

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Chairman /Ethel M. Harding, on February  
14, 1989, at 1;00 p.m. in Room 405, State Capitol

ROLL CALL

Members Present: Senators Ethel Harding, Vice Chairman  
Bruce D. Crippen, R.J. "Dick" Pinsonneault, Tom Beck,  
Eleanor Vaughn, H.W. "Swede" Hammond, Mike Walker, Gene  
Thayer

Members Excused: None

Members Absent: Senator Paul Boylan

Staff Present: Connie Erickson, Legislative Council;  
Dolores Harris, Committee Secretary

Announcements/Discussion: None

HEARING ON SENATE BILL 393

Presentation and Opening Statement by Sponsor: Senator J.  
D. Lynch, senate district 24, Butte, Silver Bow, stated  
SB 393 is an act clarifying legislative immunity. We  
didn't include actions that go beyond their legislative  
duties. Wrongful discharge is one. No one should be  
above the law and that is basically what this bill  
states.

List of Testifying Proponents and What Group they Represent:

Michael Sherwood, M.L.A.  
Nadiean Jensen, AFSCME

List of Testifying Opponents and What Group They Represent:

Earl W. Bennett, Flathead County  
Howard W. Gipe, Flathead County  
Gordon Morris, MACO  
Leroy Schramm, Legal Council of Montana Board of  
Regents

Testimony:

Michael Sherwood stated that he had copies of the special interim committee of the judiciary 1975-76 that was impaneled in reaction to the 1972 constitution, which eliminated sovereign immunity. See exhibits 1, 2, 3, 4, 5, 6. He read his testimony which is exhibit 1.

Kelly Addy from house district 94, Billings stated that the school district claimed legislative immunity in a case he was handling. He went to federal law and found "denial of due process under the 14th Amendment". He found a law passed shortly after the Civil War in 1868 to assure local governments would not deprive people of their rights without due process of law. Under the 1983 statute, a state immunity is not a defense, to a U.S. Constitutional right. Most wrongful discharge cases are "due process" cases. What happens when you prevail as a party under 1983. You get damages, economic damages, emotional distress, pain and suffering, humiliation and disgrace in the community, every conceivable form of damages that could be available to a plaintiff under state law is also available to them under that federal law and you get attorney's fees and litigation expenses.

Nadiean Jensen stated she believes we have lost the intent of the 1977 senate bill and it should be replaced back in the law with the language presented to you. I ask your support in passing this bill.

Leroy Schramm stated that the Board of Regents partake of legislative immunity and this act would clearly strip that immunity from this board. It would have the same effect on county commissioners, city councils, and other boards. This is a sledge hammer of a bill. It goes way beyond correcting a mistake. Cause of action and wrongful discharge didn't even exist back in 1977. This act goes beyond personnel matters; curriculum changes, dropping programs. We were threatened with suit last year when we thought of dropping the architecture program, or phasing out the pharmacy program. Entrance requirements might come under this act. County commissioners will still be covered for legislative acts, but what is a legislative act. We know passing an ordinance is, but how about if they turn down a business license. Is that a legislative act? Can they refuse a zone change? If they grant certain requests and someone is harmed, what then. On page 1, line 25 it says you could be sued for an act or an omission. He told where the city of Billings hadn't designated a city canal as a nuisance and they were sued for that. This creates the opportunity for these bodies to be sued for doing something or refusing

to do something.

Representative Addy's testimony gives good reason not to have to pass this bill because the Constitution gives due process benefits plus benefits for "breach of the duty of good faith and fair dealing". If an official violates another act, such as the "Human Rights Act" and other specific statutes they can not claim legislative immunity. This touches every action that a governmental entity takes outside normal ordinance passing by a local governmental unit.

Gordon Morris focused on the Bieber vs Broadwater County case which is the basis of this bill. It is interesting to note the Supreme Court writes, Chief Justice Tournage included in the majority decision, "we previously held that the acts of the county commission are immune under 2-9-111, MCA. Appellant asks we recognize the distinction between administrative acts and acts which should not be protected and legislative acts which should be protected. We decline to give credence to appellants argument because the plain language of the statute makes no such distinction necessary. As we have stated, this Court will not delve outside the plain meaning of the words used in the statute." Section 2-9-111 was clear in its meaning.

"The oft articulated rationale for retaining government immunity specifically in this case, legislative immunity, is to insulate a decision for law making processes from being hampered or being influenced from frivolous law suits. This reason satisfies the rational basis test. The county commission is entrusted with the responsibility to supervise the maintenance and repair of county roads, this includes the power to decide who to hire and fire. To allow suits against them for the performance of their duties would hinder this performance." This bill is not in the best interest of the public at large, the public that these elected bodies serve, and recognizing that the public is in fact the tax paying public, we ask you decide the issue in SB 393 based upon immunity from suit as we had it upheld by the Supreme Court in at least 3 different decisions.

Alec Hansen of the Montana League of Cities and Towns and today representing Montana Municipal Insurance Authority, a program the cities put together that provides liability coverage to their members. Many years ago, we had sovereign immunity and now we don't. We were forced in 1985 and 86 to get involved in

insurance programs. It is extremely difficult to provide insurance coverage to cities and town because they have enormous exposure, 100s of miles of roads and make thousands of decisions every day. Anything that increases this exposure has a direct effect on the taxpayers of the state of Montana. This bill creates a tremendous amount of questions. We are opposed to this bill.

Questions From Committee Members: Senator Beck stated that in the years he had been county commissioner most of his time was spent administering county government and very little time legislatively. Gordon Morris stated that is true in the majority of counties. The bulk of commissioners duties are definitely administrative.

Senator Pinsoneault stated that immunity laws we pass are proviso and does not excuse willful or wanton conduct.

Senator Thayer asked if sexual harassment would fall under a willful or wanton act? Mr. Sherwood stated that he is not certain how broadly the Supreme Court is going to interpret this statute. Senator Pinsoneault stated that in wrongful discharge a person has the opportunity to get damages. Mr. Sherwood answered that he understands you can get punitive damages for wrongful discharge, he understands there are suits all over the state being dismissed because of sovereign immunity.

Senator Crippen asked why this bill wasn't given to Judiciary Committee for hearing? Senator Lynch answered he thought it should be heard in Judiciary.

Senator Hammond asked where this bill came from? Senator Lynch said it came from Mike Sherwood who came to me and explained the law to me as it was intended in the 1977 session. I have no trouble introducing a bill if some people's rights are being denied.

Closing by Sponsor: Senator Lynch stated that if people's rights are being denied because of this law, it is our responsibility to clarify the law. If you want to send it to Judiciary where they have a great ability to tighten up the laws, I'm agreeable to that.

#### DISPOSITION OF SENATE BILL 393

Discussion: SB 393 was sent to Judiciary Committee for hearing.

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON SENATE BILL 370

Presentation and Opening Statement by Sponsor: Senator Weeding, senate district 14, is an act to allow a county governing body to restore all or part of the annual cost-of-living increases of county officers and the longevity increases of deputy county attorneys that were lost as a result of county wage freezes. The language to accomplish that on page 5, line 17, through line 24. Then on to page 6, line 8 through line 11. This proposal allows commissioners to restore all or part of cost-of-living increments if they want to.

List of Testifying Proponents and What Group they Represent:

Bob McCarthy, Butte - Silver Bow County Attorney  
Gordon Morris, MACO  
Tom Harrison,  
Earl W. Bennett, Flathead County  
Alfred Kaschube. Roosevelt County

Howard W. Gipe, Flathead County

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Bob McCarthy speaking on behalf of Montana County Attorney's Association stated the effect of this bill will allow county governing bodies the discretion to restore cost-of-living increases. We urge you to support this bill.

Gordon Morris called attention to page 6, line 22 has the term "may". The reinstatement is permissive and dependent up the discretion of county commissioners. It is our recommendation that you give this bill favorable consideration.

Tom Harrison on behalf of the Sheriffs and Peace officers Association, advocates the bill and suggests an amendment to include undersheriffs and deputy sheriffs. See exhibit 1. I would appreciate a favorable consideration of this bill.

Questions From Committee Members: Senator Beck asked will they still have to operate under I 105? Gordon Morris

answered that all this bill does is give commissioners the option of reinstating the code that was lost in the years since 1985 but that would have to be done within the existing provisions of the tax freeze. Raises would come at the expense of other services.

Senator Thayer asked if they can give an increase in salaries and do the same thing? Mr. Morris answered elected officials' salaries are set statutorily so they must abide by that statutory provision that gives increases to elected officials at 70% of the CPI, January to January. With the freeze enacted a few years ago, the commissioners were given the further authority to freeze salaries and not automatically implement the COL provision. This is an option given to commissioners.

Senator Harding asked if the freeze has even been sunsetted? Gordon Morris answered there is no sunset on the commissioners authority to freeze salaries. It is continuing. It gives the commissioners the authority for the year following the freeze to go back and reinstate the COL and that would probably be dependent upon the economic circumstances in the county. If we pass this law, it would be possible for some counties to put this raise into effect and take away from something else. Mr. Morris said yes.

Closing by Sponsor: Senator Weeding said that in some counties the salaries are so very low, below poverty level, and some counties have the wherewith where they could give the cost-of-living raise. This does give the option. With that I close.

#### DISPOSITION OF SENATE BILL 370

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

#### EXECUTIVE ACTION ON SENATE BILL 317

Discussion: This is senator Eck's bill regarding annexation of tracts within a city. Connie Erickson handed out the amendment she had prepared. The amendment changes the amount of acreage from 10 acres to 2 acres, and it also changes the title on page 1, line 6, following "SIZE" insert: "OR ARE ELIGIBLE FOR AGRICULTURAL VALUATION. It makes the same 2 changes in the body of

the bill. On page 1, line 16 strike "10" and insert "2" and following the word "acres" insert "or is eligible for agricultural valuation as provided in 15-7-202(2)". See exhibit 1. Senator Crippen asked if it is raw land and is larger than 2 acres can it be annexed. Connie Erickson answered that it has to be less than 2 acres or produce \$1500 per year.

Amendments and Votes: Senator Thayer MOVED that the AMENDMENTS be accepted. The VOTE was UNANIMOUS in FAVOR of the AMENDMENTS.

Recommendation and Votes: Senator Thayer MOVED that SB 317 DO PASS AS AMENDED. The VOTE was UNANIMOUS in FAVOR of this MOTION.

#### HEARING ON HOUSE BILL 175

Presentation and Opening Statement by Sponsor:

Representative Stella Jean Hansen, house district 57, Missoula, states HB 175 will allow local governments to go outside their city or county to collected bids before they invest their money. This bill will allow counties to search for better interest rates and allow them to have a better selection of where they put their money.

List of Testifying Proponents and What Group they Represent:

Gordon Morris, MACO  
Alfred Kaschulie, Roosevelt County  
Earl W. Bennett, Flathead County  
Howard W. Gipe, Flathead County

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Gordon Morris stated that this bill on page 3 and 4, line 25, in the current law the counties having at least 2 banks, are required to bid the investment of public monies. When you have less than 2 banks, as you read on page 4, then commissioners have the option of going and investing in a neighboring county. All this bill will do is to delete the neighboring county language and open it up to investment in any institution anywhere in the state of Montana. It does not do anything by way of a bid requirement for public investments. More importantly, it will make the local

banking community more competitive. Also, when you go out of your county for a bid, it says on page 4, line 8, a local financial institution can be approached and if that institution agrees to pay the same interest rate then you would invest locally. It is a critical factor in terms of the interest earnings, which go to offset additional tax increases. This bill came through the house in remarkably good shape. I ask for a favorable consideration.

Questions From Committee Members: Senator Beck asked Representative Hansen if they had any opposition from the banking industry on this bill? She answered they did not have any opposition at all.

Senator Crippen asked is this bill putting local banks in smaller communities at a disadvantage? This bill is good for taxpayers, but is it good for the business? She stated the local banks can meet that lowest bid.

Senator Thayer asked if it was self-defeating to solicit bids and let other banks match? Perhaps, but it works both ways.

Closing by Sponsor: I believe this is a good tool for county government to manage their funds and I urge your support.

#### DISPOSITION OF HOUSE BILL 175

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

#### HEARING ON HOUSE BILL 121

Presentation and Opening Statement by Sponsor:

Representative Norm Wallin, house district 78, Gallatin County stated that HB 121 allows fire chief of a fire service are or fire company and his deputy chief have the authority to enter property to fight fires and they have immunity from suit resulting from the suppression of fires. This bill also set up a 5 member board of trustees to govern and manage the affairs of the district. It passed in the House 93 for, 2 against.

List of Testifying Proponents and What Group they Represent:



Henry E. Lohr, MT State Vol. Firefighters  
Lyle Nagel, MT St. Vol. Firefighters Assn.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Henry Lohr testifies in support of this bill. It clarifies what the liability and immunity so that everyone understands their position. I urge your support.

Lyle Nagel stated this bill will solve a problem for fire service and fire companies where they are the only fire protection, in that it will include fire chiefs in fire control powers and liability statute and also in the immunity statute. This makes all fire chief equal. On Section 2, line 12 it authorizes 5 qualified trustees be elected. In the statute 7-33-2106 the county commissioners may appoint the 5 members or they may be elected. We urge your support of this bill.

Questions From Committee Members: None

Closing by Sponsor: Representative Wallin said thank you for hearing HB 121.

DISPOSITION OF HOUSE BILL 121

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 182

Presentation and Opening Statement by Sponsor:

Representative Joe Quillici, house district 71, Butte, stated HB 182 is a procedure to vacate streets and alleys and it changes from 100% of the owners to 75% of the owners must approve the closure. The reason for this is in some cases the area was subdivided and the streets and alleys were never used through there. This 100% can stifle economic development. The house changed this bill to 75% of the owners approval and we were hoping that the percentage could be as low as 60% of the owners. This can not be to the detriment to government interests and it must have approval of the

local governing body. This will give more control to local governments. It will put unused property into the tax base.

List of Testifying Proponents and What Group they Represent:

Bob McCarthy, County Attorney of Silver Bow County  
Robert M. McDonough  
Richard A. Nisbet, City of Helena  
Joe Quilici, Representative from Butte

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Bob McCarthy stated that in past years, before planning boards were organized, subdivision plats were filed throughout the state. Streets and alleys were dedicated on these plats, and in many cases, they were not appropriate. For example, streets in gullies or washes and other places where they shouldn't be. Also, owners who don't live there, won't consent to the closure. Presently we can close a street or alley for a school with 75% of the property owner's consent. So this would make the provisions consistent.

Bob McDonough stated he is a property owner in the State of Montana and he has been faced with this problem as far as trying to vacate streets and alleys. He supports HB 182 with a 55% or 60% signature so that local governments could be the deciding authority.

Questions From Committee Members: Senator Thayer asked if the streets are actually in place? Or are they just platted streets? Rep. Quilici stated most are just platted and not used for many years.

Senator Walker talked about only 2 or 3 owners in a block. Rep. Quilici stated that is why they are asking for a percent of the owners. He stated they originally asked 55%.

Closing by Sponsor: Rep. Quilici asked the committee to lower the percent and with that he hoped they would pass this bill.

DISPOSITION OF HOUSE BILL 182

Discussion: There was discussion of which percentage would

be best. Senator Crippen asked about 10 owners with 1 owner owning 75% of the property and the other 9 own 25%, what then. Senator Harding stated that the county attorney from Butte stated that the 75% is the same qualification as closing streets for the school statute. She sees this problem in her area also. The House changed this to 75% and debated it. Senator Thayer suggested we put it back to 50%. Senator Beck asked about a public hearing. C. Erickson said there is a public hearing notice. Senator Thayer stated in bigger cities it's very difficult to close streets and alleys.

Amendments and Votes: Senator Thayer MOVED that we AMEND HB 182 back to 50%. The VOTE was UNANIMOUS in FAVOR of this MOTION.

Recommendation and Vote: Senator Walker MOVED we DO CONCUR IN HB 182 AS AMENDED. The VOTE was UNANIMOUS in FAVOR of this MOTION

#### HEARING ON HOUSE BILL 180

Presentation and Opening Statement by Sponsor:

Representative Tom Hannah, house district 86, Billings stated HB 180 allows county commissioners of class 1 counties to hire an attorney to perform civil legal services. Counties classed 2 - 7 can do this now. This will allow the county commissioners to hire an attorney and pay him from the general fund without the consent of the county attorney.

List of Testifying Proponents and What Group they Represent:

Gordon Morris, MACO  
Howard W. Gipe  
Alfred Kaschuhe, Roosevelt County

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Gordon Morris stated this give commissioners authority to retain civil counsel for purposes of advising the board and other portions of the county government, and relieving the county attorney from that responsibility. This bill is a result of a MACO resolution 88-13 that was passed last June 15, 1988. I ask your favorable consideration.

Questions From Committee Members: Senator Crippen asked if the county attorney in class 1 counties can have private clients? In counties that do not employ a full time county attorney, that would be counties with a low population, allows county attorneys to have private clients. Senator Crippen said that would give you the rationale that county commissioners could hire an attorney without the county commissioners permission, because of smaller counties having potential conflicts of interest.

Senator Crippen asked if the county attorney is the chief legal officer of the county? Gordon Morris responded that the county attorney is statutorily charged with being the chief legal counsel for the county in terms of civil matters and that includes all the extensions of the county as well as the commissioners. More and more counties are retaining deputy civil county attorneys, understanding that the county attorney is first and foremost the prosecuting attorney. Senator Crippen asked why commissioners would want to hire someone without the consent of the county attorney? Gordon Morris answered this bill is not covering a problem between the commissioners and the attorney. It is primarily to lift the work load from the attorney. County attorneys are not well versed in county government, county budget law, and county finances. They are primarily prosecutors.

Senator Beck asked if Yellowstone County in particular wanted to hire legal counsel. Rep. Hannah responded that Yellowstone County would use more legal counsel. Their county attorney is overworked and the commissioners are looking for help with other issues. Yellowstone County wants to be able to do this on a need basis. Senator Beck asked if there is a potential for conflict? Rep. Hannah said he thought there is a possibility of that, but that is not what is driving this bill.

Senator Harding stated that in Lake County the commissioners would get frustrated when the county attorney was so busy with criminal matters that they couldn't get an audience with him. The intent of the bill is to get legal counsel for the commissioners when the county attorney is too busy.

Senator Hammond asked how counties are classified. Gordon Morris stated county classification is based solely on taxable value. Salaries are built both on taxable valuation and population. Senator Pinsoneault stated

that traditionally the county attorney spoke for everyone. In Ravalli County the county attorney does all the civil work and hires out the criminal. In Lake County we have a full time attorney for civil matters and a full time attorney for criminal matters.

Closing by Sponsor: Representative Hammond stated the bill has been well discussed and this bill will be helpful to class 1 counties to have another option.

DISPOSITION OF HOUSE BILL 180

Discussion: Chairman Harding asked if there is a Senator willing to carry the bill to the floor? Rep. Hannah stated Senator McLane will carry HB 180.

Amendments and Votes: None

Recommendation and Vote: Senator Hammond MOVED that we DO CONCUR in HB 180. The VOTE was 8 for and Senator Crippen voted NO. VOTE CARRIED 8 to 1.

EXECUTIVE ACTION ON SENATE BILL 119

Discussion: Chairman Harding stated SB 119 was sponsored by her and she talked with Dwayne Robertson and he stated that HB 111 had been amended and had a much lower price tag. It goes from \$.50 to \$.85 instead of \$.50 to \$1.10. He thinks HB 111 will pass and this bill would work in conjunction with it, so asked that we pass SB 119 out of committee.

Amendments and Votes: Connie Erickson presented the amendments that were requested during the hearing. They are as follows: On Page 2, line 2 strike: "and" and insert: "or". On page 2, line 13 following line 12 insert: "NEW SECTION Section 3. Coordination instruction. Unless House Bill No. 111 (LC 535) is passed and approved, (this act) is void."

Renumber: subsequent section

Senator Beck MOVED that we ACCEPT THE AMENDMENT as stated. The VOTE was UNANIMOUS in FAVOR of the amendments.

Recommendation and Vote: Senator Vaughn MOVED that we DO PASS AS AMENDED SB 119. MOTION CARRIED with 8 voting for and Senator Beck OPPOSED.

EXECUTIVE ACTION ON HOUSE BILL 62

Discussion: Representative Hanson's HB 62 was brought back

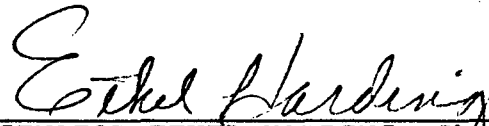
from the TABLE. Senator Crippen asked about amending the amount to \$25,000 before an audit was required. Representative Hanson had written a letter to Senator Harding approving of the \$25,000 amount and agreeing to a sunset because her area just needed the one audit.

Amendments and Votes: Senator Beck MOVED that we AMEND HB 62 as follows: In the Title, line 8, following: "DATE" insert: "AND A TERMINATION DATE". On page 4, line 14 strike: "\$10,000" and insert: "\$25,000". On page 5 following: line 15 insert: "NEW SECTION Section 4. Termination. (This act) terminates June 30, 1991." The MOTION carried to AMEND HB 62 UNANIMOUSLY.

Recommendation and Vote: Senator Walker MOVED that we CONCUR IN AS AMENDED HB 62. The VOTE was UNANIMOUS in FAVOR of HB 62 AS AMENDED.

ADJOURNMENT

Adjournment At: 3:00 p.m.



SENATOR ETHEL HARDING, Chairman

EH/dh

minutes.209



SENATE STANDING COMMITTEE REPORT

February 15, 1989

MR. PRESIDENT:

We, your committee on Local Government, having had under consideration SB 317 (first reading copy -- white), respectfully report that SB 317 be amended and as so amended do pass:

1. Title, line 6.

Strike: "10"

Insert: "2"

Following: "SIZE"

Insert: "OR ARE ELIGIBLE FOR AGRICULTURAL VALUATION"

2. Page 1, line 16.

Strike: "10"

Insert: "2"

Following: "acres"

Insert: "or is eligible for agricultural valuation as provided in 15-7-202(2)"

AND AS AMENDED DO PASS

Signed: Ethel M. Harding

Ethel M. Harding, Chairman



SENATE STANDING COMMITTEE REPORT

February 15, 1989

MR. PRESIDENT:

We, your committee on Local Government, having had under consideration HB 182 (third reading copy -- blue), respectfully report that HB 182 be amended and as so amended be concurred in:

Sponsor: Quilici (Lynch)

1. Title, line 6.  
Following: "50"  
Strike: "75"  
Insert: "50"

2. Page 1, line 19.  
Following: "50%"  
Strike: "75%"  
Insert: "50%"

AND AS AMENDED BE CONCURRED IN

Signed: 

Ethel H. Harding, Chairman

SCRHB182.215

*Sen. Lynch*

2-15-89  
1:30

SENATE STANDING COMMITTEE REPORT

February 15, 1989

MR. PRESIDENT:

We, your committee on Local Government, having had under consideration HB 180 (third reading copy -- blue), respectfully report that HB 180 be concurred in.

Sponsor: Hannah (McLane)

BE CONCURRED IN

Signed: Ethel M. Harding

Ethel M. Harding, Chairman

SENATE STANDING COMMITTEE REPORT

February 15, 1989

MR. PRESIDENT:

We, your committee on Local Government, having had under consideration SB 119 (first reading copy -- white), respectfully report that SB 119 be amended and as so amended do pass:

1. Page 2, line 2.

Strike: "and"

Insert: "or"

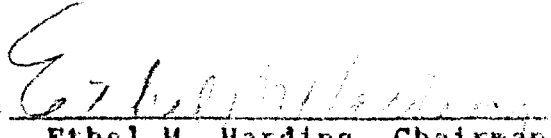
2. Page 2, line 13.

Following: line 12

Insert: "NEW SECTION Section 3. Coordination instruction. Unless House Bill No. 111 [LC 535] is passed and approved, [this act] is void."

Renumber: subsequent section

AND AS AMENDED DO PASS

Signed: 

Ethel H. Harding, Chairman

SENATE STANDING COMMITTEE REPORT

February 15, 1989

MR. PRESIDENT:

We, your committee on Local Government, having had under consideration HB 62 (third reading copy -- blue), respectfully report that HB 62 be amended and as so amended be concurred in:

Sponsor: Hanson (Devlin)

1. Title, line 8.

Following: "DATE"

Insert: "AND A TERMINATION DATE"

2. Page 4, line 14.

Strike: "\$10,000"

Insert: "\$25,000"

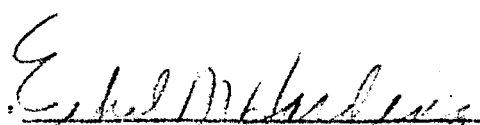
3. Page 5.

Following: line 15

Insert: "NEW SECTION Section 4. Termination. [This act]  
terminates June 30, 1991."

AND AS AMENDED BE CONCURRED IN

Signed:

  
Ethel M. Harding, Chairman

Testimony of Michael J. Sherwood, MTLA  
RE: SENATE BILL NO. 393

SENATE LOCAL GOVERNMENT  
EXHIBIT NO. 1  
DATE 2-14-89  
BILL NO. 393

~~OFFICIAL~~ SUPPORTING

The legislative history of this bill makes it very clear that in 1977 when this statute was passed the immunity extended was only for clearly legislative acts of bodies having legislative capacity.

The particular bill was Senate Bill No. 43. I have provided a copy of that Bill.

The intent behind this legislation was discussed extensively at two meetings of the interim committee which ultimately proposed the specific Bill. I have provided copies of the pertinent text of the minutes and transcript of those meetings.

On Nov. 22, 1975, the minutes reflect:

"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.

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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."

The minutes from the February 28, 1976 meeting, which were transcribed, show multiple instances in which it was clear that the intent was to immunize officials having legislative capacity only when actually acting in that capacity. Senator Towe summarized the opinion of the committee best when he said:

" The idea being if a committee votes on something or the legislature votes on something then that's the official action of that

body and there would be immunity from that to both the legislature (the state) and the individuals."

The supreme court has refused to look beyond the plain meaning of the statute in interpreting this section. In a recent decision, District Judge Gordon Bennett, noted that the supreme court had refused to take this approach and, therefore, felt compelled to do the same. He did say, however, that if he had been "called upon to construe the meaning of the immunity statute in light of the legislative history, [he] would be compelled to limit the immunization to legislative acts of legislative bodies. I have provided a copy of Judge Bennet's order for your review. In that decision an Junior High School teacher named Richard Field was terminated from his employment and sued alledging that letters contained in his file had effectively "blacklisted" him. Judge Bennett granted summary judgment in dismissing the case, upon the grounds of governmental immunity.

*Beeper V. D. Braslowater Co*

*U.D. - Co. Conn.*

## 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;

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.

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 3

DATE 2-14-89

BILL NO. SB 393

Legislature

SB 0043/02

SB 0043/02

SENATE BILL NO. 393  
INTRODUCED BY HOME TURKAGE  
(INTRIM JUDICIAL COMMITTEE BILL)

1 A BILL FOR AN ACT ENTITLED "AN ACT TO SPECIFICALLY PROVIDE  
2 THE STATE, COUNTIES, TOWNS AND ALL OTHER LOCAL GOVERNMENT  
3 ENTITIES AND THE OFFICERS, AGENTS, AND EMPLOYEES OF THOSE  
4 ENTITIES IMMUNITY FROM SUIT FOR INJURY TO A PERSON OR  
5 PROPERTY IN CERTAIN CASES IN ACCORDANCE WITH THE PROVISIONS  
6 OF ARTICLE II, SECTION 18 OF THE CONSTITUTION OF THE STATE  
7 OF MONTANA; AMENDING SECTION 2-4310, R.C.M. 1947."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
9 Section 1. Section 02-4310, R.C.M. 1947, is amended to  
10 read as follows:  
11 "2-4310. Governmental entities liable for torts  
12  
13 EXCEPT AS SPECIFICALLY PROVIDED BY THE LEGISLATURE. EVERY  
14 governmental entity is subject to liability for its torts  
15 and those of its employees acting within the scope of their  
16 employment or duties whether arising out of a governmental  
17 or proprietary function ~~except as specifically provided by~~  
18 the legislature under Article II, section 18 of the  
19 Constitution of the State of Montana."

20 Section 2. Immunity from suit for legislative acts and  
21 omissions. (1) As used in this section:

1 (a) the term "governmental entity" includes the state,  
2 counties, municipalities, and school districts;  
3 (b) the term "legislative body" includes the  
4 legislature vested with legislative power by Article V of  
5 the Constitution of the State of Montana and any legislative  
6 governmental entity given legislative powers by statute,  
7 including school boards.  
8 (2) A governmental entity is immune from suit for  
9 acts or omission of its legislative body or a member  
10 of its legislative body or an officer or agent thereof  
11 (3) A member, officer, or agent of a legislative body  
12 is immune from suit for damages arising from the lawfully  
13 discharge of an official duty associated with the  
14 introduction or consideration of legislation or action by  
15 the legislative body.  
16 (4) The immunity provided for in this section does not  
17 extend to any tort committed by the use of a motor vehicle,  
18 aircraft, or other means of transportation.  
19 Section 3. Immunity from suit for judicial acts and  
20 omissions. (1) The state and other governmental units are  
21 immune from suit for acts or omissions of the judiciary.  
22 (2) A member, officer, or agent of the judiciary is  
23 immune from suit for damages arising from his lawfully  
24 discharge of an official duty associated with judicial  
25 actions of the court.

REFERENCE BILL

SB

(3) The judiciary includes those courts established in accordance with Article VII of the Constitution of the State of Montana.

Section 4. Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.

Section 5. 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 the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

Section 6. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

Section 7. Actions under invalid law or rule. Same as if valid. (1) 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, without malice or corruption, and under the authority of law and that law is subsequently declared invalid, its in-

1 conflict with the constitution of Montana or the  
 2 constitution of the United States, neither he nor any other  
 3 officer or employee of the governmental entity he  
 4 represents nor the governmental entity he represents, is  
 5 civilly liable in any action in which he, such other  
 6 officer, or such governmental entity would not have been  
 7 liable had the law been valid.

8 (2) If an officer, agent, or employee of the state, or  
 9 of a county, municipality, taxing district, or other  
 10 political subdivision of the state acts in good faith  
 11 without malice or corruption, and under the authority of a  
 12 duly promulgated rule or ordinance and that rule or  
 13 ordinance is subsequently declared invalid, neither he nor  
 14 any other officer, agent, or employee of the governmental  
 15 unit he represents, nor the governmental entity he  
 16 represents, is civilly liable in any action in which no  
 17 liability would attach had the rule or ordinance been valid.

18 Section 8. Limitation on governmental liability for  
 19 damages in tort. -- petition for relief in excess of limits.  
 20 (1) Neither the state, a county, municipality, taxing  
 21 district, nor any other political subdivision of the state  
 22 is liable in tort action for:  
 23 (a) noneconomic damages; or  
 24 (b) economic damages suffered as a result of an act or  
 25 omission of an officer, agent, or employee of that entity in

1 excess of \$100,000 for each defendant and \$1 million for each  
 2 occurrence.  
 3 (2) The legislature of the governing body of a county,  
 4 municipality, or taxing district or other political  
 5 subdivision of the state may, IN ITS SOLE DISCRETION,  
 6 authorize payments for NONECONOMIC DAMAGES OR economic  
 7 damages in excess of the sum authorized in subsection (1)(b)  
 8 of this section, OR BOTH, upon petition of plaintiff  
 9 following a final judgment SO ISSUED IS LIABLE FOR SUCH  
 10 NONECONOMIC DAMAGES OR EXCESS ECONOMIC DAMAGES, UNLESS  
 11 SPECIALLY AUTHORIZED IN THE CONTRACT OF INSURANCE.  
 12 (3) As used in this section:  
 13 (a) "economic damages" means tangible pecuniary  
 14 losses;  
 15 (b) "noneconomic damages" means those damages not  
 16 included in economic punitive or exemplary damages,  
 17 including, without limitation, damages for pain and  
 18 suffering, loss of consortium, mental distress, and loss of  
 19 reputation.  
 20 Section 9. Severability. If a part of this act is  
 21 invalid, all valid parts that are severable from the invalid  
 22 part remain in effect. If a part of this act is invalid in  
 23 one or more of its applications, the part remains in effect  
 24 in all valid applications that are severable from the  
 25 invalid applications.

-End-



SENATE LOCAL GOVERNMENT

2-28-86

Transcript

EXHIBIT NO. ~~2~~ 4

DATE 2-14-89

FILE COPY

BILL NO. SB 393

SENATOR TOWE read draft section I.A. and asked for comments.

SENATOR TURNAGE: You're not accomplishing anything if you don't grant the immunity to the acting individual. The legislature is immune, but the legislator or employee may be sued. In my mind that creates a question.

REPRESENTATIVE HUENNEKENS: Well doesn't that phrase about "officer or agent"...the officer would include the members wouldn't it?

SENATOR TURNAGE: But the immunity, I think, Herb, runs to the state the legislature, so we ought to do something about that... within the scope of their authority and acting in good faith and so on.

SENATOR TOWE: Well, let's analyze that a minute. Would you not suggest that this is not strictly sovereign immunity? That at the present time sovereign immunity does not protect the individual separately. That the theory now is that you can sue the officer but not the state?

SENATOR TURNAGE: But, I think you're gaining little or nothing, at least for insurance purposes by this provision. It seems incongruous to say, "You can't sue the state, but you can sue the individual even though he acts on behalf of the state in complete good faith."

MR. CONGER: There is a section 82-4323 that says if you sue the individual the state or the employer is stuck with the judgment anyway.

SENATOR TOWE: That's correct, we passed that in the '74 session as I recall.

SENATOR TURNAGE: Yes, but that doesn't answer the problem.

SENATOR TOWE: No. That just boosts the insurance rates up again.

MR. PERSON: This section, if passed, would abrogate the other section anyway.

SENATOR TURNAGE: Well, if there is validity in immunizing the state or the legislature we should immunize the people that that body causes to act on behalf of it. Provided they act in good faith and within the scope of their authority.

SENATOR TOWE: Well, how do you read this then: "The state is immune from suit for an act or omission of the legislature or of an officer or agent of the legislature."

REPRESENTATIVE HUENNEKENS: It says the state is immune, not the officer or agent.

SENATOR TURNAGE: Yes, that's what bothers me.

SENATOR TOWE: So you're satisfied on the first part that this covers as far as the state's concerned. It covers all its officers and agents for any action the legislature might take.

REPRESENTATIVE HUENNEKENS: I agree with Jean that this should be written to include the officers and agents because that's what we're really talking about.

SENATOR TURNAGE: Now let us be a little careful. We can always open a can of worms. I wouldn't want to immunize the state or its officers if, for example, this committee were touring say Warm Springs and the bus driver ran over an innocent individual. We don't want to immunize that type of accident.

REPRESENTATIVE HUENNEKENS: Well the bus driver wouldn't actually be an agent in that case would he?

SENATOR TOWE: Sure, you bet he would.

SENATOR TURNAGE: So we might have to go back to something like we had before the new constitution where some activities like with motor vehicles were covered this way. Can we define legislative act? I don't mean a bill. If we're jogging around the country peeking into this and that and we run over someone or cause our airplane to crash in a school yard, I don't think that should be covered.

REPRESENTATIVE HUENNEKENS: That would be covered under standard insurance shouldn't it?

SENATOR TOWE: We've got some statutes on tort liability for automobile accidents. But we've got to be careful also that we don't immunize some officer who is conducting himself some way that is not authorized.

SENATOR TURNAGE: That's right it's got to be within the scope of their authority.

SENATOR TOWE: I suspect that what we should actually say is that any legislator, officer, or agent who is actually conducting legislative business or operating under legislative business, or something like that...

REPRESENTATIVE HUENNEKENS: But Jean's example would still come under that because the driver would still be functioning officially on legislative business. I think, would you say Jean, we have to apply this more strictly to the legislators themselves, rather than just broad scale to all agents.

SENATOR TURNAGE: You don't want a legislator, Herb, to be immune when he is driving over here.

REPRESENTATIVE HUENNEKENS: No. Definitely not.

MR. PERSON: The immunity I thought you were concerned about was immunity from suit for the kinds of discretionary decisions that arise in the process of legislating that it is the duty of a legislator to make. Thus he couldn't be sued for voting one way or another on a bill. I don't know whether language like "discretionary acts relating to the legislative process" might lead in the direction of this kind of immunity.

REPRESENTATIVE ANDERSON: Could you give one example of a legislative act as you mean it here?

MR. PERSON: Voting on a bill would be an example. Giving a speech to influence a vote would be one.

SENATOR TURNAGE: Any act relative to the enactment of legislation.

SENATOR TOWE: Suppose we passed a bill and the net effect of it was to hurt someone individually in a way that we didn't realize or intend. That person wouldn't be able to sue the legislator or the state for an official act.

MIKE YOUNG: I think you could solve your problem here and with judicial officers by taking the officers employees and agents of the legislature out from under it because they do not perform a legislative function. I think what you're trying to immunize is the legislative function.

SENATOR TURNAGE: What we're really talking about is the passage or failure to pass legislation. To eliminate the human movement that might be collateral to that. Travel, for example, or the chief clerk dropping a pot of coffee on somebody's head - those shouldn't be immune. So the idea of eliminating the ministerial employees and immunize the legislature as an entity and the legislators as when acting strictly within that entity in the passage of legislation or the failure to pass it for that matter.

REPRESENTATIVE HUENNEKENS: Is the term discretionary as opposed to ministerial sufficiently defined in case law so we could use that?

SENATOR TOWE: No. I think the case law has area so fouled up I don't think there's any possible way we could bring any light to that. That's my opinion anyway.

Let's try this. Keep the same language we already have and then go on to say that any legislator, officer, or agent of the legislature would further be immune from suit as a result of any votes taken or official action taken by either house or by any of its committees as a body.

TOM MADDOX: Would that cover testimony? Speeches on the floor?

SENATOR TOWE: I think not. But I think that's not necessary. If you're talking about the question of libel and slander. That is a point, but under libel and slander laws, there is a privilege for certain things including legislative conduct. So that activity is immune from suit without sovereign immunity. I don't think that sovereign immunity would touch that situation.

TOM MADDOX: This would be an opportunity to provide immunity for legislators' testimony in committee. Would you comment on that Jean?

SENATOR TURNAGE: Well, I think unless they act corruptly or in bad faith they should be immune.

SENATOR TOWE: Aren't they immune anyway?

SENATOR TURNAGE: I don't know.

REPRESENTATIVE HUENNEKENS: I think your point is that they're not specifically immune in statute isn't that right?

TOM MADDOX: Not in committee or subcommittee.

SENATOR TURNAGE: Well let's say you're hearing a bill about hiring of architects by the state and some dum-dum legislator gets up and accuses somebody of child molesting in his testimony on the bill. That's not only bad form - it's malicious and corrupt.

SENATOR TOWE: It's probably privileged.

SENATOR TURNAGE: Well, I don't know. It shouldn't be.

SENATOR TOWE: Let me read this over again and hear some comments because I think it's generally the direction we're headed.

In addition to the language we already have, we would add language to the effect that any legislator and any officer or agent of the legislature would also be immune from any claims brought against them as a result of any votes or official action taken by either house or by any of its committees when such action is taken as a body. The idea being if a committee votes on something or the legislature votes on something then that's the official action of that body and there would be immunity from that to both the legislature (the state) and the individuals. It would not apply if one individual happens to do something during the legislative process. Suppose a legislator throws a heavy object and hurts someone - it wouldn't cover that. Maybe the language needs to be improved, but that's the basic concept.

REPRESENTATIVE HUENNEKENS: What about legislators speeches before committees?

SENATOR TOWE: We could add another sentence that would say: Any legislator will further be immune from suit for libel, slander, or



defamation as a result of any statements or actions taken by him while directly involved in the legislative process.

REPRESENTATIVE HUENNEKENS: Tom, I really wasn't thinking of narrowing it down to libel, slander, etc - I was thinking in terms of a possible tort situation where an action by a legislator before a committee might result, through the passage of the bill that he testified on, in damage to some citizen and so on. I'm not sure I want the legislators protected from libel and slander, except perhaps for nuisance suits, but we're not talking about that.

SENATOR TOWE: Good point. You really want it to be more sophisticated than just libel and slander. Somebody might sue you as a legislator even though they can't sue the state simply because you were instrumental in getting this bill passed that caused him harm.

SENATOR CETRONE: Well, didn't we just eliminate that?

SENATOR TOWE: No. I think Herb is right, we have not. Herb is raising the question of whether the legislator is perhaps liable for his actions other than his vote. Under what we discussed, his vote would clearly not make him liable. But suppose he spearheaded it, brought it in, drafted the legislation, argued in favor of it at the committee and then was the real principal reason for causing its passage. The fact that he voted on it would impose no liability because of what we just proposed, but will that individual be liable for his other actions in securing passage?

SENATOR CETRONE: Can that be proven in court?

SENATOR TOWE: Well, I've never heard of any such claim being successful, so we may be talking about something that as a practical matter isn't very likely to come up.

TOM MADDOX: That is because we've had sovereign immunity in all fifty states until just recently.

SENATOR TOWE: No. The official or agent has never been immune. Only the state has been immune.

MR. PERSON: Uncertainty is one of the main problems in this area. The subcommittee might want to replace uncertainty with certainty.

SENATOR TOWE: I see no reason why we can't include that within this last statement. I think I said: Any legislator would be immune from any claim from damage for defamation. Then we would have to add to that: -- would be immune from any claim for harm or any damage caused by official action actually taken by the legislature as a result of any of his statements or activities actually conducted during the course of enacting legislation.

REPRESENTATIVE HUENNEKENS: I imagine Bob has enough material now to know what we're trying to get at.

MR. PERSON: I will work with it and send a draft to you.

SENATOR TOWE: I will entertain a motion that we want language drafted to this effect.

REPRESENTATIVE VINCENT: Where are we now in light of this language in regard to a legislator slandering somebody at a committee hearing?

SENATOR TOWE: I think that's a privilege. This would make it clear whether it's a committee hearing or on the floor of the house, and as Tom has pointed out there is maybe some doubt in the committee at the present time. On the floor of the house you can say anything you darn well please and nobody can sue you for slander. I don't care whether somebody molesting a child in connection with a bill on architects. Under this language the same would be true in the committee.

REPRESENTATIVE VINCENT: There is no doubt however as to the validity of that, at least in law, on the floor.

SENATOR TOWE: That's correct at the present time and sovereign immunity would not change that anyway. That exists as a privilege in the law of defamation. There is also a privilege in the law of defamation on information that somebody is entitled to know. For example in an oversight committee if the question of some employer's integrity might come up, any information related by a member of the committee to those people who are charged with the oversight itself would be privileged. So therefore you could not be sued for that, if it was legitimately within the privilege and related to the business at hand.

SENATOR CETRONE: Responding to your call for a motion, I so move.

SENATOR TOWE: We have a motion that we adopt language relating to defamation and other actions of legislators. Any further discussion?

Motion carried.

SENATOR TOWE: The question of what constitutes the legislative body arises. You say the legislature is that body vested with legislative power by Article V of the constitution and that restricts it then just to the legislature of the state of Montana. Is that right? No city council, no county commissioners, or any other body.

MR. PERSON. That's right. I didn't expand beyond what was said at the November meeting. It does not include anything except the state legislature. I think it adequately includes the state legislature.

SENATOR TOWE: Any comments on that question?

TOM MADDOX: Shouldn't this be expanded to include anything that has an official convention such as a city council or an officially called meeting of the county commissioners, school boards, etc? We still need qualified individuals to serve and if they cannot be protected that is a bad thing.

REPRESENTATIVE HUENNEKENS: We move in that direction on the next page section III, not with respect to absolute immunity but with respect to limitation of liability. You are proposing though that immunity be applied all the way down to local government at all levels.

TOM MADDOX: I'm saying that city and county lawmaking is in essence no different than state lawmaking.

SENATOR CETRONE: How can we justify protecting state legislators when we can't justify protecting city council members. I think what we're really getting at is can we through legislation protect and encourage responsible action by government officials. I don't think we've solved that through language so far. Would somebody fill me in? What is the rationale?

SENATOR TOWE: I'm not sure we got into that. My rendition of what we were talking about was the legislative and judicial branch. I don't know that we discussed the question of whether we were limiting it.

REPRESENTATIVE HUENNEKENS: We did discuss that. The question here is if we extend this immunity all down the line, are we beginning to touch on the complete immunity, which the new constitution has said shall not be?

SENATOR TOWE: We started with the assumption that the constitution has said we want no more sovereign immunity than we absolutely must have. Perhaps the state legislature is one place where we have to have it. I think the question is legitimately before us now whether the county and city level legislative bodies have an equal right to such protection.

RAY CONGER: Let me call your attention back to section 82-4323 so you will realize that the immunity you're talking about is immunity for the entity and no one need be fearful of serving on a board or committee.

SENATOR TOWE: That is a good point. Of course the other problem with that is that as a realistic matter then the entity when it goes out to get insurance has to recognize that if we don't protect the individuals from suit it's going to come back against them as a claim under that statute.

REPRESENTATIVE VINCENT: We're talking about immunity for not only the body but for the individuals involved. Is that correct?

SENATOR TOWE: I think we've decided that from official action taken as a body everybody is immune. The individual as well as the body (the state) itself. Also the individual legislator to the extent that there might be a claim for defamation in a committee meeting, on the floor or action he's taken leading up to an official action of the body. It does not include action that is unauthorized or clearly not leading up to a vote or a collective decision of the body.

REPRESENTATIVE VINCENT: At a city council meeting, if a member stands up and makes a statement that any other time would be slander..

SENATOR TOWE: He would be protected. He would be protected anyway under the law of defamation.

REPRESENTATIVE VINCENT: So what we do is immunize the entire political process from any recourse a citizen might have if he's been slandered. Conversely, at the local level, a statement made by an official that is slanderous could have much more effect on a person than it might at the state level. So I'm a little worried.

SENATOR TOWE: About extending it?

REPRESENTATIVE VINCENT: Well, I don't know. I certainly see the validity of the argument. I think we have a serious question about qualified people and giving them the flexibility and authority to do the job and make the decisions they need to. But also I think that in small towns a person could be slandered in a council meeting the individual has no recourse. That could be dangerous. So I don't know. I'm in a quandry here. I recognize the argument, but I see some danger going completely in that direction. But I don't know how to resolve it.

SENATOR TOWE: Explained the two parts of the motion accepted. Asked Senator Turnage if the same should be extended down to all levels.

REPRESENTATIVE HUENNEKENS: What would "local legislative bodies" include? It would not apply to school boards and irrigation districts would it?

SENATOR TOWE: Any governmental unit can have a legislative body and I don't think an irrigation district is a governmental unit is it?

REPRESENTATIVE HUENNEKENS: Oh, yes it is. Any of them are.

SENATOR TURNAGE: Well, it's a political subdivision.

SENATOR TOWE: We could say that this would apply to the state, city, and county legislative bodies and that's all. I wouldn't feel unhappy with that, by the way.

REPRESENTATIVE VINCENT: School boards decide how money derived from a local levy is to be spent. That seems legislative.

SENATOR TOWE: They do promulgate rules about school management.

REPRESENTATIVE HUENNEKENS: But they do that within the concept of statutes. It's not original legislation.

SENATOR TURNAGE: I think we should try to stay away from the local level.

SENATOR TOWE: Leave that out altogether - just talk about the state legislature - Well, that's the quandry at this point.

SENATOR CETRONE: How much is all this going to affect the insurance picture?

SENATOR TOWE: I think in legislative activities very little. I don't think this is the area that's really hot as far as the insurance rates are concerned. We may be talking about a lot of nothing. On the other hand it is an issue that is properly within the scope of this committee's activities.

SENATOR TOWE: Does someone want to make a motion?

SENATOR TURNAGE: I move we pass consideration.

REPRESENTATIVE VINCENT: I want to ask Bob to find out how other states handle this.

SENATOR TOWE: I don't think any other states have this situation, but we can ask our researcher to look into it.

REPRESENTATIVE VINCENT: I think once we make the step to immunize local legislative bodies we are going to be forced to extend to all local entities.

SENATOR TOWE: Motion is to pass for now. Motion passed.

SENATOR TOWE: Read proposal I. B. I guess that at the present time the law is quite clear that statements made in court are completely immune and completely protected from defamation. I believe the law, is that not true? The judge - perhaps his actions as opposed to his statements may not be privileged. I suspect the only way this could come up is if he makes a ruling on what he thinks is a proper basis in law or fact and it later develops that it is not. For instance, if the law is declared unconstitutional, is the judge open to a lawsuit for that reason? And this would prohibit that.

MR. PERSON: This section, as the first, protects the state not the individual. It is parallel to the other.

SENATOR TOWE: I think it would be appropriate to add language about official action much like we added for the legislature.

SENATOR TURNAGE: That's what I think.

SENATOR TOWE: Any judicial officer or agent of the judiciary would not be liable for damages resulting from any official action taken by any court.

SENATOR TURNAGE: I so move.

SENATOR TOWE: Discussion?

REPRESENTATIVE ANDERSON: You're singling out a court.

SENATOR TOWE: We're just taking each branch separately. We covered the legislative now we'll cover the judicial. I think it makes sense to apply this to the official actions of any court, even a J.P. court, and they are often very wrong, but I don't think the judge or the state should be subject to suit simply because of an action taken when a J.P. is trying to do an honest - the best job he is capable of doing.

REPRESENTATIVE HUENNEKENS: This action wouldn't be impinging on the jurisdiction of the Supreme Court in respect to its control of the district court nor would we be impinging on the impeachment process, is that correct?

SENATOR TOWE: I can't see that would be any problem.

REPRESENTATIVE HUENNEKENS: I think we still need some protection against the judges, in good faith or not.

SENATOR CETRONE: Frankly, I think we need some protection against any governmental body. The more I hear of this the more I question the whole intent of what we're doing here. We've decided it isn't going to be that important in terms of the insurance picture. Secondly how do we not only get good people in but how do we get them to be responsible. I think being subject to suit is one thing. Might we go into the issue of maliciousness or dereliction in some way. Exempt those areas some way.

SENATOR TOWE: I suppose that would be a possibility.

TOM MADDOX: Read Florida law regarding personal tort liability in tort as a result of acts in the scope of employment.

REPRESENTATIVE ANDERSON; That's what we had before.

SENATOR TOWE: I think that's right. That is the old sovereign immunity theory that we don't want. The question now is related to the official action of a legislator or a judge in court. That is different from executive implementation of acts.

MR. PERSON: Other recourse such as action for malfeasance misfeasance and the ballot box is also available against these people.

REPRESENTATIVE HUENNEKENS: We don't want to interfere with those either.

SENATOR TOWE: I don't think we're doing that. Those things would stay on the book.

MIKE YOUNG: Would this apply to a writ of mandamus against the legislature. Suppose someone got a judgment against the state for breach of contract, and the legislature refused to appropriate money - you have your choice of remedies whether to attach bank accounts of the state or to bring a writ of mandamus against the legislature. Are you reaching a writ here?

SENATOR TOWE: No. Because we're talking about money damages. When you bring a writ of mandamus, or order to pay, your asking a state official to actually do an act. That's different than suing the state for damages for the failure of that state official to act, even though the measure of damages is exactly the same. That's a different theory and I don't think that that is involved at all.

There is a motion on the floor that the officers and agents of the judiciary be immune for any official action taken by the court.

Motion carried.

The "official actions" bothers me a little bit. I suspect we'll have to be awfully careful about that. Maybe judicial action would work.

SENATOR TURNAGE: We'll have to watch the wording very carefully.

REPRESENTATIVE VINCENT: I just have a question here. It's not very significant, I don't think, but how much evidence does a judge give to legislative intent if one of these things came before a court? Is that a viable argument? How would a court look into legislative intent?

SENATOR TOWE: I won a case just the other day on that very point. This was a federal statute and I cited the committee report that was prepared by the House committee, which made it just crystal clear that my facts were just right on point and the Internal Revenue service was on the other side and the U.S. Attorney's office said, "Yes, that may be their intent, but that's not what the law says and we don't think you should pay any attention to it." He asked Judge Battin what Judge Battin thought about it and Judge Battin didn't bat an eye on that one having been through the legislative process.

REPRESENTATIVE HUENNEKENS: Tom, however, let's keep straight on this: your federal courts and state courts are entirely different because your Congress has a complete record of committee hearings, subcommittee hearings, etc. We do not have that in this state. We do not even have floor records.

SENATOR TOWE: I know.

REPRESENTATIVE HUENNEKENS: So that sort of thing doesn't apply here.

SENATOR TOWE: Well except for we do in some instances. The coal tax committee has a very careful report. That's the only one where we really have a report on a bill.

SENATOR TURNAGE: Our records aren't as adequate as we might wish them to be. But for what they are, they are. There are some.

SENATOR TOWE: I've even been asked what I thought the legislative intent was by a judge on matters too. Which isn't very good evidence frankly - but

SENATOR TURNAGE: I've had some judges, once they get past the four-letter words, tell me what the intent must have been.

SENATOR TOWE: Well, I don't think this is a very significant matter really because you don't very often sue a judge. And I don't think you're going to get very far if you do sue a judge.

CAP BRYANT: Does "officer or agent of the judiciary" include the sheriff's office?

SENATOR TOWE: No. It would include, probably the probation officer. I am not 100% sure about that, but they are appointed by the judges. So I think it would. It would clearly include the court reporter, the bailiff, the clerk while the clerk is working in that type of case, that type of thing.

MR. PERSON: What about the Governor as in the report?

SENATOR TOWE: You could add it to the legislative language.

REPRESENTATIVE HUENNEKENS: It would be better to separate it.

SENATOR TOWE: The Governor could be covered in his legislative function.

I will entertain a motion to set forth as item C. (and we'll renumber the other one D) that the Governor would be immune that the action of the Governor and the Governor himself would be immune from any action taken officially as a part of his legislative function.

SENATOR TURNAGE: Let's say in vetoing, or approving bills, or in calling sessions of the legislature to narrow it down a bit.

SENATOR TOWE: OK, I will entertain a motion to that effect.

SENATOR CETRONE: Could I add to that that we might want some research to see if the Governor has any other legislative functions that we might want to include.

SENATOR TOWE: We can look it up, but I don't think there would be anything.

OK. I haven't yet received a motion.

SENATOR CETRONE: So move.

Motion carried.

SENATOR TOWE: Read proposal I.C.

SENATOR TURNAGE: The only question I have about that - it's very clear but - ought not we to consider using the statutory language -



exemplary damages? We ought to stay close to the statutory language.

SENATOR TOWE: The words are in the section on damages. There is a section that specifies that you are entitled to damages on an action not arising out of a contract.

SENATOR TURNAGE: It's exemplary because it is for an example.

SENATOR TOWE: I would favor using both exemplary and primitive to show we mean nothing by excluding exemplary. We'll assume that's done and proceed.

II.

SENATOR TOWE: Now we get to the executive department and really apply a different standard. Reads proposal II.

SENATURE TURNAGE: I don't like the word "apparent" why not just "under authority of law."

MR. PERSON: What about the notion that if the law is declared unconstitutional it is void from the beginning?

SENATOR TURNAGE: Well we'd better put "apparent" somewhere else.

SENATOR TOWE: Inasmuch as the remainder of the section covers it I think "apparent" adds nothing to that sentence.

SENATOR TURNAGE: I have some misgivings about injecting "rule" in there. That's an invitation to all kinds of things: you know how the departments can write rules now.

SENATOR TOWE: So, let's see, I'm not sure I can follow how your fears would...If there was a law unconstitutional and pursuant to that law the Department of Health promulgated a regulation. Then the agent acted under the regulation - then what.

SENATOR TURNAGE: Ultimately he is acting pursuant to the law because it is from the law that all rules flow.

SENATOR TOWE: You think it's adequately covered without having to refer to rules because authority of law means any regulation promulgated pursuant to that authority.

SENATOR TURNAGE: I'd feel a little safer if we could just take rule out.

SENATOR TOWE: "Under authority of law" I think really covers it. I think I'd have to agree with Senator Turnage.

MIKE YOUNG: I'd have to comment to the contrary. We have vast body of administrative law. It's been well stated often times by many different courts that administrative bodies enacting rules and

regulations are in fact carrying on a lawmaking function. I thought the purpose of the immunity was to allow the individual harmed to challenge the validity of the rule or statute rather than the individual himself.

SENATOR TOWE: You lost me on that. The purpose of this is to allow someone who is following an invalid law to be protected if he didn't realize it was invalid.

MIKE YOUNG: The plaintiff ought to attack the regulation not the individual enforcing it. That may or may not be a constitutional challenge. I object to the "constitutional" language in there. I suggested to Bob that he make it "unlawful" statute, rule, rather than "unconstitutional". There are twelve grounds in the APA for challenging a rule, only one of which is the constitutional problem. So I think the purpose the committee should look at is protecting the individual state employee from personal suit be it under rule or statute. I wouldn't take "rule" or "regulation" out of it.

SENATOR TOWE: I think you're raising a different question really than what Jean Turnage was talking about, but that's a valid question too. What you say may be true, but what Jean said as far as authority of law covering any regulation pursuant to an unconstitutional statute.

SENATOR TURNAGE: Well, you can't adopt a rule unless you're authorized by statute. So if you've covered the statute you've covered the rule.

SENATOR TOWE: But he's saying something else. Suppose we have a law that is perfectly and properly constitutional. Pursuant to that law the Department of Health writes a rule that is not pursuant to the statute - that is beyond the scope of the statute, and therefore under the APA unlawful - not unconstitutional.

SENATOR TURNAGE: Then they shouldn't be protected. That's the whole point.

LEE HEIMAN: You're trying to protect that public health officer who's making the inspection - not the agency.

SENATOR TURNAGE: We're trying to protect the people from these over-zealous health officers. His superior caused all the mischief.

SENATOR TOWE: But you want to stick the poor guy who carried out his superior's orders?

SENATOR TURNAGE: Well, I don't know. I really didn't have that in mind.

MIKE YOUNG: The state employee is really caught between rock and a hard spot. His agency made the regulation and he has to go out and do a job. I've had many people come in and say "If you try to do that, we're going to sue you." I tell them where to go. In other cases it doesn't work. Rules can be challenged under the APA and that is how it should be done.

MONTANA FIRST JUDICIAL DISTRICT COURT,  
LEWIS AND CLARK COUNTY

FILED

1988 DEC 14 AM 9:22

CLARA GILREATH  
CLERK OF DISTRICT COURT

RICHARD E. FIELD,

Cause No. BDV-85-99

Plaintiff,

- vs -

ORDER

N7..

HELENA SCHOOL DISTRICT NO. 1,

TB17pg 717

INDEXED

Defendant.

A hearing on several motions pending before the Court was held on November 3, 1988, including Motions for Leave to Amend both the Complaint and the Answer, and Defendant's Motions for Partial Summary Judgment and Summary Judgment. Counsel for both parties were present and were heard. From the argument and briefing presented, the Court rules as follows.

The defendant's Motion for Leave to Amend its Answer to allege the defense of immunity is granted.

The plaintiffs' oral Motion for Leave to Amend its Complaint to add Helena School District No. 1 employee Jack Copps as party defendant is also granted.

The defendant moves this Court for summary judgment on two grounds. First, defendant argues that it is provided immunity from plaintiff's suit by virtue of section 2-9-111, MCA (1987).

Secondly, defendant argues that school districts are not entities

1 which can be sued for blacklisting under Montana's blacklisting  
2 statutes (§§39-2-801 through 39-2-803, MCA), and that plaintiff's  
3 claim is summarily dischargeable on that basis as well. The Court  
4 agrees with both of these contentions, and summary judgment is  
5 therefore granted to the defendant on these two grounds, as  
6 discussed below.

7 School districts are specifically included within the definition of  
8 "governmental entity" in section 2-9-111, MCA (1987), and as such  
9 are provided immunity from certain suits by that statute. The  
10 immunity provided by section 2-9-111, MCA, has been held to  
11 extend to "administrative" acts such as the hiring and firing of  
12 employees, and is not limited to the "legislative" functions of the  
13 governmental entities or their agents. Bieber v. Broadwater County,  
14 45 St. Rptr. 1218 (July 8, 1988); Barnes v. Koepke, \_\_\_\_\_ Mont.\_\_\_\_\_,  
15 736 P.2d 132 (1987).

16 Plaintiff argues that the Montana Supreme Court has erred in  
17 providing immunity to discretionary "administrative" acts,  
18 specifically arguing that this Court should consider the legislative  
19 history of section 2-9-111, MCA, and that consideration of this  
20 history would lead this Court to a conclusion that the immunity of  
21 section 2-9-111, MCA, extends only to "legislative" acts of  
22 governmental entities. A review of the legislative history as  
23 proposed by Plaintiff in his memorandum in opposition to the motion  
24 reveals quite clearly the legislature only intended the immunity  
25 afforded by §2-9-111 to cover acts which occur while the legislative

1 body is performing its legislative functions. Resort to legislative  
2 history would seem required by the differences between the  
3 legislatively enacted "catch line" and the actual operative language of  
4 the statute, which are in obvious conflict.

5 Indeed, if this court had been called upon to construe the  
6 meaning of the immunity statute in light of the legislative history,  
7 the court would be compelled to limit the immunization to legislative  
8 acts of legislative bodies.

9 However, in Bieber, the Montana Supreme Court specifically  
10 declined to "delve outside the plain meaning of the words used [in  
11 §2-9-111, MCA]" for aids in the construction of that statute. The  
12 Court found section 2-9-111, MCA, unambiguous, and thus extrinsic  
13 evidence of legislative intent, such as legislative history, is not  
14 consulted to determine the statute's meaning. Bieber at 1220. See  
15 also Crist v. Segna, 197 Mont. 399, 622 P.2d 1028 (1981); Yearout v.  
16 Rainbow Painting, \_\_\_\_ Mont. \_\_\_\_ 719 P.2d 1258 (1986). Therefore,  
17 even if consideration of plaintiff's excerpts of legislative history  
18 would indicate that the Supreme Court has overextended the  
19 immunity granted by section 2-9-111, MCA, this Court may not  
20 consider this history when faced with what in Bieber was called an  
21 unambiguous statute. Therefore, the ruling in Bieber is  
22 determinative, and defendant's motion for summary judgment on the  
23 basis of immunity is granted.

24 Defendant's motion for summary judgment is granted for a  
25 second reason. The Montana blacklisting statutes, §§39-2-801

1 through 39-2-803, MCA, are restricted in their application. These  
2 statutes prohibit blacklisting by "persons" or "companies or  
3 corporations." Sections 39-2-801 and 39-2-802, MCA, refer only to  
4 actions for blacklisting done by "persons." Section 392-803, MCA,  
5 allows actions against "any company or corporation" or "person"  
6 which engages in blacklisting. Defendant is neither a "person" nor a  
7 "company or corporation," and no authority has been cited to this  
8 Court which would include school districts within the definition of  
9 those terms. Consideration of the legislative history and the  
10 construction of Montana's blacklisting statutes lead this Court to the  
11 conclusion that the defendant is not within the definition of the  
12 entities to which the prohibitions of sections 39-2-801 through 39-2-  
13 803, MCA, apply. Therefore, this Court is persuaded that school  
14 districts are not intended to be included within these blacklisting  
15 statutes, and defendant's motion for summary judgment on this  
16 ground is also granted.

17 As noted, plaintiff is granted leave to amend his Complaint to  
18 add the individual employee Jack Copps as a party defendant,  
19 reserving the issue of whether any such claim against Mr. Copps may  
20 be barred by any applicable statute of limitations.

21 The defendant also moves for partial summary judgment on  
22 several grounds. First, defendant argues that the Montana  
23 blacklisting statutes require communication with "another person,"  
24 and that communication by an employer with itself (between its  
25 various members or agents), does not satisfy that element. Although

1 there is little authority on this point, the Court is persuaded that  
2 communication between agents of a single employer satisfies the  
3 element of communication with "another Person" as contemplated by  
4 these blacklisting statutes. Therefore, defendant's motion for partial  
5 summary judgment in this regard is denied.

6 Second, the defendant also moves for partial summary on the  
7 grounds that the facts plead and learned through discovery in this  
8 case do not show evidence that plaintiff was discharged or  
9 constructively discharged. A discharge of the complaining employee  
10 is a required element of a claim under sections 39-2-801 and 39-2-  
11 802, MCA. The Court agrees that a discharge is a required element of  
12 those two statutes, but is persuaded that a constructive discharge is a  
13 "discharge" within the meaning of sections 39-2-801 and 39-2-802,  
14 MCA; and that Mr. Field has alleged sufficient facts that a trier of fact  
15 could find that a constructive discharge has occurred. Therefore, this  
16 motion for partial summary judgment is denied.

17 Finally, the defendant seeks partial summary judgment on  
18 damages, arguing that plaintiff is allowed only punitive damages  
19 under section 39-2-803, MCA, and thus only punitive damages are  
20 recoverable by plaintiff in his claim under that statute. The Court  
21 agrees. The recoverable damages are listed in section 39-2-803,  
22 MCA. Only punitive damages are listed. Under the doctrine of  
23 "expressio unius est exclusio alterius," only the listed damages are  
24 deemed intended to be included, excluding all non-listed categories.  
25 Under ordinary rules of statutory construction, this Court ordinarily

1 does act to insert any language omitted by the Legislature. It  
2 appears that the Legislature may have contemplated the recovery of  
3 punitive damages only under section 39-2-803, MCA. See §1-2-101,  
4 MCA; Reese v. Reese, 196 Mont. 101, 637 P.2d 1183, 1185 (1981).  
5 Therefore, this motion for partial summary judgment is granted.

6 If Plaintiff can state a theory which would give him a right to  
7 recover compensatory damages, he is granted leave to amend his  
8 Complaint to allege such theories, reserving the issue of whether any  
9 such claim may be barred by any applicable statute of limitations.

10  
11 DATED this 13<sup>th</sup> day of December, 1988.

12  
13   
14 DISTRICT COURT JUDGE



SENATE LOCAL GOVERNMENT

EXHIBIT NO. 1

DATE 2-14-89

BILL NO. 370

Amend Senate Bill No. 370

1. Page 1, line 7.  
Following: "ATTORNEYS"  
Insert: ", UNDERSHERIFFS AND DEPUTY SHERIFFS"
  
2. Page 7, line 2.  
Following: "7-4-2503(3)(d)(i)"  
Insert: ", undersheriffs and deputy sheriffs in 7-4-2510"

Amendments to Senate Bill No. 370  
First Reading Copy

For the Committee on Senate Local Government

Prepared by Connie Erickson  
February 14, 1989

1. Title, line 7.

Following: "ATTORNEYS"

Insert: ", UNDERSHERIFFS, AND DEPUTY SHERIFFS"

2. Page 7, line 2.

Following: "7-4-2503(3)(d)(i)"

Insert: "and for undersheriffs and deputy sheriffs in 7-4-2510"

Amendments to Senate Bill No. 317  
First Reading Copy

For the Committee on Senate Local Government

Prepared by Connie Erickson  
February 9, 1989

1. Title, line 6.

Strike: "10"

Insert: "2"

Following: "SIZE"

Insert: "OR ARE ELIGIBLE FOR AGRICULTURAL VALUATION"

2. Page 1, line 16.

Strike: "10"

Insert: "2"

Following: "acres"

Insert: "or is eligible for agricultural valuation as provided in  
15-7-202(2)"

WITNESS STATEMENT  
SENATE LOCAL GOVERNMENT

EXHIBIT NO. 1

NAME: Lyle Nage

DATE 2-14-1989

DATE: 2-14-89

BILL NO. HB 121

ADDRESS: Box 93 Simms Mt. 59477

PHONE: 264 5151

REPRESENTING WHOM? Mt. St. Vol. Fire Fighters Assn

APPEARING ON WHICH PROPOSAL: HB 121

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: Section 1 - The fire protection in most fire service areas is or will be provided by a fire company or contracted from an existing neighbor fire service. The present statute, 7-33-2208 does not cover fire company chiefs but should. This change will furnish coverage for the fire chief involve  
Section 2.(c) 7-33-210b allows for either <sup>appointment</sup> ~~appointment~~ or election of officers. This would stipulate election

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Amendments to House Bill No. 182  
Third Reading Copy

For the Committee on Senate Local Government

Prepared by Connie Erickson  
February 14, 1989

1. Title, line 6.

Following: "50"

Strike: "75"

Insert: "50"

2. Page 1, line 19.

Following: "50%"

Strike: "75%"

Insert: "50%"

Amendments to Senate Bill No. 119  
First Reading Copy

For the Committee on Local Government

Prepared by Connie Erickson  
January 24, 1989

1. Page 2, line 2.

Strike: "and"

Insert: "or"

2. Page 2.

Following: line 12

Insert: "NEW SECTION Section 3. Coordination instruction.

Unless House Bill No. 111 [LC 535] is passed and approved,  
this act is void."

Amendments to House Bill No. 62  
Third Reading Copy

For the Committee on Senate Local Government

Prepared by Connie Erickson  
February 14, 1989

1. Title, line 8.

Following: "DATE"

Insert: "AND A TERMINATION DATE"

2. Page 4, line 14.

Strike: "\$10,000"

Insert: "\$25,000"

3. Page 5.

Following: line 15

Insert: "NEW SECTION Section 4. Termination. [This act]  
terminates June 30, 881991."

