

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 21, 1991, at 10:12 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, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

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

EXECUTIVE ACTION ON SB 199

Motion: REP. WYATT MOVED SB 199 DO BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 154

Motion: REP. WHALEN MOVED TO RECONSIDER SB 154.

Discussion:

REP. WHALEN stated that this bill is an immunity bill. He stated that he and Sen. Nathe agreed on some amendments and he would like to amend the bill. EXHIBIT 1

REP. NELSON asked REP. WHALEN when he talked with Sen. Nathe? She stated that she sat with Sen. Nathe yesterday and he said he was going to resist these amendments.

REP. WHALEN stated that it was news to him. He stated that he talked with Sen. Nathe on Saturday morning and at that time, told him what he was proposing to do and on Monday evening Sen. Nathe told him he was agreeable to the amendments.

REP. NELSON stated she had met with Sen. Nathe yesterday and said he did not agree with these amendments.

REP. WHALEN stated that in view of that he would withdraw his amendments and talk with Sen. Nathe.

OTHER COMMITTEE BUSINESS:Discussion:

REP. RICE stated that he would like to introduce a motion that the Judiciary Committee request a bill to be drafted. He stated that as the Judiciary Committee knows it has had all the detention legislation that has come through the session and the only issue remaining, in terms of that whole package, is how it will be funded. One idea that has surfaced is the idea of accessing an annual permit fee on all video games in the state. The connecting being that it is kids that play these video games and it is a total cash business. There is not system for knowing how much income is made from these machines. It would be required for these machines to be permitted and there would be an annual fee paid on each machine. He felt this might be a mechanism that would be more satisfactory for funding the juvenile detention needs the state has.

CHAIRMAN STRIZICH clarified the motion stating that it would be for the drafting of the bill and then brought back to the committee for final decisions.

REP. BOHARSKI asked REP. RICE if there was \$600,000 in the special revenue account from gambling machines? REP. RICE stated that this is not gambling machines. They are amusement games and arcade games. There is not tax on these games.

REP. MEASURE asked what level of taxation is being proposed?

REP. RICE stated that the level would be on what the permit fee

would be and he had no idea what that level would be.

REP. MEASURE asked REP. RICE would he be willing, if necessary, to include video gaming machines for additional funding? REP. RICE stated that there is already a permit fee on those things.

CHAIRMAN STRIZICH stated that the proposed motion needs a two-thirds vote for the bill to be drafted.

Motion/Vote: REP. RICE MOVED TO HAVE A COMMITTEE BILL DRAFTED.
Motion carried with Rep. Boharski voting no.

EXECUTIVE ACTION ON HB 73

Motion: REP. RICE MOVED TO RECONSIDER HB 73.

Discussion:

REP. RICE stated that this bill would take a portion of the library proceeds to fund part of the juvenile detention package. The Judiciary Committee tabled HB 73 in favor of putting a general appropriation in SB 37, which they did. The idea is to allow the HB 73 go down to appropriation in consideration of raising necessary funds to fund the juvenile package.

REP. NELSON asked if some money would be taken from the foundation program? CHAIRMAN STRIZICH stated that it would be a very small percentage.

REP. NELSON stated that in turn the committee would have to come up with appropriate money to replace the money for the foundation program.

CHAIRMAN STRIZICH stated that it would be discussed in the Appropriations Committee. The interim study committee felt that this is one area of the funds that has grown and the committee looked for funding from a source that is growing at a reasonable rate. The money would be taken out of the growth area rather than drawing down on the funds that would go into the foundation program.

REP. NELSON stated that she opposes the motion. It is wonderful that it is a growth area but it draws on the money the state has for education.

Vote: Motion carried 18 to 2 with Rep's: Clark and Nelson voting no.

Motion: REP. RICE MOVED HB 73 DO PASS.

Discussion:

REP. JOHNSON inquired as to why the committee doesn't handle this

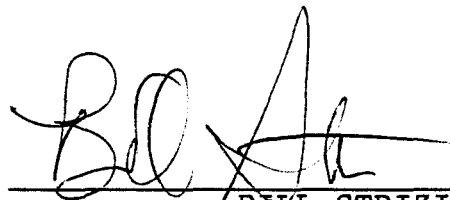
bill the same why it would be handled on the floor and allows the majority leader to assign the bill to a different committee with consent of the chairman rather than send it down to the floor with a DO PASS. It could be sent directly to appropriations.

CHAIRMAN STRIZICH stated that if Rep. Rice will withdraw his motion the committee will proceed as Rep. Johnson suggested.

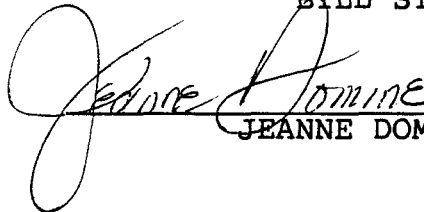
REP. RICE WITHDREW HIS MOTION TO DO PASS HB 73.

ADJOURNMENT

Adjournment: 10:39 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-21-91

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	/		

George H. W. Bush

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 199 (third reading copy -- blue) be concurred in.

Signed: Bill Strickland, Chairman

Carried by: Rep. Jim Cooper

Amendments to Senate Bill No. 154
Third Reading Copy

Requested by Rep. Whalen
For the Committee on the Judiciary

Prepared by John MacMaster
March 19, 1991

1. Title, lines 5 through 12.

Strike: "CLARIFYING" on line 5 through "AMENDING" on line 12

Insert: "REVISING THE LAW RELATING TO LEGISLATIVE IMMUNITY;
PROVIDING THAT STATUTORY LEGISLATIVE IMMUNITY EXTENDS ONLY TO
LEGISLATIVE BODIES OF GOVERNMENTAL ENTITIES AND ONLY TO
LEGISLATIVE ACTIONS, NOT ADMINISTRATIVE ACTIONS; AMENDING SECTION
20-15-403, MCA; REPEALING"

2. Page 1, line 15.

Insert: "WHEREAS, in 1972, the State of Montana adopted a new
constitution that abolished governmental immunity, except as
specifically provided by law by a two-thirds vote of each house
of the Legislature; and

WHEREAS, in 1977, the Legislature adopted statutory immunity
from suit for legislative acts and omissions in accordance with
the provisions of the 1972 Montana Constitution; and

WHEREAS, in 1989, the Montana Supreme Court, in the case of
Peterson v. Great Falls School District, 237 Mont. 376, 773 P.2d
316 (1989), held that the legislative immunity statute protected
a school district from liability for the discharge of an employee
by the school board's administrative assistant; and

WHEREAS, in 1989, the Montana Supreme Court, in the case of
State ex rel. Eccleston v. District Court, 240 Mont. 44, 783 P.2d
363 (1989), held that the legislative immunity statute protected
a school district and individual employees from liability for a
slip-and-fall accident on school property; and

WHEREAS, in Crowell v. School District No. 7 of Gallatin
County, 48 St. Rep. 81 (1991), Chief Justice Turnage stated, in
his concurring opinion, that the legislature, not the courts, is
the proper forum for the subject of tort liability immunity of
governmental entities; and

WHEREAS, recent decisions of the Montana Supreme Court have
carried legislative immunity beyond the orbit of legislative
action into the sphere of administrative immunity; and

WHEREAS, recent decisions of the Montana Supreme Court have
extended legislative immunity beyond the intent of the
Legislature and the framers of the 1972 Montana Constitution; and

WHEREAS, it is the intention of the Legislature to address
the statutory interpretations found in the recent Montana Supreme
Court decisions regarding legislative immunity; and

WHEREAS, it is the intention of the Legislature to revise
statutory legislative immunity to specifically exclude
administrative functions; and

THEREFORE, it is appropriate for the Legislature to repeal a
statute relating to legislative immunity that has been
misinterpreted by the Montana Supreme Court and to enact a new

statute."

3. Page 1, line 17 through page 3, line 14.

Strike: section 1 in its entirety

Insert: **"NEW SECTION. Section 1. Immunity from suit for legislative acts and omissions -- exceptions.** (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards. Legislative body does not include executive or administrative agencies of a governmental entity exercising nonlegislative responsibilities.

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy; and

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; and

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for a legislative act or omission by its legislative body, or any member or staff of the legislative body, engaged in legislative acts.

(3) A member or staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with legislative acts of the legislative body.

(4) The immunity provided for in this section does not extend to:

(a) nonlegislative actions taken by a legislative body; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water, ground water, soil, or air.

Section 2. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, ~~2-9-111~~ [section 1], 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-

201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

NEW SECTION. **Section 3. Repealer.** Section 2-9-111, MCA, is repealed.

NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 9, part 1, and the provisions of Title 2, chapter 9, part 1, apply to [section 1]."

Renumber: subsequent sections