

House BILL NO. 534

INTRODUCED BY

Wells *Roberts*

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING THE STATE LIABLE FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT INVOLVING A CONTRACT; MAKING A GOVERNMENTAL ENTITY LIABLE FOR INTEREST ON A JUDGMENT; AMENDING SECTION 18-1-404, MCA; REPEALING SECTION 2-9-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-1-404, MCA, is amended to read:

"18-1-404. Liability of state — ~~limitations~~ -- costs. (1) The state of Montana ~~shall be~~ is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana ~~shall is~~ is not ~~be~~ liable ~~for interest prior to or after judgment or~~ for punitive damages. The state of Montana is liable for interest from the date on which the payment on the contract became due.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs ~~shall~~ must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant, ~~except that such~~ The costs shall must not include ~~attorney's~~ attorney fees."

NEW SECTION. Section 2. Repealer. Section 2-9-317, MCA, is repealed.

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0534, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act making the state liable for interest and attorney fees in contract cases and making a governmental entity liable for interest on a judgment.

ASSUMPTIONS:

1. The bill requires payment of interest and attorney fees by the state in contract actions. It also allows for interest from the date on which payment of the contract becomes due. This is more generous than current law (Mont. Code Ann. § 27-1-211), which only allows prejudgment interest on sums reasonably certain or capable of calculation on a certain day. Current case law holds that the state is not liable for prejudgment interest except moratory interest (costs of actual borrowing, which is actual damages and not interest), and that recovery of prejudgment interest against the state is barred by sovereign immunity.
2. The bill's provision for attorney's fees is broader than current law and is more generous than cases not involving the state. Under current law, attorney's fees are allowed in contract actions only if expressly provided for in the contract, whether the state is a party or not. If bad faith is involved, attorney's fees are presently recoverable against the state.
3. The bill also would repeal Mont. Code Ann. § 2-9-317, under which the state currently has two years to pay a judgment without incurring penalties or interest. This provision recognizes that agencies may not be able to pay a judgment out of currently available funds and mirrors Mont. Code Ann. § 18-1-414, under which final judgments in contract actions are to be paid out of funds appropriated by the legislature in the next session. Making agencies liable for interest prior to the 2-year time limit will increase the cost of contract awards, since payment likely will have to await an appropriation by the next legislature under any circumstances.

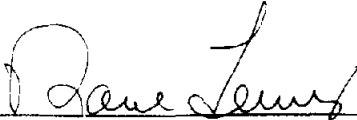
FISCAL IMPACT:

The proposal will increase state expenditures through the requirement for payment of attorney fees and interest. The impact cannot be calculated with certainty, however.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Passage of the bill may affect the state's decision to appeal cases to the Supreme Court because the state will be forced to pay the additional interest charges if it loses.

If this bill had been in effect 10 years ago, the division would have incurred in excess of an additional \$250,000 in interest charges on judgements.

 2-17-97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JACK WELLS, PRIMARY SPONSOR DATE

Fiscal Note for HB0534, as introduced

HB 534

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(B) The state of Montana is liable for interest from the date on which the payment on the contract became due. FOR PURPOSES OF THIS SECTION, THE INTEREST RATE MUST BE AS PROVIDED IN 25-9-205.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs ~~shall~~ must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant, ~~except that such~~ The costs shall must not include ~~attorney's attorney~~ fees."

~~NEW SECTION. Section 2. Repealer. Section 2-9-317, MCA, is repealed.~~

SECTION 2. SECTION 2-9-317, MCA, IS AMENDED TO READ:

"2-9-317. No interest if judgment paid within two years -- exception. ~~Except as provided in 18-1-404(1)(b),~~ if a governmental entity pays a judgment within 2 years after the day on which the judgment is entered, no penalty or interest may be assessed against the governmental entity."

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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(B) The state of Montana is liable for interest from the date on which the payment on the contract became due. FOR PURPOSES OF THIS SECTION, THE INTEREST RATE MUST BE AS PROVIDED IN 25-9-205.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs ~~shall~~ must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant, ~~except that such~~ The costs shall must not include ~~attorney's~~ attorney fees."

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13 in respect to any contract entered into in the same manner and to the same extent as a private individual
14 under like circumstances, except the state of Montana ~~shall is~~ is not be liable for interest prior to or after
15 judgment or for punitive damages.

16 (B) The state of Montana is liable for interest from the date on which the payment on the contract
17 became due. FOR PURPOSES OF THIS SECTION, THE INTEREST RATE MUST BE AS PROVIDED IN
18 25-9-205 IS 10% SIMPLE INTEREST EACH YEAR, WHETHER DUE BEFORE OR AFTER A JUDGMENT. IF
19 THE CONTRACT DOES NOT SPECIFY WHEN INTEREST IS PAYABLE BEFORE A JUDGMENT, INTEREST
20 MUST BE PAID AT THE TIME PROVIDED IN 17-8-242(2).

21 (2) Costs may be allowed as provided in 25-10-711. In all other cases, costs ~~shall~~ must be allowed
22 in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant,
23 ~~except that such~~ The costs shall must not include attorney's attorney fees.

24 (3) THIS SECTION DOES NOT APPLY TO A CONTRACT GOVERNED BY TITLE 19."

25
26 ~~NEW SECTION. Section 2. Repealer. Section 2-9-317, MCA, is repealed.~~

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28 SECTION 2. SECTION 2-9-317, MCA, IS AMENDED TO READ:

29 "2-9-317. No interest if judgment paid within two years -- exception. If Except as provided in
30 18-1-404(1)(b), if a governmental entity pays a judgment within 2 years after the day on which the

1 judgment is entered, no penalty or interest may be assessed against the governmental entity."

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3 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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(B) The state of Montana is liable for interest from the date on which the payment on the contract became due. FOR PURPOSES OF THIS SECTION, THE INTEREST RATE MUST BE AS PROVIDED IN 25-9-205 IS 10% SIMPLE INTEREST EACH YEAR, WHETHER DUE BEFORE OR AFTER A JUDGMENT. IF THE CONTRACT DOES NOT SPECIFY WHEN INTEREST IS PAYABLE BEFORE A JUDGMENT, INTEREST MUST BE PAID AT THE TIME PROVIDED IN 17-8-242(2).

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(3) THIS SECTION DOES NOT APPLY TO A CONTRACT GOVERNED BY TITLE 19."

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1 judgment is entered, no penalty or interest may be assessed against the governmental entity."

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3 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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-END-

OFFICE OF THE GOVERNOR

STATE OF MONTANA



MARC RACICOT
GOVERNOR

STATE CAPITOL
HELENA, MONTANA 59620-0801

April 21, 1997

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena MT 59620

Dear Speaker Mercer and President Aklestad:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return with amendments House Bill 534, **"AN ACT MAKING THE STATE LIABLE FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT INVOLVING A CONTRACT; AMENDING SECTIONS 2-9-317 AND 18-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE,"** for the following reasons.

Section 18-1-404, MCA, provides that, for purposes of liability, the State of Montana is to be treated in contract cases in the same manner as private litigants, except with respect to punitive damages.

House Bill 534 would change the section 18-1-1404, MCA, to:

-make the State liable for payment of interest from the date on which the contract became due, rather than from when the sums are capable of calculation, as is the rule for other litigants;

-require the State to pay attorneys fees to a successful claimant in all contract actions. By contrast, other litigants must pay attorneys fees in contract cases only if expressly required by the contract itself.

The above-mentioned changes that would be brought about by House Bill 534 would result in treating the State of Montana more harshly than other litigants in contract actions.

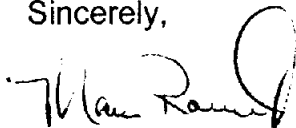
I can understand from the standpoint of fairness that the rules for liability in contract cases should treat litigants equally. House Bill 534, however, does not do that. It would apply different, more onerous rules to one type of litigant -- state government.

The fiscal impact of House Bill 534 is impossible to estimate. Some of the contracts to which the State is a party involve many millions of dollars. Were any of those contracts to result in litigation, the State, unlike a private litigant, could be exposed to significantly increased liability under the provisions of House Bill 534.

I am, therefore, proposing amendments that would specify that costs are awardable against the State in the same manner as against a private individual.

With respect to the immediate date of effect provided in House Bill 534, I propose that, in the interest of fairness, the State be given some time to modify and enter into contracts with knowledge of the changes in the law.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Racicot". The signature is fluid and cursive, with a large loop at the end.

MARC RACICOT
Governor

GOVERNOR'S AMENDMENTS TO
House Bill No. 534
(Reference Copy)
April 21, 1997

1. Title, lines 4 and 5
Following: "LIABLE" on page 4
Strike: "FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT"
Insert: "IN THE SAME MANNER AS A PRIVATE INDIVIDUAL IN CASES"
2. Title, line 7
Following: "AN"
Strike: "IMMEDIATE"
3. Page 1, line 12
Following: "(1)"
Strike: "(A)"
4. Page 1, line 13
Following: "extent"
Insert: ",including costs,"
5. Page 1, lines 16 through 20
Strike: subsection (B) in its entirety
6. Page 1, lines 21 through 23
Following: "25-10-711." on line 21
Strike: remainder of line 21 through line 23 in their entirety
7. Page 1, line 30
Following: "18-1-404(1)"
Strike: "(b)"
8. Page 2, line 3
Following: "**date.**"
Strike: "[This act] is effective on passage and approval"
Insert: "This act is effective on July 1, 1997. It shall apply to causes of actions arising from contracts entered on or after the effective date"