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14 legislative body.

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16 from exemplary and punitive damages. The state and other
17 governmental entities are immune from exemplary and punitive
18 damages.

19 Section 7. Actions under invalid law or rule -- same
20 as if valid -- when. (1) If an officer, agent, or employee
21 of the state or of a county, municipality, taxing district,
22 or other political subdivision of the state acts in good
23 faith, without malice or corruption, and under the authority
24 of law and that law is subsequently declared invalid as in
25 conflict with the constitution of Montana or the

1 constitution of the United States, neither he nor any other
2 officer or employee of the governmental entity he
3 represents, nor the governmental entity he represents, is
4 civilly liable in any action in which he, such other
5 officer, or such governmental entity would not have been
6 liable had the law been valid.

7 (2) If an officer, agent, or employee of the state, or
8 of a county, municipality, taxing district, or other
9 political subdivision of the state acts in good faith,
10 without malice or corruption, and under the authority of a
11 duly promulgated rule or ordinance and that rule or
12 ordinance is subsequently declared invalid, neither he nor
13 any other officer, agent, or employee of the governmental
14 unit he represents, nor the governmental entity he
15 represents, is civilly liable in any action in which no
16 liability would attach had the rule or ordinance been valid.

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18 damages in tort -- petition for relief in excess of limits.
19 (1) Neither the state, a county, municipality, taxing
20 district, nor any other political subdivision of the state
21 is liable in tort action for:

22 (a) noneconomic damages; or
23 (b) economic damages suffered as a result of an act or
24 omission of an officer, agent, or employee of that entity in
25 excess of \$300,000 for each claimant and \$1 million for each

1 occurrence.

2 (2) The legislature or the governing body of a county,
3 municipality, taxing district, or other political
4 subdivision of the state may authorize payments for economic
5 damages in excess of the sum authorized in subsection (1)(b)
6 of this section upon petition of plaintiff following a final
7 judgment.

8 (3) As used in this section:

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10 losses;

11 (b) "noneconomic damages" means those damages not
12 included in economic, punitive, or exemplary damages
13 including, without limitation, damages for pain and
14 suffering, loss of consortium, mental distress, and loss of
15 reputation.

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17 invalid, all valid parts that are severable from the invalid
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21 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 564-77

FISCAL NOTE

Form BD-1.

In compliance with a written request received February 10, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 43 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to specifically provide the state, counties, towns, and all other local government entities and the officers, agents, and employees of those entities immunity from suit for injury to a person or property in certain cases in accordance with the provisions of Article II, Section 18 of the Constitution of the State of Montana.

ASSUMPTIONS:

1. Liability insurance under current law will cost approximately \$1,500,000 in FY 78 and \$1,740,000 in FY 79.
2. Under current law, no limit exists on the liability to the state or its subdivisions.
3. Under the proposed law, maximum exposure is \$1,000,000 per occurrence, excluding noneconomic damages (pain, suffering, etc.)
4. Under current policy coverage, the state is insured to \$1,000,000 per occurrence including noneconomic damages.
5. Noneconomic damages represent nearly 40% of the amount of all claims filed against the state.
6. Given the limits provided in the proposed law, it is assumed that policy costs could be reduced up to 25%; however, there have been no commitments by the insurance companies.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Estimated reduction in insurance costs due to proposed legislation	<u>\$375,000</u>	<u>\$435,000</u>

The above cost reduction would be allocated to all funds contributing to the purchase of liability insurance, to include the General Fund.

LOCAL IMPACT:

No detailed estimates can be provided as to the fiscal impact on local government, but the proposed law should result in trends and cost savings similar to that which the state would realize.

LONG-RANGE EFFECT:

The proposed legislation will significantly reduce the risk exposures of governmental entities, resulting in reduced insurance costs.

Richard L. Franz
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-24-77

Approved by Committee
on Judiciary

1 SENATE BILL NO. 43
2 INTRODUCED BY TOWE, TURNAGE
3 {INTERIM JUDICIARY COMMITTEE BILL}
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO SPECIFICALLY PROVIDE
6 THE STATE, COUNTIES, TOWNS, AND ALL OTHER LOCAL GOVERNMENT
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10 OF ARTICLE II, SECTION 18 OF THE CONSTITUTION OF THE STATE
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14 Section 1. Section 82-4310, R.C.M. 1947, is amended to
15 read as follows:
16 "82-4310. Governmental entities liable for torts
17 ~~except as specifically provided by the legislature.~~ Every
18 governmental entity is subject to liability for its torts
19 and those of its employees acting within the scope of their
20 employment or duties whether arising out of a governmental
21 or proprietary function ~~except as specifically provided by~~
22 ~~the legislature under Article II, section 18 of the~~
23 ~~Constitution of the State of Montana."~~
24 Section 2. Immunity from suit for legislative acts and
25 omissions. (1) As used in this section:

1 (a) the term "governmental entity" includes the state,
2 counties, municipalities, and school districts;
3 (b) the term "legislative body" includes the
4 legislature vested with legislative power by Article V of
5 The Constitution of the State of Montana and any local
6 governmental entity given legislative powers by statute,
7 including school boards.
8 (2) A governmental entity is immune from suit for an
9 act or omission of its legislative body or a member,
10 officer, or agent thereof.
11 (3) A member, officer, or agent of a legislative body
12 is immune from suit for damages arising from the lawful
13 discharge of an official duty associated with the
14 introduction or consideration of legislation or action by
15 the legislative body.
16 (4) The immunity provided for in this section does not
17 extend to any tort committed by the use of a motor vehicle,
18 aircraft, or other means of transportation.
19 Section 3. Immunity from suit for judicial acts and
20 omissions. (1) The state and other governmental units are
21 immune from suit for acts or omissions of the judiciary.
22 (2) A member, officer, or agent of the judiciary is
23 immune from suit for damages arising from his lawful
24 discharge of an official duty associated with judicial
25 actions of the court.

SECOND READING

1 (3) The judiciary includes those courts established in
2 accordance with Article VII of The Constitution of the State
3 of Montana.

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5 gubernatorial actions. The state and the governor are immune
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5 civilly liable in any action in which he, such other
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19 damages in tort -- petition for relief in excess of limits.

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21 district, nor any other political subdivision of the state
22 is liable in tort action for:

- 23 (a) noneconomic damages; or
24 (b) economic damages suffered as a result of an act or
25 omission of an officer, agent, or employee of that entity in

1 excess of \$300,000 for each claimant and \$1 million for each
2 occurrence.

3 (2) The legislature or the governing body of a county,
4 municipality, taxing district, or other political
5 subdivision of the state may, IN ITS SOLE DISCRETION,
6 authorize payments for NONECONOMIC DAMAGES OR economic
7 damages in excess of the sum authorized in subsection (1)(b)
8 of this section, OR BOTH, upon petition of plaintiff
9 following a final judgment. NO INSURER IS LIABLE FOR SUCH
10 NONECONOMIC DAMAGES OR EXCESS ECONOMIC DAMAGES UNLESS
11 SPECIFICALLY AUTHORIZED IN THE CONTRACT OF INSURANCE.

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14 losses;

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16 included in economic, punitive, or exemplary damages
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SB 43

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