

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

49th Legislature Special Session III

Date June 28, 1986

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

MINUTES OF THE MEETING  
JUDICIARY COMMITTEE  
49TH LEGISLATURE SPECIAL SESSION III  
HOUSE OF REPRESENTATIVES

June 28, 1986

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Saturday, June 28, 1986 at 10:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Eudaily and Keyser who had been previously excused.

CONSIDERATION OF SB 22: Senator Chet Blaylock, Senate District 43, sponsor of SB 22, gave a brief historical report on the liability crisis and how it is affecting Montana today. In the Pfost decision, the supreme court stated that the legislature had not demonstrated a "compelling state interest." He said that some counties simply cannot obtain liability insurance. Even though he feels this may be a "shakey" approach, he feels it is the "only game in town" right now for public entities. He also expressed concern for groups who are trying to get the proposed constitutional amendment on the ballot this fall. They may fail due to the required number of signatures to do so. Although it has come to Senator Blaylock's attention that some people would like the caps set higher, he feels uneasy about doing so. He pointed out that SB 22 has a 1987 sunset provision.

PROPONENTS: Gordon Morris, representing the Montana Association of Counties, stated that the "compelling state interest" with respect to counties is real. He said counties are finding fewer local officials who are willing to serve because of the present liability crisis. He urged the committee to pass the bill.

Bill Anderson, representing Ed Argenbright from OPI, stated that the cost of obtaining insurance is becoming a very significant problem for schools. Even more importantly, activities in schools are being restricted along with the use of those facilities.

Alec Hanson, representing the Montana League of Cities and Towns, said that about a year ago they began to realize that they had a serious insurance crisis in municipal government in this state. In July 1, 1986, 7 cities had their policies cancelled. At that time, they began a self insurance program to provide an alternative for those cities who didn't have insurance coverage at that time. This program has since been implemented, and they expect to have 60 cities and towns

enrolled next month with an annual premium income of approximately \$1 million. This program is operating on a straight, bold risk self-insurance concept. Under the program, Mr. Hansen said they can offer a policy limit of \$500 per occurrence. A policy limit of \$500 per occurrence does not provide adequate coverage in a state that has no limit on liability judgments, said Mr. Hanson. Under state law, any city or town that is hit with an uncovered liability claim can impose for a period of three years a special judgment levy. In the larger cities around Montana, a 5, 10, or 15 mill increase may not be devastating, but when you get into the smaller communities, the danger of uncovered liability plans becomes very obvious. He said the town of Polson would have to levy 54 mills for three years to cover a \$500,000 liability plan; Thompson Falls would have to levy 139 mills for three years; and Culbertson would have to levy 233 mills for three years. It is possible that in the coming months, they won't be able to increase the level of coverage available under their program. They are presently working to put together a bond issue to secure their self insurance pools. Higher levels of participation are also expected. If the bill passes, Mr. Hanson thinks that coverages could be offered up to the limits proposed. Hopefully, if this bill passes, it will constitute full coverage for the cities and towns in Montana and protect them from circumstances where liability claims become a general tax obligation which in turn could possibly destroy the local governments in this state.

Debbi Brammer, representing the Montana Association of Conservation Districts, said they are facing a real problem in the state whereupon there are 110 elected officials' pending resignations depending on what happens with this issue.

John H. Maynard, administrator of the Tort Claim Division of the Department of Administration, testified as a proponent. A copy of his written testimony is attached hereto as Exhibit 1. He said that the state has demonstrated that it cannot afford unlimited exposure. SB 22 contains reasonable limitations on that exposure, he said.

Bruce Moerer, representing the Montana School Board Association, told the committee that they have districts who are going without coverage and other districts whose premiums are dramatically increasing. He said that districts have certain mandated services that cannot be terminated. These particular services contribute to a lot of exposure. He feels that the protection provided for in SB 22 is necessary.

Don Peoples, chief executive of Butte-Silver Bow, spoke as a proponent. He said that in order for the self insurance program to succeed i.e. to provide the needed coverage, some sense of responsibility needs to be returned to the system.

Rep. Jack Ramirez, House District 87, supports this bill because he feels something has to be done with the liability problem. He expressed his concern, however, with the level of limits that are presently proposed. He said that if the legislature passes a bill with limits that won't withstand a constitutional test, it will put us right back to square one. The higher the level of limits, the less objection the Montana Supreme Court will have. Furthermore, the higher the limit is placed, the more burden and risk is placed on local government and the more compelling the state interest is in having some protection. Rep. Ramirez also feels that insurance will become more attainable with some sort of a limit. He suggested that the limit in the bill be amended to \$1 million per claim. It was his feeling that \$1.5 per occurrence be left as is.

There were no further proponents.

OPPONENTS: Karl Englund, representing the Montana Trial Lawyers Association, said the association opposes this bill because any limits which are imposed have the potential to deprive someone who is seriously injured of their ability to support themselves with the money received from their judgment. He believes that no matter where the limits are placed, someone has the potential of falling outside those limits. He does, however, support the process that the legislature is going through. He said that the record this committee is building today, and the record that was built in the Senate will assist in upholding the limits that are imposed. Both for the protection of more and more individuals who have the potential to be hurt and also for the protection of the constitutionality of this act, he asked the committee to seriously consider raising the limits that are presently in the bill.

There were no further opponents, and Senator Blaylock closed. He asked the committee to keep in mind that between July 1 and January 1, 1985, there were seven cities that could not obtain any insurance whatsoever.

Chairman Hannah opened the committee up to questions.

SB 22 is sunset for June 30, 1987. Rep. Krueger wanted to know if Senator Blaylock thinks there will be enough data presented as a result of this bill. Senator Blaylock said it would be questionable as to whether or not the legislature would receive much data by that time.

In order to give this bill a change, Senator Blaylock suggested that the act be made effective upon its passage rather than making it retroactive to 1977. Rep. Kreuger suggested that the limits be raised and the time extended. Senator Blaylock pointed out that representatives from cities and towns have indicated that their uninsured liability will get very, very expensive if limits are raised further.

In reply to a question, Senator Blaylock stated that this legislation needs a two-thirds vote from each house because we are putting a limit in the statutes.

Rep. Spaeth requested that the testimony and evidence that was included in the Senate Judiciary Committee and the findings of the interim committee that studied this question for two years be made a part of the record.\* He also requested that the state of Montana continue to compile evidence of the pay outs on the tort claims statewide, and make them a part of the record build-up. Senator Blaylock said he would make that prior information available to the committee.

Due to time limitations, the hearing recessed at 10:45 a.m. Chairman Hannah advised the committee that executive action on this bill would be taken on call of the chair.

#### E X E C U T I V E   S E S S I O N

The meeting reconvened at 12:40 p.m. Rep. Eudaily appeared.

ACTION ON SB 22: Rep. Brown moved that SB 22 BE CONCURRED IN. The motion was seconded by Rep. O'Hara. Rep. Krueger moved the following amendment:

1. Page 3, line 13.  
Strike: \$500,000"  
Insert: \$1 million"
2. Page 3, line 13.  
Strike: "\$1.5"  
Insert: "\$3"

The motion was seconded by Rep. Brown. Rep. Krueger's main concern with this bill is that the rights of the victims have not been addressed. He doesn't think that the present limits are sufficient.

There being no objection, the above amendment was divided.

Rep. Spaeth resisted the amendments by saying he feels the bill should be left the way the Senate passed it.

Rep. Mercer voiced his support for the amendments. He said economic wages such as loss of wages, medical expenses, etc. shouldn't be capped. When you're talking about putting an absolute cap on the damages, the cap better be pretty high because it is including not only non-economic damages, but it is also including loss of actual wages or damages for personal injuries. He further feels that a \$1 million cap ought to cover just about everyone.

Rep. Grady was concerned that if these limits are set too high, it won't lower the cost of premiums.

The question was called as to Amendment #1 which would raise the limits to \$1 million per claim. The motion CARRIED 9-8. (See roll call vote.)

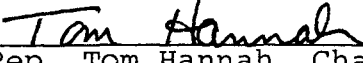
The question was called as to Amendment #2 which would raise the limit to \$3 million per occurrence. The motion FAILED 8-9. Rep. Krueger further moved to amend:

Page 3, line 13.  
Strike: "\$1.5"  
Insert: "\$2"

The motion was seconded by Rep. Brown and CARRIED 11-6.  
(See roll call vote.)

Rep. Darko moved that SB 22 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Gould and CARRIED with Reps. Cobb and Spaeth voting no.

ADJOURN: In lieu of Rep. Keyser, Rep. Brown moved to adjourn at 1:05 p.m.

  
Rep. Tom Hannah, Chairman

\*See special session III Senate Judiciary minutes for said testimony, exhibits, findings, etc.

# ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE June 28, 1986 BILL NO. SB 22 NUMBER

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

TALLY

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Marcene Lynn

Secretary

Tom Hannah

Chairman

MOTION: Rep. Krueger moved to amend page 3, line 13 by striking  
"\$500,000" and inserting in lieu thereof, "\$1 million". The motion  
was seconded by Rep. Brown and CARRIED 9-8.

# STANDING COMMITTEE REPORT

June 28

19<sup>36</sup>

Mr. Speaker: We, the committee on JUDICIARY  
report SB 22

☐ do pass  
☐ do not pass

☒ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

REP. TOM HANNAH

Chairman

## REINSTATE PUBLIC LIABILITY LIMITS

### BE AMENDED AS FOLLOWS:

1. Page 3, line 13.  
Strike: "\$500,000"  
Insert: "\$1 million"  
Strike: "\$1.5"  
Insert: "\$2"

Third reading copy (Blue color)



# ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE June 28, 1986 BILL NO. SB 22 NUMBER \_\_\_\_\_

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

TALLY

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Marcene Lynn

Secretary

Tom Hannah

Chairman

MOTION: Rep. Krueger moved to amend page 3, line 13 by striking  
"\$1.5" and inserting "\$3". The motion was seconded by Rep.

Brown and FAILED.

# ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE June 28, 1986 BILL NO. SB 22 NUMBER \_\_\_\_\_

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

TALLY

11 6

Marcene Lynn

Secretary

Tom Hannah

Chairman

MOTION: Rep. Krueger moved to amend page 3, line 13 by striking  
"\$1.5" and inserting "\$2". The motion was seconded by Rep.  
Brown and CARRIED.

SENATE BILL 22

Testimony of John H. Maynard  
Administrator, Tort Claims Division  
Department of Administration

Before the House Judiciary Committee  
June 28, 1986  
Room 325, Capitol Building

Attached is a letter dated June 17, 1986, from Coopers & Lybrand. The letter provides our actuary's comparisons of the amount of money we should have reserved at the present time to pay the claims made against our Self-Insurance Fund. In the final report entitled "Actuarial Estimates of the Adequacy of the Comprehensive General Liability Self-Insurance Fund for the State of Montana, as of April 30, 1986", Coopers & Lybrand have estimated our necessary reserves to be \$47,200,000. This figure assumes no limits on liability. Presently the Self-Insurance Fund contains \$9,000,000.

Senate Bill 22 would impose \$500,000 limits on the State's liability, which would reduce the necessary reserves of the Self-Insurance Fund by \$22,000,000. The Self-Insurance Fund is derived from premiums paid by agencies into the Fund.

In order to establish sufficient reserves in the Self-Insurance Fund it would be necessary to charge agencies a percentage of the reserve deficit. The percentage is determined by using a formula

we have developed in consultation with our actuaries. According to that formula, for example, the Department of Highways' contribution to the Self-Insurance Fund, when there are no damage limitations, would have to be \$16,044,000. If limits are imposed at a level of \$500,000 the Highway Department's percentage of that reserve deficit would be \$8,645,000. In order to sustain the larger damage limits this would require a reallocation of Department of Highways' resources in the amount of \$7,500,000. For the reasons expressed to this Committee during the March special session, as well as the reasons presented in support of damage limitation bills in the 1983 session and before, there are compelling reasons to place limitations on the potential liability of the State and other governmental entities, even though to do so creates a possibility that some person's right to "full legal redress" might, at some time in the future, be infringed. When that potential loss is weighed against the reallocation of State resources that providing for such risks would require, the Legislature should not have to reallocate those resources and cut programs.

# Coopers & Lybrand

certified public accountants

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in principal areas of the world

June 17, 1986

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Cables Colybrand

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

RECEIVED  
TORT CLAIMS DIVISION  
JUN 18 1986  
HELENA, MONTANA

Dear Steve:

As you requested, we have estimated the expected ultimate loss and loss expense relativities for the State of Montana's Comprehensive General Liability Self-Insurance Fund at different retention levels as follows:

<u>Retention</u>	<u>Relativity</u>
\$300 thousand	1.00
\$500 thousand	1.25
\$1 million	1.55
Unlimited	2.35

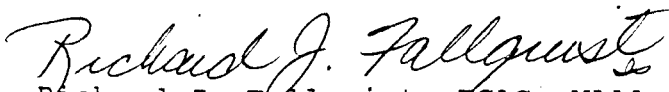
These factors can be used to approximate the difference in the State's liability at different retention levels. For example, ultimate loss and loss expense for unlimited liability will be approximately 2.35 times larger than losses limited to \$300 thousand.

We estimated these relativities by using the State's size-of-loss distribution and by reviewing industry increased limits factors for general liability.

Please realize these are expected factors and could vary substantially from actual loss experience. This is due to the nature of general liability where large claims are expected and where claims take a long time to settle. Wide variability is not only possible, but quite probable.

We will be issuing our final report entitled "Actuarial Estimates of the Adequacy of the Comprehensive General Liability Self-Insurance Fund for the State of Montana, as of April 30, 1986", shortly. Meanwhile, please contact me if you have any questions regarding our analysis.

Sincerely,

  
Richard J. Fallquist, FCAS, MAAA  
Director, Actuarial Services

