

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

April 12, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, April 12, 1985 at 9:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Cobb who was previously excused.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 56: Rep. Dennis Rehberg, House District #88, testified in support of HJR 56. This is a resolution urging the President of the United States to appoint a well-qualified Montanan to the United States Court of Appeals for the Ninth Circuit. Rep. Rehberg gave some background as to the function of the Court of Appeals. He feels that it is important to get someone who is living and actually working in Montana on the Court of Appeals. He further pointed out that there are some very important cases before the Court.

There were no further proponents or opponents, and Rep. Rehberg closed.

There being no questions, hearing closed on HJR 56.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 55: Rep. Gary Spaeth, House District #84, chief sponsor of this resolution, testified on its behalf. HJR 55 is a joint resolution requesting an interim study of government's immunity from suit and limits of liability for the state of Montana. He said this resolution was introduced because a bill that Rep. Spaeth had introduced earlier dealing with this subject was tabled. He said it is a really important issue, and it needs to be studied. He viewed this resolution as a fulfillment to his commitment to some of the members of this committee who had some concern as to whether the limits of liability were reasonable limits. When liability limits are changed, local governments and school districts are affected by it as their insurance rates are affected. However, someone who suffers from a catastrophic injury is affected if the limits are set too low. There has to be a balance.

Karl Englund, representing the Montana Trial Lawyers Association, testified in favor of HJR 55. Mr. Englund said that this resolution is important as it dovetails quite nicely not only with Rep. Spaeth's bill but also SB 184.

He said the resolution itself contains the best reasons why this subject should be reviewed at this point. He asked the committee to add some language to the resolution to make sure that everything is covered. Specifically, he suggested that the committee amend page 2, line 19 following "means" by inserting "and costs". Furthermore, on page 2, line 21 following "self-insurance" he recommended adding "excess insurance coverage".

Mike Young, administrator of the Insurance and Legal Division for the Department of Administration, also feels this particular issue should be looked into. He said that the types of claims that are being made should be looked at as well as the number of claims that are being processed and the tremendous flow of litigation the division presently has. It has been 10 years since anyone has looked at this. He informed the committee that in 1975 during the last study commission on this particular issue, there were only two states then that had unlimited liability -- one was Montana and the other was California. There are now three or four.

There being no further proponents or opponents, Rep. Spaeth closed. He said this resolution really does affect a lot of people and a lot of the resources of the state as far as the claims that are being made.

The floor was opened to questions from the committee.

Rep. Keyser asked Rep. Spaeth if he had any problems with Karl Englund's suggested amendments. Rep. Spaeth answered, "no."

There being no further questions, hearing closed on HJR 55.

EXECUTIVE SESSION:

ACTION ON HJR 55: Rep. Brown moved that HJR 55 DO PASS. The motion was seconded by Rep. O'Hara. Rep. Rapp-Svrcek moved the following amendment:

1. Page 2, line 19.
Following: "means"
Insert: "and costs"

2. Page 2, line 21.
Following: "self-insurance,"
Insert: "excess umbrella insurance coverage,"

The motion was seconded by Rep. Brown and carried unanimously.

Rep. Brown further moved that HJR 55 DO PASS AS AMENDED. The motion was seconded, and it carried unanimously.

ACTION ON HJR 56: Rep. Hammond moved that HJR 56 DO PASS. The motion was seconded by Rep. O'Hara and carried unanimously.

ACTION ON HJR 53: Rep. Gould moved that HJR 53 DO PASS. The motion was seconded by Rep. Keyser and further discussed. Rep. Bergene made a substitute motion that HJR 53 BE TABLED. The motion was seconded by Rep. Montayne.

Rep. Gould informed the committee that he has prepared some amendments to this resolution which he feels will make it more palatable. He requested Rep. Bergene to withdraw her tabling motion for the purpose of discussing the amendments. He feels this is an important resolution, and if those problems can be brought out and dealt with, it will result in a stronger and better Human Rights Commission. A copy of Rep. Gould's amendments was marked Exhibit A and attached hereto.

Rep. Bergene said the audit committee added no recommendation to sunset the Human Rights Commission as it was very well looked at. She went on to say that she was disturbed with the obvious witch hunt that was brought out during the hearing yesterday. She said she doesn't feel this resolution is needed. A roll call vote was taken on the tabling motion, and it failed due to a tie vote.

Rep. Krueger handed out some proposed amendments; a copy of which was marked Exhibit B and attached hereto. He explained his amendments to the committee in greater detail. He said that if we are going to have a study commission, he feels we should do it in fairness. He feels that the way this resolution is presently written is not at all objective. He feels that by adopting his proposed amendments, it will make the resolution more objective. After reviewing Rep. Gould's amendments, Rep. Kreuger said they would tie very nicely into his amendments. He further moved his amendments inclusive of Rep. Gould's amendments. Rep. Gould seconded the motion, and further discussion followed.

As Rep. Eudaily understood Rep. Manuel's testimony, the whereases in the resolution were complaints expressed by people all over the state. He asked how under these new amendments can some of these concerns be addressed. Rep. Krueger said the study commission would be allowed to examine all the areas of concern. He feels that the many whereases that are set forth in the resolution are merely allegations.

Rep. Keyser said that by striking subsections (6) through (10) on page 8 as proposed by Rep. Kreuger, would be failing to address the problems specifically addressed by Rep. Manuel. He said that if this material is deleted, especially subsections (9) and (10), we would be removing any chance to have these particular issues studied. Rep. Keyser said that subsection (10) is part of the resolution, and he feels it should be retained in the resolution. He has no problems

with the amendment which would delete subsections (6) through (8), but he feels that subsections (9) and (10) should be left in the resolution. Rep. Keyser moved to divide #4 amendment (Exhibit B) from the rest of the proposed amendments. The motion was seconded by Rep. Hannah.

Rep. Addy, on the other hand, feels that subsections (9) and (10) need to be stricken. He said the Human Rights Commission has a tough job to do, and we, as legislators, are not elected to decide contested cases of this nature. The whole idea of the Human Rights Commission is to protect minorities. The whole idea of the Legislature is to express the will of the majority. He just doesn't think the Legislature should perform these types of duties.

Rep. Mercer said he doesn't think it would be inappropriate to scrutinize the Commission's decisions to be sure their decisions are accomplishing what the Legislature has set the whole thing up for in the first place. He doesn't see any problem with the Legislature investigating the allegations. If people are complaining about something that the Legislature has set up, we should know what these complaints are and decide whether or not to adjust those procedures and the standards. He doesn't see any problem with the Legislature delving into this area.

Rep. Kreuger said he hopes the committee resists Rep. Keyser's motion to retain subsections (9) and (10). He doesn't think that the committee has heard clearly enough if there is any such bias. He feels this should be approached from an objective standpoint. He doesn't think there is any advantage of scrutinizing each of the Commission's decisions.

Rep. Rapp-Svrcek commented that the whereases in the resolution are the most offensive portions of the resolution. He said he doesn't necessarily feel that subsections (9) and (10) are intended to be a witch hunt. It seems to him that it would just be part of the study.

Rep. Darko feels that HJR 53 is one-sided, and it ought to be neutralized as much as possible.

Rep. Eudaily pointed out that unless these subsections (9) and (10) are included in the resolution, the study committee may not be able to move into the areas that need to be further addressed. There will be allegations listed under subsections (1), (2), and (3) that the committee might want to pursue but won't have the authority to do so. The study committee may not even use this authority, but if they want to, they won't be able to do so if this portion of the resolution is stricken.

The question was called to adopt Rep. Gould's amendments and Rep. Kreuger's amendments 1 through 3 (see Exhibit B). The motion carried unanimously.

Rep. Mercer made a substitute motion to leave in subsections (7), (9), and (10) but delete subsections (6), (8) and (4) on page 8. The motion was seconded by Rep. Hannah. It is Rep. Hannah's opinion that subsection (7) is the most important one.

The question was called on the substitute motion, and it failed due to a tie vote. (See roll call vote.)

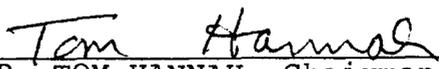
The question was called on the previous motion to adopt amendment #4 of Exhibit B, and it carried on a voice vote with Rep. Keyser dissenting.

Rep. Hannah said the biggest problem he has with the Administrative Procedures Act which the Human Rights Commission operates under is that there is no new fact-finding trial available once that commission or agency rules. He wants the study commission to have the opportunity to look at this area. He thinks that we have to make reference to the whole Administrative Procedures Act because he doesn't want to single the Commission out. He further moved to amend by adding a new subsection (8) which would make reference to the whole Administrative Procedures Act.

Rep. Hannah further moved to reinsert (7), page 8 of the resolution. It was seconded by Rep. Krueger and carried unanimously.

Rep. Gould moved that HJR 53 DO PASS AS AMENDED. The motion was seconded by Rep. Addy. Rep. Brown made a substitute motion for a DO NOT PASS AS AMENDED. The motion was seconded by Rep. Hammond. Rep. Addy made a substitute motion to TABLE the resolution. The motion was seconded by Rep. Brown and carried 11-7. (See roll call vote.)

ADJOURN: There being no further business, the meeting adjourned at 10:08 a.m.



REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 4/12/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	.		✓
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

April 12

1935

MR. Speaker:

We, your committee on JUDICIARY

having had under consideration House Joint Resolution Bill No. 55

First reading copy (White
color)

INTERIM COMMITTEE TO STUDY GOVERNMENT'S IMMUNITY FROM SUIT AND LIMITS OF LIABILITY

Respectfully report as follows: That House Joint Resolution Bill No. 55

be amended as follows:

1. Page 2, line 19.

Following: "means"

Insert: "and costs"

2. Page 2, line 21.

Following: "self-insurance"

Insert: "excess umbrella insurance coverage,"

AND AS AMENDED,

DO PASS.

STANDING COMMITTEE REPORT

April 12

19 85

MR. **Speaker:**

We, your committee on **JUDICIARY**

having had under consideration **House Joint Resolution** Bill No. **56**

First reading copy (**White**)
color

**JOINT RESOLUTION URGING PRESIDENT TO APPOINT WELL-QUALIFIED
MONTANA TO U.S. COURT OF APPEALS FOR NINTH CURCHIT**

Respectfully report as follows: That **House Joint Resolution** Bill No. **56**

~~DO PASS~~

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE April 12, 1985 BILL NO. HJR 53 TIME 9:35 a.m.

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Bergene moved that HJR 53 BE TABLED. The motion was
seconded by Rep. Montayne and failed due a tie vote.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE April 12, 1985 BILL NO. HJR 53 TIME 10:05

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer	✓	
Joan Miles		✓
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Mercer made a substitute motion to leave in
subsections (7), (9), (10) and delete subsections (6), (8) and
(4) on page 8 of the resolution. The motion was seconded by
Rep. Hannah and failed due a tie vote.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE April 12, 1985 BILL NO. HJR 53 TIME 10:08

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		✓
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Addy moved to TABLE HJR 53. The motion was seconded
by Rep. Brown, and it carried 11-7.

Amendments to HJR 53:

1. Page 6, following line 23.

Insert: "WHEREAS, the Human Rights Commission has been designated as the local agency authorized to enforce compliance with § 504 of the Rehabilitation Act of 1973, the federal law providing for rights of handicapped persons; and WHEREAS, if there is no local agency designated to enforce § 504 of the Rehabilitation Act of 1973, the law will be enforced by the U.S. Office of Civil Rights' regional office located in Denver, Colorado; and"

2. Page 8, line 23.

Strike: "and"

Insert: "(10) evaluate the enforcement of § 504 of the Rehabilitation Act of 1973 by the Human Rights Commission and the effect, if any, on that enforcement if the U.S. Office of Civil Rights assumed enforcement of the law; and"

Renumber: subsequent subsections

Amendments to HJR 53:

1. Page 1, following line 10.

Insert: "WHEREAS, Article 2, Section 4 of the Montana constitution prohibits "discrimination against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or conditions, or political or religious ideas;" and
WHEREAS, the Montana legislature enacted the Human Rights Act in 1974 and the Governmental Code of Fair Practices in 1975; and"

2. Page 1, following line 25.

Strike: all material on pages 2 through page 7, line 14

Insert: "WHEREAS, since its inception in 1974, there has not been a comprehensive legislative study of the goals and effectiveness of the Human Rights Commission and the law it enforces,"

3. Page 8, following line 7.

Strike: subsection (4) in its entirety

Renumber: subsequent subsections

4. Page 8, following line 12.

Strike: subsections (6) through (10) in their entirety

Insert: "(5) compile and evaluate the range of legal remedies for discrimination that are available in other jurisdictions and analyze their suitability for use in Montana;

(6) consider the advisability of requiring submission of complaints to mediation procedures prior to the institution of formal proceedings; and

(7) develop a comparison of the costs associated with various means of resolution of cases filed with the Human Rights Commission."