

MINUTES OF THE MEETING  
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE  
MONTANA STATE SENATE

JANUARY 24, 1983

The meeting of the Public Health, Welfare and Safety Committee was called to order by Chairman Tom Hager on Monday, January 24, 1983 at 1 p.m. in Room 410 of the State Capitol Building.

ROLL CALL: Roll was called with Senator Himsel excused. Greg Petesch was present as staff attorney.

Many visitors were also in attendance. (See attachments)

CONSIDERATION OF SENATE BILL 180: Senator Mazurek, District #16, sponsored this bill at the request of the Department of Health and Environmental Sciences. He presented the committee with a proposed Statement of Intent (Exhibit 1) which he felt would be of assistance to the committee. Under the present law a man and woman are required to have a serological test for syphilis and rubella 20 days prior to their marriage. This bill would revise the requirements to eliminate the test for syphilis but would retain the test for rubella. The test for rubella would be extended from 20 days to 6 months. The bill also clarifies who is able to administer the test or from whom the test is acceptable. Penalties are also revised to allow for those cases where the department may grant an exemption from the test. There is no guarantee that in a negative test the individual would not subsequently develop syphilis prior to the birth of a child.

Chairman Hager asked for proponents to this bill.

John Anderson M.D., Department of Health and Environmental Sciences, stated that he was primarily at the hearing to answer questions. The original intent was two-fold, to find any known cases of syphilis, but primarily to avoid having a baby born with congenital syphilis. If this bill is passed the test will be done on the baby and mother when entering the hospital for delivery. In the last 10 years there were 8,300 marriages, rounded off to 8,000, which would be 1600 tests and from this number of tests there have been 18 positive. None of these were in the infectious stage. Most were men and women in their 30's and 40's and not considered to be child bearing age.

There being no other proponents, Chairman Hager asked for opponents. There were no opponents.

Chairman Hager asked for questions from the committee. There were no questions from the committee.

CONSIDERATION OF SENATE BILL 150: Senator Story, District #37, presented this bill. He stated that SB 150 would alter a rule of the Department of Health and up until the last session a

Joint Resolution would have been used. Due to Judge Bennett's decision it now takes a bill to change a rule. This bill would eliminate the requirement that large swimming pools must have lifeguards on duty. If this bill passes, large privately owned pools will not have to have a lifeguard, just a sign displayed "Lifeguard not on duty." The rule was adopted in December, 1972, by the Department of Health without a public hearing. He feels this should be changed for the following reasons: (1) because the Department of Health does not have statutory authority to adopt rules, (2) the rule is not necessary for safety, (3) the rule causes undo economic burden; and (4) the rule is impractical in other regards other than financial. Department of Health Rule 16.10.37 requires a lifeguard in accordance to statute 50-53-103. That statute says the Department may adopt rules for sanitation in public swimming pools and public bathing places to protect health. It is not a safety regulation. The department only has authority regarding sanitary provisions. He feels there is no demonstrable need for the lifeguard requirement. For the last 15 years there has been no deaths due to drowning in pools. He knows of one drowning by a drunk who got onto the premises after hours. His concern is for Chico Hot Springs. The pool is open year round 18 hours a day. The situation is entirely different than in the city. It is a private resort and children are usually accompanied by parents. The pool is frequently not crowded with just one or two bathers.

Chairman Hager asked for proponents to this bill.

Mike Art, owner of Chico Hot Springs, supports this bill for the reasons presented by Senator Story. He is very much a proponent for safety but it is difficult to run his business under this handicap.

Evelyn Joppa spoke in favor of SB 150. She requested the Department of Health to take into consideration that these type of pools, over 2,000 square feet, have peak times when they might choose to have a lifeguard on duty, when a large number of children are coming. They know their requirements, the Department of Health does not. There are a number of pools requiring parents to go in with children under the age of 5 or to be accompanied by an adult. There is safety even though a lifeguard is not on duty.

Dennis Popp spoke in favor of this bill. He feels the requirement for a lifeguard does not increase safety without the owner's active interest. He suggested that possibly someone is trying to justify the opening of a new state agency. He feels the owner has a vested interest in the safety of the people who use his pool.

Chairman Hager asked for opponents to SB 150.

Vern Sloulin, Department of Health, Food and Consumer Safety Bureau, is opposed to this bill. He presented the committee with information relating to the bill, a copy of which is attached as Exhibit 2. He stated that he was at the meeting basically to provide information and to clarify some points brought up. The rules were first adopted prior to 1971 under authority of the present law. They have an Attorney General's Opinion on this subject relating to their authority for safety in hotels and motels. The previous director of their legal division advised that they also had authority in other than hotels and motels. The adopted rules were determined after a consideration of other states' standards and national organizations. The National Swimming Pool Institute rule requires a lifeguard for every 1800 square feet and a second lifeguard for over 3,000; Texas requires a lifeguard per every 75 people; Ohio requires a lifeguard for 2,000 square feet; Virginia all pools have to have a lifeguard; Florida requires a lifeguard for 2,000 square feet; North Dakota requires a lifeguard per every 75 people; and Nevada requires a lifeguard for 2,000 square feet. His figures of deaths due to drowning are two on the highline, two in Great Falls and one death in Missoula during the last two or three years in privately owned pools.

Brian Kelly, American Red Cross, stated that his primary concern is water safety. He agrees with the gentleman from the Department of Health. There have been pool drownings in Montana in the past two or three years. There was one in a privately owned pool in Great Falls, two in privately owned pools on the highline, one in Missoula and a man is paralyzed from a water accident in a private pool in Great Falls. He would encourage the committee to thoroughly examine the drowning fatalities in Montana in the past years. Statistics can be obtained, but what price do you put on a life? The bill would pertain to hot spring pools, hotel and motel pools and YMCA pools. Some hot spring pools in the state are not clear and do not have lifeguards. He suggested an alternative to this bill. He suggests that a Red Cross basic water safety course, which is four hours of training, and a CPR course, which is 8 hours, be given. Those two courses would enable anyone, especially a non-swimmer, to save the life of a person that has had a water accident.

Chairman Hager asked for questions from the committee.

Senator Marbut asked Mr. Vern Sloulin if the statistics on drownings in pools stated if there was a lifeguard on duty.

Mr. Sloulin said that he could not answer that question.

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Senator Marbut feels this is critical information and would like that information before making a determination on the bill.

Mr. Sloulin said that even though a lifeguard was on duty at the pool, he would not be on duty for 24 hours.

Senator Marbut said he is not interested in whether or not the lifeguard was at the scene, just whether a lifeguard was supposedly on duty at the time.

Senator Jacobson asked Senator Story if privately owned non-private type pools, the YMCA for instance, would be exempt under this bill.

Senator Story said if they don't charge a fee they are exempt. We do not know if they charge a fee.

Senator Christiaens asked if pools like Chico Hot Springs are now providing lifeguards.

Senator Story said no and they have never had a drowning at Chico.

Vern Sloulin said that Mr. J. Murfitt, who was present at the meeting, had advised him that there were no lifeguards on duty at any one of the drowning incidents.

Senator Story questioned the size of the pool in each drowning case.

Vern Sloulin did not know that information.

Senator Hager asked if the Department gets a report on these type of accidents.

Vern Sloulin said yes.

Senator Hager asked if the committee could be furnished with copies of the accident reports.

Vern Sloulin said yes.

Chairman Hager asked Senator Story for any closing comments.

Senator Story stated that the fact remains that in the statute the state only has the power to regulate sanitation. They have gone to the Attorney General but the authority has not been adopted in court. If this bill does not pass, Chico Hot Springs will have to go to court to determine whether or not this rule is valid. If the court finds the rule is valid they

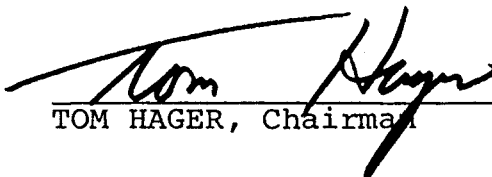
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will probably have to shut down Chico Hot Springs. Consequently safety will not be increased. The probable consequence is that more of Park County children will swim in the dredge pond, which has dangerous cliffs and the water level is from 30 to 50 feet. Chico could justify hiring a lifeguard during the summer months when they have a high load capacity but they cannot afford to keep a lifeguard on duty all year round.

Chairman Hager closed the hearing on SB 150.

ANNOUNCEMENTS: The next meeting of the committee will be held in Room 410 of the State Capitol Building on Wednesday, January 26, 1983, to hear SB 27, SB 31 and SB 32, sponsored by Senator Tom Hager.

ADJOURNMENT: There being no further business the meeting was adjourned.

  
\_\_\_\_\_  
TOM HAGER, Chairman

ROLL CALL

PUBLIC HEALTH, WELFARE, SAFETY COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 1/24/8

[illegible]



NAME: John Anderson MD DATE: 1-24-83

ADDRESS: Cogswell Bldg

PHONE: 449-4740

REPRESENTING WHOM? Dept Health & Environment Science

APPEARING ON WHICH PROPOSAL: SB 180

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME: Carolyn B. Jypen DATE: 1-24-83

ADDRESS: Helena Mt

PHONE: 443-3035

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: AB 150

DO YOU: SUPPORT? ✓ AMEND?        OPPOSE?       

COMMENTS: I support this bill because present rule  
making of the Dept of Health does not take into  
consideration that large private pools are  
located away from municipalities & require  
travel to such pools. Most drowning that  
occur in pools are children under the  
age of 12 or adults having had too much  
to drink. The cost of having a guard on duty  
the full time is prohibitive. However with  
this bill it leaves the private pools the  
option of providing a guard during peak  
periods or.

Parents or the adults taking children  
to such pools should be responsible  
PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.  
for the safety.

Some large private pools may have  
staff, because of location may not be  
well trained thus giving a false security.  
There so have a sign "Swimming No Life  
guard on duty swim at your own risk.

NAME: Dennis Papp DATE: 24 Jan 83

ADDRESS: Box 104 Helena 59620

PHONE: 458-9835

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 150

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: 1. Requirement for lifeguard does not materially increase safety without owner's active interest. ~~Can~~ Believe we should TRUST owner's desire to avoid loss and insurance company requirements to ensure safety.

2. Requirement for lifeguard is open invitation to adopt a new state agency to:

a. Inspect lifeguards, lifeguard/swimmer ratio, lifeguard pool breaks, etc, which leads to,

b. State testing of lifeguards for uniformity of procedures and knowledge of regulations, which leads to,

c. A state agency to train, as well as test, inspect, ~~and~~ regulate and administer programs, attract Federal grants, etc. -- And charge fees for their services.  
PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

This will increase state government's size & expense without materially increasing the safety of swimmers, and could decrease swimming experience through the increased costs to pool owners.

This bill will preclude the gradual development of a state agency to regulate lifeguards.

STATEMENT OF INTENT  
SENATE BILL 180  
48th LEGISLATURE

A statement of intent is necessary for Senate Bill 180 because it adds to the laws relating to premarital serological tests rule-making authority for the Department of Health and Environmental Sciences to specify allowable exceptions to the test requirement.

Present law defines a premarital serological test as including both a test for rubella immunity and a test for syphilis. Senate Bill 180 eliminates the syphilis test requirement and requires the rubella test only of female applicants for a marriage license, since the purpose of the rubella test is to alert the license applicants to lack of immunity to the disease which could result in damage to a fetus if rubella were contracted during pregnancy. Since the test is of value only to women capable of bearing children, there is no purpose in requiring the test of women incapable of doing so. Therefore, the rules would define those categories of women whose medical status precludes them, with reasonable certainty, from bearing children, including, but not limited to, women over child-bearing age and those whose physicians certify they are incapable of bearing children.

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SENATE BILL 150

"A bill for an Act entitled: An Act to provide that for privately owned public swimming pools, no lifeguard is required if warning is given:

Section 50-53-107 would be amended to read:

(2) A lifeguard is not required for a privately owned public swimming pool if a sign is prominently displayed . . .

At the present time the State of Montana, through its Rule for Swimming Pools, ARM Title 16, Chapter 10, Subchapter 2, addresses the lifeguard requirements for all public pools in the State of Montana.

Section 16.10.1224 Lifesaving Equipment states:

(a) Each pool having an area of more than 2,000 square feet shall be provided with an elevated lifeguard chair. Additional chairs shall be provided on the basis of one/each 2,000 square feet or fraction thereof. The chairs shall be located so as to provide a clear unobstructed view of the pool bottom in the area under surveillance.

(d) Where no lifeguard service is provided, the warning sign shall be placed in plain view and shall state, "Warning - no lifeguard on duty," with clearly legible letters at least four inches high. In addition the sign shall also state, "Children should not use pool without an adult in attendance."

Section 16.10.1229 Operating Requirements states:

(8) . . . when a use fee is charged, competent lifeguards shall be on duty during all swimming periods.

To paraphrase the preceding sections, three items are addressed.

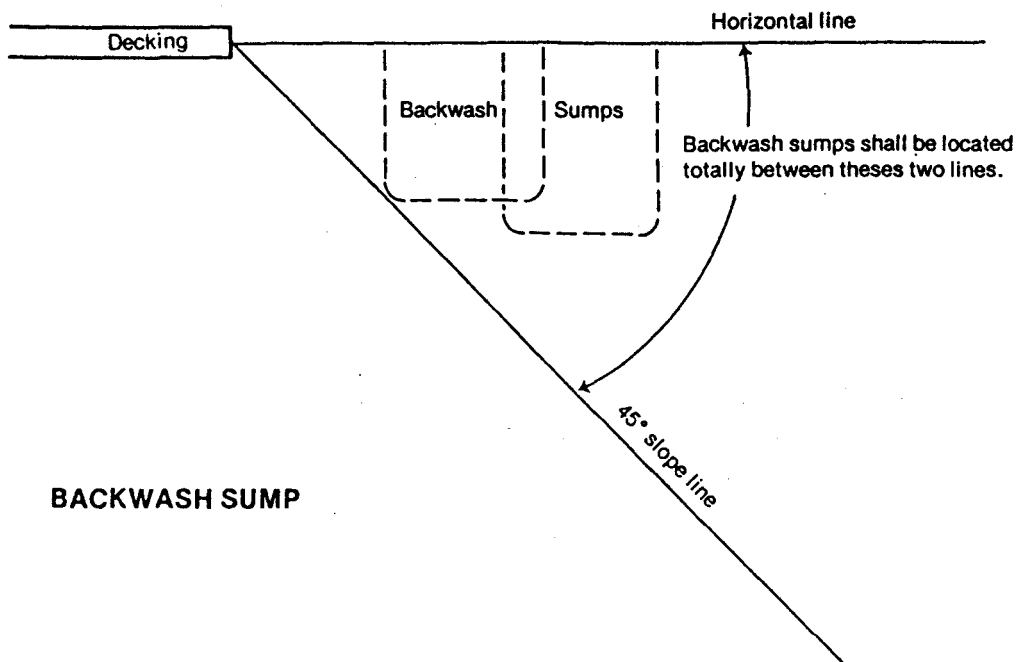
1. Any public pool, 2,000 square feet or over, must have lifeguard service provided. (YMCA, municipal, large resort.)

2. Any pool less than 2,000 square feet may have a lifeguard present if they wish, however, a warning sign is satisfactory, e.g. (motel/hotel, campground).

3. Any pool charging a use fee (health spas, resorts, under 2,000 feet, etc.) to use the facility, must have a lifeguard in attendance.

Prior to the introduction of Senate Bill 150, a rewrite of these rules was undertaken. During this rewrite, number 3 above was eliminated.

The only requirement for lifeguards remaining is when a pool is 2,000 square feet or larger in size. This measurement is a common standard used by many states and is recommended by national swimming pool organizations. The lifeguard requirement is justified by the increased risk to safety due to the large area and occupancy load which could be 150 or more.



- 9.13.4 Deck work shall be designed and installed in accordance with the engineering practices required in the area of the installation. This includes the design and quality of sub-base when required, concrete mix design, reinforcing, etc. In the absence of specific local engineering practices the work shall be performed in accordance with the recommended practices of the American Concrete Institute. \*

## 10. SAFETY

- 10.1 Class B and C pools with over 1800 square feet (139 m<sup>2</sup>) of water surface area shall have at least one elevated lifeguard chair for each 3000 square feet (279 m<sup>2</sup>) of pool surface or fraction thereof. Where a pool is provided with more than one lifeguard chair and pool width is 45' (13.72 m) or more, they shall be located on each side of the pool.
- 10.2 Depth of water in feet shall be plainly and conspicuously marked at or above the water surface on the vertical pool wall and on the top of coping or edge of the deck or walk next to the pool, at maximum and minimum points and at all points of slope change and at no more than 2' of intermediate increments of depth. Such markings shall be spaced at no more than 25' (7.6 m) intervals and shall be arranged to be uniformly located on both sides of the pool as well as both ends. In the case of irregularly shaped pools, such markings shall designate depths at all major deviations in shape as well as conforming to the foregoing where possible.
- 10.3 The depth marking numbers shall be at least 4" (10 cm) minimum height, of a contrasting color with the background of a reasonably permanent nature. Markings on the vertical pool wall shall be in the uppermost portion of the wall and be positioned to be read from the water side. Markings on the deck shall be within 18" (46 cm) of the water edge and positioned to be read while standing on the deck facing the water. Deck markings shall be slip-resistant.
- 10.4 A life line shall be provided between 1' and 2' (30 cm and 61 cm) on the shallow side of the break in grade between the shallow and deep portions of the swimming pool, with its position marked with visible floats at not greater than 7' (2.13 m) intervals. The life line shall be securely fastened to wall anchors of corrosion-resistant materials and of the type which shall be recessed or have no projection which will constitute a hazard when the line is removed. The line shall be of sufficient size and strength to offer a good handhold and support loads normally imposed by bathers.
- 10.5 There shall be no protrusions, extensions, means of entanglement or other obstructions which can cause the submerged entrapment or injury to the bather. There shall be no hazardous obstruction extending from the pool wall or floor into the clear area of the diving portion of the pool.

\* A.C.I. Standard # 302-69