

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 13, 1991, at 8:08 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Legislative Council
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON SB 304

EXTENDING VALID. OF CONVEYANCES RECORDED AFTER DEFECTIVE EXEC.

Presentation and Opening Statement by Sponsor:

SEN. STIMATZ, SENATE DISTRICT 35, stated that SB 304 is a technical correction bill and that the correction hasn't been done during the last few sessions because of an oversight. He stated that the bill validates and corrects a measure to pick up any slight errors that have been made in the notary public instruments made in real property. He stated that if there is no

action pending involving notary acknowledgment previous to October 1, 1991 then this bill corrects all those inadvertent errors.

Proponents' Testimony:

Bill Gowen, Montana Land Title Association, stated that SB 304 corrects and validates notaries acknowledgments to real property incidents that may have been mis-stated or have any technical defects. He stated that is basically what the bill does and he would be happy to answer any questions from the committee.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: none

HEARING ON SB 154
CLARIFY LEGISLATIVE IMMUNITY

Presentation and Opening Statement by Sponsor:

SEN. NATHE, SENATE DISTRICT 10, stated this is a bill to clarify who has legislative immunity at the Local Government level. We define what legislative body and act means to further clarify who has legislative immunity. School boards were specifically included so that everyone would know they are included in legislative immunity. What a Legislative Act does not include is administrative actions undertaken in the execution in law or public policy. This is to make sure that legislative immunity, as we have granted to the Local Government, does not go through to the employees who are merely carrying out administrative policies. The court has made a swing from unlimited liability at the Local Government all the way to granting sovereign immunity to all Local Government bodies. Local Governments would waived their immunity to the extent to their insurance coverage which left a lot of confusion as far as the bar is concerned with regard to any of the entities at the Local Government level, as to how they carry insurance. This bill tries to find a middle ground in this area.

This bill includes 911, at the request of the League of Cities and Towns, because they were extremely concerned that a dispatcher may happen to send someone to the wrong address on a 911 case. They are concerned about their exposure in that type of situation.

Proponents' Testimony:

Joe Bottomly, Attorney - Great Falls, stated sovereign immunity means that the government can be wrong. If someone is hurt the government should pay just like anyone else. That was the law until 1972 in Montana when the Legislature passed an act that gave only the Legislature immunity. Everyone knew what that meant for 15 years. In 1988 blanket sovereign immunity was brought from the dead and now it covers every single act. If a teacher throws a javelin and happens to hit a student in gym class, it is sovereign immunity. If a road crew digs a pit on the side of the road, goes to lunch and forgets to put up a sign, and someone falls into it, it is sovereign immunity. The statue where this blanket sovereign immunity comes from was never intended to be that broad. When the statute was passed it was meant to be legislative policy and never intended to go this far. This bill tries to put it back to where everybody knew it was before 1988.

Michael Sherwood, Montana Trial Lawyers Association, stated there are a few bill this session that cover this same issue. You will note that on the multiple amendments made on pages 1 and 2 of the bill were designed to address the concerns of opponents that are still not happy in the Senate. We have no objection to those. Specifically, the opponents wanted to make sure that we are not only granting legislative immunity to states, counties, municipalities, and school districts, but also other Local Government entities or other local political sub-divisions vested with legislative power by statute.

On page 3 of this bill, as drafted, defines what is legislative immunity. The proponents were successful in the Senate in getting a rider on this bill that says "Government entities will be immune when providing 911 services." This is not legislation, this is an administrative procedure by cities and towns. It is inappropriate in this bill and we oppose a grant of immunity to cities and towns. We encourage you to delete the language found on page 3, subsection 4, regarding Governmental immunity as it applies to 911 services.

The Supreme Court has now stated that local governments, their agencies and boards, are immune. We cannot even get them in court. The latest case says that to the extent that their is insurance and the extent of those policy limits, that immunity was waived, at least in the Crowle decision. Number 5 on page 3 is a reversal of that decision. It says the acquisition insurance coverage, including self-insurance or group self-insurance by governmental entity, does not waive immunity provided by this statute. I also oppose that amendment that was proposed by the proponents. I don't have a strong objection to it, but this committee has to make a decision on what is sound public policy. Our position in opposing that amendment in the Senate was that it makes no sense to exempt insurance companies. That is what subsection 5 does. It says if there where a determination that the city of Two-Dot, for example, had an insurance policy and despite the fact that they were arguably

immune, they had insured against some sort of potential claim. One of their employees was negligent and someone was hurt, this says that even though the insurance company had collected the premium they do not, now, have to pay for the damage.

Rep. Whalen's bill, HB 653, deals with Legislative Immunity, but also deals with quasi-judicial immunity. The other major distinction between HB 653 and SB 154 is that SB 154 is retroactive and we are very much in support of retroactivity in this bill because it will help Nani Linder and other people similar to her that have been injured since 1988.

Alec Hansen, Montana League of Cities and Towns, stated that the League of Cities and Towns support this bill and offered a set of amendments to this bill over in the Senate and two of them were accepted. The amendment on 911 service is critical for us. We will not be able to continue to offer this critical public service if there is not some limited immunity to protect the people and the government. The amendment we offered waived immunity if there is gross negligence. We are really concerned about are routine modest mistakes that could occur at any 911 service, but could grow into an extensive law suit. It is our intent to continue to supply the 911 service. But, that will be very difficult if we don't have the protection that is included in that amendment.

The other amendment was the acquisition of insurance companies include the self-insurance by governmental entity does not waive immunity. We feel this is absolutely critical. This Crowle case should be reversed and addressed by the Legislature.

Mr. Hanson stated that he would like this committee to consider the other amendments we proposed in the Senate. EXHIBIT 1

David Hull, City Attorney - Helena, stated we are in favor of this bill with the proposed amendments. You have heard a lawyers perspective on sovereign immunity. The way you should look at it is a more balancing factor by balancing the individuals rights to regress the wrongs done to them against a government organization's ability to take care of that. The state continually mandates new obligations on the cities and counties. For example, under state law we are required to provide a Fire Marshall for the State Fire Marshall Office from the city to do the work as directed by the states office. The State's Fire Marshall Office is proposing various new regulations which would increase this person's duty to the point of requiring two deputies in our fire department and still would be short of man power. It is unreasonable for the city to be sued because we are unable financially to provide the services that the state mandates that we provided. The amendments Alec Hanson has proposed and the amendments in this bill, strike a fair balance between a person's individual rights and the local governments ability to provide services.

Jacqueline Terrell, American Insurance Association, stated that the American Insurance Association is not taking a position on what you determine to be the appropriate public policy with respect to sovereign immunity; however, they are in favor of the amendments in this bill with respect to insurance coverage. Mr. Sherwood indicated to you that if you allow immunity to not be waived when there is insurance coverage, that it would effect in affect unjustly enrich insurance companies. She submitted that it puts the process in slightly the opposite order. If one does not treat everyone similarly under this law, what one is doing is putting the insurance company, that is going to underwrite the risk, in the position of trying to guess whether there is immunity or whether there is not immunity. That is going to make the underwriting much more difficult. The insurance company will have to err on the side of caution and is going to increase the cost of insurance coverage should the entity choose to insure and thus decrease insurance availability. She felt that if the committee chooses to pass this bill, her association would request that the amendments with regard to insurance coverage in place be left in the bill.

Phil Campbell, Montana Education Association, stated his association want to go on record in support of this bill. It will put things back where they were and should still be. He stated that the association takes no position on the amendments.

Jim Jenson, Montana Environmental Information Center, stated that if this bill does not come out of this committee with a favorable vote then we will urge the Senate to move SB 691 through. The point of this bill is that the people who live in the dump here in Helena, have had their ground water contaminated and subsequently lost their home or become divorced, will have a way to get the county into court. We urge you to understand there are people who are directly affected by this problem unfairly.

J. Michael Young, Attorney - State Tort Claims Division, gave written testimony in favor of SB 154. EXHIBIT 2

Opponents' Testimony:none

Questions From Committee Members:none

Closing by Sponsor:

SEN. NATHE stated that he would like this committee to not take any action on this bill today and wait for the Senate to hear the quasi-judicial tomorrow morning.

HEARING ON SB 246
REMOVE TERMINATION OF TORT LIABILITIES LIMITS

Presentation and Opening Statement by Sponsor:

SEN. NATHE, SENATE DISTRICT 10, stated that SB 246 is a bill to

take the sunset provision off a law that passed in June of 1986 that placed caps on the limits of liability to local government. These caps were placed at \$750,000 and \$1,500,000. He stated that the caps are to expire in June of 1991 and this bill would take the Sunset Provision off and extend it indefinitely. He stated that SB 246 was a compromised bill that was agreed upon in June of 1986 after a December 31, 1985 Supreme Court decision where the court said that the Legislature has no right to set any limits on any liabilities. He stated that people have to have a remedy for their wrongs, but at the same time the state cannot open up the pocket book of the tax-payer for being liable without limits.

Proponents' Testimony:

Alec Hansen, Montana League of Cities and Towns, stated that the limited liabilities in SB 246 is critical to the operations of cities and towns for the program of self-insurance operations. He stated that the League is paying legitimate claims to people who file law suits against the city and the League's policy includes the same limits as the Sunset Provision. He felt that if SB 246 is not adopted and there is not limits then there will be an increase on the premiums on the cities and towns. Mr. Hansen urged the committee to support the bill as it came from the Senate.

Brett Dahl, Administrator - Tort Claims Division, Department of Administration, gave written testimony in favor of SB 246.
EXHIBIT 3

David Hull, Attorney - City of Helena, stated that the City of Helena is in support of SB 246.

Michael Sherwood, Montana Trial Lawyers Association, gave written testimony in favor of HB 246. EXHIBIT 4

Opponents' Testimony: NONE

Questions From Committee Members:

REP. WHALEN asked Mr. Dahl once the second cap is reached, aren't umbrella policies that will carry up to \$10,000,000 relatively cheap? Mr. Dahl stated that in terms of the insurance, they are not relatively cheap. One reason the limits were established and capped in 1986 was because of the availability of insurance.

REP. WHALEN asked Mr. Dahl if he felt that \$1,500,000 was a low cap? Mr. Dahl said that he felt the cap was not low and that the limits are good where they are set at the present time.

REP. WHALEN asked Mr. Maynard how much of the cap on the occurrence claims contributed to the reduction of 38 to 18 in tort claims? Mr. Maynard stated that there were less than 5 cases there were occurrence limited. He stated that when those

accuracies sat down with him and he gave them his best assessment, there was only one claim that pierced that 1.5 million dollars cap.

REP. TOOLE asked Mr. Dahl if there was anything the Department has done as far as reviewing the continuing of the caps? Mr. Dahl stated that the Department has not done any type of review for the need for the caps.

REP. WHALEN asked SEN. NATHE if he would object to raising the cap up to 5 million? SAN. NATHE stated that the caps as they are set have been successful up to this point. He stated that he would caution Rep. Whalen about going that high.

Closing by Sponsor:

SEN. NATHE stated that SB 246 is needed because caps are needed. He asked the committee to give SB 246 a favorable consideration.

HEARING ON SB 361
BILL GENERALLY REVISING AIRPORT AUTHORITY ACT;
NOISE LIABILITY; TAX AREA

Presentation and Opening Statement by Sponsor:

SEN. THAYER, SENATE DISTRICT 19, stated that SB 361 will make clear that airport authorities as governmental entities are immune from their legislative acts. The request by the airport authorities is not any different than the issue regarding immunity, the bill only clarifies that airport authorities enjoy whatever immunity that is given to other governmental entities.

Proponents' Testimony:

Monte Eliason, Montana Airport Managers Association, Airport Manager - Glacier National Airport in Kalispell, stated that SB 361 is a combination of two years of gathering comments from airports across the state in an attempt to clarify provisions of the airport authority Act which has been on the books in Montana for 20 years. He stated that the bill's purpose is to clarify and make consistent the treatment of Airport Authorities under Montana Law. He stated that the bill does not effect any revenue or expenses for any city or state owned airport, but is simply a matter of clarification. Mr. Eliason stated that the changes made in the Senate are accepted by the Association and support the bill as it appears before the committee today.

Anne Wolfinger, Helena Regional Airport Board, stated that SB 361 assures treatment of Airport Authorities, under the law, to be consistent and in line with the treatment of other public bodies under the law. She stated that she is particularly in support of section 4 which allows for the inclusion of Airport Authorities in the definition of non-profit corporation regarding the

immunity of liabilities extended to officers, directors and volunteers of non-profit operation. She stated that airports relay on voluntary participation of private citizens on their boards and commissions. The bill clarifies that the same protection of boards members of non-profit organizations is now extended to airport authorities.

Opponents' Testimony:

Michael Sherwood, Montana Trial Lawyers Association, gave written testimony opposing SB 361. EXHIBIT 5

David Hull, Attorney - City of Helena, stated that SB 361 is a bad bill. He stated that section 10 of the bill that requires the City of Helena as a governmental authority as part of the Helena Airport Authority gives the city the obligation to enforcing the regulations. He stated that the city of Helena does not want that obligation and are not interested in doing that for Airport Authorities because they have their own ability to enforce their own regulations. He stated that section 15 adds assessments to the Airport Authorities expemtion and that they do not have to pay street maintenances and that the city of Helena has to provide the airport with street maintenance at the tax payers expense. He felt that overall, the bill is more bad than good.

Questions From Committee Members:

REP. BROWN stated that he is an Airport Board member in Butte for a number of years and two sections of the bill cause him concern. One is the section exempting Airport Authorities from extended vacation and sick leave requirements and the second is in section 12 dealing with the operation of use privileges.

REP. BROWN asked Mr. Eliason to address those two sections. Mr. Eliason stated that on the section dealing with extended vacation and sick leave requirements, there was a letter that was written to Sen. Thayer by Mr. Attwood, saying that Airport Authority employees are not public employees. He said that section 3 is designed to clarify the fact that all state employees are public employees and the reverse is not the case. Mr. Eliason stated that in regards to Rep. Brown's second concern, he was not aware of any attempt to utilize any particular individual case or instance around the state which to draft a statement regarding the setting of fees. He stated that Airport Authorities set the fees in an equitable manner. He felt that the establishment of fees, by allowing the additional clause that is being struck from the existing act, creates an unworkable and difficult mechanism to establish a fee for a 30 day service.

REP. BROWN asked Mr. Sherwood if what is in Sen. Nathe's bill would also apply to airports and their board of directors? Mr. Sherwood stated that he felt that as the law sits now without the amendments of SB 154, that Airport Authorities are subject to the

same immunities and obligations as cities and towns. He stated that there was some concern expressed with respect to the boards that are created but that SB 154 covers liability for these boards.

Closing by Sponsor:

SEN. THAYER stated that the bill tries to clarify existing law for a group of people that should be covered under the same liability laws as local government agencies. He asked the committee for a do concur consideration.

HEARING ON SB 270
LEGALIZE AND REGULATE AMUSEMENT GAMES

Presentation and Opening Statement by Sponsor:

SEN. WILLIAMS, SENATE DISTRICT 15, stated that he would like his proponents to explain the proposed amendments and the bill to the committee. EXHIBIT 6

Proponents' Testimony:

Lois Menzies, Administrative Officer, Gambling Control Division - Department of Justice, stated that the Department of Justice supports SB 270 because it resolves some problems that emerge from SB 431 during the last session. She stated that because of the definition of gambling contained in that bill, some amusement games were considered illegal gambling activities in Montana. The carnival industry agreed to take certain games out of the carnivals that were based on chance. The games based on skill were permitted to keep operating in carnivals. Ms. Menzies stated that SB 270 corrects the problem created by the bill last session by creating a new section for carnivals games separate from the definition of gambling. She stated that the Division did have one reservation with the bill, as introduced, permitting games of pure chance to be conducted in Montana. The Division's position is that games based solely on chance are remained in the gambling area. She stated that those amendments are in the bill and the Division supports the bill as amended.

Ms. Menzies stated that she would quickly explain the amendments to the committee.

Amendment one was made at the request of the Department of Justice that would prohibit a person from participating in carnival games based credit. Only cash can be given in a carnival game.

Amendment two is a clarification that provides an amusement game may now be a device that simulates a gambling activity.

Amendment three permits any business to enter into an agreement with the carnival operator to provide amusement games.

Amendment four clarifies that a prize given out in an amusement game may not exceed the whole sale value of \$50.

Amendment six eliminates the \$2.00 cap on the fee to play the game.

Amendment seven and eight prohibits manipulation of a game at any time to determine who would win the game.

Amendment nine prohibits counties from imposing a fee for issuing amusement game permit.

REP. STEPPLER, HOUSE DISTRICT 21, stated that he is representing the county rodeo in Sidney, Montana. He stated that SB 270 is necessary to insure that Montana's county fairs and similar forms of entertainment, that includes carnival operators, are allowed to continue as in the past years. He felt that the bill clarifies language in defining games of skill or games of mixed skill and chance. He asked the committee to support SB 270.

Patrick Holt, Rocky Mountain Association of Fairs, stated that he was involved with the original drafting of SB 270 and have been involved with the discussions and amendments that have taken place. He felt that the original intent behind the drafting of the bill was to try and correct a problem that occurred when the gambling legislation was originally enacted. The original intent was not to create anything new or open doors to anything, but to bring back what has always been in Montana and to allow it to be an exemption of the existing gambling laws.

He stated that with the amendments that have been made to the bill, there is still some ambiguity as to whether or not all of the games that were traditionally played in the state of Montana are allowed under the language at the present time. He stated that the word "chance" was removed and elimination of that language could be easily interpreted as eliminating any language that was made last year. He stated that SB 270 is very much needed and it is critical to the county fairs and carnivals.

Bill Chiesa, Billings Metra, Billings - stated he is in support of the bill.

Board of County Commissioners, Yellowstone County, sent a letter to the committee supporting SB 270. EXHIBIT 7

Larry Stollfuss, Executive Secretary - Rocky Mountain Association of Fairs, stated that all the fairs in Montana have been contacted about SB 270 and are in support of it. He stated that it was the Associations hope that the bill will pass.

Bob Cartwright, Northwest Montana Fair - Kalispell, stated that many of the fairs depend a great deal of revenue that is generated by carnivals. He stated that he calls it free revenue because they do not have any expenses from the percentages that is received by carnivals. He hoped the committee would give their favorable consideration of SB 270.

Sam Yuvsiat, Manager - Western Montana Fair - Missoula, stated that he is in full support of SB 270 and would ask the committee to give it a do concur consideration.

Bill Ogg, State Fair - Great Falls, stated that SB 270 significantly impacts the Great Falls business people and asked the committee for a do pass recommendation.

Mik Mikkelson, A & M Novelties, stated that SB 270 is needed to keep the carnivals in operation for the people of Montana to enjoy as they have in the past years.

Gary Keopplin, Ravalli County Fair, stated that the people of Ravalli County are in favor of SB 270.

John Ravenberg, Rocky Mountain Fair Association, stated that SB 270 is a product from the concerns from the local areas stating they do not want to loose their county fairs. He stated that revenue is generated to these areas that is much needed and he hoped the committee would pass SB 270.

Opponents' Testimony: none

Questions From Committee Members:

REP. BROWN asked **Mr. Ravenberg** what games were taken out because of the word "chance" was taken out of the bill? **Mr. Ravenberg** stated that Duck Ponds and the Color Wheel.

REP. BROWN asked **Lois Menzies** if the application of arcades in the bill mean that an arcade that exists in a shopping center comes under the provisions of this bill but an arcade that exists in the back of a convenience store doesn't? **Ms. Menzies** stated that arcades are simply included in this bill, but is a separate entity from this bill.

REP. BROWN asked **Ms. Menzies** how an arcade in a pizza parlor would come under this bill? **Ms. Menzies** stated that an arcade in a pizza parlor doesn't fit this statute. She stated that the way the bill is drafted is that it allows arcades in free standing buildings or an area within a mall for the sole purpose to operate that arcade.

REP. BROWN stated that rather than have the Attorney General waste a lot of time and tax payers money setting rules for amusement games for children in the state and for rules governing what has been traditionally the big event in rural Montana and in

most of the cities, which is the county fair, why doesn't the committee provide a definition in the bill that says, "amusement games are exempted with some reasonable explanation as to what amusement games are" and skip about 5 pages of the bill?

Ms. Menzies stated that the bill does provide a definition of what an amusement game is. The bill, as drafted, did not give the Justice Department the authority. She stated that it was through the gambling industry that the suggestion was made to draft a bill such as this bill. The purpose was for uniformity of amusement games throughout the counties of Montana. She felt that was a reasonable approach by the Department.

REP. BROWN asked **Ms. Menzies** if it seems that the main reason the Department is dealing with the amusement game issue is because of the Attorney General's inability to interpret the statutes on gambling in the state of Montana? **Ms. Menzies** stated that there is a statute on the book now that provides that the department can prohibit activities that are not specifically authorized. The Attorney General had no choice but to make the decision he did.

REP. BROWN asked **Ms. Menzies** if that is the case, what is your comment as to whether or not the statue should be changed in the existing gambling law the way the committee amended Sen. Brown's Constitutional Amendment Bill to take the Attorney General out of that position to have the statue say it is illegal otherwise it is legal in the state of Montana. **Ms. Menzies** felt that would be a worthy option that should be considered.

Closing by Sponsor:

SEN. WILLIAMS stated that the bill isn't a cure all but it is a good bill that he felt everyone could live with and asked the committee to pass it out to the House Floor.

EXECUTIVE ACTION ON SB 304

Motion/Vote: **REP. RICE** MOVED SB 304 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 7

Motion: **REP. TOOLE** MOVED SB 7 BE CONCURRED IN.

Discussion:

John MacMaster stated that Sen. Mazurek offered some clean-up amendments. One is on page 6, line 8, striking "assets" and insert the word "property". The second amendment is on the same

line by striking "do" and insert the word "does". The third amendment is on page 6, subsection 3 would be struck, which is lines 13-15.

Motion/Vote: REP. RICE moved to amend SB 7 with the amendments explained by John MacMaster. Motion carried.

Motion/Vote: REP. RICE MOVED SB 7 BE CONCURRED AS AMENDED.
Motion carried unanimously.

EXECUTIVE ACTION ON HB 752

Motion: REP. TOOLE MOVED HB 752 DO PASS.

Motion: REP. TOOLE moved to amend HB 752 by changing the 90 day hearing period to 30 days, to mandate a hearing which both husband and wife appear to finalize the papers and to leave the filing fees as is in existing law.

Discussion:

CHAIRMAN STRIZICH stated that in addition to those amendment, John MacMaster has suggested a technical amendment to page 2, which deals with how automobiles are defined.

John MacMaster stated that on page 2, changing line 9 to read, "a motor vehicle with a rated carry load of a persons property of 1 ton or less" and do the same thing on lines 11 and 14.

REP. TOOLE stated that he would accept that as a friendly amendment to his amendment.

REP. MEASURE stated that he resists the amendments. He felt that when a couple is in a position that they want to get a divorce they shouldn't have to wait 30 days. He stated that if they find they want to be married again, they can go to the clerk and pay the \$60 for a marriage license.

Vote: Motion carried 17 to 3 with Rep's: Johnson, Wyatt, and Measure voting no.

Discussion:

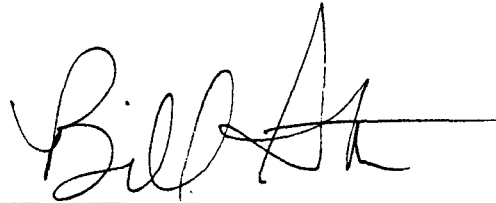
REP. RICE stated that he was concerned about the phrase "to her knowledge" in regards as to whether the wife may be pregnant at the time of her divorce. He stated that in section 6, at the bottom of the page 4 and the top of page 5 he felt the that if the wife did not believes she was pregnant it does not allow the decree to be set aside if she is.

Motion/Vote: REP. RICE moved to amend HB 752 by making it a requirement that the wife not be pregnant whether she has the knowledge or not and if she is the decree can be set aside; on page 1, line 22, strike the words "to her knowledge." Motion carried 13 to 7 with Rep's: Johnson, Brooke, Russell, Becker, Wyatt, Whalen and Measure voting no.

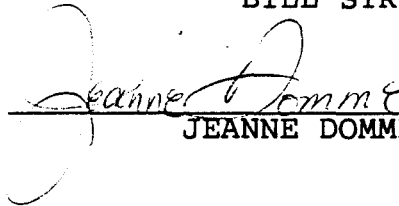
Motion/Vote: REP. TOOLE MOVED HB 752 DO PASS AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 12:15



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-13-91


NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI			
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

March 13, 1991

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Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 304 (third reading copy -- blue) be concurred in .

Signed: 
Billy Strizich, Chairman

Carried by: Rep.

HOUSE STANDING COMMITTEE REPORT

March 13, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 7 (third reading copy -- blue) be concurred in as amended .

Signed: Bill Strizich, Chairman

Carried by: Rep. Toole

And, that such amendments read:

1. Page 6, line 8.

Strike: "Assets"

Insert: "Property"

Strike: "do"

Insert: "does"

2. Page 6, lines 13 through 15.


Strike: subsection (3) in its entirety

HOUSE STANDING COMMITTEE REPORT

March 14, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 752 (first reading copy -- white) do pass as amended .

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 12.

Page 3, line 24.

Page 5, lines 15 and 24.

Page 6, lines 2 and 6.

Page 7, lines 2 and 5.

Strike: "8"

Insert: "7"

1. Page 1, line 22.

Strike: ", to her knowledge,"

2. Page 2, line 9.

Strike: "an automobile"

Insert: "a motor vehicle with a rated carrying load in persons
and property of 1 ton or less"

3. Page 2, lines 11 and 14.

Strike: "automobiles"

Insert: "motor vehicles with a rated carrying load in persons and
property of 1 ton or less"

4. Page 3, lines 8 and 9.

Strike: "and by paying the fee required by [section 8]"

5. Page 4, line 7.

Strike: "Final"

Insert: "Hearing and final"

6. Page 4, line 8.

Strike: "90"

Insert: "30"

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7. Page 4, line 10.

Following: "shall "

Insert: "hold a hearing at which both parties must be present,
and if the court determines that the conditions in [section
1] exist, the court shall"

8. Page 6, lines 22 through 25.

Strike: "Section 8 in its entirety"

Renumber: subsequent sections

Amendments to Senate Bill No. 154
First Reading Copy (White)

Submitted by Mr. Pinsonneault
Shows amendments
he wanted in Senate
and proposer
here.

Requested by Senator Pinsonneault
(League of Cities and Towns)
For the Committee on Judiciary

Prepared by Valencia Lane
February 7, 1991

EXHIBIT 1
DATE 3-13-91
SB 154

1. Page 1, line 17.

Strike: "includes"

Insert: "means only"

2. Page 1, line 18.

Strike: "and"

Following: "districts"

Insert: ", and any other local government entity vested with
legislative power by statute"

3. Page 1, lines 21 through 23.

Following: "and" on line 21

Strike: remainder of line 21 through "boards" on line 23

Insert: "that branch or portion of any other governmental entity
empowered by law to consider and enact statutes, charters,
ordinances, orders, rules, policies, resolutions, or
resolves"

4. Page 2, line 16.

Following: line 15

Insert: "(4) A governmental entity and its members, officers,
- employees, and agents are immune from suit for damages
arising from the undertaking or failure to undertake any
judicial or quasi-judicial act, including but not limited to
the approval or denial of a license, permit, or zoning
matter, when an administrative remedy is available. This
provision does not preclude judicial review, otherwise
allowed by law, of any administrative decision.

- (5) (a) A governmental entity and its members,
officers, employees, and agents are immune from suit arising
out of any defect, including but not limited to lack of
repair or lack of maintenance, of any public area or public
works when:

(i) the governmental entity did not have prior notice
of the defect; or

(ii) the legislative body, in the face of competing
financial demands, had duly adopted a plan of upgrade,
maintenance, or repair of certain public areas or public
works and the suit alleges a defect in a public area or
public work that is either included in or excluded from the
plan.

(b) The immunity provided by this section does not serve to immunize a governmental entity from negligence arising out of acts or omissions of its employees in carrying out ministerial functions.

(c) As used in this subsection (5), the following definitions apply:

(i) "Public areas" means any highway, street, alley, sidewalk, boulevard, parking area, causeway, bridge, airport runway or taxiway, or any other public place or grounds dedicated to public use and all appurtenances necessary for the control of the ways, including but not limited to street signs, traffic lights and controls, parking meters, and guardrails.

(ii) "Public works" includes but is not limited to any sewage disposal system, water supply system, and garbage disposal system.

— (6) A governmental entity and its members, officers, employees, and agents are immune from suit for any act or omission arising out of the operation of a 911 emergency number service, including but not limited to answering and dispatching the 911 telephone call and responding to the 911 telephone call location. This immunity does not apply to gross negligence or willful and wanton acts or omissions.

— (7) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity may not be considered to waive the immunity provided by this section."

Renumber: subsequent subsection

EXHIBIT 2
DATE 3-13-91
~~SB~~ 154

January 31, 1991

Senator Richard Pinsoneault, Chairman
Senate Judiciary Committee

Re: Senate Bill No. 154 - Clarification of
Legislative Immunity

Dear Senator Pinsoneault:

This is to advise you and the other members of the Judiciary Committee of my support for Senate Bill No. 154.

As the former chief legal counsel of the State Tort Claims Division, and its predecessor agency the Insurance and Legal Division, I was instrumental in the drafting and administration of the Montana Tort Claims Act from the passage of the new constitution until 1985. This included that section of the Tort Claims Act codified as 2-9-111 which provides immunity from legislative acts and omissions.

In my capacity as one of the attorneys submitting this legislation to the legislature on behalf of the executive branch, it was clearly our intention that immunity be given to local government legislative bodies only for their legislative acts. In particular, the thinking at the time was that this involved all efforts in the preparation, drafting, debate, and passage of ordinances by city councils, as well as resolutions by boards of county commissioners. At no time during the debate on this legislation, or during the work by the joint senate and house judiciary subcommittee which examined the issue from 1975 to 1977, was there ever any discussion that executive actions of local government boards would be subject to immunity.

Indeed, given the Montana Supreme Court decisions during the past three years that have conferred sovereign immunity on virtually every type of executive action of a local governing board, we now see a resurrection of the very same dilemmas that gave rise to the constitutional debate concerning abolition of sovereign immunity in the first instance. For example, cheerleaders and students who might be hurt by defective facilities or negligent crowd control at a local school district sporting event have no right of recovery, while the very same injuries

EXHIBIT 2
DATE 3-13-91
#B 154

To: Senator Pinsoneault

- 2 -

January 31, 1991

Re: Senate Bill No. 154

occurring at a unit of the Montana University system will allow full recovery. The same is true for any claims that arise out of premises maintenance or the actions of staff in carrying out the executive functions of the board. Surely, neither the members of the legislature or the constitutional convention delegates would agree that the recovery for injuries sustained by our citizens should be dependent on whether one was injured by a county employee or a state employee!

In my opinion, if one were to poll the members of the joint House and Senate Judiciary subcommittee who thoroughly examined these issues between the 1975 and 1977 sessions of the legislature, I doubt that you could find one participant who foresaw this dichotomy in our law.

For these reasons I urge you and the other members of the committee to pass Senate Bill No. 154.

Very truly yours,

JMY/pes

J. Michael Young

EXHIBIT 3
DATE 3-13-91
~~HB~~ 246

February 14, 1991

TESTIMONY IN SUPPORT OF H.B. 246

AN ACT REMOVING THE TERMINATION DATE
FOR LIMITATIONS ON GOVERNMENTAL LIABILITY
FOR DAMAGES IN TORT ACTIONS

Mr. Chairman, Members of the Committee, My name is Brett Dahl. I'm the Administrator of the Tort Claims Division, Department of Administration.

We support H.B. 246, which proposes to remove the termination date of June 30, 1991 and to re-enact the present liability limits (\$750,000 per claim and \$1,500,000 per occurrence) which plaintiffs may recover from the state for damages in tort actions effective July 1, 1991.

I would like to provide a brief historical perspective. Limits on governmental liability have been the topic of much discussion in the Legislature and at the Supreme Court since 1972, when the State of Montana lost its sovereign immunity and was no longer immune from lawsuit.

The limits have changed over the years to include recovery for non-economic damages. In addition, the limits have been modified by the Supreme Court and the Legislature where a compelling interest existed, or to provide full legal redress to plaintiffs seeking economic or non-economic damages from the state.

Most recently, in 1986, the limits were set at \$750,000/\$1,500,000 for both economic and non-economic damages. The liability limits in effect, were given a 5 year trial period with a sunset date of June 1991 at which point the limits expire.

We respectfully request re-enactment of the present limits effective July 1, 1991. The present limits have been in effect for the past 5 years and have never been challenged by plaintiffs.

We also submit that there is no need to establish another sunset or expiration date at this point in time. If changes to the limits are necessary, legislation may be introduced by interested parties to that effect. Additionally, the limits are constantly being reviewed by the Supreme Court who will modify the present limits if they feel that there is a compelling reason to do so.

THANK YOU FOR YOUR CONSIDERATION.

EXHIBIT 4

DATE 3-13-91

~~SB~~ 240

Testimony of Michael Sherwood
MTLA
Supporting SB 246, with amendments

Section 2-9-108 MCA reads as follows:

2-9-108. (Temporary) Limitation on governmental liability for damages in tort. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an action or omission of an officer, agent, or employee of that entity in excess of \$750,000 for each claim and \$1.5 million for each occurrence.

8(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitations specifically waived. (Terminates June 30, 1991--sec. 1, Ch. 228, L. 1987)

This law was enacted in 1986 as Chapter 22 of the Special Laws of June 1986. It was effective July 10, 1986 and terminated June 30, 1987. In 1987 the legislature extended the effective period of the statute to June 30, 1991, by passing Section 1, Chapter 228, Laws of 1987.

2-9-104, a predecessor to this statute had been enacted in 1979. It was held unconstitutional in 1983 as a violation of a fundamental right to "bring an action for a personal injury" in the case of White v. State.

In reaction to that case the 1983 Legislature repealed 2-9-104 and enacted 2-9-107. This time the limitations found in the statute were prefaced with multiple legislative findings to justify the legislation. In 1985 the Supreme Court rejected those findings as not showing a compelling state interest sufficient to denigrate the fundamental right of "full legal redress" in the case of Pfost v. State.

White and Pfost were overruled by the Montana Supreme Court in 1989. The court reversed it's prior holdings that such legislation denigrated a fundamental right and therefore required a compelling state interest. Instead, the court required only that the legislation's disparate treatment of similar claims be "rationally related" to a legitimate state interest. That interest was the promotion of Montana's economic interests. This rationale is found in several decisions, including Meech v. Hillhaven West, Inc..

In order to insure that 2-9-108 is not voided by the Supreme court in the future, the legislature should do two things:

1. Continue to provide for periodic review of these

Ex. 4

3-13-91

SB 246

limitations in order to insure that the limits bear a rational relation to the promotion of Montana's economic interests. For that reason, I propose that rather than remove the termination date for the limitation on damages, this body extend that termination date for an additional two years. I have attached a proposed amendment for that purpose.

2. Take the opportunity to review the present limits to see if they are rational. If the limits were rational in 1986, some five years ago, then perhaps they only continue to be so it adjusted by a minimal cost of living increase. If a 5% per annum increase is applied the figures should be adjusted by a factor of 1.28. In other words the figures should be adjusted to \$960,000 for each claim and \$1.82 million for each occurrence.

One other factor demands review. Insurance companies don't issue policies on a regular basis for such odd numbers, either the current numbers of those resulting from a cost of living increase. More typically insurance companies issue policies for round numbers, e.g 1 million, 2 million, etc. Even the self insured local governments are obtaining excess insurance coverage above certain round numbers.

For the foregoing reasons, I ask the committee to amend the current language to adjust the caps to \$1 per claim and \$2 million for each occurrence.

Ex. 4
3-13-91
SB 244

Proposed amendments of Michael Sherwood, MTLA

1. At Line 5, after "ACT",

STRIKE: "REMOVING", and

INSERT: "EXTENDING"

2. At Line 6, after "FOR",

INSERT: "AND RAISING THE"

3. At line 16, after "~~dates.~~",

RE-INSERT: "-- TERMINATION DATE."

4. At line 20, after "1991.",

INSERT: "EXCEPT THAT SECTION 3 IS EFFECTIVE JULY 1, 1995.
SECTIONS 1 AND 2 OF THIS ACT TERMINATE ON JUNE 30, 1995."
and

STRIKE: All of lines 21 and 22.

5. At line 23,

INSERT: "Section 2. Section 2-9-108, MCA, is amended to read:

2-9-108. (Temporary) Limitation on governmental liability for damages in tort. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an action or omission of an officer, agent, or employee of that entity in excess of \$1 million ~~\$750,000~~ for each claim and ~~\$1.5~~ \$2 million for each occurrence.

8(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitations specifically waived.

Proposed Amendments to SB 361
Michael J. Sherwood
MTLA

EXHIBIT 5
DATE 3-13-91
SB 361

1. At page 1, line 6, after "ACT;",

STRIKE: "LIMITING THE LIABILITY OF AIRPORT AUTHORITIES, AIRPORT OPERATORS, AND AIRPORT OWNERS;

Reasoning: An airport authority should enjoy the same immunities and have the same responsibilities as any other local government entity. SB 154 already contains language and amendments which make it clear that an airport authority would be included within the scope of that Bill.

2. At page 1, line 9, after "REQUIREMENTS;"

STRIKE: "PROVIDING THAT OFFICERS OF AIRPORT AUTHORITIES ARE OFFICERS OF NONPROFIT CORPORATIONS AND THEREFORE IMMUNE FROM LIABILITY;"

Reasoning: There is no need for this inclusion. As employees and officers of a local government agency, the officers of an airport authority are already immune from suit under the terms of Section 2-9-305 MCA. It reads, in part, "It is the purpose of this section to provide for the immunization, defense and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment."

3. At page 2, line 4,

STRIKE: All of Section 1.

Reasoning: See amendment 1.

4. At page 5, line 19,

STRIKE: All of Section 2.

Reasoning: See amendment 1.

5. At page 6, line 16,

STRIKE: All of Section 3.

Ex. 5
3-13-91
SB 361

Reasoning: See amendment 1.

6. At page 8, line 15,

STRIKE: All of Section 4.

Reasoning: See amendment 2.

7. At page 10, line 3, after "airport"

STRIKE: "operations"

and

INSERT: "HAZARD AREA OR AIRPORT INFLUENCE"

Reasoning: The proposed language is found elsewhere in the statutes and is defined. (See 67-1-101(13) and 67-4-201 MCA). The term "operations" is not found elsewhere in the statutory scheme and is, therefore, vague.

8. At page 10, line 5,

STRIKE: All of Section 6.

Reasoning: Under the terms of 67-11-102 and 103 MCA only a municipality and not a county may establish an airport authority or regional airport authority. The language found in the Bill is confusing because it mentions county commissioners. The current language found in the statute is more accurate.

9. At page 18, line 12,

STRIKE: Section 7 and Section 8.

Reasoning: Both the Fifth Amendment to the U.S. Constitution and Article II, Section 29 of the Montana Constitution provide that private property shall not be taken or damaged for public use without just compensation to the full extent of the loss. These proposed sections would allow a municipality or airport authority to constructively take or actually damage the property of those located next to a new airport without any reimbursement whatsoever.

10. At page 27, line 23, after "area",

2X.5
3-13-91
SB 361

STRIKE: "and is not adversely affected by noise, vibrations, or other incidents of operation from an airport"

Reasoning: This language is vague. Does every seller of land anywhere near an airport need to guaranty that the purchaser's quiet enjoyment of that land will not somehow affected by overhead aircraft, even if miles from the airport?

11. At page 28, line 9,

STRIKE: All of Section 18.

Reasoning: The language re: immunity is unnecessary if the above amendments are adopted.

PROPOSED AMENDMENTS TO SENATE BILL NO. 270

March 13, 1991

1. Page 2, lines 11 and 12.
Following: "player" on line 11
Strike: "gives" through "otherwise," on line 12
Insert: "pays cash"
2. Page 3, line 4.
Strike: "and"
Insert: "or"
3. Page 4, line 7.
Following: "~~business~~"
Insert: "business,"
4. Page 4, line 14.
Following: "A"
Insert: "wholesale"
5. Page 4, line 16.
Following: "A"
Insert: "wholesale"
6. Page 4, line 25 through line 1, page 5.
Strike: subsection 3 in its entirety
Renumber: subsequent subsections
7. Page 5, line 9.
Strike: "during" through "play"
8. Page 5, line 10.
Strike: "by" through "person"
9. Page 6, line 2.
Following: "MAY"
Insert: "not"

County of Yellowstone

COMMISSIONERS



EXHIBIT _____
DATE 3-13-91
SB 270

(406) 256-2701

Box 35000
Billings, MT 59107

March 12, 1991

Rep. Bill Strizich, Chairman
Committee Members
House Judiciary Committee

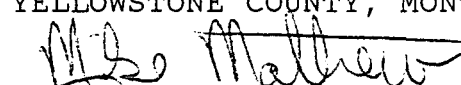
Dear Chairman Strizich:

The Yellowstone County Commissioners offer their support for SB270. Our fair depends on the revenue from a well run carnival to finance our fair. This legislation will give midway operators clear guidelines to work with so that they can keep working the Montana circuit. Good carnivals make good fairs and good fairs are important to all Montanans.


Please give this legislation your support.

Very truly yours,

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA


Mike Mathew, Chairman


Dwight MacKay, Member


James A. Ziegler, Sr., Member

/pf

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO.

SE# 154

DATE

3/23/91

SPONSOR(S)

Sen. Natchez

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Joe Bottomly	self	154		X
Gordon Morris	MAAC	154		
David Hull Helms	C. G. Helms	154		X
Phil Campbell	MEA	154		X
Michael Sherwood	MTCA	154	X	X
Chris Kaufman/John Jensen	MEIC	154		X
Jaqueline N. Serrell	Am. Ins. Assoc.	154	as amended	X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB# 304
 DATE 3-13-91 SPONSOR(S) Sen. Shmatz

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PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
William F. Gowen	MONTANA LAND TITLE ASSN	SB 304		<input checked="" type="checkbox"/>

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB# 246
 DATE 3-13-91 SPONSOR(S) Sen. Nathan

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Dan Hall 547 Toole Ct Helena	Tort Claims Dept of Admin	246		X
Gordon Morris	MAG.			X
David Hall Helena	City of Helena	246		X
Michael Sherwood	Michael Sherwood			X
Jacqueline N Jurell	Am. Ins. Assoc	246		X
Roger McBlenn	INDEPENDENT INS. AGENTS ASSOC. OF MT	246		X
John Maynard	Former Admin. Tort Claims	246		X

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HOUSE OF REPRESENTATIVES

1062

VISITOR'S REGISTER

House Judiciary COMMITTEE 36#270 BILL NO.
 DATE 3-13-91 SPONSOR(S) Sen. Williams

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
MIK MIKKELSON	ATM Novelty	270		✓
MARIE MIKKELSON	✓	270		✓
Gordon Morris	MAC	270		✓
John S. S. by	Only Mt. Fair Ass.	270		✓
Patricia Holt	Rocky Mtn Assn of Fairs	270		✓
Larry Stollfuss	Rocky Mtn Ass. of Fair	270		✓
BILL CHIESA	METRO PARK Billings, MT	270		✓
Bob Cartwright	Kalispell, Mont Northwest Montana Fair	270		✓
Keed Williams	Inland Empire Show, Inc. Royal West Amusement, Inc.	270		✓
DAVE BROWN	HO#72	270		✓
Bill O'ggy	Mt State Fair	270		✓
Sam Givens	Western Mt. Fair: Mpls	270		✓
Sen. Dennis				✓

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HOUSE OF REPRESENTATIVES

2 of 2

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE BILL NO. SB 270
DATE 3.13.91 SPONSOR(S) SEN. WILLIAMS

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
LOIS MENZIES	GAMBLING CONTROL DIVISION	SB 270		X
GARY KOEPLIN	Ravalli County Fair	SB 270		X

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