

SENATE BILL 393

Introduced by Lynch, et al.

2/11	Introduced
2/11	Referred to Local Government
2/13	Fiscal Note Requested
2/14	Hearing
2/14	Rereferred to Judiciary
2/16	Hearing
2/18	Fiscal Note Received
2/20	Fiscal Note Printed
	Died in Committee

1 *Senate* BILL NO. *393*
 2 INTRODUCED BY *Sen. Clark*
 3 *Sen. Van Vleet*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT
 5 STATUTORY LEGISLATIVE IMMUNITY EXTENDS ONLY TO LEGISLATIVE
 6 BODIES OF GOVERNMENTAL ENTITIES AND ONLY TO LEGISLATIVE
 7 ACTIONS, NOT ADMINISTRATIVE ACTIONS, TAKEN BY SUCH AGENCIES;
 8 AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE
 9 EFFECTIVE DATE AND AN APPLICABILITY DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 2-9-111, MCA, is amended to read:

13 "2-9-111. Immunity from suit for legislative acts and
 14 omissions. (1) As used in this section:

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

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

24 (2) A governmental entity is immune from suit ~~for--an~~
 25 ~~act--or--omission--of~~ for damages arising from the lawful

1 discharge of an official duty associated with legislative
 2 actions of its legislative body or a member, officer, or
 3 agent thereof.

4 (3) A member, officer, or agent of a legislative body
 5 is immune from suit for damages arising from the lawful
 6 discharge of an official duty associated with the
 7 ~~introduction--or--consideration--of--legislation--or--action--by~~
 8 legislative actions of the legislative body.

9 (4) The immunity provided for in this section does not
 10 extend to any tort committed by the use of a motor vehicle,
 11 aircraft, or other means of transportation or to
 12 nonlegislative actions taken by a legislative body."

13 **NEW SECTION. Section 2. Severability.** If a part of
 14 [this act] is invalid, all valid parts that are severable
 15 from the invalid part remain in effect. If a part of [this
 16 act] is invalid in one or more of its applications, the part
 17 remains in effect in all valid applications that are
 18 severable from the invalid applications.

19 **NEW SECTION. Section 3. Effective date** --
 20 **applicability.** [This act] is effective on passage and
 21 approval and applies to causes of action arising on or after
 22 [the effective date of this act].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB393, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An Act clarifying that statutory legislative immunity extends only to legislative bodies of governmental entities and only to legislative actions, not administrative actions, taken by such agencies; amending Section 2-9-111, MCA; and providing an immediate effective date and an applicability date.

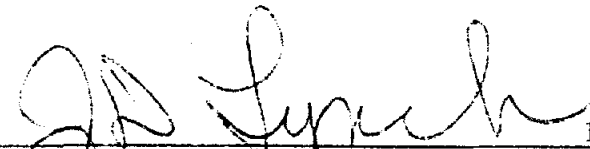
ASSUMPTIONS:

This bill seeks to overturn recent interpretations by the Montana Supreme Court of the "legislative immunity" granted by the Tort Claims Act. One such lawsuit is Bieber v. Broadwater County in which a county was immunized from a wrongful discharge suit because of its county commission's "legislative immunity". The Department of Administration is not aware of any attempt by the state to rely on "legislative immunity" to immunize a nonlegislative Act in a suit brought against the state. For that reason, and for the reason that plaintiffs' attorneys are attempting in other lawsuits involving counties to avoid the impact of the Bieber decision by pleading their causes of action as civil rights violations under federal law, we believe the bill would have no fiscal impact. If the second reason fails, the fiscal impact would only affect counties, probably subjecting them to a few wrongful discharge suits.



DATE 2/17/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING



DATE 2/18/89

JOHN LYNCH, PRIMARY SPONSOR

Fiscal Note for SB393, as introduced

SB 393