

**MINUTES**

**MONTANA SENATE  
54th LEGISLATURE -- REGULAR SESSION**

**COMMITTEE ON FISH & GAME**

**Call to Order:** By **CHAIRMAN KEN MESAROS**, on January 26, 1995, at 1:00 p.m.

**ROLL CALL**

**Members Present:**

Sen. Kenneth "Ken" Mesaros, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Bruce D. Crippen (R)  
Sen. William S. Crismore (R)  
Sen. Ken Miller (R)  
Sen. Mike Sprague (R)  
Sen. Gary Forrester (D)  
Sen. Judy H. Jacobson (D)  
Sen. Terry Klampe (D)  
Sen. Bob Pipinich (D)

**Members Excused:** None

**Members Absent:** Senator John Hertel

**Staff Present:** Andrea Merrill, Legislative Council  
Serena Andrew, Committee Secretary

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

**Committee Business Summary:**

Hearing: Continued Discussion of SB 211  
Executive Action: None

{Tape: 1; Side: A; Approx. Counter: 36.}

**CONTINUED HEARING ON SB 211**

**CHAIRMAN KEN MESAROS**, SD #25, CASCADE, said this meeting was called to discuss issues raised at the last meeting. He asked **SENATOR BISHOP** or **ANDREA MERRILL** to review definitions of "willful or malicious" as used on page 3, section 4, subsection (1) of SB 211 and commented that he believed the bill was well intended, but the committee must be careful of the liability aspect.

**ANDREA MERRILL, Legislative Council Staff**, read a paragraph from Black's Law Dictionary: "Negligence - an omission to do something which a reasonable man, guided by ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do."

"Willful - proceeding from a conscious motion of the will; voluntary. Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary."

"Malicious - characterized by or involving malice; having or done with wicked or malicious intentions or motives."

Gross negligence would be a higher aspect of a higher standard; willful and malicious would be another level or aspect of action.

**SENATOR TERRY KLAMPE, SD #31, FLORENCE**, commented that the discussion seemed to be getting away from the subject and into definitions. Previous testimony mentioned that liability does not exist until it is proven. He asked what was said in current law.

**RUSSELL HILL, Montana Trial Lawyers Association**, replied that his organization felt the present law was preferable. It is necessary to go to court and convince a jury that an injury has occurred. There is a burden of proof on the defendant, even if he wins. He felt that when people were hurt and needed justice this law would be a very bad thing.

**SENATOR WILLIAM CRISMORE, SD #41, LIBBY**, asked if the exemption in SB 211 would apply in the case of a person who receives a landowner's permission to cross his private land to enter state lands where he pays a \$5 recreational access fee.

**ANDREA MERRILL** responded that page 1, line 18 talks about "charge" of money and it is keyed to the person or state agency that does not charge. There probably would be another standard for the charge to use state lands.

**SENATOR CRISMORE** asked if it would cause a problem if he gave permission to cross his land to a state section. **Ms. Merrill** replied that it would not.

**SENATOR MIKE SPRAGUE, SD #6, BILLINGS**, said he signed SB 211 because he thought the law was limited to recreational use of property. If he let someone on his land he did not want that person to sue him. He did not like to see that simple principle distorted.

**CHAIRMAN MESAROS** commented that HB 195 also has some liability restrictions or conditions on the bottom of page 5 where it mentions 70-16-302(1).

**ANDREA MERRILL**, referring to the sections of law that would be repealed by SB 211, said those sections are the current law that has been in force since 1965 and deal with the Department of Fish, Wildlife & Parks' operating agreement with landowners, keyed to the property owner-recreationist relationship.

**CHAIRMAN MESAROS** stated that SB 211 repeals the sections that apply to Block Management.

**MS. MERRILL** said it appeared that the bill intends to cover Block Management participants. It would be necessary to coordinate with **Representative Swanson** to be sure that when 70-16-301 is repealed, SB 211 language is substituted in HB 195.

**CHAIRMAN MESAROS** commented that was the reason for the current committee meeting. Action will not be taken on the bill at this time, however.

**MAUREEN CLEARY-SCHWINDEN, Women in Farm Economics**, stated that she stood in support of this bill on January 24. Her group supports the overall concept of the bill, but wants the committee to know that there are some concerns regarding the broad language in the bill. The definition of "owner" that includes governmental or quasi-governmental entities - how will it affect people on the highway? She suggested some changes to the broad language of the bill to protect ordinary citizens and would like to see SB 211 coordinated with HB 195.

**SENATOR SPRAGUE** said he was sure **SENATOR KEATING** did not intend to create harm with this bill.

**SENATOR BRUCE CRIPPEN, SD #10, BILLINGS**, commented that the bill probably should have been assigned to Judiciary.

**SENATOR GARY FORRESTER, SD #8, BILLINGS**, asked if **SENATOR CRIPPEN** would be amenable to moving the bill to Judiciary.

**SENATOR BISHOP** remarked that he agreed with **SENATOR CRIPPEN**, but since the bill has been heard he thought it should be resolved by this committee. The concept of the bill should be retained.

**SENATOR KEN MILLER, SD #11, LAUREL**, said it appeared everyone had the same concerns and suggested one or two people work with legal counsel to come up with an amendment.

**SENATOR KLAMPE** said he thought SB 211 should be tabled until after HB 195 is heard.

**SENATOR CRISMORE** agreed with **SENATOR KLAMPE** because he thought it might not be necessary to have both bills.

**SENATOR FORRESTER** asked to hear from **Charles Brooks** because of the ditch company in Billings and the bikeway program.

**CHARLES BROOKS, Yellowstone County**, said this bill originated with the Yellowstone County Commissioners. They are concerned about liability because they are attempting to develop bikeways and trails along the Yellowstone River. They need the protection of this bill. Former County Attorney Harold Hanser worked on the bill and **Mr. Brooks** promised to communicate the committee's concerns to him. He urged the committee not to table the bill.

**SENATOR MILLER** commented that he didn't think the committee needed to worry about HB 195 because it addresses different issues.

**ANDREA MERRILL** said HB 195 is about the Block Management Program, but it certainly is of concern because the section being repealed refers to landowners.

**SENATOR KLAMPE** remarked that he thought the concern was being shifted to cities, and asked if Missoula should have immunity for its ditches because Billings wants immunity.

**SENATOR SPRAGUE** said he represented taxpayers and municipalities are made up of taxpayers. He thought it should be possible to take care of everyone.

**CHAIRMAN MESAROS** commented that the purpose of this meeting was to identify questions and research that might be needed on SB 211.

**SENATOR CRIPPEN** requested minutes of the meetings of January 24 and 26.

**CHAIRMAN MESAROS** said he had a set of amendments prepared by **ANDREA MERRILL (EXHIBIT 1)**. **Ms. Merrill** commented that the amendments were suggested by Ken Hoovestall and the Department of Fish, Wildlife & Parks concurred. On line 18, the bill would say that "charge" means the amount of money "from a person engaged in a recreational activity."

The other change would be on the first page, Section 2, line 26 following "property" where "or with an agreement to use or occupy property." would be inserted.

With regard to the issue of a two-thirds vote, yes, it is required on this bill because the bill is relieving governmental liability to a degree. The two-thirds vote notation didn't appear because of an omission by the Legislative Council.

The bill should read on page 4, line 27, following line 26:

"NEW SECTION. **Section 10. Two-thirds vote required.** Because [sections 1 through 4] limit governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage."

SENATOR FORRESTER said he would like to wait until Harold Hanser and SENATOR KEATING are able to work on the bill.

CHAIRMAN MESAROS commented that he also would like to give them the opportunity to do that and would like to work with the Legislative Council staff on the bill.

SENATOR FORRESTER MOVED TO ALLOW THE SPONSOR AND DRAFTER (HAROLD HANSER) OF SB 211 TO MEET WITH A COMMITTEE ON TUESDAY, JANUARY 31.

ALL VOTED AYE EXCEPT SENATOR KLAMPE WHO VOTED NO. THE MOTION CARRIED.

CHAIRMAN MESAROS told the committee that 1995 is the 100th anniversary of the Fish, Wildlife & Parks Commission, and the department would like to commemorate the occasion. He asked the committee to keep the date of Thursday, March 9 open for that event.

ADJOURNMENT

Adjournment: The meeting adjourned at 1:40 p.m.

*{Tape: This meeting is recorded on Side A of One 60-Minute tape.}*

  
KEN MESAROS, Chairman

  
SERENA ANDREW, Secretary

KM/sa

MONTANA SENATE  
1995 LEGISLATURE  
FISH AND GAME COMMITTEE

ROLL CALL

DATE \_\_\_\_\_

1/26/95

[illegible]

SEN:1995

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CS-09

Amendments to Senate Bill No. 211  
1st Reading Copy

Requested by Senate Fish and Game Committee

Prepared by Andrea Merrill  
January 26, 1995

1. Page 1, line 18.

Following: "asked"

Insert: "from a person engaged in a recreational activity"

2. Page 1, line 26.

Following: "property"

Insert: "or with an agreement to use or occupy property"

3. Page 4, line 27.

Following: line 26

Insert: "NEW SECTION. Section 10. Two-thirds vote required.

Because [sections 1 through 4] limit governmental liability,  
Article II, section 18, of the Montana constitution requires  
a vote of two-thirds of the members of each house of the  
legislature for passage."

NAME Richard F. (Tom) Harwood  
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REPRESENTING SELF  
APPEARING ON WHICH PROPOSAL? SB 211  
DO YOU: SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS:

The future development of recreation activity in the state rests in many respects on the limitation of spurious or malicious acts by recreationists against landowners. Such activities as water sports (such as) rafting can cross property lines. cattle drives or similar activities must have ability to use appropriate routes crossing multiple ownership.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY



BILLS BEING HEARD TODAY: SB 211

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PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY