

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 16, 1991,
at 8 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Greg Petesch (Legislative Council).

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

Announcements/Discussion: Senator Crippen advised the Committee
that, based on his experience as a committee chairman, it
would be best to avoid long evening meetings, as they appear
to be nonproductive. He commented that if members read
information ahead of time, and if hearing time is limited,
more time would be available for executive action. Senator
Brown added that the Committee could also order sandwiches and
work through lunch.

EXECUTIVE ACTION ON SENATE BILL 154

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe reported that the Subcommittee adopted 1, 2, 3, and 4 of the amendments proposed by the Montana League of Cities and Towns. He said the Subcommittee did not accept subsection (4), nor amendment 5, but did adopt amendment 6 (911 emergency). Senator Towe continued, and said the Subcommittee adopted self-insurance coverage, and Greg Petesch reported that amendment 7 is included in school board immunity.

Senator Svrcek made a motion that the proposed amendments be approved. The motion carried with all members voting aye except Senator Halligan. Senator Doherty was absent.

Senator Mazurek said he was curious as to why subsection (4) was not adopted by the Subcommittee. Greg Petesch replied that the adoption of zoning plans is a legislative act. Senator Towe stated that the Subcommittee talked about getting into court before administrative remedy is completed, and decided it was not necessary.

Senator Mazurek made a motion that subsection (4) as it was written in the draft, be reinserted in the bill "immunity from suit for damages" only. As an example, he said that if someone did not like a zoning decision they may want to sue the city for damages. Senator Svrcek reminded Senator Mazurek that he made a motion to this effect during prior executive action on SB 154, and it was explained then that these are quasi-judicial or executive and not legislative acts.

Greg Petesch advised the Committee that SB 154 is here because the Supreme Court said everything is a legislative act. He commented that Representative Whalen has a bill addressing this issue. Senator Mazurek withdrew his motion.

Recommendation and Vote:

Senator Towe made a motion that SB 154 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 246**Motion:**

Senator Grosfield made a motion that SB 246 DO PASS.

Discussion:

Senator Svrcek requested a sense of the Committee on extending review of liability limits for another four to six years. He commented that from a public policy standpoint, maybe the Legislature should review these limits periodically.

Senator Harp stated he opposed that action.

Senator Towe suggested that the limits could be raise to \$1 million and \$2 million. Senator Crippen replied they should be left as they are.

Chairman Pinsoneault commented that the bill puts finality in the law and that the process seems to have worked.

Senator Grosfield stated there is no security if there is not a revisiting period.

Amendments, Discussion, and Votes:

Recommendation and Vote:

The motion made by Senator Grosfield carried with all members voting aye, except Senator Svrcek who voted no. Senator Doherty was absent.

EXECUTIVE ACTION ON SENATE BILL 257

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Harp made a motion that "must" be deleted and "shall" be inserted on page 3, line 14. The motion carried unanimously.

Senator Mazurek made a motion that advisory council be deleted from sections 1 and 2 and that the title be changed correspondingly. He said this power is authorized in 2-15-122, MCA, and that he believed leaving it in the bill could run into trouble. Greg Petesch commented that he questioned codifying an advisory council when the bill came in.

Senator Grosfield stated he had hesitant feelings about advisory councils and their cost to state government. He said 2-15-102.8, defines advisory councils and says most are not legal to begin with. He further stated that statute says the advisory councils are not meant to set policy or perform administrative functions, but to comply with federal regulations.

The motion made by Senator Harp carried 10 to 1 with all members voting aye except Senator Towe who voted no. Senator Doherty was absent.

Recommendation and Vote:

Senator Mazurek made a motion that SB 257 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 271

Motion:

Discussion:

Senator Towe commented that if ordinary fees were removed and construction fees were left in the bill it might be okay.

Senator Mazurek commented that can be done with construction fees now.

Amendments, Discussion, and Votes:

Recommendation and Vote:

Senator Halligan made a motion that SB 271 be TABLED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 250

Motion:

Discussion:

Senator Towe stated the bill would provide protection now instead of before court action. He said it is talking about the right to even have a hearing, and not about waiving rights in a hearing (page 12 of the bill).

Senator Svrcek commented that the advocacy groups support this bill, and that it has had a lot of work done on it during the interim.

Amendments, Discussion, and Votes:

Senator Mazurek made a motion to strike "1993" and insert "1995" on page 48 of the bill. The motion carried unanimously.

Senator Halligan advised the Committee that he is Chairman of the Missoula County Development Corporation, and said he is sure the bill is tight or it would not have advocacy support.

Recommendation and Vote:

Senator Svrcek made a motion that SB 250 DO PASS AS AMENDED.
The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 270

Motion:

Discussion:

Senator Mazurek commented that the bill needs a time limit.
Senator Towe replied that the 14-day amendment is being drafted.

Amendments, Discussion, and Votes:


Chairman Pinsoneault appointed a subcommittee to study the
bill and report to the Committee: Senator Mazurek, Chairman,
Senator Grosfield, and Senator Rye.

Recommendation and Vote:

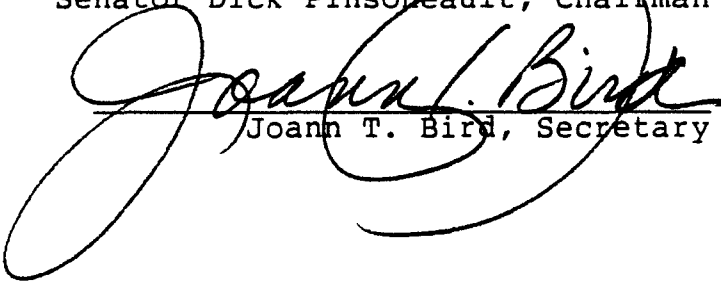
No further action was taken this date.

ADJOURNMENT

Adjournment At: 8:30 a.m.



Senator Dick Pinsoneault, Chairman



Joann T. Bird, Secretary

DP/jtb

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 154 (first reading copy -- white), respectfully report that Senate Bill No. 154 be amended and as so amended do pass:

1. Title, line 9.

Following: "ACTIONS"

Insert: "OTHER THAN OPERATION OF A 911 EMERGENCY TELEPHONE SERVICE"

Following: " ; "

Insert: "CLARIFYING THAT THE ACQUISITION OF INSURANCE DOES NOT WAIVE IMMUNITY;"

2. Page 1, line 17.

Strike: "includes"

Insert: "means only"

3. Page 1, line 18.

Strike: "and"

Following: "districts"

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

4. 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 local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves"

5. Page 2, line 1.

Following: "1"

Strike: "and"

6. Page 2, line 3.

Following: "1"

Insert: "or"

7. Page 2, line 4.

Following: line 3

Insert: "(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);"

8. Page 2, line 16.

Following: line 15

Insert: "(4) 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.

(5) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section."

Renumber: subsequent subsection

9. Page 3, lines 3 and 4.

Following: "action" on line 3

Strike: remainder of line 3 through "1977," on line 4

10. Page 3, line 4.

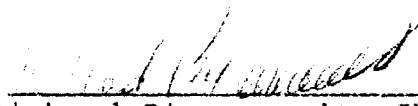
Following: "to"

Insert: "final"

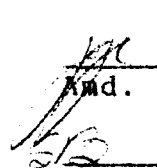
Following: "judgment"

Strike: "by"

Insert: "on or before"

Signed: 

Richard Pinsoneault, Chairman

 2-16-91
Ad. Coord.

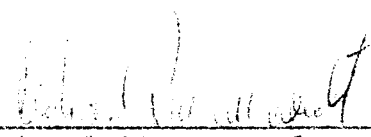
5/2 2-16-91
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 246 (first reading copy -- white), respectfully report that Senate Bill No. 246 do pass.

Signed: 
Richard Pinsoneault, Chairman

2-16-91
And. Coord.

2-16-91
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 257 (first reading copy -- white), respectfully report that Senate Bill No. 257 be amended and as so amended do pass:

1. Title, lines 5 through 8.

Following: "ACT" on line 5

Strike: remainder of line 5 through line 8 in its entirety

2. Page 1, line 15 through page 2, line 15.

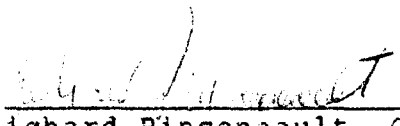
Strike: sections 1 and 2 in their entirety

Renumber: subsequent sections

3. Page 3, line 14.

Strike: "must"

Insert: "shall"

Signed: 

Richard Pinsoneault, Chairman

2-16-91
Amd. Coord.

2-16-91
Sec. of Senate

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 250 (first reading copy -- white), respectfully report that Senate Bill No. 250 be amended and as so amended do pass:

1. Page 48, line 20.
Following: ", "
Strike: "1993"
Insert: "1995"

Signed: 
Richard Pinsoneault, Chairman

1 2-16-91
Amd. Coord.

56 2-16-91 100
Sec. of Senate

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1989

Date 16 Feb 9,

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty		✓	
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

EXHIBIT 1
16 Feb 91

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

Requested by Subcommittee

For the Committee on Judiciary

Prepared by Greg Petesch
February 15, 1991

1. Title, line 9.
Following: "ACTIONS"
Insert: "OTHER THAN OPERATION OF A 911 EMERGENCY TELEPHONE
SERVICE"
Following: ";"
Insert: "CLARIFYING THAT THE ACQUISITION OF INSURANCE DOES NOT
WAIVE IMMUNITY;"
2. Page 1, line 17.
Strike: "includes"
Insert: "means only"
3. Page 1, line 18.
Strike: "and"
Following: "districts"
Insert: ", and any other local government entity or local
political subdivision vested with legislative power by
statute"
4. 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 local governmental
entity or local political subdivision empowered by law to
consider and enact statutes, charters, ordinances, orders,
rules, policies, resolutions, or resolves"
5. Page 2, line 1.
Following: "i;"
Strike: "and"
6. Page 2, line 3.
Following: "i;"
Insert: "or"
7. Page 2, line 4.
Following: line 3
Insert: "(C) actions by a school board that result in adoption
of school board policies pursuant to 20-3-323(1);"

EX. 1
2-16-91
SB 154

8. Page 2, line 16.

Following: line 15

Insert: "(4) 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.

(5) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section."

Renumber: subsequent subsection

9. Page 3, lines 3 and 4.

Following: "action" on line 3

Strike: remainder of line 3 through "1977," on line 4

10. Page 3, line 4.

Following: "to"

Insert: "final"

Following: "judgment"

Strike: "by"

Insert: "on or before"