.

Representative Vincent said that if most of the cases come from the five noneconomic points and by eliminating them rather than lowering the overall limit then we're keeping the cost down.

Mr. Maddox said that in settlement of tort actions noneconomic damages are as large or larger than economic damages. Premiums aren't determined on what is asked for, but actual settlements.

Representative Vincent withdrew his motion because of no data available on what this might cost. He'll try to get some figures on this, and perhaps make a motion in committee during the legislative session.

Representative Lory moved that the bill and title be approved as amended. In the title "s" on Sections and 83-701 should be struck. Representative Anderson seconded the motion, and the motion carried unanimously.

The committee discussed the proposed draft bill #2 on self-insurance programs.

Senator Turnage moved that on page 2, Section 2, (2), the deleted portion should be reinserted in the bill. The motion was seconded. It should read as follows: "(2) The department of administration, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full coverage insurance plan, until such time as the deductible reserve is established. In each subsequent year, the department shall be authorized to charge a sufficient amount over

the actual cost of the deductible insurance to replenish such deductible reserves. (3) The department of administration may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages which, in its discretion, it considers should be self-insured." The present (3) should be taken out and put with local self-government entities. Then (4) should be (3).

Mr. Young said that as written it doesn't differentiate between deductibles and self-insurance. They are not the same thing. A deductible is that one is willing to have insurance, but for "x" amount of dollars off the top and you're willing to pay. The insurance company still has the control over the coverage and amount a person gets. Self-insurance means that you are running the insurance companies. Mr. Young said the Department of Administration has 1/4 million dollars in deductible self-insurance reserve presently. One doesn't have control over a lawsuit. The deductible reserve has already been established, but it hasn't been used that much. Mr. Young didn't know what the self-insurance reserve fund would be. A place to start would be $1,200,000 which is being paid to the companies for liability coverages of all types. That amount should be put in the deductible reserve, and fund some other amount for the fund to cover administration, defense, investigation, contracted services, etc. A bill would have to be introduced to the legislature stating the exact amount. It should be considered as to who would approve this--Board of Examiners, court, attorney general, etc.

Senator Turnage said there should be a recommendation process. This would have to be in the form of an amendment to Section 82-4319 to say "if the claim is settled from the self-insured reserve fund the compromise must be approved by the district court".

The motion passed unanimously.

The committee noted the error on page 3 that (3) in its entirety should follow the first paragraph on page 4.

Mr. Young commented that the way the bill is drafted they presently can have deductibles and come into insurance as well as the self-insured reserve. Since self-insurance is brand new, the state is having enough problems without this added facet. The state is almost uninsurable now. This will involve a process of adverse selection where the poor counties or cities will want to come into the state. His department wouldn't be able to handle this. Another solution should be found for those people.

Representative Huennekens said that the insuring by the state process of the political subdivisions would still be coming under some sort of a purchased insurance policy from a private company with only the deductible portion.

Chairman Towe said it could mean that.

Mr. Zinnicker said that this Section 3 has to be consistent with the previous section and provide that self-insurance option for local governments. He felt this was unfair because a deductible was provided, but a self-insurance is not provided. They would need that opportunity. He felt that this option should be left open to the Department of Administration to make that decision when they are ready.

Mr. Young didn't know how he could let one political subdivision in and not another.

Mr. Zinnicker said not to segregate between political subdivisions, but when the plan was established, the Department can decide whether to allow local governments to come into the insurance or self-insurance.

Mr. Young said this would up the self-insurance reserve by ten times by letting in local governments.

Mr. Mizner said if a local government wanted to start a self-insurance program now, then later they could put their funds in the state self-insurance fund if the state took this over. The assets would be there and one wouldn't have to go back to the legislature for an appropriation to that local government entity.

Mr. Maddox thought the language for the local entities should parallel the state government language. Don't close the door on the local entities to negotiate their own plan. It is quite conceivable that all local entities could negotiate their own plan without jeopardizing the state position.

Representative Lory moved that the committee introduce the same wording for the local entities as there is for the deductible and self-insurance for the state, and there should be no mention for the local entities to enter into the state plan. On page 3, line 5, before "legislative" the word "local" should be inserted. The motion was seconded.

Mr. Young wondered how this would be funded. Mr. Maddox said that local entities had for some time been utilizing the investment facilities of the state for short-term investments. A rather large amount of money is centralized under the state investment program, and it is possible that he will have a proposed amendment on this section before the legislature which would suggest that it be mandatory for all counties, cities, and towns to pool their writings of insurance to make it possible for one carrier to make a bid of an offer. Representative Lory said there is nothing in here that says they can't pool their reserves. The whole idea is being designed for the best position of cities and towns with regard to the cities and towns. Mr. Young said some problems with pooling county funds

would be who settles, who decides, which county, etc. Mr. Zinnicker and Mr. Mizner said their associations would oppose the mandatory position.

The motion carried unanimously.

On page 4, Section 4, line 14, delete "may" and insert "fund" and after "insurance" insert ", deductible reserve fund" to read as follows: "fund the premium for insurance, a deductible reserve fund, and self-insurance reserve fund as herein authorized". The committee accepted this change.

Sections 5 and 6 were discussed by the committee. Mr. Person said that he inserted the change therein because the 120-day provision had been declared unconstitutional. Representative Huennekens wondered if some other limitation should be put in. The court said they would allow a statute to this effect. Mr. Young said there is currently a two-year statute of limitations in the current tort claims act. As far as state government is concerned, the 120 days created nothing but tension and hardship. This time period is too short.

Representative Anderson moved that the committee delete the reference to the 120-day statute of limitations. The motion was seconded and carried unanimously.

Mr. Young said that the committee might want to take the state provision and the one for local entities and reenact them into a reasonable time period of two to three years. The time for filing should be the same for both, and one has to file with the secretary of state and the district court.

Senator Turnage moved that Section 5 and 6, page 5 of the draft bill, Section 82-4311 through Section 82-4317, be deleted in its entirety. A new section will be added repealing those sections. Section 6 will be putting in a new statute of limitations. It shall read: "A claim against the state or a political subdivision is subject to the limitation of actions provided by law.".

Chairman Towe said that once a case is filed with the clerk of court, time must be allowed for them to decide on the case. It might be settled without going to court. Chairman Towe proposed that a person be allowed to file with the secretary of state on the last day of the two years and then be given another 90 days to file the lawsuit.

Mr. Young asked if it was necessary to file with the secretary of state. His office is the one who receives six xerox copies and he is the last to receive the copy, but he has to make the answer within 20 days. Elsewhere in the statutes there is a statute of limitations

time for regular actions by individuals against individuals. There will have to be language put in here to say that this now applies in this chapter which deals against tort claims in the state.

Mr. Young questioned whether Section 82-4317 was necessary as there were many alternatives available. As long as there is mandatory notice to somebody, it is extra work to file with the secretary of state.

Mr. Zinnicker said the financial administrator of the local governmental entities would be the person concerned with the filing issue.

Mr. Young said sometimes there is a time lag between the agency that is being sued and the Department of Administration. He suggested that filing of the claim be changed from the Secretary of State to the Department of Administration.

Mr. Mizner said it is a problem about where to go to, but it is not a problem at the local level.

The motion was seconded and passed unanimously.

Chairman Towe said that all the repealers should be put together under Section 9, page 6. Section 9 should read: "Repealer. Sections 82-4311-82-4317, 82-4326, 83-701-707, and 83-706.1 are repealed." The committee agreed to this change.

Section 82-4318 was discussed in order to require approval of settlements. The committee decided to add: "provided, however, a compromise involving the self-insurance fund or deductible reserve fund made by the department must be approved by the district court." They all have to go to court.

Senator Turnage moved that Section 82-4319 be amended to read as follows: "Section 7: The department of administration may compromise and settle a claim brought under this act subject to the terms of insurance, if any, provided that such compromise must be presented to the district court for approval." The motion was seconded and passed unanimously.

Senator Turnage moved that the bill do pass as amended. Representative Anderson seconded the motion, and the motion passed unanimously.

The next draft bill was discussed regarding attorney fees. The committee agreed that the title should be amended to read: "An act to provide for approval of attorney fees in connection with claims against governmental entities."

The committee agreed that the first four lines should read as follows: "Section 1: Attorney fees in claims against governmental entities to be reviewed by the court when an award or settlement is in excess

of $50,000. If an award or settlement is in excess of $50,000 it is granted in any claim against the state....". The title should be changed accordingly.

Senator Turnage moved that this bill be approved as amended and recommended as do pass. The motion was seconded and passed unanimously.

Chairman Towe agreed to introduce the bills to the legislative session. Section 82-1113 through 82-1119 wasn't considered to be a problem by the committee so it was left alone.

Sections 4301-4327 have already been discussed.

Senator Turnage moved that Section 89-115 be re-enacted again as an immunity section. Chairman Towe said there was a real question if that is an advisable thing to do and whether it has to be put through on a 2/3 sovereign immunity vote or it isn't valid anymore. This is saying that the state isn't liable, but the water user is. The motion was seconded and carried unanimously.

Mr. Person said he would draft an amendment and clean-up bill and a repealer bill to be introduced to the legislature. It was moved and seconded that the language should read: Strike "or the state of Montana" in Section 2. A new sentence should read: "The state of Montana is not liable for injury or damage that occurs on the works caused by failure to maintain safe working and operating conditions." This motion passed unanimously.

The committee decided to leave Section 89-2406 alone. This is covered as an economic damage as a tort.

Senator Turnage moved that Section 89-3514 be re-enacted. The motion was seconded and carried unanimously.

The committee considered Title 92 and agreed that state employees could be covered by the Workers Compensation law exclusion because of Article II, Section 16.

Section 93-26 was already discussed.

Section 93-4301 is a procedural matter, and is already covered in the Tort Claims Act.

Senator Turnage moved that in Section 93-2815 it be amended after "adjudicated" to insert a period and strike the language thereafter. The motion was seconded and passed unanimously.

The committee adjourned at 10:30 p.m.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 6-26-86
BILL NO. SB-22

SUBCOMMITTEE ON JUDICIARY
(name)

November 12, 1976
(date)

	ATTENDANCE	ROLL CALL VOTES											
Chairman Towe	✓												
Senator Cetrone	Abs												
Senator Drake	Abs												
Senator Turnage	✓												
Representative Huennekens	✓												
Representative Anderson	✓												
Representative Lory	✓												
Representative Vincent	✓												

SUBCOMMITTEE ON JUDICIARY
(name)

November 12-13, 1976
(date)

NAME	REPRESENTING
Dean Zinnecker	Montana Assn. of Counties
[illegible]	Dept. of [illegible]
Tom Maddox	Independent Insurance Agents
Dan K Mizner	Mont League of C & T

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB22

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.

PROPONENTS: 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 Pfost 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 Pfost decision. The amendments mentioned by Representative Bardanouve (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 Pfost 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

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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

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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 entites 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 govermental 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 Pfost 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 Pfost 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.

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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 Pfost 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.

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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 Pfost 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 Pfost 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.

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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.

Joseph P. Mazurek
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	✓		

DATE March 25, 1986

COMMITTEE ON Judiciary

VISITORS' REGISTER HB-7

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Gordon Morris	MACo	HB7	✓	
Nicki Jamison	Gov's.	HB7	✓	
Alec J. Hansen	MLCT	HB7	✓	
Mark Wolf	ACLU	11		✓
John C. Hoyt	UTU	11	✓	
Jean Long	S.A.M.	HB7	✓	
Jack Stechi	PAT	HB7	✓	
Kurt Campbell	MEA	HB7	✓	
Chip Erdmann	MSBA	HB7	✓	
Don Waldron	S.A.M.	HB7	✓	
Rose Skoog	MT LIABILITY COALITION	HB7		✓
Bill Leary	Montana Hospital Assn.	HB7		✓

SENATE JUDICIARY
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(Please leave prepared statement with Secretary)

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

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DATE 032886
BILL NO. HB-7

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DATE 6-26-86
BILL NO. SB 22

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

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experience to date, is set forth in the attached schedule. (Exhibit No. 1)

The most recent actuarial estimate of adequacy of the comprehensive general liability self-insurance fund was prepared by Coopers & Lybrand, Certified Public Accountants, on September 28, 1984. The next review of the adequacy of the self-insurance fund is scheduled to be completed in June of 1986. A copy of the 1984 report is attached. (Exhibit No. 2) The 1984 report estimated a reserve deficiency of approximately $11.2 million. The estimates applied only to the statutory limits of $300,000 per claim and $1,000,000 per occurrence for economic and noneconomic damages.

The recent decision of the Montana Supreme Court in Pfost v. State of Montana, et al striking the statutory limits has significantly changed the assumptions on which the 1984 report was prepared. The Department of Administration supports passage of House Bill No. 7 to give the people of Montana the opportunity to enable the Legislature to impose limits of liability at the next legislative session. The integrity of the self-insurance fund depends on the Legislature's authority to set limits of liability where the state is named as a defendant.

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DEPARTMENT OF ADMINISTRATION
Tort Claims Division

PART I - Insurance protection provided

	Annual Cost FY86 (11-26-85)
A. Commercial Insurance:	
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	21,281
TOTAL	359,157
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	139,852
TOTAL	2,187,901

PART II - Self Insured Comp-General Liability

A. Actual payments made for claims and expenses:

	FY78&79	FY80&81	FY82&83	FY84	FY85	FY86[1]
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	67,649	296,186	3,337,944	1,689,261	2,588,445	928,374

EXHIBIT 1

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B. Income by Fiscal Year:

	Billings to Agencies	Interest Earned	Total
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[1]	1,440,000	921,052	2,361,052
FY86[1]	1,615,635	887,452	2,503,087

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

	Beg. F. Balance	Receipts	Expenses	Ending F. Balance
FY78	-0-	1,823,218[2]	36,037	1,787,181
FY79	1,787,181	2,230,851[2]	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[1]	8,015,060	2,361,052	2,588,445	7,787,667
FY86[1]	7,787,667	2,503,087	928,374	9,362,380

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

FY78	FY79	FY80	FY81	FY82	FY83	FY84	FY85	FY86	Tota
107	110	151	94	123	125	189	155	89	1143

PART V - Self-Insured Automobile Fleet Insurance Claims Filed[4]

FY86

114

A. Amounts Paid

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

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B. Fund Balance Summary

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

---

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.

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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
Certified Public Accountants

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BILL NO. H.B. 7

Coopers
&Lybrand

certified public accountants

1800 First Interstate Center
Seattle, Washington 98104-4098

in principal areas of the world

telephone (206) 622-8700
twx 910-444-2036
cables Colybrand

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

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.

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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

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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.

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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.

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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.

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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.

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.

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 whcih 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.

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Exhibit 1

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.

STATE OF MONTANA

ESTIMATED ULTIMATE LOSSES

Property Damage Claims

Accident Year	Estimated Ultimate Loss		
	Based on Development (1)	Based on Size-of-Loss Projection (2)	Selected (3)
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	-	734.6	725.0
Total		$2,619.6	$2,610.0

Accident Year	Payments as of 6/30/84 (4)	Estimated Reserves as of 6/30/84 (3)-(4) (5)
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	5.8	719.2
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.

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Exhibit 3

STATE OF MONTANA

ESTIMATED ULTIMATE LOSSES

Bodily Injury Claims

Accident Year	Estimated Ultimate Economic Loss: Based on Development (1)	Estimated Ultimate Economic Loss: Based on Size-of-Loss Projection (2)	Estimated Ultimate Economic Loss: Selected (3)	Factor to Adjust Economic to Total Loss (4)
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	-	2,972.2	2,900.0	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	4,350.0	4.9	4,345.1
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.

Exhibit 4

STATE OF MONTANA

ESTIMATED ULTIMATE ADJUSTMENT EXPENSES

Property Damage and Bodily Injury Claims

Fiscal Year	Loss (1)	Expenses (2)	Ratio of Expenses to Loss (2)/(1) (3)	Attorneys Fees (4)	Ratio of Attorneys Fees to Loss (4)/(1) (5)
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

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
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

Exhibit 5

Exhibit 6

STATE OF MONTANA

RUNOFF OF 6/30/84 RESERVES WITH FUNDING AT PRESENT VALUE OF FUTURE EXPECTED PAYMENTS

Property Damage and Bodily Injury Claims

	1985	1986	1987	1988	1989	1990	1991
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
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

Exhibit 7

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.

STATE OF MONTANA
Number of Reported Claims
Property Damage Claims

Accident Year	Months of Development 12	24	36	48	60	72	84
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.

Exhibit 9

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

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.

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	1.200	1.090	1.040	1.015	1.005	1.000	1.000

Note:

1. Accident year ends June 30.

Exhibit 11

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

Accident Year	Cumulative Reported Claims (1)	Selected Development Factor (2)	Cumulative Development Factor (3)	Ultimate Claims (1)X(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

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

Note:

1. Accident year ends June 30.

Exhibit 12

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-
$ 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+	1	2	3	1	0	0	0
Total	59	58	75	49	40	41	[illegible]

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-
$ 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+	.02	.03	.04	.02	.00	.00	.00
Total	1.00	1.00	1.00	1.00	1.00	1.00	1.00

Note:

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

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

Exhibit 13

STATE OF MONTANA

ESTIMATED SIZE-OF-LOSS DISTRIBUTION
FOR ACCIDENT YEAR 1979

Property Damage Claims

Size-of-Loss Category	Estimated Percentage (1)	Estimated Average Loss (2)
$ 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.

STATE OF MONTANA

ESTIMATED ULTIMATE LOSS BASED ON SIZE-OF-LOSS DISTRIBUTION

Property Damage Claims

Accident Year	Estimated Average Loss (1)	Estimated Ultimate Number of Claims (2)	Estimated Ultimate Loss (1)x(2) (3)
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.

STATE OF MONTANA

ESTIMATED ULTIMATE LOSS BASED ON PAID AND INCURRED DEVELOPMENT

Property Damage Claims

Accident Year	Months of Development	Losses 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
EXHIBIT NO. 4
DATE 2-26-85
BILL NO. SB 322

Exhibit 15

Exhibit 16

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
EXHIBIT NO. 4
DATE 6-26-86
SB 22

Exhibit 17

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.

Exhibit 18

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	1.775	1.320	1.340	1.060	1.030	1.010	1.010

Note:

1. Accident year ends June 30.

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

Accident Year	Cumulative Reported Claims (1)	Selected Development Factor (2)	Cumulative Development Factor (3)	Ultimate Claims (1)X(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

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

Note:

1. Accident year ends June 30.

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	1983-198
$ 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+	0	2	3	3	2	0	[illegible]
Total	38	34	43	29	41	40	18

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	1983-198
$ 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+	.00	.06	.07	.10	.05	.00	.06
Total	1.00	1.00	1.00	1.00	1.00	1.00	1.00

Note:

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

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

Exhibit 21

STATE OF MONTANA

ESTIMATED SIZE-OF-LOSS DISTRIBUTION
FOR ACCIDENT YEAR 1979

Bodily Injury Claims

Size-of-Loss Category	Estimated Percentage (1)	Estimated Average Economic Cost (2)
$ 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.

STATE OF MONTANA

ESTIMATED ULTIMATE ECONOMIC LOSS BASED ON SIZE-OF-LOSS DISTRIBUTION

Bodily Injury Claims

Accident Year	Estimated Average Economic Loss (1)	Estimated Ultimate Number of Claims (2)	Estimated Ultimate Economic Loss (1)x(2) (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.

STATE OF MONTANA

ESTIMATED ULTIMATE ECONOMIC LOSS BASED ON PAID AND INCURRED LOSS DEVELOPMENT

Bodily Injury Claims

Accident Year	Months of Development	Losses 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
EXHIBIT NO. 4
DATE 6-26-85
BILL NO. SB 27

Exhibit 23

3/26/86 HB 7

Power Block
Bldg. Suite 4G
Sixth and Last Chance Gulc
Helena, Montana 59601
Ph. 406-443-5711

Montana Association Of Conservation Districts

HB7

Mr. Chairman and members of the Committee, my name is Debi Brammer and I represent the Montana Association of Conservation Districts.

Although there has not been a significant liability suit impact in the Conservation Districts within Montana, the liability threat is becoming a very large concern of most of our supervisors. Each Conservation District has five to seven supervisors who serve basically on a volunteer basis. There are, in many cases, farmers, ranchers, and or professionals who are deeply concerned with losing their ~~positions~~ possessions and or livelihoods. An increasing amount of demands are being placed upon Conservation Districts and their supervisors by federal, state and local laws. This, along with the public's demands on soil and water resources put demands on supervisors that require personal and professional judgments. Basically, our supervisors feel that the demands put on them in their voluntary capacity creates needs for liability protection. Many of our supervisors are considering resigning due directly to the increasing threat of liability suits. We feel that this is a valuable human resource that has helped protect the soil and water resources of Montana Since the 1930's, and that it would be devastating to the state if it were lost. We urge your support of House Bill Number Seven.

Thank you.

Debi Brammer

Debi Brammer
Executive Vice President
Montana Association of Conservation Districts

Rep. Krueger noted that the supreme court did not say that they could not establish levels, they just said that they could not be arbitrary in their determinations on this and he asked Mr. Cater to comment on this.

Mr. Cater responded that he would never recommend to the legislature that they go back to the same age type criteria even if they do change the constitution. He advised that the basis for that legislation was primarily due to the fact that the state of Pennsylvania had enacted an age limitation, which was similar to HB 843, and that was upheld by the federal circuit court; there was testimony by low-income people that because of their age they had been discriminated against, witnesses indicated that older people would have a harder time; and all this was admitted in court, so he does not feel that this was completely arbitrary.

He further informed the committee that just last week he received notices from the legal services that they believe that under this middle-tier test, it is essential that all low-income people receive annual eye checkups, semi-annual dental checkups and he felt that this is taking away the discretion of the legislature and may be the next court challenge.

Rep. Eudaily asked if it was necessary to put the word "discretion" in his amendments. Mr. Cater responded by saying that the reason he left it out is because in the current bill there is an "against" clause. If the committee voted against it, in effect the committee would be against giving the legislature the discretion to provide the welfare. This could cause some confusion.

There being no further questions, the hearing on this bill closed, and the members of the Human Services Subcommittee were excused.

(Chairman Hannah had previously invited members from the House Business and Labor Committee to participate in the hearing on HB 7.)

CONSIDERATION OF HOUSE BILL NO. 7: Rep. Francis Bardanouve, House District #16, sponsor of this bill stated that HB 7 wasn't necessarily his bill but rather it is a bill that was put together by the citizens of Montana. HB 7 is a permissive piece of legislation, and if the bill passes, it will enable the 1987 legislature and subsequent legislatures to set limits as to liability of governmental units. Rep. Bardanouve said this bill doesn't necessarily say the

"King" can do no wrong, but it will give the legislature the ability to limit how wrong the "King" may be. The state of Montana is facing an insurance crisis although Rep. Bardanouve is unsure of what the reasons are. Insurance rates have soared so high that governmental entities as well as the private sector can hardly afford insurance. Some cannot even obtain liability coverage. Rep. Bardanouve stated that he has no assurance that Montanans will benefit by lower rates or the availability of insurance even if the legislature does pass limitations. Montana is only a small speck in the insurance industry; some city suburbs carry more insurance than all of Montana. In reality, no matter what happens in Montana on this issue, we are at the mercy of a Board of Directors of a giant insurance corporation. Rep. Bardanouve mentioned that a few small governmental entities with small resources are at the complete mercy of high insurance rates and large judgment awards. He said that this legislation is not a partisan issue; it crosses all political lines. Rep. Bardanouve submitted a news article concerning this particular legislation which he had previously written. (Exhibit A) In closing he feels that the private and public liability limits should not be combined in one bill.

PROPONENTS: Mona Jamison, legal counsel to Governor Schwinden emphasized a few points previously made by Rep. Bardanouve. She said that after the Pfost v. State of Montana, et al. decision was handed down by the supreme court, she and others started working on this issue. HB 7 is the final product of two months' of debate, concensus, comments, etc. She told the committee that the issue here is not caps -- it is not where caps should be set, if at all. The issue before the legislature is one of legislative prerogative. Should the legislature have the ability to consider the establishment of caps, she asked. The forum for the consideration of virtue of setting caps would be in the 1987 session assuming the legislature passes HB 7 and the people approve it in the November election. The referendum is the vehicle of getting the issue of establishing caps back before the people to decide. In closing, Ms. Jamison said the governor urges passage of this bill.

John H. Maynard, administrator of the Tort Claims Division, Department of Administration, stated he supported HB 7 as an effective means to implement the liability limits the legislature has already enacted three times previously. This bill gives the people of Montana the opportunity to once again demonstrate whether or not they wish the legislature to have the prerogative of setting limits. Mr. Maynard gave the committee a brief overview of what their experiences have been

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in Montana under the limits and what they expect to experience now that the supreme court in the Pfost case struck those limits. A copy of his written testimony was marked Exhibit B and attached hereto.

Chip Erdmann, representing the Montana School Board Association, stated that this legislation is not a unique concept in Montana. This is something that both the people of Montana and the legislature have voted and approved three different times. He said that school districts provide mandated services. There are risks involved in some of the services that are provided. There are some school districts operating without insurance coverage and those school districts that do have it are experiencing increases in their premiums of about 300%. If an uninsured school district gets hit with a substantial judgment against it, an emergency is passed which gives the school district the authorization to spend that money. They don't have the money, so they borrow it by registering warrants. At the next levy election, that amount is placed on the taxpayers of that particular district. He said that many of these counties are increasing tax delinquencies due to the current economic conditions. The restoring of limits will allow school districts to form self-insurance pools with the help of SB 2, Mr. Erdmann said in closing.

Bill Anderson, representing the Office of Public Instruction, stated his support for HB 7 by saying it is the first step in setting necessary limits. He presented some examples of how various school districts in Montana are either having their insurance altogether cancelled or their premiums dramatically increased. There seems to be no permanent solutions to their problems at this time. Mr. Anderson stated that their office has been in contact with the people in this state and the general consensus is for limits. Superintendent Ed Argenbright sets a high priority on HB 7; however, they feel that the private sector should be added.

John Hoyt, an attorney from Great Falls, said he feels we should get our constitution back where the framers intended it to be and leave it alone. The constitution should be sacred and unchanged. All HB 7 is going to do is put the constitution back in place.

Alec Hansen, representing the Montana League of Cities and Towns, stated that his organization support HB 7. He further stated that 45 other states have some kind of liability protection for state and local governments.

Gordon Morris, executive director for the Montana Association of Counties, stated that his organization supports the long standing common law principle of sovereign immunity.

Debi Brammer, representing the Montana Association of Conservation Districts, voiced her support of this bill. She said that although there has not been a significant liability suit impact in the conservation districts within Montana, the liability threat is becoming a very large concern. A copy of her written testimony was marked Exhibit C and attached.

Jo Brunner, executive secretary of the Montana Water Development Association, stated that the association stands in full support of this bill.

Jesse Long, executive secretary for the School Administrators for Montana, stated his support for the bill. A copy of his written testimony was marked Exhibit D.

George Bennett, representing the Montana Liability Coalition, stated his support in concept for HB 7. He said that tort reform is the long term solution and the only solution to the liability issue.

Donald R. Waldron, superintendent of Hellgate Elementary School urged the committee to pass HB 7. A copy of his testimony was marked Exhibit E.

Nathan Tubergen, finance director for the City of Great Falls, said that Great Falls is one of the unfortunate cities that has been without general liability insurance since July 1, 1985. He urged the committee to pass this bill.

Larry Stollfuss, Choteau County Superintendent of Schools, representing the Montana Association of County School Superintendents, said that liability insurance in many cases is costing some of their rural schools over 10% of their general fund budgets. Hopefully, passage of HB 7 will curb some of the rising insurance costs by limiting some of the liability amounts.

Craig Burrington, Superintendent of Schools in Fort Benton, testified in support of the bill. He said that if a million dollar judgment was assessed against the school district, their taxes would triple. Because of economic conditions, they could not afford that end of an increase in their tax rate.

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Bob Correa, representing the Bozeman Chamber of Commerce, stated that HB 7 is a step in the right direction in addressing the insurance crisis present in Montana.

Sandra Whitney, representing the Montana Taxpayers Association, supports the concept of this bill.

Gary Marbut, representing the Montana Council of Organizations supports the idea of a constitutional referendum for liability limitations and supports the position of the Montana Liability Coalition.

Glen Drake, representing the American Insurance Association, supports the concept of HB 7.

F. H. "Buck" Boles, president of the Montana Chamber of Commerce, supports the concept of this bill and the position of the Montana Liability Coalition.

Don Peoples, chief executive of Butte-Silver Bow, stated his support for HB 7.

Jim Van Arsdale, mayor of Billings, stated his support for HB 7.

OPPONENTS: Joe Bottomly, lawyer from Great Falls, stated that the proposal to pass a constitutional amendment to give juries the right to restrict what a severely injured person will receive less than his full legal redress is an over reaction to an insurance crisis which may or may not be based upon a liability crisis. Mr. Bottomly said that before this legislature or any legislature takes such a drastic step it should study the issue and determine what the underlying facts are. He said that a number of the proponents who testified on this bill have indicated that they don't know what the underlying facts are. Until we have facts and figures from the insurance companies, it would be grossly unfair for those people who can afford it the least -- the people who have been most severely injured -- to pass a bill without knowing all of the facts.

Mr. Bottomly submitted a number of reports which raise various questions such as the liability crisis is not the basis of an insurance crisis. (Exhibit F) If that is so, there is no justification for this type of an amendment, he said. The Washington State Legislature studied this issue in 1985 and concluded that too often people are being victimized by the insurance industry that is facing a crisis of its own making. Mr. Bottomly stated that the insurance premium crisis can be handled in this legislature by such

bills as the one introduced by Dorothy Bradley, et al. which will allow for self-insurance pooling, will allow insurance companies to obtain re-insurance and will help businesses and entities which are having difficulty in finding available insurance.

Cindy Spadginske, mother of a young man who was injured in an auto accident, said that before a bill such as this one is passed, the legislature should know the expenses incurred on victims of accidents.

Kim Wilson, representing the Montana Chapter of the American Civil Liberties Union, stated that the ACLU opposes in principle any constitutional amendment which places caps on liability. The thing that is forgotten in trying to examine this issue in such a short manner of time is the question, "What is going to happen to the victims?" Mr. Wilson feels that the liability cap proposal creates a very inequitable situation. On the one hand, if we allow public liability caps and no caps for private, we are going to have victims who are injured by public agents who may not be compensated; whereas, private victims may well be compensated for all their injuries. If on the other hand both caps are passed, we are going to have victims whose injuries fall below a certain economic level who will be fully compensated; whereas, victims who injuries cost more are not going to be fully compensated. We feel it is important that these amendments do not pass, because they limit the right to redress. They will also limit the power of a jury to decide on the basis of the individual facts based on the individual injuries what a victim is entitled to be compensated. Finally, we feel these proposals will constitutionalize a form of discrimination by drawing the line between certain economic situations. Mr. Wilson urged the committee to study this issue further because he feels we do not have a sufficient grasp of what the true causes of the liability insurance crisis are to make such a decision.

Monte Beck, an attorney who primarily represents victims of injury, opposes any types of caps or limits upon liability. He asked the question if the insurance industry has promised anything such as a drop in premiums or an increase in the availability of insurance will result if caps are imposed. He urged the committee to ask the insurance industry to provide them with the statistics that will show that in the state of Montana municipal liability, county liability, state liability is at such a loss that it justifies tampering with such a sacred document such as our constitution. He asked, "Where are the losses for the counties and the state of Montana?" Mr. Beck feels that

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this type of legislation appears to be an emotional stampede to try to convince the legislature to pass a bill which would affect the very types of people the liability system and the jury system is intended to help -- and that is injured people who have been hurt through no fault of their own.

There being no further opponents, Rep. Bardanouve closed briefly.

QUESTIONS ON HB 7: Rep. Spaeth asked if this legislation will solve the problem. Chip Erdmann responded by saying he didn't know whether or not it will solve the insurance problems from a company point of view. However, it will allow them to create a self-insurance fund that is feasible if they have limits, but it will not be feasible if they don't have limits. In response to another question, Mr. Erdmann feels that caps is a part of the answer to the problem. This bill provides the legislature authority to set those caps if they feel it is appropriate. The bill has nothing to do with installing caps; that debate will come in 1987. Mr. Erdmann said that perhaps there are other areas in tort reform that they should be looking at, but as a governmental representative he supports this bill as a means of dealing with the present problems of lack of insurance coverage. If caps are enacted that can self-insure. This will afford at least some protection for the victims.

Rep. Gould asked Ms. Jamison if she had a fear that voters won't take the time to study each of the proposed initatives and referendums before voting this fall and just vote no. He said he is concerned for this reason with the question of combining the two issues. Ms. Jamison feels it is a test that Montanans can meet. She said they want to see both issues addressed because she feels it will reduce the areas of litigation and possible rulings of unconstitutionality.

Rep. Miles asked Mr. Maynard why they have to look at total immunity. Mr. Maynard said that it was necessary for the drafters of of HB 7 to indicate that in addition to immunity from suite, the legislature has the ability by a 2/3 vote to address the issue and the extent of the state and local government's immunity from suit. In addition, the legislature has the prerogative under this legislation to set limits of liability and address both of those issues.

Rep. Cobb asked Ms. Jamison that without a constitutional amendment, can the legislature revise now and raise within reason the real and personal property exemptions from

execution of judgment against public entities as well as a time period that judgment can be paid off without violating the supreme court rulings. Ms. Jamison responded by saying that she did not have the information right now to give a legal opinion.

Rep. Thomas asked Mr. Bennett if he felt the legislature can make tort reforms without a constitutional amendment addressing the Pfost case. Mr. Bennett stated that the liability crisis as they see it is much broader than the insurance crisis. He said our law in the civil liability field is pretty much made by the courts. The legislature has allowed the courts to make the law in roughly the same way it allows bureaucrats to make laws under their administrative procedures act with rules. Tort reform involves definitions of negligence, contributory or comparative negligence, and a whole host of things that goes into who has been harmed and who pays the bill. Tort reform is a massive thing which Mr. Bennett hopes the legislature will have the opportunity to address. He feels that the Pfost case stands in the way of getting the reform that this legislature has to undertake, both in the public sector and the private sector. Until we can really get a handle on this through a tort reform act, it will continue on and on with the court creating new rights and the legislature having no ability to respond.

Rep. Addy asked Ms. Jamison if there had been any consideration given to distinguishing between economic and non-economic damages. Ms. Jamison said there had been. She believes that this referendum allows the legislature to address that issue in the 1987 legislative session. This referendum would allow the legislature to deal with the whole area of caps -- where they want to draw the lines, if any, and it gives them the authority in certain areas to even differentiate. Rep. Addy asked if the legislature should have the constitutional authority to limit economic damages (out-of-pocket losses) that the plaintiff had suffered. Ms. Jamison said this referendum would allow the legislature to do that.

In response to a question by Rep. Simon, Ms. Jamison said this bill will allow the legislature to deal directly with the issue of caps which is in direct response to the Pfost decision. She said that one lawyer's opinion is that there are areas of tort reform that could occur without this constitutional referendum; therefore, changes could be made in

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other areas. This referendum just allows limits to be set in the area of caps. Basically, the legislature could do both.

ADJOURNMENT: There being no further questions or discussion, Chairman Hannah adjourned the meeting at 11:10 a.m. Rep. Hannah announced that the Judiciary Committee will meet at 1:30 this afternoon in Room 312-2 to consider HB 13.

Tom Hannah
REP. TOM HANNAH, Chairman
Judiciary Committee

DAILY ROLL CALL

JUDICIARY COMMITTEE

SECOND SPECIAL 49th LEGISLATIVE SESSION -- 1986

Date March 26, 1986 (8:00 a.m

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	✓		

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DAILY ROLL CALL

APPROPRIATIONS-HUMAN SERVICES SUB COMMITTEE
SPECIAL SESSION II
49th LEGISLATIVE SESSION -- 1986

Date _____

NAME	PRESENT	ABSENT	EXCUSED
REP. WINSLOW, CAL - Chairman	✓		
BRADLEY, DOROTHY, REP.		✓	
REHBERG, DENNIS, REP.	✓		
CHRISTIAENS, CHRIS, SEN.	✓	✓	
MANNING, RICHARD, SEN.	✓		
STORY, PETE, SEN.		✓	

CS-30

other areas. This referendum just allows limits to be set in the area of caps. Basically, the legislature could do both.

ADJOURNMENT: There being no further questions or discussion, Chairman Hannah adjourned the meeting at 11:10 a.m. Rep. Hannah announced that the Judiciary Committee will meet at 1:30 this afternoon in Room 312-2 to consider HB 13.

Tom Hannah

REP. TOM HANNAH, Chairman
Judiciary Committee

MLIC - Montana Law-Income Coalition

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FACT SHEET

March 1986

Why A Constitutional Amendment is Not Needed to Solve Welfare Costs

1. Will the proposed amendment affect the integrity of the Constitution and human rights?

Montana has one of the finest constitutions in the country, and is far reaching in protecting human rights. Among these are the right to the basic necessities to sustain life, such as food, clothing and shelter. The proposed constitutional amendment would abrogate those rights and relegate them to the whim or good will of whatever political party is in power at the moment. We believe the constitutional framers intended more protection than this for needy Montanans. Constitutional amendments should not be taken lightly and not considered hastily in a special session where debate is limited by time constraints. In addition, in 1992, the Montana electorate will have the opportunity to decide upon a constitutional convention where changes can be comprehensively debated and acted upon.

2. Should the Constitution be changed to solve budget problems?

Obviously, it would be totally unrealistic to change the Constitution each time the state is faced with serious budget problems where other alternatives exist but have not been tried.

The goal to limit GA by the 1985 legislature was to save money. There is nothing in the constitution which prevents the legislature from saving money and the it still has the power to set limits. In fact, does so now by determining eligibility requirements for welfare. MLIC supports the goal of reducing welfare costs through just alternatives. MLIC and it's member groups have long been calling for employment and training alternatives. We have worked diligently for the past year to get the Job Partnership Training Act (JPTA) progams to provide increased opportunities for Montanans receiving general assistance. We have submitteed proposals to the two Private Industry Councils, the Joint Training Coordinating Council and to the Governor. All of these requests fell on deaf ears. Last year, only 6% of JPTA placements went to GA recipients. The state JPTA plan continues to set a goal of only 2% for GA placements. MLIC recommended goals of up to 60%, and if our recommendations had been followed there would be no need for a GA supplemental appropriation at this time.

3. What are the alternatives?

Because of the failure of JPTA programs to respond to the job/training needs of GA people, and thereby reduce welfare costs, MLIC and it's member groups decided to join with SRS and other state organizations to develop innovative, job/training, job creation approachs, many of which have been very successful in other states in reducing welfare costs.

SRS has taken these ideas and has developed six (6) pilot projects to be tried around the state completed, evaluated and recommendations made to the 1987 legislature. We recommend legislators defeat the proposed amendment, support job/training initiates which will reduce welfare expenditures, preserve a just constitution and human dignity for all Montanans who are now in need or will be in the future.

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 program. 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.

Exhibit A
March 26, 1986
HB 7
Rep. F. Bardanouve

Exhibit B
March 26, 1986
H.B. 7
John Maynard

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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

that may create financial liability but are not administered by the Division are such items as collective bargaining, unfair labor practice charges, employment discrimination claims under the Human Rights Act, claims payable by other state funds, i.e., claims against the uninsured employer's fund, retirement system benefits wrongfully denied, and the wrongful collection and distribution of taxes.

Currently the state building schedule, including furnishings and equipment, is commercially insured for replacement costs subject to a $100,000 deductible per occurrence which is self-insured. Similarly, all aircraft, helicopters, boilers, money and securities and fine arts are commercially insured for stated values. These policies are publically bid on a three-year basis by the Division and premiums are billed on a pro rata basis to each participating agency.

Up until June 30, 1985, we obtained commercial insurance to cover our auto liability. Since that date, we have been unable to get a bid from the commercial insurance sector. Therefore it has been necessary to pick up auto liability in our self-insurance reserve fund. The premiums billed to agencies which we use for coverage have been placed in the self-insurance fund. The cost of the insurance protection provided, as well as the claims

experience to date, is set forth in the attached schedule. (Exhibit No. 1)

The most recent actuarial estimate of adequacy of the comprehensive general liability self-insurance fund was prepared by Coopers & Lybrand, Certified Public Accountants, on September 28, 1984. The next review of the adequacy of the self-insurance fund is scheduled to be completed in June of 1986. A copy of the 1984 report is attached. (Exhibit No. 2) The 1984 report estimated a reserve deficiency of approximately $11.2 million. The estimates applied only to the statutory limits of $300,000 per claim and $1,000,000 per occurrence for economic and noneconomic damages.

The recent decision of the Montana Supreme Court in Pfost v. State of Montana, et al striking the statutory limits has significantly changed the assumptions on which the 1984 report was prepared. The Department of Administration supports passage of House Bill No. 7 to give the people of Montana the opportunity to enable the Legislature to impose limits of liability at the next legislative session. The integrity of the self-insurance fund depends on the Legislature's authority to set limits of liability where the state is named as a defendant.

DEPARTMENT OF ADMINISTRATION
Tort Claims Division

PART I - Insurance protection provided

	Annual Cost FY86 (11-26-85)
A. Commercial Insurance:	
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	21,281
TOTAL	359,157
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	139,852
TOTAL	2,187,901

PART II - Self Insured Comp-General Liability

A. Actual payments made for claims and expenses:

	FY78&79	FY80&81	FY82&83	FY84	FY85	FY86[1]
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	67,649	296,186	3,337,944	1,689,261	2,588,445	928,374

EXHIBIT 1

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B. Income by Fiscal Year:

	Billings to Agencies	Interest Earned	Total
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[1]	1,440,000	921,052	2,361,052
FY86[1]	1,615,635	887,452	2,503,087

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

	Beg. F. Balance	Receipts	Expenses	Ending F. Balance
FY78	-0-	1,823,218[2]	36,037	1,787,181
FY79	1,787,181	2,230,851[2]	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[1]	8,015,060	2,361,052	2,588,445	7,787,667
FY86[1]	7,787,667	2,503,087	928,374	9,362,380

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

FY78	FY79	FY80	FY81	FY82	FY83	FY84	FY85	FY86	Tota
107	110	151	94	123	125	189	155	89	1143

PART V - Self-Insured Automobile Fleet Insurance Claims Filed[4]

FY86

114

A. Amounts Paid

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

B. Fund Balance Summary

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

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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

EXHIBIT NO. 4

DATE 6-26-86

SB 22

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

Coopers & Lybrand

Certified Public Accountants

Coopers &Lybrand

certified public accountants

1800 First Interstate Center
Seattle, Washington 98104-4098

telephone (206) 622-8700
twx 910-444-2036
cables Colybrand

in principal areas of the world

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.

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BILL NO. SB 22

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

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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.

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.

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Estimated Ultimate Losses and Adjustment Expense 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.

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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.

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 whcih 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.

Exhibit 1

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.

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DATE 03 28 86

Exhibit 2

SENATE JUDICIARY
EXHIBIT NO. 4
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BILL NO. SB 22

STATE OF MONTANA

ESTIMATED ULTIMATE LOSSES

Property Damage Claims

Accident Year	Estimated Ultimate Loss: Based on Development (1)	Estimated Ultimate Loss: Based on Size-of-Loss Projection (2)	Selected (3)
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	-	734.6	725.0
Total		$2,619.6	$2,610.0

Accident Year	Payments as of 6/30/84 (4)	Estimated Reserves as of 6/30/84 (3)-(4) (5)
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	5.8	719.2
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.

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Exhibit 3

STATE OF MONTANA

ESTIMATED ULTIMATE LOSSES

Bodily Injury Claims

Accident Year	Estimated Ultimate Economic Loss: Based on Development (1)	Estimated Ultimate Economic Loss: Based on Size-of-Loss Projection (2)	Estimated Ultimate Economic Loss: Selected (3)	Factor to Adjust Economic to Total Loss (4)
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	-	2,972.2	2,900.0	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	4,350.0	4.9	4,345.1
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.

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Exhibit 4

STATE OF MONTANA

ESTIMATED ULTIMATE ADJUSTMENT EXPENSES

Property Damage and Bodily Injury Claims

Fiscal Year	Loss (1)	Expenses (2)	Ratio of Expenses to Loss (2)/(1) (3)	Attorneys Fees (4)	Ratio of Attorneys Fees to Loss (4)/(1) (5)
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

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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.

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DATE 2-2-86

Exhibit 5

SENATE JUDICIARY
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Exhibit 6

STATE OF MONTANA

RUNOFF OF 6/30/84 RESERVES WITH FUNDING AT PRESENT VALUE OF FUTURE EXPECTED PAYMENTS

Property Damage and Bodily Injury Claims

	1985	1986	1987	1988	1989	1990	1991
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.

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Exhibit 7

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.

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SENATE JUDICIARY
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STATE OF MONTANA
Number of Reported Claims
Property Damage Claims

Accident Year	Months of Development 12	24	36	48	60	72	8
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.

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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.

Exhibit 10

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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	1.200	1.090	1.040	1.015	1.005	1.000	1.000

Note:

1. Accident year ends June 30.

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Exhibit 13

STATE OF MONTANA

ESTIMATED SIZE-OF-LOSS DISTRIBUTION
FOR ACCIDENT YEAR 1979

Property Damage Claims

Size-of-Loss Category	Estimated Percentage (1)	Estimated Average Loss (2)
$ 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.

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Exhibit 14

STATE OF MONTANA

ESTIMATED ULTIMATE LOSS BASED ON SIZE-OF-LOSS DISTRIBUTION

Property Damage Claims

Accident Year	Estimated Average Loss (1)	Estimated Ultimate Number of Claims (2)	Estimated Ultimate Loss (1)x(2) (3)
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.

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STATE OF MONTANA

ESTIMATED ULTIMATE LOSS BASED ON PAID AND INCURRED DEVELOPMENT

Property Damage Claims

Accident Year	Months of Development	Losses 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.

Exhibit 15

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 02-28-85

Exhibit 16

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

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. 02
DATE 03 28 86

Exhibit 17

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. 2
DATE 03 28 86

Exhibit 18
SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

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	1.775	1.320	1.340	1.060	1.030	1.010	1.010

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
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. 2
DATE 03 28 85
BILL NO. H.B. 7

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB22

Exhibit 20

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+	0	2	3	3	2	0	1
Total	38	34	43	29	41	40	18

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+	.00	.06	.07	.10	.05	.00	.06
Total	1.00	1.00	1.00	1.00	1.00	1.00	1.00

Note:

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 03 28 86

Exhibit 21

STATE OF MONTANA

ESTIMATED SIZE-OF-LOSS DISTRIBUTION
FOR ACCIDENT YEAR 1979

Bodily Injury Claims

Size-of-Loss Category	Estimated Percentage (1)	Estimated Average Economic Cost (2)
$ 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

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

Exhibit 22

STATE OF MONTANA

ESTIMATED ULTIMATE ECONOMIC LOSS BASED ON SIZE-OF-LOSS DISTRIBUTION

Bodily Injury Claims

Accident Year	Estimated Average Economic Loss (1)	Estimated Ultimate Number of Claims (2)	Estimated Ultimate Economic Loss (1)x(2) (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. 2
DATE 03 28 86

STATE OF MONTANA

ESTIMATED ULTIMATE ECONOMIC LOSS BASED ON PAID AND INCURRED LOSS DEVELOPMENT

Bodily Injury Claims

Accident Year	Months of Development	Losses		Selected Paid Factor To Ultimate	Selected and Incurred Factor To Ultimate	Estimated Ultimate Economic Loss (1)x(3)	Estimated Ultimate Economic Loss (2)x(6)	Selected Ultimate Economic Loss	Estimated Ultimate Number Of Claims	Average Economic Loss (7)/(8)
		Payments (1)	Incurred (2)	(3)	(4)	(5)	(6)	(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 03-28-85
BILL NO.

Exhibit 23

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 1-26-86
BILL NO. SB 22

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 program. 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

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.

March 26, 1986
HB 7
Don Waldron

HELLGATE ELEMENTARY SCHOOL

DISTRICT NO. 4
2385 FLYNN LANE
MISSOULA, MONTANA 59802
Established in 1869

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

K-5th PRINCIPAL 721-2160
6th-8th PRINCIPAL 549-6109
SUPERINTENDENT 728-5626
BUSINESS OFFICE 728-5626

March 26, 1986

Representative Thomas E. Hannah
Central Station
Helena, Montana 59620

Dear Representative Hannah:

Realizing the time was short today for the hearing on House Bill #7, I felt a need to express my views in writing for future consideration. I expressed that the 700 some odd administrators belonging to the School Administrators of Montana whole-heartedly support HB 5. I would like to add a couple comments that might better express our viewpoint. As chairman of the legislative committee of this group, our committee met and relayed some of the following concerns regarding entering the debate on liability limitations for public agencies.

First and foremost, was that we did not want to misread that they were not responsible for their actions. We wanted to make sure that we had some way to be responsible in protecting our district taxpayers from excessive suits that may jeopardize the stability of the school district.

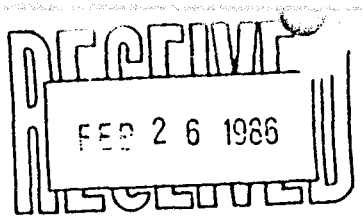
We want to be responsible to those that are in need of some kind of compensation for mishaps that would arise, but we feel that this compensation needs to be just; and the only way to have this just is to have it reviewed by the legislature from time to time and the limits adjusted to fit the needs of the times.

In being responsible to the taxpayers in our district, we feel that we need to have some kind of limitation that can be set and then we in turn can secure proper insurance to protect the district from excessive financial loss. We feel that once the legislature in their wisdom sets the limit, we will be able to find the proper coverage to protect the taxpayers in our district.

We do not want to debate public and private limitations as a collective item. The reason being that presently we are excluded from some things that the private sector are not. We think it would only be confusing the issue to put them on the same referendum. We fully support HB 5 in setting up a separate referendum for the public to make a decision if they want to limit their exposure through their public agencies which they in turn support with their tax dollars. We also feel the legislature is the forum to determine those limits and review those limits as needed.

We realize the tremendous task and the support for both sides of this issue. Thank you for your time at your committee hearing and for reviewing this followup letter to further express our support of House Bill #5.

Don Waldron
Donald R. Waldron
Legislative Chairman of
Montana School Administrators



PROPERTY AND CASUALTY LIABILITY LOSS REPORT

(REPORTING PERIOD 1981-1985)

COUNTY		CLAIMS PAID		CLAIMS RESERVE	PREMIUMS 1984-85
BEAVERHEAD	*				
BIG HORN		$0.00	(1)	$0.00	121,409
BLAINE		$0.00		$0.00	43,955
BROADWATER		$14,852.24		$0.00	43,476
CARBON	*	$112,000.00			50,749
CARTER		$0.00		$0.00	2,593
CASCADE		$785,659.00		$161,639.00	364,705
CHOUTEAU		$22,782.00		$0.00	55,556
CUSTER		$65,246.81		$0.00	37,794
DANIELS		$0.00	(2)	$0.00	31,554
DAWSON		$223,531.00		$0.00	61,329
DEER LODGE		$13,041.36		$19,100.00	49,339
FALLON		$31,198.00		$102,000.00	50,092
FERGUS		$48,000.00		$185,000.00	56,800
FLATHEAD		$114,763.00		$157,000.00	285,375
GALLATIN		$17,991.00		$0.00	192,308
GARFIELD		$3,503.39		$0.00	18,477
GLACIER		$1,800.00		$0.00	102,665
GOLDEN VALLEY		$2,663.39		$0.00	21,886
GRANITE	*				
HILL	*				44,117
JEFFERSON		$102,915.00		$0.00	32,161
JUDITH BASIN		$0.00		$0.00	41,487
LAKE		$76,165.00		$0.00	44,676
LEWIS & CLARK		$0.00		$0.00	82,168
LIBERTY		$8,792.00			17,115
LINCOLN		$419,840.00		$0.00	65,473
MADISON		$9,032.94		$0.00	47,779
		2,073,782		624,739	1,965,038

COUNTY		CLAIMS PAID	CLAIMS RESERVE	PREMIUMS 1984-85
McCONE		$6,497.74	$0.00	48,299
MEAGHER		$0.00	$0.00	39,113
MINERAL		$77,809.00	$0.00	32,492
MISSOULA	*			
MUSSELSHELL		$0.00	$0.00	27,244
PARK		$177,840.00	$0.00	10,671
PETROLEUM		$10,703.00	$0.00	19,548
PHILLIPS		$3,475.11		57,130
PONDERA		$0.00	$0.00	49,403
POWDER RIVER		$27,393.79		77,036
POWELL		$227,133.00		50,014
PRAIRIE	*			
RAVALLI		$158,949.21		102,131
RICHLAND	*			
ROOSEVELT		$29,842.00	$0.00	69,121
ROSEBUD		$8,118.00	$0.00	97,986
SANDERS		$12,900.00	$0.00	58,254
SHERIDAN		$66,490.00		80,902
SILVER BOW	*			
STILLWATER		$49,876.76		68,598
SWEET GRASS		$0.00	$0.00	38,652
TETON		$17,809.66		38,536
TOOLE	*			123,403
TREASURE		$0.00	$0.00	17,220
VALLEY	*			
WHEATLAND	*			
WIBAUX		$14,684.91	$0.00	23,071
YELLOWSTONE	*			
		889,522	0	1,128,824
TOTAL		$2,963,304.31	$624,739.00	$3,093,862.00

* NO RESPONSE
0 NONE REPORTED
(1) Windy Boy civil suit pending
(2) One pending

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
SB 22

GOVERNOR'S COUNCIL ON ECONOMIC DEVELOPMENT
INSURANCE SUBCOMMITTEE

March 24, 1986

MEMORANDUM

TO: Judiciary Committee
Montana House of Representatives

FROM: Kay Foster, Chairperson

RE: Referenda on Private and Public Liability Caps

The Insurance Subcommittee of the Governor's Council on Economic Development has held extensive deliberative sessions and has heard a great deal of informed testimony on the crisis related to liability insurance in Montana. While we are not yet in the final stages of preparing specific recommendations on this complex problem, we have arrived at some preliminary conclusions regarding the issues of public and private liability caps.

The subcommittee recommends that referenda on giving the Legislature authority to enact both private and public caps be placed before the voters. However, the subcommittee also recommends that the issues be presented as separate referenda items.

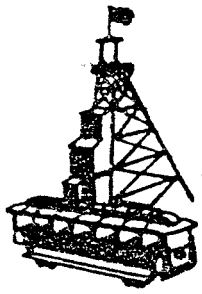
These conclusions were reached after hearing the viewpoints of defense and plaintiffs' attorneys, the Montana Trial Lawyers Associations, representatives of the insurance industry, and representatives of the Insurance Commissioner and the Office of the Governor.

Because the insurance crisis is causing such widespread damage to the operations of public and private entities statewide, the legislature must have before it the best range of possible solutions to bring the situation under control. The authority to enact liability caps may prove to be a vital tool in the control process.

Keeping public and private caps separate in presenting referenda to the electorate will allow the clearest presentation of the issues without the cloud of additional legal problems. Sufficient testimony was received to convince the subcommittee that the issues are so inherently different in terms of passing constitutional muster that combining them in one referendum is not advisable.

Please accept this as the subcommittee's formal testimony as part of the legislative process during this special session. Feel free to contact me through the Department of Commerce if we can provide further information.

2950 Harrison
Butte, Montana
59701
Telephone: 406-494-5595



Butte Silver Bow
Chamber of Commerce

March 25, 1986

Montana State Legislature
Helena, MT 59601

The insurance liability problem has reached crisis proportions for Butte businesses, as well as, the non-profit organizations in our community.

The business liability premimums are soaring. Some businesses are unable to obtain coverage at any price and must go without or close their business. Statewide, this includes hospitals, restaurants, trucking companies, day-care centers and financial institutions, just to name a few.

Figures released on an insurance liability survey of business people and professionals by the U.S. Chamber of Commerce show 60.3% had difficulty obtaining affordable general liability insurance. 40.7% said that product liability insurance presented problems and 13.2% said the same of professional liability insurance. More than 14% were unable to obtain the type of coverage they needed. 51.3% reported preminum increases of more than 100% with almost 10% stating their increase was over 500%.

We understand the causes of the problem are very complex and urge the Montana State Legislature address the conditions in Montana and take a course of action to improve conditions for the private business sector.

Sincerely,

LaDene H. Bowen

LaDene H. Bowen
Executive Director
BUTTE SILVER BOW CHAMBER OF COMMERCE

lhb

THOMPSON DISTRIBUTING, INC.

Phone 723-6528
845 So. Wyoming
Butte, Montana 59701

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB-22

March 25, 1986

Montana State Legislature
Helena, Montana 59601

To Whom It May Concern:

I would like to respectfully submit that the current liability crisis in the small business community is at a crisis proportion. We have recently been able to get our insurance placed but at a cost of twice what it cost in 1985. We were cancelled from Home Insurance at the end of the policy in March. We had been with them for 6 years with no claims.

The over all effect of such adverse insurance problems has been such that instead of expanding with one new job this year I have pulled back and will not fill that position. The money available for jobs has been taken in the form of insurance payments.

Respectfully yours,

James E. Thompson
President

JET/all

I urge you to examine this issue carefully during your special session. Insurance companies must meet their expenses and obligations and, in the long run, be profitable. However, the principal of fairness must also be applied. Their costs and profits must also be examined to insure that the policy holders are not receiving the brunt of the insurance industry's current problems.

Thank you for your consideration of this important issue and for your service to our great state of Montana.

Sincerely yours,

Philip A. Grimm
Executive Director

ROACH AND SMITH DISTRIBUTORS INC.
WHOLESALE
CIGARS, TOBACCOS, CONFECTIONERY & BAR SUPPLIES
Phone 563-2041 —— Anaconda, Montana 59

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

March 25, 1986

Montana Legislative Special Session
Gary Marbut
Montana Chamber of Commerce
P. O. Box 1730
Helena, Montana 59624

Dear Gary,

We have been effected by the current liability crisis dramatically. An example is the increase in insurance premiums.

I am very concerned about our business with the liability crisis at hand. If it were to continue we would not be able to expand our business due to the cost of liability insurance. We could not afford new vehicles or additional inventories. We have increased our deductables, to date as a method of controlling current premiums. I have thought in the past that insurance premiums were too high but now I know we cannot survive in business with anymore insurance premium increases. We are counting on you, personally so as we may continue in business.

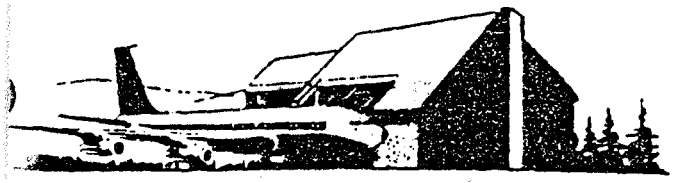
Best regards,

Joe Markovich

Joe Markovich

Rainier Heidelberg Schmidt TUBORG GOLD

BERT MOONEY AIRPORT AUTHORITY



BUTTE, MONTANA 59701
Phone 406-494-3771

March 25, 1986

Montana State Legislature
Montana Capitol
Helena, MT 59601

Dear Legislators:

The Bert Mooney Airport Authority has over the years carried 6 million dollars of liability at a cost of $4,400.00 per year. Last year the premium was raised to $9,500.00 and the same coverage for this year was increased to $27,500.00.

The airport increased the insurance budget to $14,000.00 to cover anticipated increases for 1986, but the quote for the coverage increased $13,500.00 more than was budgeted. This increased amount is more than the total repair and maintenance amount budgeted for the airport.

A survey of the past 5 years, losses at the airport revealed three slip and falls being reported. Two of the incidents had no claims turned in and the third resulted in a $94.00 claim.

Sincere efforts must be made to correct this inequity.

Yours truly,

BERT MOONEY AIRPORT AUTHORITY

By: Angelo Petroni
Angelo Petroni
Airport Manager

AP/ld

BUTTE FAMILY YMCA
405 WEST PARK ST.
BUTTE, MONTANA 59701

Telephone (406) 782-1266

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

March 25, 1986

Montana House of Representatives
State Capital Building
Helena, Montana

Honorable Representatives,

I am writing to you about the current crisis in our state and country created by drastically escalating insurance premiums. These unprecedented increases in insurance rates are affecting non profit organizations just as severely as our business and governmental counterparts. Insurance premiums have always been a major cost to any of us who operate recreational programs and facilities. However, increases like we have experienced within the past year make it increasingly difficult to provide needed programs and properly manage our facilities. At a time when increasing demands are being placed on the private sector to provide social and recreational services, more, not less,financial resources are needed to meet these needs. Diverting funds from programs and services to pay unreasonably priced insurance policies is not in the best interest of the general public, particularily those without the financial means to provide for all of their own necessities.

The insurance premiums for property and liability insurance at our YMCA increased three hundred percent [300%] in 1985. Our insurance broker tells us to expect continued increases during the coming years. Other YMCAs in our state are experiencing similar escalations in their insurance costs. Because of our limited financial resources, we cannot individually "self-insure" like many large businesses and municipalities have done. And it would be unconscionable to try to operate without proper insurance protection. We are looking at the possibility of joining with YMCAs and related agencies throughout the country in some type of group self-insurance program. However, because we are all locally governed and financially autonomous, this will be a difficult and time consuming task. And, I am not sure if collectively we have the financial resources to provide adequate protection for our organizations and potential injured parties. In any event, for the foreseeable future, we must pay the increasing premiums. We can and must pass some of these costs on to our constituents. We can also ask our supporters to increase their charitable giving. Undoubtedly, we will also have to reduce services and defer less immediate expenses to meet our insurance obligations. In the long run, the insurance companies will probably lose our business and the public will have sufferred needlessly.

4655 Harrison Avenue South • Butte, Montana 59701 • Telephone 406/494-6666

March 25, 1986

The Montana Legislature
Capitol Hill Station
Helena, Montana

Dear Sirs:

The Copper King Inn, located in Butte, Montana, has a business volume of more than $3,000,000 and employs 125 people year-round. The Copper King Inn is a service business which offers lodging, food and liquor service.

Our annual insurance renewal date is in May for our property and liability coverage, and our workers' compensation policy renews in December. In the past year, we were cancelled by our property and liability carrier and our workers' compensation carrier. A considerable effort was necessary to locate a carrier. Our property and liability policy doubled with the new carrier. In an effort to control costs, we found it necessary to reduce our umbrella policy by two-thirds.

In December our workers' compensation carrier cancelled, and we were able to locate a second carrier with our increase estimated at 15 percent.

At this time, we are approaching our renewal date. There is a great deal of uncertainty as to whether we can find a carrier and coverage at the level we require. Our insurance broker has prepared us for a stiff increase in our umbrella policy and is finding more companies which, because of the recent Supreme Court decision, no longer wish to write a liquor liability policy.

The uncertainty of recent changes in the insurance market has made it difficult to make future plans. We are particularly concerned with the effect of recent court decisions on our liquor liability.

We hope the Legislature will take steps to make our insurance market more manageable.

Sincerely yours,

Douglas G. Smith
General Manager
DGS/blf

PLUMBING, HEATING and VENTILATING CONTRACTOR | PLUMBING FIXTURES | BUTTE, MONT. PH. 782-5404 782-2929
1716 HARRISON AVENUE

GARY QUAM

WALSH
ENGINEERING

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

March 25, 1986

Montana State Legislators
Helena, Montana

Gentlemen:

At this time I would like to request that some action be taken during the next Legislature session in regards to the rising Liability insurance costs.

We are a small business concern, incorporated in the State of Montana, employing between 15 to 30 people on an annual basis, depending on work load.

The rising cost of Liability insurance has definitely worked a hardship on small business's in the surrounding area, causing some to cease operations as increased costs cannot be passed on to the public at this particular time.

Hoping some action will be taken on this request, I remain,

Respectfully yours,

WALSH PLUMBING & HEATING

Gary Quam

Gary Quam
President

GQ:bm

northAmerican VAN LINES

(406) 782-5915 Or 782-5338

EVANS TRANSFER & STORAGE, Inc.

750 Utah

BUTTE, MONTANA 59701

March 25, 1986

Montana State Legislature
Helena, Montana 59601

Dear Legislators:

During the past two years we have been insured through the Home Insurance Company of Manchester, New Hampshire. We have had both our warehouseman and trucking policy through this firm. During the past two years we have been faced with 40% increases yearly. Our basic premium that we pay each year is over $15,000.00 and because of the difficulty people in our line of business have been experiencing we are hesitant to even file a claim with our insurance company for fear of cancellatin or non-renewal. Last week we had notification that our insurance policies will not be renewed and have had to search for other carriers who would be interested in insuring us.

When we received notification of non-renewal I immediately contacted our insurance company to find out why we had received notice and was informed that Home Insurance Company was no longer writing that type of coverage, trucking insurance. My only question to him was that for the past two years we have paid premiums in excess of $30,000.00 and have had no claims other than one in 1984 for $1100.00 and at that rate I do not believe we are a bad risk.

If I, and others like myself were financially able to hold enough funds in reserve for insurance purposes we would not have these problems but unfortuantely we are at the insurance company's mercy, without them we can not operate. By law we are required to have insurance and with out this insurance we will be out of business.

207 SOUTH MONTANA ST.
BUTTE, MONTANA 59701
PHONE 723-6501

BUTTE WORKSHOP, INC.

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB22

VOCATIONAL EVALUATION

WORK ADJUSTMENT

FOOD SERVICE TRAINING

SHELTERED EMPLOYMENT

JOB PLACEMENT

SOCIAL ADJUSTMENT

COUNSELING

March 25, 1986

Montana State Legislature

Our agency provides services to handicapped men and women of South Western Montana. Briefly, the programs of service include vocational, habilitation, diagnostic, and residential. In order to provide these services our agency receives funds from the State of Montana, Social and Rehabilitative Services. One of the conditions for receiving these funds is that we maintain $1,000,000.00 in general liability coverage. During 1985 we paid approximately $8,000.00 for our total insurance package, including the million dollar liability policy. For our present premium year, 1986, our coverage will cost $22,000.00, however we can only get $300,000.00 in general liability coverage.

Our program is obviously effected in two serious ways, 1. We do not have the required amount of coverage and 2. the increased premiums puts serious restrictions on other areas of our programs. We have had to get a loan to pay the premiums over a nine month period and also we have had to rebudget in other areas of our contract with the State.

I have attached a list of the insurance companies our broker has tried to get coverage from and failed, it should be noted that we have been fortunate not to have ever had a claim.

Robert T. Kissell
Executive Director

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

Rep. Miles agreed with Rep. Krueger's statements in saying that she disagreed with the language of this bill in that the bill's intent is to restrict the duration of economic assistance. Rep. Addy said that the supreme court, in striking down the limited general assistance law passed through this legislature last year did so on the question of a rationale basis. We can do by legislation anything that has a rationale relationship and furthermore consider the resources of the state in determining what is a necessary level of services. All the supreme court said by its previous ruling was "don't act irrationally -- don't act arbitrarily."

The question was called on the motion to pass as amended, and it CARRIED 10-8.

ACTION AND DISCUSSION ON HB 7: Rep. Addy moved that HB 7 DO PASS. The motion was seconded by Rep. Rapp-Svrcek. In response to a question asked by Rep. Miles, Brenda Desmond, staff attorney, stated there used to be some question as to whether or not a constitutional amendment could simply revive a law that had been declared unconstitutional. She said that she agrees with Mona Jamison's statement on Wednesday that this would not revive the old law. Ms. Desmond said that if this is a concern, one way of dealing with it is to move the date to January of 1987 which would clearly leave the existing law in place until that time. Rep. Krueger feels if we put in a delayed effective, we make it at the conclusion of the 1987 session which would allow us at least to have full hearings on it.

It was Rep. Miles' concern that local governments will be left in a real quandry for a couple of months as far as their liability insurance. She moved to amend the effective date to July 1, 1987. Rep. Gould made a substitute motion to TABLE HB 7 for the purposes of allowing Ms. Desmond to look into the effective date question. He also wished to listen to the testimony on HB 17 and make a comparison of it with this bill. The motion was seconded by Rep. O'Hara and FAILED due to a tie vote. (See roll call vote.) Rep. Miles withdrew her motion to amend the effective date.

In further response to Rep. Miles' question, Ms. Desmond said because subsection 1 is written in the positive, e.g. "the limits of civil liability shall be as provided by law by a 2/3 vote of each house of the legislature," Ms. Desmond believes that this means if the legislature has not established limits that there aren't any. She thinks that subsection 2 needs to be read in view of and together with subsection 1 of the bill.

Rep. Spaeth feels that this area of insurance for local entitites is not going to be solved by going back in and placing limits. He feels that there are other areas the legislature needs to look at. All the local entities want this type of legislation, and he thinks it is constitutional integrity.

The question was called on Rep. Addy's motion, and it CARRIED 14-4. (See roll call vote.)

ADJOURNMENT: There being no further business, Chairman Hannah adjourned the meeting at 10:00 a.m.

Tom Hannah
REP. TOM HANNAH, Chairman

STANDING COMMITTEE REPORT

June 26, 19 46

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 22

first reading copy (white color)

REINSTATE PUBLIC LIABILITY LIMITS

Respectfully report as follows: That SENATE BILL No. 22

BE AMENDED AS FOLLOWS:

1. Title, line 7
Strike: "FOR RETROACTIVE"
Insert: "AN"

2. Title, line 8
Following: "APPLICABILITY"
Insert: "DATE"
Following: "EFFECTIVE DATE"
Insert: "AND A TERMINATION DATE"

3. Page 3, line 12
Strike: "$300,000"
Insert: "$500,000"
Strike: "$1"
Insert: "$1.5"

4. Page 4, line 7
Strike: "retroactively, within the meaning of 1-2-109,"

5. Page 4, lines 8 and 9
Strike: "July 1, 1977"
Insert: "the effective date of this act"

6. Page 4, line 15
Following: "date"
Insert: "--termination date"

DXXXX

DXXXXXXXX

(continued)

Chairman.

7. Page 4, line 16
Following: "approval."
Insert: "Sections 1 and 2 of this act terminate on June 30, 1987."

AND AS AMENDED

DO PASS

SENATOR JOSEPH MAZUREK, CHAIRMAN

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 6-26-86
BILL NO. SB 22

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HB 7 DATE March 26, 1986

SPONSOR Rep. F. Bardanouve

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
EARL Kelly	M.S.C.A		X
Bob Corker	Bozeman Chamber	—	
LeDeney H. Bowen	Butte Chamber	—	
Joe Baltonly	Great Falls		X
Cindy Sparkman			X
John C Hoyt	Fort Ben	X	
[illegible]	[illegible]	—	
[illegible]	[illegible]	—	
[illegible]	[illegible]	X	
[illegible]	[illegible]	X	
[illegible]	Mt Bldg Mtrl Assn	X	
Thomas L Hagen	Mt Clay Mtl & Elec Contractors	—	—
Bob Pyfer	Mont Credit Union League	X	
[illegible]	[illegible]	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HB 7 DATE March 26, 1986

SPONSOR Rep. F. Bardanouve

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Debi Brammer	MACD - Helena	X	
Chip [illegible]	[illegible]	X	
[illegible]	[illegible]	X	
Don Waldron	Dept Health Env.	X	
Tim BERGSTROM	MSFA		
Gordon Morris	MACo	X	
A.R. Nagel	MACo	X	
[illegible]	[illegible]		
Ron Waterman	USFEC	✓	
Kim Wilson	ACLU		X
Brooks Morin	City of Helena	✓	
[illegible]	City of Helena	✓	
[illegible]	[illegible]	✓	
[illegible]	Butte Community Union		✓
Maria Nypaver	[illegible]		✓
Jacqueline Fooks	Butte Com Union		✓
[illegible]	City of Helena	✓	
Bill Anderson	CPI	✓	
Jim Jensen	MT. ENVIR. INFO CENTER		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.