

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 17, 1997, at 10:17 A.M., in ROOM 325

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 78; 1/8/97
Executive Action: None

HEARING ON SB 78

Sponsor: SEN. MIKE SPRAGUE, SD 6, BILLINGS

Proponents: Mick Robinson, Governor's Office
David Lewis, Director, Office of Budget and Program Planning
Jane Hamman, Office of Budget & Program Planning
W. James Kembel, City of Billings
Riley Johnson, National Federation of Businesses

Informational Testimony: Jack Sands, Yellowstone Co. Community Advisory Council

Opponents: REP. BOB PAVLOVICH, HD 37, BUTTE
Tom Schneider, MT Public Employees Assoc.
Mark Staples, MT Taverns Assoc.

Beverly Gibson, MT Assoc. of Counties
Terry Minow, MT Federation of Teachers & State
Employees
Jim Smith, MT County Welfare Directors Assoc.
Mark Fisher, Helena
Joan Davies, Bozeman, County Welfare Director of
Gallatin and Madison Counties
Angela Fultz, Chief Deputy for Secretary of State
Paul Miller, MT Hunger Coalition
Don Judge, AFL-CIO
Greg Van Horssen, MT Assoc. of Beer & Wine
Wholesalers for Tom Hopgood
Kate Cholewa, MT Women's Lobby
Al Smith, MT Advocacy Program
Gail Jones, Chairman, Powell County Board of
Commissioners
Glenna Obie, Jefferson County Commission
Tom Foley, American Federation of State, County &
Municipal Employees of Montana
Shane Farnsworth, MT State Liquor Store Owners
Assoc.
Susie Hollingsworth, FAIM Coordinator, SILVER BOW
COUNTY. (EXHIBIT 19)
Tim Dalin, Liquor Store Assoc.
Bob Lemm, MT Distillers
Bea Lunda, President, Liquor Store Owners Assoc.
of Montana
Doug Kirby, Liquor Store Owner Assoc. member
Ms. Cline on behalf of Annette Sontag, Missoula,
(EXHIBIT 20)
REP. DIANE SANDS, HD 66, MISSOULA, (EXHIBIT 21)
Margaret Nelson, Big Fork, Victor Liquor #172
Mark Ganoom, Big Sky, Member, Liquor Store Owners
Assoc., #190
Brian Shennum, Krisco Liquor #170
Joseph R. Smith, Great Falls, #139
Judy Smith, Missoula FAIM Advisor
Patty Giverson, Past President, County Welfare
Assoc.
Russell LaVigne, People's Law Center
Bridget Johnson, private citizen, (EXHIBIT 22)
Willard Hill, private citizen

{Tape: 1; Side: A; Approx. Time Count: 10:17; Comments: None.}

Opening Statement by Sponsor: SEN. MIKE SPRAGUE, SD 6, BILLINGS I
bring you SB 78 at the request of the Governor. The purpose of
this legislation is to create a Governor's Competition and
Efficiency Act which will develop a process by which facts can be
separated from fiction. Many of us know, however, that there are
innuendos that government doesn't offer the services that the
taxpayer deserves, and if it does, it's inefficient, etc. We're
trying to develop a process by which government services are
being offered at the most cost-effective and economical way for

the taxpayer. And if this is so, leave them alone. Common complaints of constituents are that we have too much government. Is it being done the best way possible? Why don't they start running it like a business, and all those inferences that I can't answer. I then go through a process by which I contact various departments and try to get information and answers for the constituents, which is usually inadequate. I'm excited about this process so we can find out, once and for all, whether or not a certain department is doing its job efficiently and get off their back if they are. If they are not, then open it up to the private sector and see if they can offer those same services more efficiently and cost-effectively. I'm going to have others speak to the specifics of this bill. I would like to ask the committee, as best they can, to focus on that part of the bill that sets up a process by which we can facilitate that conviction. You have been provided with a handout. (EXHIBIT 1) Copies are on the desk for members of the audience who would like one. This is an emotional issue and every time government tries to do something different, there is concern. I believe it was Winston Churchill who said once "the only thing to fear is fear itself". With that in mind, let's not be fearful of finding out information and whether or not the process is working the way we intended.

{Tape: 1; Side: A; Approx. Time Count: 10:22; Comments: None.}

Proponents' Testimony:

Mick Robinson, representing Governor Racicot. I feel there is a tremendous amount of misunderstanding regarding the purpose of this bill. The bill will put into place a mechanism that is objective and factually based, in terms of making enquiries of those particular services that state government ought to be involved in. One of the main questions that ought to be asked, is there a valid public purpose for the state being involved in that particular issue, or is it possible that service could be provided by the private sector more efficiently? The list of particular program enquiries that are included toward the end of the bill are the constant comments we seem to be hearing regarding the necessity for the state to be involved in the provision of those services. I don't know that there has been a factual or objective evaluation of any of those particular services. This bill is to put into place a method that can be used to evaluate the efficiencies of providing the service or the efficiency of government versus the private sector in providing a service to the taxpayers of the state.

In my past life as Director of the Department of Revenue, I am most familiar with the issue of the privatization of the Liquor Warehouse. I'm not sure there has ever been a study of that particular issue, yet there are always comments as to why the state is involved in providing that service. Can it be done more cost effectively by the private sector, what are some of the qualitative issues that ought to be considered in maintaining a supply to the retail liquor stores around the state? We are

after the particular process of an objective, factual enquiry regarding a number of issues at the state level that would come to some kind of conclusion on these particular issues rather than have these issues keep coming up year after year and session after session. As **SEN. SPRAGUE** indicated, lets look at the program and make a final decision. If it is being done in an efficient, cost-effective manner by the state, lets put that to rest and let the state continue providing that service. On the other hand, if there are sufficient deficiencies that might be provided by the private sector, let us move in that direction.

{Tape: 1; Side: A; Approx. Time Count: 10:27; Comments: None.}

David Lewis, Office of Budget & Program Planning (OBPP). This project started right after the last legislature in 1995 as one which OBPP initiated. At the end of the 1995 session the OBPP looked at where we were going and what the challenges were going to be as we move toward 1999. We looked at the impact of a probable balancing of the federal budget, the fact that about 1/3 of our total budget package from the federal government would be cut, that the growth of these dollars was going to slow down. We looked at the growth in our economy, which is certainly slow but steady at this time, and the explosion of needs, particularly in corrections, and the continued need for dollars in the area of education. It became obvious that we have to put more emphasis on reducing the costs of the general operations of government. We have to get more services for the dollars we spend. We decided to look at other jurisdictions, to look at cities, states, other countries and see if there were some common themes that had come out. We also looked at the private sector. A couple of things came out of that examination; there are a couple of things you can do to get more services for the dollar you spend. You can use competition to sharpen up your costs and production and you can use automation. We have two bills to approach both of those issues. This particular bill looks at competition to allow public employees and private entities to compete for the same work from the perspective of trying to get increased productivity. The major proponents of this bill should be the taxpayer; we are trying to serve them with this bill. We are trying to get more services for the dollars that government spends and the taxpayers will be the ultimate beneficiaries of that process. We looked at the cities of Phoenix and Portland, the states of Michigan, Massachusetts and the province of Alberta. We have quite a bit of information on Alberta, which has a lot of similarities with Montana. The Alberta Department of Transportation changed their mission to move to outsourcing more; they outsourced, over the last 1½ years, highway maintenance, engineering and design, construction supervision and information technology. In 1985 the Department of Highways had 5000 employees; this January they are down to 750 employees. They say they are going to save \$40 million per year, providing the same services with 4200 fewer employees. They sold \$80 million worth of equipment to the private sector. We can monitor their performance and learn from what they have accomplished and

their mistakes. Members of our staff met with them last summer and will be going back this summer to continue to look at what they have accomplished. This isn't a dream; this is for real in cities and states in the United States and a neighboring province in Canada. You can use competition to maintain the quality of services. A lot of things happen when you flatten your organization. You are able to reduce the hierarchy and the level of supervision within the public entity and you move responsibility off of central locations. That has worked particularly in Alberta. They started a year ago with a major portion of these contracts. They have five year contracts; a lot of department employees became contractors. We think this is a good model for us to look at and monitor. They monitor contractor performance with demerits which are a \$5,000 penalty for the first demerit and \$10,000 penalty for subsequent demerits. The computer center had 81 employees; they transferred that to private operation and are down to 3 employees at the department level to monitor that particular operation. Alberta has also privatized drivers' licensing and motor vehicle registration. We think we can set up a process that allows us to explore those same kinds of options in Montana.

We've had a lot of criticism of this bill and have bent over backwards to try and accommodate a lot of these concerns. One of the major issues is why do we have to have a council, let the OBPP do this. We feel you need an outside entity to make these things happen. It is very difficult to generate a real imperative to change from within a department or organization. Texas and many of the other states have set up big competition councils; they've brought in a lot of people and spent a lot of money setting up the process to require departments to participate in this. In Alberta, the Premier brought in someone from outside Provincial Government, set that person up with a large staff and used that to drive the process. You need someone from outside the organization to initiate and make these things happen. The list of projects is in the bill for legislative approval. In the next session we will bring back another bill with another list of projects. There will be plenty of opportunity for public input and comment. We have a council that is composed of four legislative members and four executive members. We are willing to work with joint legislative, executive and oversight on the projects that are approved by each session of the legislature. These are not easy things to do. We started out with a list of approximately 125 and narrowed it down to the ones in the bill now because they are the ones we think we have the most likelihood of being successful. If we are going to put a process like this together, we ought to have some victories up front. You have to be able to generate some dollar savings and money to put into a pool to pay for severance costs, early retirements and those kinds of things for public employees. This list of projects has been developed with the fact that we know we have vendors who are interested, we know we have assets that can be converted into cash to help pay for the costs of severance packages, etc. We feel very confident that we can be successful

as we move through these projects, while lowering costs and maintaining quality. Again, we don't have the luxury of simply saying we aren't going to do anything because in two or four years we're going to be dealing with a much more dramatic situation as far as the scarcity of resources, pressure from the corrections area and continuing need to make investments in education. We have to put some major effort into trying to improve state government by delivering better services more economically for the taxpayers of this state. We think this is a good place to start; we've gone to a lot of effort in our research in looking at other areas to come up with a model that we think will work in Montana.

{Tape: 1; Side: A; Approx. Time Count: 10:37; Comments: None.}

Informational Testimony

(EXHIBITS 2, 3, 4, 5, 6, 7, 7A) were handed out by CHAIRMAN JOHN HERTEL.

Jack Sands, Council Chair, Yellowstone County Community Advisory Council. I chaired a community advisory council for welfare reform in Yellowstone County, a volunteer organization consisting of approximately 30 people. The council addressed this bill yesterday and asked me to convey their impressions of it to you. They take no position on the issue of privatization itself or the process contained in this bill. Many members of the committee are strongly supportive of privatization and many are supportive of the process contained in this bill. They are requesting that this bill be amended in Section 21 to take out the provision regarding the subject of eligibility technicians. The reason is that, as we see changes in the welfare program in the State of Montana we see errors. Welfare, as we know it, is undergoing extensive change and we believe this process is being very successful. We think subjecting eligibility technicians at this time to the process contained in this bill would be counter productive. This council does not oppose privatization, this bill, the process in this bill or even having eligibility technicians reviewed at a later time. (EXHIBIT 8)

{Tape: 1; Side: A; Approx. Time Count: 10:40 am; Comments: N/A.}

Further Proponents' Testimony:

Jane Hamman, Office of Budget and Program Planning. For the last year and a half, I have worked on drafting this bill with representatives from the agencies and the executive branch as well as talking with people across the state. I would like to highlight the bill. If you would look at the handout (EXHIBIT 1), on the last page are the amendments that the administration is recommending. As SEN. SPRAGUE has mentioned, state government is interested in increasing productivity and efficiency in the delivery of government services. The primary purpose of this act is to establish a competitive privatization process. We strongly

feel that Montana state employees and employee groups should be allowed to compete with the private sector.

On page 2 of the bill, there is a statement of intent because the Dept. of Administration and the Budget Office are given authority to adopt administrative rules. It is emphasized that it is not the intent of this bill to, in any way, restrict the current management practices of state agencies. They currently address workload changes by doing the work themselves; this process is not designed to interfere in any way.

Agency, as it is used in the bill, means any department of the executive branch of state government only. Competition includes using the concept of free market functioning whereby at least 2 viable service providers bid to perform services for state government.

On page 3 we have four amendments. We are clarifying that a state employee is a permanent employee. We are clarifying that process as shown on line 20 means there will be requests for proposals consistent with 18-4-304. We have an amendment that has been requested from local government adding them clearly on line 21 so they could be active participants.

Section 3 is one that there has been a great deal of discussion--the competition council. As Mr. Lewis mentioned there will be four members of the council. The council will become the gatekeeper on managing the workload and the process. The bid process will be proceeded by Legislative approval in a bill every session on those items.

We have added the Legislative Auditor as an ex-officio non-voting member. That relates to work that has been the responsibility of the Legislative Audit Committee. They have had privatization responsibilities in the past. Given the fact that this council has an equal balance with four legislative members on it, later on in the bill there is a repealer of those current provisions. Also recognize that at any time the Legislative Audit Committee may request public hearings on any matter or any agency in state government.

I would like now to mention on page 6 and 7, there will be a handbook provided. Training will be made available through consultants and the Budget Office for state employees who are affected by the provisions of the bill. We have looked at handbooks that have been prepared by Portland, OR, the State of Texas, and the State of Arizona. We are using them in part as models for our handbook. There is an account established so that whenever there are savings realized, after a period of two years, any balances in those accounts would go into this account and at the end of every biennium, any amounts not needed for purposes of the council and not being appropriated by the Legislature, they would be swept to the General Fund.

Section 13 indicates that anyone may initiate the competitive government process so that the council would be involved in review.

I believe clearly that Section 15 is the heart of the bill. It has been my privilege to meet with the field services administrator and with the administrator to the Public Employees Department of the AFL-CIO in Washington. We discussed public employees and their rights and responsibilities under this bill. I have met with the U.S. Dept. of Labor and others. There was also a great deal of information on model legislation and much of this Section 15 was taken from this draft on model legislation which was developed by the Council of State Governments, the National Association of Counties, the National Conference of State Legislatures, the National Governments Assoc., the U.S. Conference of Mayors and eleven other organizations in cooperation with the U.S. Dept. of Labor, Federal Mediation and Conciliation Service.

The remainder of the bill then indicates that the council will review the report for those work place units. They will make the decision to proceed. That concludes my remarks, **Mr. Chairman.**

{Tape: 1; Side: A; Approx. Time Count: 10:49 am; Comments: N/A.}

Jim Kembel, representing the City of Billings. We wish to support the amendment that clarifies the opportunity for local government to be a provider. Thank you.

Riley Johnson, representing the National Federation of Businesses. The most common complaint I hear from our area is why does the state have to do all the work and provide the services and fund this with taxpayer monies and not allow privatization. We know that there are some functions that should be done by government. What we feel that this bill is doing is 1) letting the people know that this government and industry are legitimately interested in looking at privatization as well as more efficient and cost saving methods; 2) we feel that it would eliminate some of the costs and time to review the processes that we have had complaints on over the years; and 3) we feel that the council would provide private enterprise the where and how to be in the competitive arena with state government. With that opportunity we feel private enterprise is willing to compete on that basis. We strongly support this bill.

{Tape: 1; Side: A; Approx. Time Count: 10:52 am; Comments: N/A.}

Opponents' Testimony:

REP. BOB PAVLOVICH, HD 37, BUTTE. I sit on the Legislative Audit Committee and we heard this proposal. Before you, you have a list (**EXHIBIT 9**) of the chronological events leading up to this bill. On page 3 you can see our recommendation. The Legislative

Audit Committee makes no recommendation on the seven preliminary privatization ideas submitted by the OBPP because information does not meet the requirements of state law.

Tom Schneider, representing MT Public Employees Assoc. We have been involved in this piece of legislation for the past year. Basically, the Governor and I have an honest disagreement on this bill. My problem deals with the fact that I have spent 40 years in state government and I have watched many of these things created by the Legislature and now I see a bill which says that 8 people, only 4 of whom are Legislators, can change the total direction of how these programs function and how these services are going to be directed in the future. I have some problems with the bill itself. First, the statement was made by the Budget Director that each session the Legislature is going to have the chance to review all the items which are going to be considered in the following biennium. How much time are you legislators going to have to allow you to hear about the 13 items which are in this bill. You know that you will not have the time. There must be a better way to go. One additional point is that the Center for the Aged is going to be sold for \$4.7 million to some nursing home care organization and that facility was given to the State of Montana as well as the land for \$1 for the express purpose of having a center in Lewistown to take care of people that no nursing home in this state would. I believe this is a major mistake. And if you want to have eligibility for welfare determined by computer this is up to you; I assume that must be what the Budget Director wants to do.

Mark Staples, representing MT Taverns Assoc. and a number of associate memberships of other retail liquor stores. This is a privatization bill in "competition" clothing. Privatization may have merits in individual cases, but it is the Legislative prerogative to look at these cases. What we are really talking about is that privatization is tough to get through Legislature. But I submit to you that it should be. That is where the battles should be fought, not with four members appointed by the administration and four members of the Legislature. As far as the Liquor Warehouse is concerned you say you are looking for more efficiency and it can be run more efficiently. But what you are looking to do is sell it for \$3.6 million, a good chunk of which will go to the severance packages for the employees so it is a wash in the long run. I think it is a ruse to say the employees are going to compete for that \$3.6 million warehouse. They can't buy that \$3.6 million warehouse. Those who bring to the board the questions of why something should be sold, are usually the entity that wants to take it over. They then end up dominating the field. Thank you.

Beverly Gibson, Assistant Director, MT Assoc. of Counties. I would like to read a letter from Bill Kennedy, County Commissioner of Yellowstone Co. (**EXHIBIT 10**). I also have copies of the resolution (**EXHIBIT 11**) from the Montana Assoc. of Counties who oppose this piece of legislation.

{Tape: 1; Side: B; Approx. Time Count: 11:04 am; Comments: Missed the name on the tape and whom she represented.

Terry Minow, MT Federation of Teachers and State Employees. We are in opposition to SB 78. We have looked at the bill and there are many things we can agree with. For example, we share the opinion that state employees should be provided with tools to compete with the private sector when privatization is proposed. We agree with improving efficiency and productivity. We agree that further reductions in the state work force are not a solution to budget problems and we have always opposed across the board cuts as a failure to set priorities and adequately fund those priorities. We have been consistent in opposing privatization. We oppose this because it is our members who lose their jobs. Privatization has often been a way to move numbers on a page. We want to be on record in opposition to SB 78.

Jim Smith, representing MT County Welfare Directors Assoc. I would like to hand in my testimony (EXHIBIT 12). Thank you.

Mark Fisher, Helena. Handed his typed testimony in at this time. (EXHIBIT 13)

Joan Davies, Bozeman, County Welfare Director, Gallatin and Madison Counties. I would like to follow up with what Jim Smith said; I would like to give you some more reasons why the eligibility determination of welfare have been improperly included in SB 78. The FAIM program was conceived by members of a broad cross section of Montana. It was approved by Governor Racicot and was passed by the 1995 Legislature. The State of Montana subsequently invested hundreds of thousands of dollars into the training of workers and into changing the welfare system of Montana. The eligibility workers have answered the demands of all concerned. We have seen a 17% decrease in the AFDC caseload. We are an asset to the State of Montana. The question then is why are we being included on the list for possible privatization.

Angela Fultz, Chief Deputy for Secretary of State. I stand in opposition to SB 78 and would now like to hand my testimony to you (EXHIBIT 14).

Paul Miller, Member of The Montana Hunger Coalition. I would like to hand in our reaction to SB 78. Our principal recommendation is that the Family Assistance Eligibility Determination program part of the bill be excluded. (EXHIBIT 15)

{Tape: 1; Side: 2; Approx. Time Count: 11:25 am; Comments: N/A.}

Don Judge, representing the AFL-CIO. I concur on the comments on almost all of the previous statements made here today. I would like to point out that, and make myself available, with regard to Section 15 the relationship between the Office of Budget and Program Planning and the national AFL-CIO and other unions that have participated in developing that section. We concur

basically with the language in Section 15. We do have significant problems in other parts of this bill. The unions that have been testifying before me have said very clearly that they are willing to participate in making government effective, make the quality of services good and make it as productive as it can possibly be. They can do that now with this legislation if they are invited to the table to do that. Our concern is that this bill will take the power to privatize from the Legislature and give it to the Office of Budget and Program Planning.

Greg Van Horssen, speaking for Tom Hopgood, MT Beer and Wine Wholesalers Assoc. The Assoc. opposes SB 78 because it will privatize the State Liquor Warehouse without legislative oversight. The Assoc. was extremely concerned that very important policy considerations which underlie the system of distributing alcoholic beverages in Montana will be ignored if the Warehouse is privatized pursuant to this bill. A consensus does not exist among distributors, but a common thread that does run through every members' position is that we strongly support the maintenance of the three-tier system for this distribution. This bill will eventually destroy their three-tier system which is necessary, in our view. Also, it appears to us that the present system is turning a profit for the State of Montana. Why, if the operation is profitable, should it be privatized? This question has been asked of the Legislative Audit Committee and no good answer was forthcoming. **(EXHIBIT 15A)**

Kate Cholewa, MT Women's Lobby. We stand in opposition to this bill. I will hand in my written testimony **(EXHIBIT 16)**.

Al Smith, MT Advocacy Program. He states that the committee should remember what happened to the children in the mental health issues and he does not want the same thing to happen to the senior citizens. He is also unhappy about the limited time that was given to many of the people who wished to testify.

Gail Jones, Chairman, Powell County Board of Commissioners. I will hand in my testimony. We stand in opposition to SB 78. **(EXHIBIT 17)**

Glenna Obie, Jefferson County Commission. I would add our support to the comments made by my colleagues. We stand in opposition to SB 78.

Tom Foley, representing the American Federation of State, County and Municipal Employees in Montana. Mr. Foley handed in his typed testimony **(EXHIBIT 18)**.

{Tape: 1; Side: B; Approx. Time Count: 11:37 am; Comments: N/A.}

At this time **CHAIRMAN HERTEL** asked those remaining to step forward and give their name for the record.

Shane Farnsworth, MT State Liquor Store Owners Assoc.

Susie Hollingsworth, FAIM Coordinator, SILVER BOW COUNTY.
(EXHIBIT 19)

Tim Dalin, Liquor Store Assoc.

Bob Lemm, MT Distillers

Bea Lunda, President, Liquor Store Owners Assoc. of Montana

Doug Kirby, Liquor Store Owner Assoc. member

Ms. Cline on behalf of Annette Sontag, Missoula, (EXHIBIT 20)

REP. DIANE SANDS, HD 66, MISSOULA, (EXHIBIT 21)

Margaret Nelson, Big Fork, Victor Liquor #172

Mark Ganoom, Big Sky, Member, Liquor Store Owners Assoc., #190

Brian Shennum, Krisco Liquor #170

Joseph R. Smith, Great Falls, #139

Judy Smith, Missoula FAIM Advisor

Patty Giverson, Past President, County Welfare Assoc.

Russell LaVigne, People's Law Center

Bridget Johnson, private citizen, (EXHIBIT 22)

Willard Hill, private citizen

{Tape: 1; Side: B; Approx. Time Count: 11:41 am; Comments: N/A.}

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked Mr. Lewis to direct his attention to the fiscal note on the second page. SEN. BENEDICT believed that it was showing a \$5,642,000 savings to the General Fund and then asked if that is included in the executive budget? Mr. Lewis answered "no". SEN. BENEDICT said that if this bill does not pass, we won't have to worry about having to find \$5,642,000. Mr. Lewis said that is correct.

SEN. BENEDICT followed up with a question for Ms. Hamman. Could you direct me to the specific language in the bill that prohibits the competitiveness council and the executive branch from privatizing any function of state government unless they have the express approval of the Legislature? Ms. Hamman said that on page 3, subsection 5, line 6 it states that it has been approved by the council for participation and that either is authorized by law to be part of the process or is proposed to be performed by the private sector under a contract that is scheduled to be renegotiated. SEN. BENEDICT followed up by saying that the answer does not give him a great deal of comfort and stated that in Section 18 on page 10, the Office of Budget and Program Planning may adopt rules to implement all sections 1 through 18. and this makes him nervous. SEN. BENEDICT asked if she could respond that there will be absolutely no privatization of any type without the express consent of the Legislature? Ms. Hamman replied that is our intent; that is the reason for the provision in the bill that the Governor would submit a bill every session for legislation. This is not true in other states, but that is our intent.

SEN. CASEY EMERSON informed the committee that SEN. SPRAGUE'S quote in his opening statement actually came from Pres. F. D. Roosevelt. SEN. EMERSON expressed concern that the Legislature

would be giving up their prerogative of having control over privatization. He then asked **SEN. SPRAGUE** if he would be agreeable to changing this to having the same council members, but having only the legislative members have a vote? **SEN. SPRAGUE** answered that he would be agreeable to anything that would get the process in a logical, intelligent and civil way of solving the problem once and for all. He believed that all have been witness to a great deal of misinformation and emotion.

SEN. WILLIAM CRISMORE asked **Mr. Lewis** if they are considering the cost to the state when contracting to use private trucks and machinery as compared to the cost to the Highway Department in relationship to tax revenues. **Mr. Lewis** responded "no", we have not included that in the fiscal bill, because we have not even speculated as to what the savings might be by contracting this. But in a contract situation, we are going to have to look only at the cost of the service. We will only look at cost to cost.

{Tape: 2; Side: A; Approx. Time Count: 11:50; Comments: None.}

SEN. BENEDICT referred the group to page 3 on competitive government process; he was trying to see where the process won't occur without the express approval of each project. The way he read it, that particular section seems to allude to the fact that under present statute we have the ability to privatize certain parts of state government. He asked **Ms. Hamman** how she would construe that to mean that each project isn't just approved by the Council because it's already part of Federal law that certain privatization functions can occur?

Ms. Hamman stated that she sees what **SEN. BENEDICT** is saying and this certainly could be amended for clarification. We discussed this with Mr. Petesch and indicated that was our intent. This is the definition that was used together with section 21 which specifically says that on the effective date of this act the following programs shall take part. Using those two sections together we will be implementing our intent.

SEN. BENEDICT asked her if she would have any problem coming back to the Committee, before Executive Action, with an amendment that would tie it up very, very tight and specifically say that no privatization will occur without full public process of the Legislative Session?

Ms. Hamman replied "yes".

SEN. BENEDICT asked what the intent of the Budget Office is?

Mr. Lewis thought there may be a slight misunderstanding which he wants to clarify. Our intention is that we will not go through the process unless the list of proposals had been approved by the previous Legislature. We will make sure that we have included that proposal; you might step beyond that and say that after we

have gone through the bids that we couldn't do it until we came back and got full legislative approval. It could be discussed.

SEN. BENEDICT suggested a proposed amendment striking every project in here. He stated that if we pass this bill it could be construed to mean that it has already been approved by the Legislature. We could put some wording in that says the Competitiveness Council will determine what functions of state government should be privatized and then submit those to the Legislature one by one for approval going through the full legislative process and public hearings.

Mr. Lewis thought that was done here by stating that the list of projects reviewed over the last year were discussed with the Legislative Audit Committee. He had a concern that if we go out for a bid within the next six months and then have to wait 1½ years and come back for legislative approval to make a contract award it might be very inhibiting to potential bidders.

{Tape: 2; Side: A; Approx. Time Count: 11:54; Comments: None.}

SEN. BENEDICT tries to clarify what he is saying. If we struck every project in this bill, the Competitive Council could analyze each project in this bill. We could direct the Competitive Council to come back to us (the Legislature) before they put anything out for bid and the Legislature can state which functions should be privatized. If we pass this bill the way it is we are giving passive approval for you to put those projects out for bid without the full process. We are not going through the list and having a full legislative hearing on whether each function should be privatized or not.

Mr. Lewis stated that unless we go out for bid, we're not going to have hard numbers on what the cost comparisons are. If we requested information on each of these projects, potential contractors aren't going to lay their cards on the table.

SEN. BENEDICT asked if he would like each of these projects be put out to bid so that he could find out what the savings were and then every single one of these projects would come back to the 1999 legislature before the bid would be awarded.

Mr. Lewis stated that he's not sure that would work. He will consider it but he's not sure vendors will be willing to come forward with actual bids and then wait for legislative action. He doesn't want to be in the same kind of situation as with a Request For Information and have the vendors come back and say I'd like to bid that but I'm not going to tell you what my price is until you're ready to sit down and do a contract.

{Tape: 2; Side: A; Approx. Time Count: 11:57; Comments: None.}

SEN. CASEY EMERSON stated that he agrees with the idea of competitiveness and privatization; there are things in this bill

he likes. He has a few questions, one is a constitutional question. Have you, **Mr. Lewis**, checked to make sure it sits under the Constitution and have you cleared this possible sale of the institution at Lewistown with the landlord to find out if they would do it?

Mr. Lewis responded "no", we'd have to take it back to the landlord as he is the only one who can sell the property. We'd have to go back to the landlord explaining the proposal and asking if they would accept the proposal.

{Tape: 2; Side: A; Approx. Time Count: 11:59; Comments: None.}

CHAIRMAN HERTEL stated **Mr. Lewis** alluded to Alberta's plans in his testimony. He asked if they have a similar council like the one you are trying to get established here?

Mr. Lewis stated that the Premier brought in a person to do this. He didn't recall that they specifically had a council. They set up a separate organization to take on these problems.

CHAIRMAN HERTEL asked if this particular body would have the final say or does this have to go back to the department.

Mr. Lewis thinks the Premier instructed those folks to move ahead with these kinds of proposals, to take bids and award contracts. He didn't believe they had subsequent parliamentary review. He'd like to call and ask them how that works.

SEN. BENEDICT asked **Ms. Hamman** if the department will make the award under section 17 and circumvent the legislature.

Ms. Hamman stated the council would, under this bill as introduced, and be able to go ahead with any of the 13 programs listed in section 21 or any sections thereof. As the competitive team within the department, respectively, looked at the services and programs and saw what was available in the marketplace, they would be bringing their report, costs and outcome measures to the council. The council would look at it and work with the Department of Administration to develop the specifications that would be in a Request for Proposals. The council could stop it at that point for whatever reason. If the council proceeded as mentioned under section 17 it would move forward. That is the way this bill is written.

CHAIRMAN HERTEL asked **Ms. Hamman** to elaborate briefly on the handbook.

Ms. Hamman responded that the handbook will go through the government process steps. It will have some technical assistance on assessing goals and objectives, the strategic planning component that is necessary before you can move forward. There will be worksheets and schedules. She shared examples from Portland, OR and the State of Arizona, which are the two best

handbooks we've seen. They include a direct cost schedule so that you see what it costs to deliver those defined units of service and what the indirect costs are. Those are the sorts of things that would be in that handbook, as well as resources for the technical assistance to do the best possible job.

CHAIRMAN HERTEL asked for explanation of the Department Director's role or who are the members of the council?

Ms. Hamman explained on page 4, section 3, the Director of the Department is listed and amendment #5 clarifies that. They are looking at the Director of the Department that would be affected by the agenda item under consideration by the council. He would be a full voting member at that point in time.

CHAIRMAN HERTEL stated that would be a very fluctuating position then, it would deal with whatever issue you would be dealing with.

Ms. Hamman stated that is correct. This came up as a result of meetings with the agencies and they indicated that they would like to have specific representation at the table. There would be four members from the legislature, three constant members from the Executive Branch, and one voting member representing the agency that was on the agenda.

CHAIRMAN HERTEL asked if she feels that individual will have a lot of pressure applied to him? After all, it is his department you are considering. Do you see that being a problem?

Ms. Hamman responded that she sees that Directors have pressure day in and day out from legislators and constituents in answering these kinds of questions. The hope is, with the other members that are in here as well, that after this has been considered it would not be raised again for six years. Maybe we won't be hearing about some of these issues every single session the way we do now.

CHAIRMAN HERTEL asked for elaboration on why the 13 agencies listed on page 13, section 21 were chosen.

Mr. Lewis responded that after the 1995 session we developed a list of over 100 from the various departments. When we cut this down we were looking for projects that we would be successful at. We know that there are other states that have privatized portions of the lottery. The employees at Fish, Wildlife and Parks think they can bid against the private provider and do the job cheaper. Let's give them the opportunity. We know that there are people who would like to perform long term storage and retrieval. We know there are vendors in these transportation areas who are interested in doing these jobs. It is the same situation with the State Liquor Warehouse; we know we can contract with a private vendor who might be interested in buying the Warehouse and can deliver the product to the stores and meet the

requirements the stores have to have. Regarding Public Health & Human Services, Cascade County sold their nursing home 3 years ago, which was a very successful project. We know that if we can define the requirements for providing the services, we can maintain quality. We know there are viable vendors who are willing to bid for that project, pay us and operate the project to meet state standards. Again, the same situation in Family Assistance and Elderly Determination, there has been talk for 15 years from a lot of the various other human service providers in the state that they thought they could consolidate, take this project on and save money. At the present time, Wisconsin is out for bid on privatizing this particular activity within one of their large counties. As we understand it, the initial bid required that any vendor had to be willing to cut the cost by 30% on their initial bid. We would like to do a pilot project on the Family Assistance and Elderly Determination with the large counties here in Montana. These are on the list because we think we can do them successfully.

{Tape: 2; Side: A; Approx. Time Count: 12:10; Comments: None.}

Closing by Sponsor:

SEN. SPRAGUE closed by emphasizing change is not easy but will happen someday. There has been a lot of discussion on what could, should, might, maybe and all of those things. The Governor spoke last night that if we continue to do what we are presently doing we are going to continue to get what we presently got. I've welcomed the constructive criticism, ideas and input and I think, reluctantly for some, change is going to happen. I would like to hope it won't take another 60 years such as it did in the privatization of the liquor stores. I will do all I can to participate in the process for the ultimate conclusion of this.

CHAIRMAN HERTEL stated he appreciates everyone's patience today and for being here to testify. Thank you.

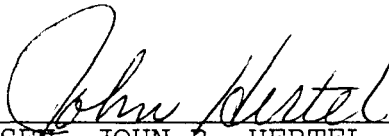
SENATE BUSINESS & INDUSTRY COMMITTEE

January 17, 1997


Page 18 of 18

ADJOURNMENT

Adjournment: 12:12 p.m.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW