

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Dick Pinsoneault, on March 14, 1991, at 10:05 a.m.

#### **ROLL CALL**

**Members Present:**

Dick Pinsoneault, Chairman (D)  
Bill Yellowtail, Vice Chairman (D)  
Robert Brown (R)  
Bruce Crippen (R)  
Steve Doherty (D)  
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:** Valencia Lane (Legislative Council).

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

**Announcements/Discussion:** Chairman Pinsoneault announced that Vice Chairman Yellowtail would act in his place during hearings this date.

#### **HEARING ON HOUSE BILL 653**

#### **Presentation and Opening Statement by Sponsor:**

Representative Tim Whalen, District 93, commented that although the Committee has heard and passed out HB 154 on legislative immunity, he sees a need to pass HB 653 and to make significant changes in Senator Nathe's bill. He cited Noni Linder's problem with the Missoula County Health Department, and said the approach needs to be more broad rather than more specific.

Representative Whalen said the idea of the bill is to get the Legislature back in control, where it should be, according to the Montana Constitution. He stated the Legislature needs to erase the board and to start over.

Representative Whalen told the Committee that, in the past two years, the Montana Supreme Court has interpreted statute on

immunity, and has ignored the Montana Tort Claims Act. He said he believes Coppen v Board of Medical Examiners is a result-oriented decision, and has caused problems with quasi-judicial immunity.

Representative Whalen commented that state and local governments don't know their position with regard to immunity. He stated that if they want immunity, it needs to be given with a strict definition according to the Montana Constitution. Representative Whalen urged the Committee to pass the bill.

#### Proponents' Testimony:

Jim Regnier, Montana Trial Lawyers Association, said he supports the bill as he believes it clearly defines the nature of sovereign immunity, and will provide predictability in the law to the plaintiff or a governmental entity. He stated that present law is confusing, further clogs the district courts, and creates unnecessary appeals in the Supreme Court.

Mr. Regnier advised the Committee that, in the past several years, district court judges have granted summary judgments where they thought there was immunity, and were reversed when the Supreme Court said the University of Montana Board of Regents was not a legislative body. He said quasi-judicial immunity is developing a body of distinctions, and commented that the Montana Supreme Court did not use Montana statute to grant quasi-judicial immunity in Coppen. He explained that the Court said it is a common law concept, and used a U.S. Supreme Court ruling.

Mr. Regnier commented that the U.S. government did not abolish sovereign immunity, as Montana did in its 1972 Constitutional revisions. He stated quasi-judicial immunity exists to protect individual employees under Montana statute. Mr. Regnier further commented that in Great Western Sugar, the Montana Supreme Court referred to providing immunity to Workers' Compensation. He explained that Great Western Sugar was self-insured and didn't file a bond, but the Supreme Court said this case was different from Coppen, as Great Western Sugar "failed to act".

Mr. Regnier stated HB 653 would eliminate confusion and provide consistency in the law, and that people would know where they stand. He read the statement of Judge Larry Moran in Koch v Yellowstone County, wherein Judge Moran said 2-9-11, MCA, tends to create confusion.

Mike Sherwood, Montana Trial Lawyers Association, said it appears the question is, "What are we going to with quasi-judicial immunity". He asked the Committee to look at the bill as soon as possible, and said that in 1989 a bill on legislative immunity was rejected which, in hindsight, may have been the best way to address Supreme Court decisions on immunity. Mr. Sherwood said the problem is being distinctly drawn with regard to quasi-judicial immunity.

Lee Kerr, Treasure County Attorney, advised the Committee he has been involved in the Great Western Sugar case. He told committee members he is frustrated in trying to explain immunity law to local government, and said present case law defies assessment. Mr. Kerr said Great Western Sugar has gone on for six years, and is not yet completely resolved. He explained that quasi-judicial immunity started after the 1972 Constitution when a prosecutor was sued for his actions. Mr. Kerr said there was not protective provision in the Constitution, and the Court ignored the Tort Claims Act and reverted back to common law.

Mr. Kerr continued, stating that the Court is now using "judge-made agency principles", making for piecemeal analysis of where immunity stands. He explained that he can't give advice on how to purchase insurance, for instance, and that it appears immunity could be addressed on a case-by-case basis. Mr. Kerr stated HB 653 clarifies that immunity is for judges, prosecutors, and legislators.

James Preston, private counsel, advised the Committee he clerked for the Montana Supreme Court in 1981, then completed post-doctorate work, and practiced law in Billings for five years. He said he just completed work in Arizona as a U.S. Attorney and is on his way to Washington, D.C., to assume U.S. Attorney duties there. Mr. Preston told the Committee he is very much concerned with immunity, and said HB 653 leaves no room for clarification. He commented that, in many cases, private counsel can settle with a government attorney if they are certain of the law.

#### Opponents' Testimony:

Kathleen Fleury, Montana Board of Pardons, said she opposed HB 653 as it would deny immunity to governmental agencies. She explained that the Board is a quasi-judicial body, attached to DOI, and is granted specific statutory authority to parole inmates. Ms. Fleury stated the Board should be immune from suits or damages. She advised the Committee that 289 inmates were paroled in the last two years, and said she believes the bill would have a negative affect on parole/parolee action.

Bill Gianoulis, Acting Chief Director, Tort Claims Division, Department of Administration, said he wanted to explain common law doctrine to the Committee. He stated there is no sound basis for it, and that if state agencies act and exercise their functions the same as judges and prosecutors, then the same reasons exist for immunity. Mr. Gianoulis commented that if they want to clarify quasi-judicial immunity he would not object, said there have been only three Supreme Court cases on immunity. He said he believes the Board of Pardons is the best example of judge-like functions, and asked the Committee to strike the portion of the bill eliminating quasi-judicial immunity.

David Rusoff, Attorney, Montana Human Rights Commission, stated his support of the provisions of the bill clarifying

immunity, and said he opposes elimination of common law doctrine of quasi-judicial immunity (Exhibit #1).

Mr. Rusoff referred to Gerber v Commissioner of Insurance, and, said he believes it is important to remember the same rationale applies. He respectfully requested that the Committee strike the portion of the bill eliminating quasi-judicial immunity.

Steve Meloy, Bureau Chief, Professional and Occupational Licensing, Department of Commerce, told the Committee there are 30 boards and 160 board members who license more than 50,000 individuals in the state. He said these board members interact with licensees on a monthly basis, and make administrative decisions.

Mr. Meloy stated that, to the person, he believes most Board members would be reluctant to serve if they were exposed to damages on decisions made (Exhibit #2).

Patricia England, Executive Secretary and Legal Counsel, Board of Medical Examiners, said the objective is to protect members of the public. She pointed out the potential conflict of interest, wherein a Board can be sued by a licensee through tort claim, but that Board does not want to settle, and the tort claim wants to reduce damages. She urged the Committee not to strike quasi-judicial immunity from the bill.

Susan Witte, Chief Legal Counsel for State Insurance Commissioner, Andrea Bennett, said she believes the working of the Insurance Commissioner is comparable to the judicial process where suspension or revocation of a license is concerned.

Fern Flanagan, public member of the Board of Dentistry, told the Committee the public relies on the Boards for protection. She said the Board need to be protected in making their decisions, and that they may not be willing to serve without it.

Alec Hansen, Montana League of Cities and Towns, agreed with the need to clarify immunity statute, and said he believes SB 154 is a much better method of making these clarifications. He stated that SB 154 affords some protection to 911 emergency services, and that group self-insurance does not mean waiver of immunity.

Mr. Hansen told the Committee he opposes the section of HB 653 doing away with quasi-judicial immunity. He explained that he had proposed an amendment to SB 154 to provide immunity for regulatory acts where there was administrative relief, and that he was told it was not necessary so he agreed to drop the amendment. Mr. Hansen said he believes quasi-judicial immunity is critically important to Montana.

Joanne Chance, Professional Engineer representing the Montana Technical Counsel of Architects, Engineers, and Surveyors, said the

state should not make the job of the Boards more difficult (Exhibit #3).

Bob Kelley, Montana State Board of Pharmacy, stated his opposition to the bill.

Tom Harris, Montana Society of Certified Public Accountants, said he believes this bill is a way to get people licensed without have to meet any qualifications, and without being regulated or disciplined. He commented that it would have a very negative result to the state.

Jacqueline Terrell, American Insurance Association, said there is no point in sovereign immunity, and that she would like HB 653 to be amended as SB 154 was, if the Committee decides to pass it out.

Craig Thomas, Executive Secretary, Board of Pardons, told the Committee he was speaking on behalf of Henry Burgess, Chairman of Board, as well as the entire Board, in opposition to HB 653. He stated that the Board releases nearly 300 inmates and makes more than 1,000 decisions annually, and that the bill would place them in a very difficult position.

#### Questions From Committee Members:

Senator Svrcek commented to James Preston that his credentials are impressive and that his testimony carries weight, and asked him if he were saying Montana should do away with quasi-judicial immunity. Mr. Preston replied he was, and said it should not be classified together with judicial, prosecutor, and legislative immunity. He commented that it should be extended in a different statute.

Senator Grosfield asked Mike Sherwood if he was saying that the House is holding SB 154 hostage pending the Committee's action on HB 653. Mr. Sherwood replied the big distinction is that SB 154 has quasi-judicial immunity. He said the House has a wait-and-see attitude, and that his sense is this committee has great impact one way or the other.

Senator Grosfield asked Mike Sherwood how he would answer statements made by Board members concerning liability. Mr. Sherwood replied that 2-9-305, MCA, makes it very clear that any member of any board in the state should be immune.

Senator Grosfield commented that this was discussed when SB 154 was heard. Representative Whalen replied that a Human Rights Commission hearing officer had asked him about quasi-judicial immunity yesterday. He said he believes an individual can't be held personally liable, if he or she is acting within the scope of the duties of that Board. He stated that if HB 653 passes, a Board would be potentially liable if there were negligent conduct and an injured person could show cause.

Senator Crippen commented that if HB 653 were to pass the Board of Pardons would be liable, even though they were acting within the scope of their authority, if a parolee went out and committed a crime. Representative Whalen replied that in torts, all claims are based on liability, and said he did not believe this would ever happen with the Board of Pardons. He commented that he could not say what would happen under current law, as "current law is a mess" and all tort claims are premised on foreseeability.

Senator Crippen stated that the Board of Pardons is faced with presumptions with every decision it makes as it is dealing with criminals. He asked why they should not be cloaked with quasi-judicial immunity. Representative Whalen replied that is a legitimate question to ask, but the purpose of the bill is to "erase the board" and to get away from judge-made law as it is not the manner in which immunity was anticipated under the Constitution. Representative Whalen stated that administrative agency law basically started during the Roosevelt administration. He said he believes the people should have recourse.

Senator Mazurek asked why the two-thirds vote requirement was stricken from language in the bill. Representative Whalen replied it was stricken because the bill does not grant any immunity.

Senator Mazurek asked if the House Rules Committee looked at this. Representative Whalen replied it did not.

Senator Doherty read from Article 2 of the Montana Constitution, and asked when the legislature specifically granted any immunity to any board. Bill Gianoulis replied that is sovereign immunity, and is a separate issue. He said the Supreme Court has stated that quasi-judicial immunity is not sovereign immunity.

Senator Towe asked if it were intended to take away immunity granted by the Supreme Court (language on page 5 of the bill), or if 2-9-305, MCA, already protects these bodies. Representative Whalen replied that 2-9-305, MCA, is not addressed in the bill.

Senator Towe asked which Boards and Bureaus have immunity and which do not. Representative Whalen replied the clear intent is to take immunity back to where it was before the judges started legislating.

Senator Towe said he wanted to follow up on Senator Crippen's questions, and asked how Representative Whalen was suggesting that the Board of Pardons be given the same immunity to judge and to make the same decisions. Representative Whalen replied they are not the same. He said they are oftentimes set up by administrative rules, and that under the 1972 Constitution immunity was to be the exception rather than the rule. He commented that administrative departments are not here to make policy.

Chairman Pinsoneault advised Representative Whalen that he could appreciate the feelings in this issue, and said he did not want to get at loggerheads and do nothing, as it would be a great disservice to the people of Montana. He commented that there needs to be an interim committee made up of some of the justices to study this matter.

Senator Svrcek commented that board members seem to be concerned with the trauma of suit to them.

Closing by Bill Sponsor:

Representative Whalen told the Committee he is addressing immunity as opposed to negligence. He said his purpose was not to get into a debate, and that although he agreed with Senator Pinsoneault's recommendation of an interim study, he still wants this bill to pass as a first step in getting away from the "mess we are in now".

HEARING ON HOUSE BILL 691

Presentation and Opening Statement by Sponsor:

Representative Howard Toole, District 60, said HB 691 is a more modest bill than HB 653 or SB 154. He explained that it addresses a more limited area, removing government immunity for actions in environmental decisions. Representative Toole stated it is similar to state immunity for motor vehicle damage in 2-9-111, MCA.

Representative Toole told the Committee he conceives the bill as a back-up to other bills, and that his purpose could be accomplished in either HB 653 or SB 154. He advised the Committee that HB 691 addresses a very serious problem, and explained that Missoula's city water supply was contaminated by a city sewer system. He asked the Committee to proceed with HB 691.

Proponents' Testimony:

Ted Darcy (?), Vice President and General Manager, Mountain Water Supply, Missoula, explained that one year ago a sewer station malfunctioned for four days near the largest water plant, and 60,000-80,000 gallons of sewage leaked out. He said the well was established in 1977, and the sewer contamination caused a loss of one-third of the water supply to the south side of Missoula.

Mr. Darcy explained that the sewer systems are supposed to have alarms and emergency back-up power. He said his company is now in litigation with the City of Missoula, and that he was advised this bill is necessary. Mr. Darcy said he believes governmental entities should have the same accountability his company has, and requested that the Committee pass HB 691.

Jim Jensen, Executive Director, Montana Environmental Information Center, said the door was slammed on Lewis and Clark County residents by the Supreme Court (Scratch Gravel Landfill ground water contamination case). He explained that a fire at the Landfill was flooded by millions of gallons of water which seeped into the water table. Mr. Jensen told the Committee that Carl Hatch, a Helena attorney represented those County residents, but Judge Sherlock dismissed the case. He stated that these people have no opportunity to get into their court.

Mike Sherwood, Montana Trial Lawyers Association, stated his support of HB 691, HB 653, and SB 154. He commented that HB 691 needs coordination instructions, but may not be necessary if HB 653 or HB 154 passes.

Jo Ann Newcomb, advised the Committee she resides at the northeast end of the Helena Valley, and represents more than 100 members of the Citizens for Responsible Landfill. She said the Citizens believed the Lewis and Clerk County Commissioners made a bad decision to put a landfill in their area, and that they could find no accountability on the part of the County after they determined a landfill would affect ground water in their area. Mrs. Newcomb commented that the Commissioners have ignored their questions, and said many people will be affected. She stated local government should be responsible for its decisions.

#### Opponents' Testimony:

Joanne Chance, told the Committee she was speaking as a Professional Engineer and Registered Sanitarian. She stated she would oppose the bill unless it is amended, and said her opposition was based on 15 years of professional experience in the area of hazardous waste and environmental sanitation.

Ms. Chance urged the Committee to specify negligent acts or omissions of the government. She said she feared chaos otherwise, as the bill doesn't recognize constraints of state and federal governments in working in this area. Ms. Chance stated she must approve or disprove 150 septic systems annually, and inspect and approve public establishments. She said she has been threatened with suits, and that one sanitarian had a death threat made against him which was investigated by the FBI.

Ms. Chance told the Committee that, as a sanitarian, she has found the courts to be overloaded at the county level. She said county attorney time is required to go to court. Ms. Chance stated that a vote for the bill is a vote for governmental inflexibility.

Jacqueline Terrell, American Insurance Association, said the Association has no position on legislative policy. She stated she is concerned, however, with unlimited retroactivity, and that insurance coverage be clarified in the bill.



Brett Dahl, Administrator, Tort Claims Division, Department of Administration, said he opposed the bill as its application is much broader than SB 154, but does understand the desire for relief. He stated the bill may result in the potential for damages against this legislative body, and urged them to carefully weigh the consequences of their actions. He advised the Committee that the state has no liability coverage right now as it is very expensive.

Questions From Committee Members:

Senator Towe asked Representative Toole if he intended to cover legislative acts, as well. Representative Toole replied he was trying to prevent the doors from closing on cause of action.

Senator Towe asked Representative Toole if he intended strict liability or not. Representative Toole replied he did not intend to effect any cause of actions, and that the bill says, "if the action for damages is otherwise not barred under 2-9-111, MCA".

Senator Mazurek asked if the Department of Health and Environmental Sciences ignored wood burning requirements, if someone with a health problem could then view this as a negligent act. Representative Toole replied he was saying the bill would not bar those kinds of actions from being pursued.

Closing by Sponsor:

Representative Toole commented that the language in the bill says what he wants it to say concerning negligence, but he would not object to new language inserted as subsection (b) in 2-9-111, MCA. He advised the Committee he would work with them and urged them to support the bill.

HEARING ON HOUSE BILL 420

Presentation and Opening Statement by Sponsor:

Representative Jim Rice, District 43, said HB 420 is a technical bill requested by the State Auditor, and would change the kind of immunity granted to persons compelled to testify in cases investigated by the Commissioner of Insurance. He explained that the bill defines what kinds of immunity are given to persons testifying for the prosecution. Representative Rice stated that, as it stands now, those testifying would have entire immunity and that is too broad. He advised the Committee that the bill suggests specific immunity for that area, and that this change would be consistent with immunity granted in securities law (amended in 1983).

Proponents' Testimony:

Susan Witte, Chief Legal Counsel, State Auditor/Commissioner of Securities and Insurance, read from prepared testimony

concerning transactional immunity. She said the bill also conforms with the Uniform Trade Practices Act (Exhibit #4).

Mike Sherwood, private practice attorney, Missoula, and member of the State Bar Committee on Criminal Procedure, said HB 420 is consistent with Title 46 and SB 51. He explained that this language was inadvertently deleted, and is being corrected.

Matt Heffron, County Prosecutor Services Bureau, Office of the Attorney General, said he supports HB 420 because it is a better law from a legal standpoint. He explained that trading away appears to promote some injustice, and the use of immunity is generally tailored in criminal law. Mr. Heffron stated 33-1-316, MCA, is brought into conformity with code via HB 420.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Representative Rice made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 420

Motion:

Senator Towe made a motion that HB 420 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously. Senator Towe was asked to carry the bill.

HEARING ON HOUSE BILL 938

Presentation and Opening Statement by Sponsor:

Representative Royal Johnson, District 88, said HB 938 takes care of extremely serious situations, particularly in small communities, where 911 emergency people are the first to respond to accidents. He explained that the bill provides immunity for people on the other end of the phone when the emergency medical technician calls for instructions.

Representative Johnson proposed amending page 2, line 6, by striking "the term does not include a physician" , and inserting "the term includes a physician". He also referred to page 4, line 18 and said people involved in emergency situations are covered under other sections.

Proponents' Testimony:

Drew Dawson, Chief, Emergency Medical Services Bureau, Department of Health and Environmental Services, read from prepared testimony in support of the bill (Exhibit #5).

Mike Sherwood, Montana Trial Lawyers Association, advised the Committee that there are two other medical immunity bills in the House. He stated that upon review of HB 938 he found it to be good public policy, and reached agreement so that he now stands as a proponent. Mr. Sherwood told the Committee the bill is consistent with the Good Samaritan law.

Jerry Loendorf, Montana Medical Association, stated his support of the bill. He said emergency medical service teams need medical direction.

Jim Ahrens, President, Montana Hospital Association, stated his support of the bill.

Opponents' Testimony:

There were no opponents of HB 938.

Questions from Committee Members:

Chairman Pinsoneault asked what the \$5,000 in the bill is for. He commented that the Good Samaritan law says \$3,000 or 25 percent of annual earnings. Representative Johnson replied he thought maybe \$3,000 was too low.

Closing by Sponsor:

Representative Johnson asked that Senator Franklin carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 938

Motion:

Discussion:

Amendments, Discussion, and Votes:

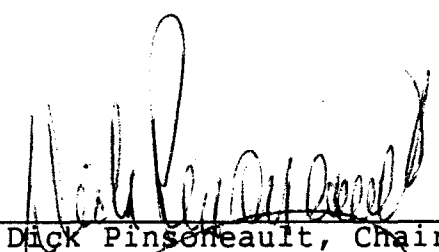
Senator Doherty made a motion that Representative Johnson's proposed amendments to HB 938 be approved. The motion carried unanimously.

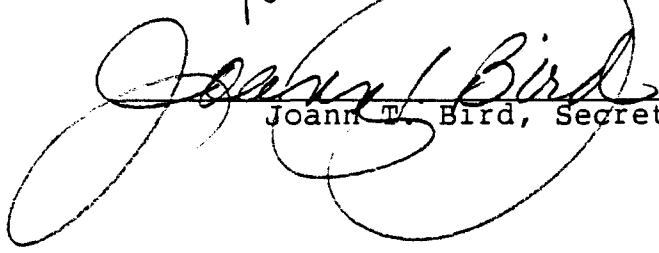
Recommendation and Vote:

Senator Doherty made a motion that HB 938 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 12:25 p.m.

  
\_\_\_\_\_  
Senator Dick Pinsoneault, Chairman

  
\_\_\_\_\_  
Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 14 Mar 91

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			

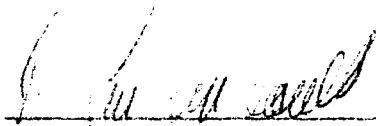
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 14, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 420 (first reading copy -- white), respectfully report that House Bill No. 420 be concurred in.

Signed:   
Richard Pinsonneault, Chairman

LB 3/14/91  
Amd. Coord.

SB 3/14 1:10  
Sec. of Senate

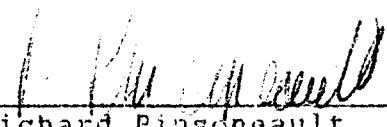
SENATE STANDING COMMITTEE REPORT

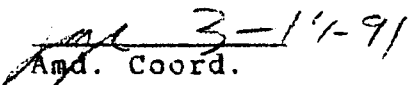
Page 1 of 1  
March 14, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 938 (third reading copy -- blue), respectfully report that House Bill No. 938 be amended and as so amended be concurred in.

1. Page 3, lines 6 and 7.  
Following: "TERM" on line 6  
Strike: "DOES NOT INCLUDE"  
Insert: "includes only"

Signed:   
Richard Pinsoneault, Chairman

 3-14-91  
And. Coord.

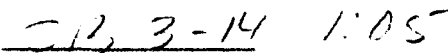
 3-14 1:05  
Sec. of Senate

Exhibit #1  
14 Mar 91  
HB 653

TESTIMONY IN OPPOSITION TO THE PROVISIONS OF HB 653  
WHICH ELIMINATE IMMUNITY FOR ALL QUASI-JUDICIAL BOARDS

March 14, 1991

David Rusoff

Attorney, Human Rights Commission

The Human Rights Commission supports the provisions of HB 653 which clarify legislative immunity and which codify the common law doctrine of prosecutorial immunity. However, the Commission opposes the provisions of the bill which eliminate immunity from suit for all quasi-judicial boards. The Human Rights Commission and several other state quasi-judicial boards act much like courts in adjudicating cases. While there may be good reason to eliminate immunity from suit for certain quasi-judicial boards which exercise functions which have the potential to result in personal injury, the same rationale does not apply to eliminating immunity from suit for adjudicatory functions performed by boards like the Human Rights Commission.

In enacting the present judicial immunity statute, § 2-9-112(2), M.C.A., the legislature recognized the need for judicial immunity to protect judges from suit for the same types of discretionary acts as those performed by adjudicatory boards like the Human Rights Commission. The Montana Supreme Court has stated that the doctrine of judicial immunity is intended to provide courts with the power to do all that is necessary to render their jurisdiction effective. Mead v. McKittrick, 727 P.2d 517, 519 (Mont. 1986). The Court has stated that "[t]he public policy of judicial immunity safeguards principled and independent decision-making." Id.

The same rationale applies equally to quasi-judicial boards when they adjudicate cases. The Human Rights Commission receives complaints of discrimination, the staff investigates each complaint and the Commission adjudicates those cases which appear to have merit. The Commission's contested case hearings are conducted pursuant to the same rules of procedure and evidence as a trial in district court. After each hearing, similar to a district court, the Commission issues a decision in favor of one of the parties. If the Commission rules in favor of the charging party, the Commission is required by statute to order the respondent to cease the discriminatory practice and has the discretion to order payment for any actual damages. Commission orders, like district court orders, frequently involve large sums of money.

In Gerber v. Commissioner of Insurance, 47 St. Rptr. 399, 401 (Feb. 15, 1990), the Insurance Commissioner determined not to hold a hearing on a particular complaint which the Commissioner's Office determined did not have merit. The complainant sued the Commissioner in district court. The Montana Supreme Court affirmed the district court's dismissal of the suit in part on



Ex. 1  
3-14-91  
HB 653

the basis that the Commissioner had quasi-judicial immunity for carrying out a discretionary function. In FY 1990, the Human Rights Commission denied hearings on 136 complaints after determining from investigation that those complaints lacked merit. HB 653 would eliminate immunity and allow suits against the Commission in such cases.

Just as it is important to safeguard a district court judge's ability to render principled and independent decisions and exercise discretion, it is important for quasi-judicial boards exercising the same basic discretionary functions to be able to decide contested cases based upon the merits without concern for the threat of suit. The Human Rights Commission respectfully requests that you do not concur in those provisions of HB 653 which eliminate common law immunity for all quasi-judicial functions.



P.O. Box 20996, 1629 Ave. D, Billings, MT 59104, Phone 406/259-7300  
Fax: 259-4211

HB 653 14 Mar 91  
MONTANA CHAPTER AIA  
AMERICAN SOCIETY OF CIVIL ENGINEERS ASCE  
BILLINGS ARCHITECTURAL ASSOCIATION BAA  
CONSULTING ENGINEERS COUNCIL OF MONTANA CECM  
GREAT FALLS SOCIETY OF ARCHITECTS GFSA  
AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS ASLA  
ARCHITECTURAL SOCIETY OF HELENA ASH  
MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS MARLS  
MONTANA SOCIETY OF ENGINEERS MSE  
INSTITUTE OF ELECTRICAL AND ELECTRONIC ENGINEERS IEEE

HB 653

TESTIMONY OF THE MONTANA TECHNICAL COUNCIL, AN ASSOCIATION OF PROFESSIONAL LICENSED ENGINEERS, ARCHITECTS, AND LAND SURVEYORS IN THE STATE OF MONTANA.

WE ARE HERE TO SPEAK IN STRONG OPPOSITION TO HB 653 FOR THE FOLLOWING REASONS.

THIS BILL WOULD REMOVE LEGAL IMMUNITY FOR ALL PROFESSIONAL LICENSING AND REGISTRATION BOARD MEMBERS. PROFESSIONAL BOARD MEMBERS ARE PROVIDING A NEEDED SERVICE IN PROTECTING THE PUBLIC HEALTH, SAFETY, AND WELFARE. THEY DO THIS FOR LITTLE OR NO COMPENSATION. OFTEN THEY ARE CALLED UPON TO MAKE CONTROVERSIAL, MAJOR DECISIONS WHICH CAN HAVE A MAJOR FINANCIAL IMPACT ON THOSE THEY REGULATE AND MONITOR. THE STATE OF MONTANA SHOULD NOT MAKE THEIR JOB DIFFICULT, IF NOT IMPOSSIBLE, BY SUBJECTING THEM TO POTENTIAL PERSONAL LIABILITY SUITS FOR THEIR ACTIONS TAKEN ON BEHALF OF THE PUBLIC GOOD.

MANY OF THESE PROFESSIONAL BOARD MEMBERS HAVE INDICATED TO BOARD SECRETARIES AND THE STATE ATTORNEY THAT THEY WILL RESIGN THEIR BOARD POSITIONS IF SUBJECTED TO THIS UNFOUNDED, UNFAIR, AND INTOLERABLE RISK OF PERSONAL FINANCIAL RUIN.

THERE ARE ADEQUATE SAFEGUARDS WHICH EXIST TO PROTECT THE REGULATED INDIVIDUAL AGAINST POTENTIAL, RARE ABUSES BY THE BOARD WHICH THEORETICALLY COULD OCCUR.

THE MONTANA TECHNICAL COUNCIL STRONGLY URGES YOU TO VOTE IN OPPOSITION TO HB 653.

SUBMITTED BY  
JOANNE CHANCE, P.E.

A handwritten signature in cursive script, appearing to read "JCa", is written over the printed name "JOANNE CHANCE, P.E.".



COORDINATING COUNCIL FOR MONTANA DESIGN PROFESSIONS

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

HB 653  
3-14-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 14<sup>th</sup> day of March, 1991.

Name: Lee R. Kerr

Address: Box 72

Telephone Number: 342-5546

Representing whom? Treasure County Attorney

Appearing on which proposal? HB 653

Do you: Support? X Amend?      Oppose?     

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

HB 653

3-14-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 14<sup>TH</sup> day of March, 1991.

Name: JAMES E PRESTON

Address: HAVE FORTSYTHE 711 W 27<sup>TH</sup> ST PO Box 20481  
BILLINGS MT. 59104-0181

Telephone Number: (406) 257-3479

Representing whom?

PRIVATE COUNSEL

Appearing on which proposal?

HB 653 SB 154

Do you: Support? ✓ Amend?        Oppose?       

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

HB 653

3-14-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 14 day of March, 1991.

Name: PATRICIA L. ENCLAWA - PCL - Bd of Med Ex.

Address: 111 N. Jackson  
Helena, MT

Telephone Number: 444-1988

Representing whom?

PCL - Bd of Med Ex.

Appearing on which proposal? HB 653

Do you: Support? \_\_\_\_\_ Amend? \_\_\_\_\_ Oppose? X

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

HB 653  
3-14-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 4 day of March, 1991.

Name: Robert J. Kelley

Address: 3. 6. 161 Ct

Idaho

Telephone Number: 402-1911

Representing whom?

Mont. State Board of Pharmacy

Appearing on which proposal?

HB 653

Do you: Support?       

Amend?       

Oppose? X

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



# CONFLUENCE SERVICES

6574 Canyon Ferry Rd., Helena, MT 59601  
(406) 475-3029

Exhibit #3  
14 Mar 91  
HB 691

HB 691

MY NAME IS JOANNE CHANCE. AND I AM HERE AS A PROFESSIONAL ENGINEER, REGISTERED SANITARIAN, AND PRESIDENT OF MY OWN TWO PERSON ENVIRONMENTAL ENGINEERING CONSULTING FIRM TO SPEAK AS AN INDIVIDUAL IN STRONG OPPOSITION TO THIS BILL. MY REASONS, BASED ON PERSONAL PROFESSIONAL EXPERIENCE IN THE AREA OF ENVIRONMENTAL REGULATION ARE AS FOLLOWS.

I HAVE OVER 15 YEARS OF PROFESSIONAL EXPERIENCE AS A SUPERVISOR IN THE WASHINGTON STATE DEPARTMENT OF ECOLOGY, SUPERFUND PROGRAM, AS AN ENGINEER IN THEIR HAZARDOUS WASTE PROGRAM; AS A HAZARDOUS WASTE COMPLIANCE ENGINEER FOR THE BOEING COMPANY; AND AS THE HEAD OF THE ENVIRONMENTAL HEALTH DEPARTMENTS IN THREE RURAL COUNTIES IN MONTANA.

I CAN TESTIFY, WITHOUT ANY DOUBT IN MY MIND, THAT THIS BILL IS SO TECHNICALLY FLAWED AS TO BE UNWORKABLE. IT IS TECHNICALLY FLAWED BECAUSE IT DOES NOT RECOGNIZE THE CONSTRAINTS OF THE NATURAL ENVIRONMENT AND THE LIMITS OF THOSE PROFESSIONALS WHO WORK IN IT. I'M AFRAID THAT IT WAS CONCEIVED, PROBABLY WITH GOOD INTENTIONS TO TRY TO CORRECT SOME UNFORTUNATE ENVIRONMENTAL PROBLEMS. BUT IT IS A VERY BAD SOLUTION TO SELECTED PROBLEMS THAT WOULD BEST BE SOLVED BY OTHER MEANS.

*Amend to  
Negligent  
acts &  
omissions*

THIS PROPOSED SOLUTION WOULD GRIND WELL INTENDED, OVERBURDENED GOVERNMENTAL REGULATORY PROGRAMS TO A HALT BECAUSE IT SUBJECTS ALL GOVERNMENTAL OFFICIALS DOWN TO THE LOWLY COUNTY SANITARIAN AND THE FRONT LINE STATE EMPLOYEE TO PERSONAL FINANCIAL RUIN FOR EACH AND EVERY ONE OF THEIR ENVIRONMENTAL DECISIONS. IS THIS REALLY WHAT YOU WANT TO ACCOMPLISH?

*That sound like the proponents would have a very strong case +*

*could get adequate compensation under a claim for negligent acts of government.*

LET ME GIVE YOU PERSONAL EXAMPLES. I CURRENTLY HAVE A CONTRACT TO ACT AS THE SOLE <sup>part-time</sup> COUNTY SANITARIAN IN TWO LARGE RURAL COUNTIES IN MT. ONE OF THEM IS GROWING AT A COMPARATIVELY FAST RATE. I AM REIMBURSED \$20,000 PER YEAR MINUS BUSINESS EXPENSES SUCH AS



Ex. #3

3-14-91

HB 691

TRANSPORTATION. I RECEIVE NO BENEFITS. MY JOB IS HIGHLY CONTROVERSIAL BECAUSE I MUST APPROVE OR DISAPPROVE OVER 150 SEPTIC SYSTEMS PER YEAR, APPROVE ALL DIVISIONS OF LAND UNDER 20 ACRES IN SIZE, AND INSPECT AND APPROVE ALL PUBLIC ESTABLISHMENTS. EVERY YEAR SEVERAL OF THE CITIZENS THAT I REGULATE THREATEN TO SUE ME AND I HAVE BEEN CURSED AT. I KNOW OF ANOTHER SANITARIAN WHO WAS BURNED IN EFFIGY AND RECEIVED A DEATH THREAT WHICH THE FBI INVESTIGATED BECAUSE OF HIS REGULATORY EFFORTS. AND WE ARE THE PEOPLE THAT THE SPONSORS AND PROPONENTS OF THIS BILL WISH TO ALSO HAVE PERSONALLY SUED. ERRORS AND OMISSIONS INSURANCE COSTS ABOUT \$12,000 PER YEAR, IF YOU CAN GET IT. I OBVIOUSLY CANNOT AFFORD TO CARRY IT FOR A CONTRACT THAT PAYS LESS THAN 20,000 PER YEAR. I WOULD BE FORCED OUT OF THE ENVIRONMENTAL FIELD, AS WOULD MANY OTHER PROFESSIONALS DUE TO INCREASED LIABILITY. IS THIS REALLY WHAT YOU WANT TO ACCOMPLISH?

ANOTHER MAJOR IMPACT OF THIS LEGISLATION WILL BE FELT DIRECTLY, AND OFTEN UNFAIRLY BY THE CITIZENS OF THIS STATE. AND THEY WILL OFTEN SUFFER SEVERE FINANCIAL IMPACT BECAUSE OF THIS BILL WITHOUT ANY REAL ENVIRONMENTAL OR PUBLIC HEALTH BENEFIT BEING GAINED. THAT'S THE TRAGEDY OF THIS BILL. IS THIS WHAT YOU REALLY WANT TO ACCOMPLISH WITH THIS BILL?

I'LL GIVE YOU AN EXAMPLE FROM AN ACTUAL CASE THAT I'VE HAD HERE IN MONTANA. AN INDIVIDUAL BUYS A LOT THAT HAS ALREADY BEEN APPROVED BY THE STATE DHES (SANITARY RESTRICTIONS HAVE BEEN REMOVED). HE BUILDS A GARAGE AND APPLIES FOR A SEPTIC SYSTEM PERMIT BEFORE STARTING HIS HOUSE CONSTRUCTION. I DO A SITE INSPECTION OF THE LOT AND FIND THAT A MISTAKE WAS MADE IN THE PAST. STATE AND COUNTY LAW REQUIRES THAT HIS DRAINFIELD BE LOCATED AT LEAST 100 FEET FROM A TINY LITTLE NEARBY CREEK. HE CAN ONLY MEET AN 80 FOOT SETBACK. UNDER CURRENT LAW, I "TAKE A RISK" AND WORK WITH THE OWNER TO GET A VARIANCE FROM THE COUNTY HEALTH BOARD TO ALLOW HIM TO BUILD ON HIS PROPERTY AND PLACE THE DRAINFIELD 20 FEET CLOSER TO THE CREEK. I DO THIS BECAUSE IT IS MY PROFESSIONAL JUDGEMENT THAT HIS DRAINFIELD WILL NOT DEGRADE THE STREAM OR JEAPORDIZE PUBLIC HEALTH AS LONG AS IT IS FUNCTIONALLY PROPERLY. IN ADDITION, THE FINANCIAL IMPACT UPON THIS INNOCENT CITIZEN WOULD BE HUGE IF HE WERE NOT ALLOWED TO BUILD HIS HOME. THE COUNTY HEALTH BOARD CONCURS.

IF THIS BILL BECOMES LAW, I WOULD BE A FOOL AND RISK FINANCIAL RUIN, AS WOULD EACH HEALTH BOARD MEMBER, AND THE COUNTY OFFICIALS AND COUNTY GOVERNMENT IF WE

Ex. 3

3-14-91

HB 691

WENT ON THE RECORD AS GRANTING HIM A VARIANCE. WE WOULD BE GIVING HIM PERMISSION TO VIOLATE VERY SPECIFIC STATE STANDARDS. THE NEIGHBORS, WHO ALREADY DIDN'T LIKE HIS GARAGE AND HAD COMPLAINED TO ME ABOUT THAT COULD NOW PERSONALLY SUE ALL OF US SHOULD HIS DRAINFIELD EVER FAIL AND DISCHARGE TO THE CREEK OR IF ELEVATED BACTERIA OR NITRATES WERE EVER MEASURED IN THE CREEK. HENCE, UNDER THIS BILL HE COULD NOT OBTAIN A CONVENTIONAL SEPTIC SYSTEM PERMIT FROM THE COUNTY BECAUSE WE WOULD FEAR FOR PERSONAL LIABILITY UNDER THIS BILL SHOULD IT BECOME LAW. I COULD GIVE YOU EXAMPLE AFTER EXAMPLE OF THIS SORT.

*IN MANY CASES GOV'T OFFICIALS/WORKERS WOULD BE PERSONALLY RESPONSIBLE FOR NOT BEING ABLE TO CORRECT VIOLATORS/VIOLATIONS DUE TO LACK OF GOV'T FUNDS.*

BUT I WILL CLOSE BY SIMPLY SAYING THAT SHOULD THIS BILL BECOME LAW THAT I WILL RESIGN THESE DUTIES IN THE NEAR FUTURE. AND I THINK MANY OTHERS WILL FOLLOW. GOVERNMENT OFFICIALS WILL BECOME TOTALLY INFLEXIBLE AS THIS BILL REMOVES ALL ABILITY FOR THEM TO "TAKE THE RISK" AND MAKE A SOUND PROFESSIONAL DECISION THAT IS NOT TOTALLY "BY THE BUREAUCRATIC RULES. IF YOU VOTE FOR THIS BILL YOU ARE VOTING FOR GOVERNMENTAL INFLEXIBILITY AND HARDSHIP FOR ENVIRONMENTAL PROFESSIONALS, CITIZENS AND GOVERNMENTAL OFFICIALS. IS THAT REALLY WHAT YOU WANT TO DO?

*\* And this hardship will be incurred often without any environmental or public health benefit.*

*Offer an amendment as a last resort to specify just negligent acts*

Exhibit # 4a  
14 Mar 91  
HB 691

March 10, 1991

TESTIMONY IN OPPOSITION TO H.B. 691

My name is Brett Dahl, Administrator of the Tort Claims Division, Department of Administration. We defend state agencies and employees in lawsuits involving tort liability.

We oppose H.B. 691 which proposes to remove governmental immunity for legislative acts and omissions which result in or contribute to personal injury caused by environmental damage.

By way of a brief background, as I understand it, this bill is proposed in response to the dismissal of a lawsuit based on legislative immunity for an environmental tort.

While we understand the desire to provide relief for people who have suffered damage as a consequence of this specific environmental hazard and do not oppose the creation of an exception or a remedy for that situation, this bill goes well beyond that.

In its present form, H.B. 691 has broader application which may result in liability for the actions or inactions of this legislative body. The potential damages in environmental torts are immense.

It is impossible to predict when or if lawsuits will be brought against the legislature. We as a State, and you as a legislature have never benefitted from legislative immunity as a defense, because the legislature has never been sued for tort damages.

Our role in the hearing today is not to be 'Chicken little' and claim that 'the sky is falling'. It is simply to inform the legislature that under this bill, you as a body could be sued by plaintiffs for enacting or failing to enact legislation which will prevent, could have prevented, or will cause environmental damage.

We urge to carefully weigh the consequences of removing immunity for acts of this body.

The Tort Claims Division recommends that you do not pass H.B. 691.

Exhibit # 4  
14 Mar 91  
HB 420

Testimony on House Bill 420, "Immunity"  
Susan C. Witte, Chief Legal Counsel, State Auditor's Office  
Senate Judiciary, March 14, 1991

For the record, my name is Susan C. Witte. I am the Chief Legal Counsel for the State Auditor's Office, and am here today representing State Auditor Bennett, who also serves as the Commissioner of Insurance and the Commissioner of Securities. I would like to thank our sponsor, Representative Rice, for carrying this bill for the Auditor and the Committee for its consideration of this legislation.

We urge passage of this bill which affects the immunity provisions of the Montana Insurance Code.

The bill changes the grant of immunity used by the Commissioner of Insurance from "transactional" immunity to "use" immunity. The need for this bill was suggested by the Attorney General's office which prosecutes both Insurance and Securities Department criminal referrals.

For background definition, transactional immunity applies in a situation where the person providing evidence, for example, in response to a lawfully issued subpoena, cannot be criminally prosecuted for his participation in any of the events about which he gives testimony. Use immunity, on the other hand, allows prosecution for those events but the evidence that the witness has given cannot be used against him. With transactional immunity, the witness cannot be prosecuted for events related to his testimony. It's an extremely broad grant of immunity. Let's say the Insurance Department has discovered that a licensed agent has forged a number of insurance applications for people who are already insured. Forging applications is a violation of Montana's Insurance Code and can subject an agent to administrative fines and loss of his license. The Insurance Department brings an administrative action against the agent for license revocation. A subpoena is issued in conjunction with the license revocation proceeding

Ex. 4  
3-14-91  
HB 420

for the insurance applications. The Insurance Department is forced to seek subpoena enforcement from the District Court when the agent refuses to comply and the Court compels him to comply and produce the documents. The Insurance Department ends up proving its license revocation case and takes his license for forgery of applications. Later, it's independently discovered - maybe from an insured who thought he had a valid policy all along - that the agent has in fact been stealing premiums his clients have paid on actual policies. Under transactional immunity, since the agent was compelled to testify, he can't be pursued criminally for the theft of premiums because the grant of immunity affects the entire "transaction" which is the agent's policy sales. Use immunity, in this situation, would allow prosecution of the agent for theft of the policy premiums because he did not testify to the same - he only testified or produced those forged applications.

This change brings the Insurance Code into conformity with other administrative statutes which were amended in 1983 to reflect changes in the federal system; to wit, the Securities Act and the Unfair Trade Practices and Consumer Protection statutes administered by the Department of Commerce.

We ask for your favorable consideration of HB 420. Thanks for your time. I will try to answer any questions you may have. Matt Heffron of the Attorney General's Office is also here today to testify in support of this bill.

SCW/amp(1689)

14 Mar 91  
HB 938  
Exhibit #5

## HOUSE BILL 938

Mr. Chairman, members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences.

Pre-hospital EMS providers render emergency care under very adverse circumstances ... poor weather, poor lighting, and rowdy crowds. Physicians and nurses give the EMTs and paramedics orders, by radio, under the most urgent conditions - without the benefit of their own patient examination, or the patient's old chart.

Physician supervision of pre-hospital emergency medical services is essential to assure the appropriateness and quality of care. Physician medical directors are required for all pre-hospital *advanced life support services*. Basic life support emergency medical services are encouraged, but not required, to have a medical director.

However, emergency medical services often have a difficult time finding a physician to serve as their medical director. Assuming the responsibility for the medical direction of pre-hospital care providers increases the physician's liability. Some malpractice carriers do not cover these physicians. In Montana, a majority of the EMS medical directors are not compensated for their time.

This legislation is intended to encourage physicians to become more involved with the supervision of pre-hospital emergency care. It provides liability protection to:

1. Physicians and nurses who give instructions to pre-hospital EMS personnel providing they do this without compensation, or the total compensation they receive for these services does not exceed \$5,000 in a twelve month period.
2. The off-line medical director...that physician who generally supervises an emergency medical service, reviews their care rendered, makes recommendations for improvement, and is responsible for the care administered with the same limitations on income derived from serving as off-line medical director.

Several facts should be emphasized:

1. The individuals must be operating within their scope of practice and within their approved protocols and medical control plan. They are not provided liability protection for acts they are not legally authorized to perform.
2. They are still liable for gross negligence.
3. This applies primarily to physicians and nurses who volunteer their services, or who earn very little compensation from providing medical advice.

I would appreciate your support of this bill. It will greatly assist local emergency medical services in obtaining appropriate medical direction.

Deaconess  
Medical  
Center

HB 938

3-14-91

*14 Mar*

February 21, 1991



The Honorable William Strizich  
Chairman, Judiciary Committee  
Montana House of Representatives  
Capitol Building  
Helena, MT 59620

Dear Mr. Chairman:

I am writing to you in support of House Bill #938. The passage of this bill will encourage and support physicians practicing in Montana rural health systems to take an active, necessary role in directing emergency medical services (EMS).

As manager of an emergency medical system (DEACARE), I frequently encounter rural EMS providers who want to provide quality patient care, but who need the assistance of a physician. HB #938 would allow rural physicians to assist in this vital area.

Please give due consideration to this piece of legislation.

Thank you.

Sincerely,

*Joyce Mavity*

Joyce Mavity, RN, BSN, CEN  
DEACARE Manager  
Advanced Life Support Services

JM/ed

Deaconess  
Medical Center  
of Billings, Inc.

Broadway at  
Ninth Avenue North  
P.O. Box 37000  
Billings, Montana 59107

Telephone 406-657-4000

HB 938

3-14-91

*Thomas Bell, D.O., F.A.C.E.P.*

2801 SIXTH STREET N.W.  
GREAT FALLS, MONTANA 59404  
TELEPHONE: (406) 452-5948

March 12, 1991

TO: Dick Pinsoneault, Chairman (D)

FROM: Thomas Bell, D.O., F.A.C.E.P.  
Medical Director, Northwest Bicsak Ambulance

Dear Sir:

I'm writing to give you my support for Bill #938 giving immunity status to EMS Medical Directors. As Montana becomes more and more involved with Advanced pre-hospital care, physicians will have to become involved in training and supervision of these systems. While some of the large systems may be able to encourage physicians with token reimbursement, most rural communities can not. I believe by encouraging physicians with immunity as Directors more communities throughout the state can become involved in Advanced pre-hospital care. I believe everyone comes out ahead.

Better pre-hospital care throughout the state, for the patient and encouragement and protection for the physicians involved.

*Thomas Bell*



3-14-91

# **Deaconess Emergency Physicians**

1145 North 29th, Suite 1B ■ Billings, Montana 59101 ■ (406) 248-6203

March 13, 1991

The Honorable R. J. Pinsoneault  
Montana Senate  
Capitol Station  
Helena, MT 59620

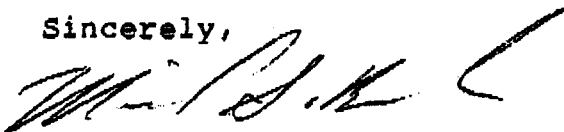
Dear Senator Pinsoneault:

I am writing in support of HB 38.

Due primarily to the low population density of Montana, EMS systems in this state have been slow to develop. Growth in the larger populated areas is now starting to occur, however in more rural areas, where there are fewer physicians, this bill will help provide incentive for involvement in local EMS systems, stimulating their growth. In larger areas where trained emergency physicians are practicing, most of the medical direction is provided by these physicians on a voluntary basis, which is a direct benefit to their local communities.

I feel that this bill will directly promote development of quality EMS systems in Montana.

Sincerely,



Michael S. Bush, M.D., FACEP  
DEACARE Medical Director  
Advanced Life Support Service

MSB/ed

3-14-91

**Montana Emergency Medical Services Association**

P.O. Box 30336  
Billings, MT 59107  
(800) 247-2369

DATE: March 13, 1991

TO: Senate Judiciary Committee  
Dick Pinsoneault, Chair

SUBJECT: Testimony Concerning HB938

Please verbally enter the following into the Senate Judiciary Committee hearing concerning HB938.

The Montana Emergency Medical Services Association Inc. (MEMSA) is the professional organization of Emergency Medical Technicians (EMT, D, I, P) in our state. Membership is voluntary and consists of over 800 members. The majority are associated with rural volunteer emergency medical service (EMS) organizations.

We support Senator Johnson in the introduction of HB938, a bill that we feel supports emergency medical services (EMS) and will be beneficial to the quality and availability of care provided.

Montana, being a rural, sparsely populated state, depends on volunteer emergency medical services organizations to assure that EMS is available when needed. The voluntary participation of physicians and nurses contributes directly to the quality and level of care that the system can provide. This bill by providing limited liability protection to the physicians, nurses and EMS providers will have a positive impact on the recruitment and retention of members for the EMS team, thus providing for the growth and improvement of EMS in our state. MEMSA, by a unanimous vote of the House of Delegates, strongly supports this bill and urges you as a committee to give it a "DO PASS" recommendation.

Thank you for consideration of this issue.

Sincerely;

R. Mark Zandhuisen  
President

Gary R. Haigh  
Legislative Committee



COMMITTEE ON

DATE

14 Mar 91 1962

Senate Judiciary

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Patricia England	Prof. + Occ. Learning	653		✓
John Hancock	MEIC	691	✓	
Jim Jensen	MEIC	691	✓	
David Rusoff	Human Rights Commission	653		✓
Drew Dawson	MT Dept Health	938	✓	
Ted J. Dary	Mountain Water Co.	691	✓	
Arvid M. Hiller	Mountain Water Co.	691	✓	
KATHLEEN FLEURY	Coordinator INDIAN FARM - Bd of Pardon	653		✓
Robert J. Kelley	MT State Board of Pharmacy	653		✓
Norman C. Wilk	MT State Auditor/Treas. + Sec.	6534		✓
RAIG THOMAS	BOARD OF PARDONS	653	✓	
		653		✓
James E. Preston	PRIVATE COUNSEL	653	✓	
Lee R. Kerr	Treasure County Atty	653	✓	
Fern Flanagan	Board of Dentistry	653		✓
STEVE MELOY	Dept of Comm	653		✓
Bill Granados	Tert. Courts	653		✓
Lana G. Ken	DFS	653		X
STAN KAGETYS	MT MUNICIPAL INS AUTH	653		X
Veron T. Zander	MT. Pub. Assn	938	✓	
Brian Muzys	MEIC	691/653	✓	
Joanne C. Chano, PE	MT Tech. Council	653		X
Joanne C. Chano, PE	Individual	691		X
Michael J. Sherwood	MTLA	HD 653	✓	
		HD 691	✓	
		HD 938	✓	
		HD 930	✓	
Alec Hansen	WILCT	HD 653		✓

DATE 14 Mar 91 20 =

Senate Judiciary

VISITORS' REGISTER

## VISITORS' REGISTER

[illegible]