MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on January 17, 1997, at 10:00 a.m., in 331

ROLL CALL

Members Present:
Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 114, 1/14/97;
SB 170, 1/14/97
Executive Action: None

HEARING ON SB 114

Sponsor: **SEN. MIGNON WATERMAN, SD 26, HELENA**

Proponents: **Chuck Virag, Fiscal Bureau Chief, Department of Public Health and Human Services**

Opponents: **None**

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, HELENA, distributed copies of proposed amendments to SB 114 (**EXHIBIT 1**) which will clarify some of the language in the bill, and indicated that the Committee already has copies of a fiscal note (**EXHIBIT 2**). She added that she has requested a revised fiscal note.

SEN. WATERMAN stated that SB 114 will clarify what is already being done with regard to collection of costs for the care of residents in State institutions. She pointed out that the fiscal note would lead one to believe that no costs are currently being collected, explaining that there was a miscommunication between the Department of Health and Human Services and the Budget Office in the preparation of this fiscal note, that these costs are actually being collected, and there will be no fiscal impact. She indicated that the bill will clarify the intent of some of the changes made in the 1995 session as a result of the Managed Care Mental Health program, and will allow the Department to continue their current practices, and maintain current revenues.

She explained that present law is vague and, in some cases, silent on what is being done. She referred to current statute 53-1-402(1), (**EXHIBIT 3**), and pointed out that, currently, this does not apply to the Montana State Hospital or the Mental Health Nursing Home, to the extent that these institutions collect all-inclusive rates, instead of a per diem rate. She pointed out that the language is unclear as to whether they can collect at all, or that the intent is that they can use an all-inclusive rate. She indicated that the Managed Care Mental Health contract allows for collection of an all-inclusive rate, and the Department is concerned that there might be a legal challenge, if they are being reimbursed at an all-inclusive rate. She added that this bill will help clarify that, and the amendments will further clarify the language.

She again directed the Committee's attention to current statute 53-1-402(1)(d) which refers to the Eastern Montana Veterans' Home, pointing out that the language is unclear as to whether the Department can collect if there is a private vendor. She added that this bill will clarify that.

SEN. WATERMAN explained that, currently, an assessment is made of a client's ability to pay and they are billed accordingly. She indicated that this bill will clarify what assets clients are required to disclose for that assessment, adding that one of the amendments, which was requested by the Department of Revenue, would require that requests for copies of tax records be made by the clients, themselves. She then indicated that this bill would also provide for automatic assignment of insurance benefits, pointing out that, especially in cases of involuntary commitments, clients often refuse to sign an assignment of benefits and the Department has to institute collection procedures.

She added that the fiscal note indicates this would increase those collections by approximately $3,000, but pointed out that it actually will cut down on administrative costs, and that the revised fiscal note will indicate there is virtually no fiscal impact.

Proponents' Testimony:

Chuck Virag, Fiscal Bureau Chief, Department of Public Health and Human Services, stated that the Department has requested this legislation to clarify the procedures currently being used to assess and recover costs of providing care at the Department's seven institutions. He indicated that this bill is not intended to increase costs billed to residents, that it will allow the Department to maintain collections essentially at the current level, adding that the only revenue enhancement they anticipate would be as a result of the automatic assignment of insurance benefits. He reiterated that current statutes are vague in terms of the basis they are to use to assess an individual's ability to pay, and what procedures they are to follow in collecting those costs. He stated that, in many instances, the clarifications they are requesting in statute are currently provided for in the Department's administrative rules.

Mr. Virag summarized the bill, explaining that it will provide for the automatic assignment of insurance benefits to the State, it will clarify, in statute, the information they are collecting and the criteria they are using to assess a resident's ability to pay, and that it will clarify that residents who are enrolled in a managed care program are not relieved of their liability to pay for the cost of care received based on an assessment of their ability to pay. He indicated that other representatives of the Department, including their legal counsel who drafted this bill, are available to answer any questions.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. FRED THOMAS indicated that **SEN. WATERMAN** had testified that the fiscal note would reflect a potential savings with regard to the automatic assignment of benefits, and asked if that would be the extent of the fiscal impact.

SEN. WATERMAN stated that it is her understanding the savings would be approximately $3,000 annually. She then pointed out that one of the amendments would provide for an immediate effective date, noting that the Managed Care contract becomes effective April 1, 1997 and, if this language is not clarified immediately, legal challenges could result in the inability of the Department to collect from clients of the Mental Health Managed Care contract for a period of time, or in their inability to collect from residents of the Eastern Montana Veterans' Home. She stated that, if this bill does not pass and there are legal challenges, the Department stands to lose approximately $5 million in revenue. She added that the fiscal note the Committee currently has actually shows a potential negative fiscal impact.

SEN. KEN MESAROS commented that this answers his concerns regarding the $5 million fiscal impact.

SEN. WATERMAN apologized for the misinterpretation which resulted in the fiscal note.

SEN. MESAROS asked if this is just a potential negative fiscal impact.

SEN. WATERMAN confirmed that it is a potential negative impact, and explained that the Department has been collecting these costs for the past two years, under these rules, with no challenges, adding that the language is ambiguous and it is foolhardy not to clarify it.

SEN. DELWYN GAGE indicated he is not clear about the new language in New Section 14(2), line 7, "Collection is not limited to the amount that the resident or financially responsible person has been determined able to pay under 53-1-405.", and asked, if the resident or financially responsible person can not pay, can the Department collect from a third party.

SEN. WATERMAN explained that the law is vague, but that it is limited to the resident and the resident's spouse. She added that a resident's ability to pay can be based on real property, if the resident will not be returning to their home, or their social security or retirement income, but that the Department could enlarge that in order to recover from the resident's estate, if there will be no one remaining in the home.

{Tape: 1; Side: A; Approx. Time: 10:21 a.m.; Comments: None.}

Greg Gould, Attorney, Department of Public Health and Human Services, indicated that the language **SEN. GAGE** referred to means that, if a resident has an insurance policy which provides benefits to cover these services, the insurance company will be responsible for providing those benefits to the extent that those benefits would cover these services. He explained that, if the resident's assessment indicated they were not able to pay based on their income and assets, the insurance company could not, then, refuse to pay based on that assessment of the resident's ability to pay.

SEN. GAGE asked, if there was no one living in the home, could the Department require the resident to seek a mortgage to pay for the cost of care.

Mr. Gould responded that, if a resident has a home that is unoccupied, the Department could take that into account in assessing charges, but that they could not make the resident pay until that home was sold or, perhaps, if that property was an asset of the estate, in the event of the resident's death, in which case the Department could make a claim in the estate proceedings. He stated that nothing in the bill would allow the

Department to require a resident to sell their home or secure a mortgage on that home, that ability to pay is based on current, liquid assets.

CHAIRMAN DON HARGROVE asked **Mr. Virag** if these procedures are currently in the Department's published rules.

Mr. Virag responded that the procedures regarding the assessment of a resident's ability to pay, as described in the bill, are presently in rule.

CHAIRMAN HARGROVE asked if the Department feels, in order to avoid liability, this needs to be put in statute.

Mr. Virag stated that this was the advice of their legal counsel, that current statute merely states that the Department will assess a resident's ability to pay and, based on that assessment, will bill the resident or a financially responsible person, but that is all the guidance they have in statute.

CHAIRMAN HARGROVE asked if the bill contained anything that is a new process or procedure.

Mr. Virag responded that there is nothing new, in the sense of the Department's current practices, that every provision added in the bill is currently provided for in administrative rule, with the exception of the automatic assignment of insurance benefits.

CHAIRMAN HARGROVE asked if someone would go through the amendments and the bill for the Committee.

Mr. Gould stated that the first amendment addresses the issue in subsections (2) and (3) regarding the Department's ability to charge for services using an all-inclusive rate rather than a combination of per diem and ancillary charges. He indicated that these two subsections could be misinterpreted to mean that residents in those facilities, under those circumstances, would be excused from any obligation to pay the costs of their care, when the intent of these subsections is actually to allow a different method of setting rates. He pointed out that the bill, as presented, would correct the problem with respect to the advent of managed care as it relates to the Montana State Hospital and the Montana Mental Health Nursing Care Center.

He explained that amendments 2 through 5 address the issue, in Section 2 on page 5 of the bill, regarding what factors are used in determining a resident's ability to pay, and what assets can be taken into consideration. He indicated that the resident's home can be taken into consideration when assessing charges, if it is anticipated that the house is or will be placed on the market, or if the resident is expected to remain in the institution permanently, the home is unoccupied, and it is anticipated that the home would become part of the resident's estate. He pointed out that it is not considered in what the

resident would be required to pay on a monthly basis. He added that the amendments also change references to a "financially responsible person" to "resident's spouse", to clarify that the Department would not be looking at the personal assets of a guardian or trustee.

CHAIRMAN HARGROVE pointed out that some of the laws within our social system make it more profitable, particularly for elderly people, to live together as husband and wife, and not be married. He asked what would happen in those circumstances where there is no legal spouse.

Mr. Gould responded that current law specifies that a spouse is a financially responsible person, that this bill would not change that, and that not being legally married would be an advantage in those circumstances.

He then continued that amendment 3 would provide that the Department could consider property that has been advertised for sale, or if it is anticipated that it will be sold, unless the resident intends to replace it with another home, pointing out that this amendment would restrict the Department's use of that assessment. He added that amendment 4 would clarify that, if the resident or the resident's spouse would be returning to the home, the Department can not consider that property in the assessment.

Mr. Gould indicated that amendments 6 and 7 are presented at the request of the Department of Revenue, and require the taxpayer's consent before tax records can be released to the Department of Health and Human Services.

He noted that amendment 8 will correct a typographical error, and that amendments 9 through 12 will conform the changes provided in the bill to an immediate effective date, in order to minimize the impact of the problems existing in current law.

SEN. THOMAS pointed out that there is no specific provision in the bill for an appeal of an assessment of a person's ability to pay, and asked if there is a need for anything of that nature, noting that subsection (8) on page 6 states "the department shall have a written notice and an opportunity for a hearing regarding a department determination of ability to pay".

Mr. Gould reported that the hearing provided for in that subsection would be subject to the Montana Administrative Procedure Act, which does provide for Department review and judicial review in the courts.

SEN. GAGE indicated that amendment 4 is apparently intended to eliminate the conservator or guardian as a financially responsible person, and asked if parents or others might be involved.

Mr. Gould responded that is correct, adding that this would also make it consistent with amendment 2 in removing the term "financially responsible person" and replacing it with "spouse".

Closing by Sponsor:

SEN. WATERMAN commented that, hopefully they have not confused the Committee too badly with what probably should be referred to as a housekeeping bill, stating that she thinks it is the potential impact of not passing this legislation that is more of a concern to the Department. She indicated that the changes have, if anything, tightened up language that is very vague, noting that, currently, financially responsible person might be interpreted as someone beyond the family, which was never the intention of the law, and is not current practice of the Department. She added that this bill just makes that very clear, and urged the Committee's passage of SB 114.

CHAIRMAN HARGROVE stated that, in considering executive action, the Committee has an obligation to review everything carefully, even though it is just a transfer from procedure to law, adding that the Department is held in the highest regard for what they have been doing very well for a long time.

{Tape: 1; Side: A; Approx. Time: 10:41 a.m.; Comments: End of Tape 1, Side A.}

EXECUTIVE ACTION ON SB 110

Amendments: SB011001.ADN

Discussion:

Mr. David Niss explained that SB 110 would allow the Department of Public Health and Human Services to require parents to contribute towards the cost of care for youths who are taken from the home and placed in State youth care facilities. He distributed copies of amendment SB011001.ADN (**EXHIBIT 5**), indicating that the sponsor requested that these amendments be considered along with the bill.

He reported that the Department has statutory authority to establish child support orders through an administrative hearing process with an administrative law judge, under the Montana Administrative Procedure Act, and using enforcement guidelines mandated by Federal law. He explained that amendments 1, 3 and 5 would clarify that the enforcement language contained in the bill applies to orders established by the courts as well as the Department, and amendments 2, 4 and 6 address modifications to previous support orders, to insure that, however a modification is effected, it is based upon the guidelines or tables required by Federal law.

Motion/Vote: **SEN. MESAROS's** motion to adopt **AMENDMENT SB011001.adn CARRIED UNANIMOUSLY**

Motion: **SEN. MESAROS** moved that **SB 110 DO PASS AS AMENDED**

Discussion:

SEN. GAGE referred to page 6, subsection (5), and asked for clarification regarding child support orders being effective for both current and accrued support.

CHAIRMAN HARGROVE asked **Mr. Niss** to explain what 53-2-613 contains. **Mr. Niss** responded that 53-2-613 is the general assignment statute which requires persons receiving assistance from the Department to assign their rights to child support payments for a child who has been taken from the home. He explained that, if a child is taken from a single parent home and placed in State foster care, the parent's right to child support payments passes to the Department because the Department is, in effect, supporting that child.

SEN. GAGE indicated that his question related to the assignment of accrued child support.

Mr. Niss explained that arrearage is caused by failure of a parent to pay what either the courts or the Department have previously ordered to be paid, and which have not been paid, that the arrearage continues to accrue, and this line in the bill provides that accrued arrearage will pass to the Department.

CHAIRMAN HARGROVE suspended executive action on SB 110 and opened the hearing on SB 170.

HEARING ON SB 170

Sponsor: **SEN. GARY AKLESTAD, SD 44, GALATA**

Proponents: **Don Waldron, Montana Rural School Association**
Lance Melton, Director, Governmental Relations, The Montana School Boards Association
Loren Frazier, School Administrators
Nita Periman, Anaconda, Montana
George C. Anderson, Lincoln, Montana
Angela Janacaro, Montana Mining Association

Opponents: **Debra Beaver, Northern Plains Resource Council**
Patrick Judge, Montana Environmental Information Center
Debbie Smith, Montana Common Cause
Tara Mele, Montana Public Interest Research
Russell Hill, Montana Trial Lawyers Association
Mark Mackin, Helena, Montana

Opening Statement by Sponsor:

SEN. GARY AKLESTAD, SD 44, GALATA, explained that SB 170 proposes to place a measure on the ballot in 1998 for approval to increase the signature requirements for statutory initiatives and referendums. He pointed out that, because this bill proposes a Constitutional Amendment, it requires a vote of the people, and the public will have the opportunity to scrutinize this proposal and decide if they want those changes implemented.

He referred to the changes on page 1, lines 16-17, and lines 25-26, and pointed out that the changes do not affect the process, that they only change the percentage of signatures required, from five to ten percent of the qualified electors, and the distribution of those required signatures, from one-third to two-fifths in each district, in order for an initiative or referendum to qualify to be placed on the ballot.

SEN. AKLESTAD reported that many of his constituents, prior to the last election, as well as in previous elections, have asked him why so many initiatives are placed on the ballot, and why the Legislature could not handle these measures. He stated that, when the initiative process was first enacted, it was more difficult to gather signatures because there was less access to the general public, adding that he felt this would actually strengthen the process in that more people would have the opportunity to be directly involved.

Proponents' Testimony:

Don Waldron, Montana Rural School Association, stated that they support the concept of SB 170, that the Association thinks it should be put to the vote, and they appreciate this bill being presented by **SEN. AKLESTAD**.

Lance Melton, Director, Governmental Relations, The Montana School Boards Association, indicated that they believe this bill has a good concept behind it, and they particularly support putting this issue before the voters to decide what kind of requirements there should be for initiatives and referendums.

Loren Frazier, School Administrators, stated that he thinks this is democracy in action, that it is a chance for the public to actually vote on the petitions, and he thinks they deserve that. He added that they hear a lot of controversy on this issue, and this will give the public a chance to voice their opinion.

Nita Periman, Anaconda, Montana, reported that she was involved with Initiative 122, and saw first-hand the deceit and lies that are used to secure signatures on a petition. She stated that she heard claims that there was cyanide in the Clark Fork River which was causing deaths between Butte and Anaconda, that she saw petitions posted in schools, which she later found out was contrary to the law, that the signatures have to be witnessed,

and she witnessed the disruption in mining families because of the threat of losing their jobs. She indicated that she does not like to see this process used by a vocal, idiotic minority to hold the State of Montana and its citizens hostage, and urged the Committee's support of the bill.

George C. Anderson, Lincoln, Montana, stated that he would like to testify in favor of SB 170. He indicated that the initiative process has been around for a long time, that he has seen many proposals that are bad for him and his family, and the people who are trying to work in this State, adding that sponsors of initiatives will present false information to get signatures on their petitions.

CHAIRMAN HARGROVE pointed out that the purpose of this proposal is to increase the signatures required to place a measure on the ballot, that it does not otherwise address the process, and asked **Mr. Anderson** to address his remarks to the bill before the Committee.

Mr. Anderson asked that the Committee support this bill. He then stated that it is an extreme pleasure to walk the hallowed halls of this great Capitol in the State of Montana, that he thinks previous Legislative Assemblies would be proud of the work being done now, and that this is the only way this State can go forward. He thanked the Committee.

Angela Janacaro, Montana Mining Association, quoted **District Judge Dorothy McCarter**, "any kooky thing that you can get on the initiative will be on the initiative". She indicated that it costs not only the opponents and proponents of the initiative tremendous amounts of money, but it is a financial hardship to the State, adding that making it more of a challenge to place an initiative on the ballot will better serve the citizens of the State.

Opponents' Testimony:

Debra Beaver, Northern Plains Resource Council, indicated that she appreciates the opportunity to address the Committee, and would like to testify on behalf of the Northern Plains Resource Council against SB 170. She stated that the initiative process has been a fundamental right of Montanans for over 80 years, that it's origins lie in the fact that people are concerned about too much corporate influence over the legislative process, which remains a concern today. She reported that, currently, the process of gathering signatures is almost entirely volunteer driven, that it takes a lot of time and energy, and this bill would make it twice as difficult, that it would almost take it out of the realm of ordinary people, volunteers, and would create the situation, common in other states, where there are paid signature gatherers. She indicated that she thinks that detracts from the spirit of the initiative process, and the ability of ordinary Montanans to effect change through the initiative

process, adding that, as it was designed to operate, she thinks the process is working well.

Patrick Judge, Montana Environmental Information Center read written testimony attached as (**EXHIBIT 6**).

{Tape: 1; Side: B; Approx. Time: 11:12 a.m.; Comments: None.}

Debbie Smith, Montana Common Cause, urged the Committee to table SB 170. She stated that this bill will directly diminish citizen involvement in government, that there will be a move to retain paid signature gatherers in order to qualify initiatives and referendums for the ballot, pointing out that, last session, a bill was introduced which proposed to regulate paid signature gatherers to avoid some of the abuses purported in connection with the sales tax issue, noting that the bill was tabled. She alleged that SB 170 is a political response to two widely publicized initiatives which certain members of the Legislature did not like, and challenged the Committee to consider whether the initiative process is well serving the needs of Montanans. She pointed out that the Constitution has been in effect for twenty years, and there is not a large hue and cry to amend this process, that Montanans pass initiatives, and they also say no to them. She indicated that it is a process that works well, that this bill is a direct response to I-125 and I-122 by the people who were unhappy with those initiatives, noting that I-122 failed. She stated that it is not the process that is broken, that the process works, and again asked the Committee to table this bill.

Tara Mele, Montana Public Interest Research, stated that they are in strong opposition to this bill for many of the same reasons outlined by previous opponents. She reported that Montanans voted clearly to get big money out of the initiative process when they passed I-125, and that, regardless of anyone's feelings about the initiative, Montanans passed it, that it is clearly the voice of the people, and she would urge the Committee to listen to that voice. She indicated that, in her opinion, many things are said in the political arena that she does not agree with, but that is no reason to limit the speech of those people. She stated that she truly believes, in order for her free speech to be protected in the political arena, she must respect the voice of others, however offensive she may find their views, and urged the Committee to remember that in their decision.

She indicated that, if the Committee should recommend passing this bill, she would like to propose an amendment (**EXHIBIT 7**), which would amend the wording on page 2 of the bill to state that this legislation proposes to double the signature requirements and increase the distribution of those required signatures.

Russell Hill, Montana Trial Lawyers Association (MTLA), stated that they rise in opposition to this bill. He indicated that, in addition to the comments made previously, he would point out that

the initiative process only becomes relevant when the voters of Montana believe that something in the legislative process is not working.

{Tape: 1; Side: B; Approx. Time: 11:16 a.m.; Comments: End of Tape 1, Side B.}

He continued that this will not affect the ability of the Legislature to pass laws, or to pass initiatives, but it will affect the balance of what has been in effect for decades. He pointed out that the 1995 Legislature passed more than 400 pages of new laws, noting that this was from a conservative Legislature, and indicated that, if the people are worried about the Legislature, it may not be that they want to pass more laws, that the initiative and referendum process allows them to strike down laws, and it is very important not to skew the safety valve effect of that process. He then pointed out that previous testimony indicated this is a way to get more people involved in the initiative process. He stated that this may be true, but that, as currently constituted, there are some archaic restrictions on getting initiatives qualified. He explained that there is absolutely no reason why, in this computer dominated age, an initiative should have to remain in the hands of a petition circulator, that there is no reason why people can not register their signature on a petition through a computer, or through a kind of chain-letter concept. He indicated that there are ways to get more people involved in the process, but that is not what this bill does.

He reported that the Montana Trial Lawyers Association was involved in defending against a tort reform initiative in the late 1980's, and stated that it is not that there are a bunch of hot-headed, ideological liberals trying to get initiatives on the ballot, that the business community has done the same thing, noting that one of the witnesses used the phrase "a vocal, idiotic minority". He indicated that there is a balance, but this would be tilting that balance away from citizens' rights, and the MTLA believes that is poor policy.

Mark Mackin, Helena, reported that he is a former initiative sponsor, and an advocate of the initiative process. He stated that, if there were any way to improve the initiative process, he would suggest that they lower the signature requirements and do away with the distribution requirements altogether, citing the example that Switzerland requires less than 1%, with no distribution requirements, pointing out that they have a million people, and seem to govern themselves fairly effectively using the initiative and referendum process in supplement to their Legislature.

He stated that the purpose of the initiative and referendum process is to allow the people to have direct control over their government when it either fails to address problems, or abuses its authority. He indicated that he believes the past record of

the Montana electorate is pretty sound, that they have an excellent and fairly conservative record of voting on issues.

He further stated that he sees SB 170 as essentially anti-democratic, that the process should be easier, not harder. He then pointed out that there are always cries of woe from politicians about apathy, and the inability to get people to participate, yet this proposal would make it even more difficult for people to participate.

Mr. Mackin then indicated that he would like to address a technical issue, pointing out that, by making a statutory initiative essentially equivalent to a constitutional initiative, it would remove any incentive to pursue a statutory initiative, and that measures that should be in statutory law will have a strong tendency to end up in the Constitution. He pointed out that people will do this to protect their measure from some kind of political backlash occurring in the Legislature, adding that he does not think this is a good idea. He stated that the Legislature should exercise some kind of review and oversight, just as the public exercises some review and oversight over the Legislature, and he does not think the initiative process should be made a great deal more difficult. He cited the example of the 1978 Legislature placing a Constitutional Amendment on the ballot to allow a drinking age lower than the age of majority, and also enacting legislation to set a drinking age, and pointed out that, if the requirements are exactly the same, people could circulate two petitions at the same time, that they could use the same organizational technique, and this would be further incentive to go directly to the Constitution, adding that they should think separately in terms of statutory measures and Constitutional measures.

He then pointed out that **SEN. AKLESTAD** testified that it was more difficult to obtain signatures in the old days, and reported that he has looked at the history, and believes that it was a lot easier to get signatures, even with higher signature requirements. He indicated that we used to be a face-to-face society, but are now a face-to-television society, and it is more difficult to get people's signatures than it used to be. He reported that, in the early 1900's, a Constitutional Amendment drive obtained most of the signatures, in a short amount of time, in churches, adding that a lot of public space, the market place, has disappeared, and public lands are now in private hands. He concluded by saying that he does not think there are a lot of good reasons to even put this on the ballot.

<u>Questions From Committee Members and Responses</u>:

SEN. GAGE stated that he assumes **Ms. Mele's** proposed amendment is based on the fact that the word "increasing" would give the advantage to the sponsor, noting that the word "doubling" would give an advantage to her side. He asked if she would be opposed

to the term "changing the signature requirement", to keep it more neutral.

Ms. Mele replied that he is probably right, but that she feels it is the responsibility of the Legislature to accurately describe what they are presenting to the people. She indicated that she thinks everyone who puts initiatives on the ballot makes that effort, and that, as it is worded now, she feels it is deceitful. She pointed out that a voter may approve of increasing the requirement, but may not be fully informed enough to realize the requirement is being doubled.

SEN. VIVIAN BROOKE asked **Joe Kerwin, Deputy Secretary of State for Elections** to confirm the statistics quoted in testimony by **Mr. Judge** regarding the number of Citizens Initiatives presented in the last election, and further asked him how many petitions were reviewed by his office and rejected.

Joe Kerwin, Deputy Secretary of State for Elections, responded that, for the 1996 election, twelve initiatives were submitted and approved for circulation by his office, that five received enough signatures to qualify for the ballot, and two were approved by the voters.

SEN. BROOKE asked if his office monitors how those signatures are gathered.

Mr. Kerwin replied not directly. He indicated that they receive reports, questions and concerns from people about the process, but that the petitions are actually proofed and certified by the County Election Administrators, and his office does not monitor the signature gathering process.

SEN. BROOKE asked if she understood him to say there were seven initiatives which qualified for the signature gathering process, but did not receive the required number of signatures.

Mr. Kerwin responded that is correct, that those seven were approved, but did not receive enough signatures, and did not qualify for the ballot.

SEN. BROOKE asked if he had any information on the number of initiatives in 1994 .

Mr. Kerwin reported that, in 1994, four initiatives were approved by his office, that one qualified for the ballot, and was approved by the voters.

SEN. BROOKE asked how many were approved, but did not obtain the required number of signatures to qualify. **Mr. Kerwin** responded that four were approved for circulation, but only one received the required signatures to appear on the ballot.

SEN. BROOKE asked if this history is consistent, that many more are approved, but do not get the required number of signatures to qualify for the ballot.

Mr. Kerwin reported that, since 1974, forty-one petitions have been submitted and approved for circulation by his office, noting that number does not include those that were rejected or withdrawn. He indicated that, of those forty-one, twenty-two qualified for the ballot, and thirteen were approved by the electorate. He added that these figures do not include HB 671, which was Referendum 112, and is a different process.

SEN. THOMAS asked **Mr. Kerwin** to review the process one goes through to get a proposed initiative approved for signature gathering.

Mr. Kerwin stated that anyone can submit a petition to his office for approval. He indicated that the first step involves submitting the text to Legislative Services to review for clarity and consistency, pointing out that their recommendations are just that, and not binding, and the sponsor only needs to acknowledge receipt of those recommendations, indicating that this process takes approximately two weeks. He explained that, at that point, the petition is submitted to his office in the form it will be circulated, then a copy is forwarded to the Attorney General's office to review for form, and to prepare the fiscal statements and the 100-word explanatory title of the measure, as well as the for and against statements that will appear on the petition, and the ballot, if it qualifies. He noted that this takes roughly four weeks, after which the petition can be circulated for signatures, adding that the deadline for submitting the petition to the County is roughly mid-June. He explained that the County will check each signature on the petition, that a random check is performed whereby the signature on the voter registration card will be compared to the signature on the petition, and that they have four weeks to complete this task and forward the petition to his office. He noted that the referendum process is basically the same, with the exception that they have to be submitted within six months of adjournment of the session.

Mr. Kerwin then indicated that they suggest placing an immediate effective date on this legislation, and explained that a July 1st effective date could affect the process for a referendum on the 1999 Legislature, and that an immediate effective date would resolve that problem.

SEN. THOMAS asked if there is any public hearing regarding the proposed law.

Mr. Kerwin responded not in the same way as in the Legislature, that anyone can contact the sponsor, but the sponsor is not required to hold any hearings. He pointed out that the Attorney General, in drafting the explanatory statement, is required to

seek out opinions from different parties, but that is the extent of any kind of public input.

SEN. THOMAS asked if the documents that are submitted are public documents accessible to any citizen.

Mr. Kerwin responded that is correct, that ballot information is public information as soon as it is received in his office.

SEN. THOMAS reviewed the process as related by **Mr. Kerwin**. He then noted that there appears to be a lot of difference between the initiative and referendum processes, and the legislative process with public hearings with committees, and discussion in both houses, and asked **SEN. AKLESTAD** to comment on that.

SEN. AKLESTAD acknowledged that this is very true, but pointed out that a Constitutional Initiative proposal such as SB 170 must go through the same legislative process of public hearings and floor debate, and then is presented to the people for their approval. He indicated that the initiative process does not go through the hearing process, but that both proponent and opponent arguments on these issues are presented on the ballot.

SEN. BILL WILSON indicated that **Mr. Judge** had testified that, if the requirements are doubled, there would be an increase in paid signature gatherers, and asked where information could be obtained regarding how much money was spent in hiring people to circulate petitions on a particular measure.

Mr. Judge responded that, to his knowledge, that information is reported to the Commissioner of Political Practices and is available through that office.

SEN. MESAROS indicated that **Mr. Kerwin** testified that random checks of signatures on petitions are conducted by the Counties, and asked him to how random these checks are, noting that he is interested in what the cost of that signature verification process might be.

Mr. Kerwin reported that they are required to conduct a random check, but that the law does not specify what that means. He indicated their practice is to select signatures at random and compare them with the signature on each person's voter registration card on file in their office. He cited an example, during the 1992 Presidential election, when a random check revealed a signature that did not match that on the voter registration card, so they checked all the signatures on that petition. He indicated that, during the 1996 election cycle, he estimates over 150,000 signatures were verified by County Election Administrators, that the success rate will vary between 80% and 100%, noting that there are more signatures actually checked.

SEN. MESAROS asked if there is a specific ratio for the signatures that are randomly checked.

Mr. Kerwin respond no, there is not a specified number.

{Tape: 2; Side: A; Approx. Time: 11:39 a.m.; Comments: None.}

SEN. WILSON asked **Jerome Anderson, Lobbyist**, where the information could be obtained regarding expenditures for signature gatherers on a particular petition.

Jerome Anderson, Lobbyist, replied that there is no requirement for reporting expenses to the Commissioner of Political Practices until the initiative has been formalized, the signatures have been gathered, and it has been placed on the ballot. He indicated that, at that point, the campaign organization is required to begin reporting expenditures. He pointed out that, with respect to I-122, an idea of the costs involved could be obtained from the University of Montana because a course was offered to environmental groups on how to organize, and that a three-week portion of that curriculum was devoted to signature gathering for I-122. He pointed out that there was obviously some taxpayer money used in that effort.

SEN. BROOKE asked **Mr. Kerwin**, if this bill passes, and is approved by the voters, would the additional required signatures increase costs to local Clerks and Recorders.

Mr. Kerwin indicated that is difficult to determine because of the many variables, but that, if the number of signatures are increased, they will have more signatures to check, and there would be more cost to the counties. He also pointed out that, the more ballot issues there are, the more cost in printing the ballots, and stated that he would not want to presume that there would not be added expense to the Counties, but that they would probably be better prepared to estimate what those costs would be.

CHAIRMAN HARGROVE indicated that there seems to be an irony in that this is an act to be submitted to the qualified electors of Montana to amend the Constitution, that the voters will have the opportunity to decide if that is what they want to do, and asked **Ms. Mele** if she does not think that portion of it is a good idea.

Ms. Mele stated that they would rather not see it go that far because those groups who would have to fight the measure are the poor groups, that those people in favor of the measure are the wealthy groups, and a lot of money will be spent in media spreads, as has been done on other initiatives. She agreed that there is an irony in that presenting it to the people is what they advocate, that they believe in the ability of the people to answer these questions, but stated that she would say it is inappropriate to put it to the people without amending the wording. She added that she would agree with **SEN. GAGE** to avoid

the double standard between the two words, and that they should go ahead and say that it would increase the percentage from 5% to 10%, and increase the distribution from one-third to two-fifths, that perhaps that would be a fair agreement.

CHAIRMAN HARGROVE indicated there is a school of thought that statutory initiatives are, for lack of a better word and with great respect for his colleagues, a sign of a weak-kneed Legislature. He pointed out that it is not that difficult to get a Legislator to sponsor a bill, if it has some validity, noting that the sponsor indicated his constituents asked him why these things are not handled in the Legislature. He added that the Legislature represents the people of the State of Montana, and can handle these things fairly simply, relatively speaking. He asked **Mr. Judge** to comment on that.

Mr. Judge pointed out that it is not entirely true that the public does not hear both sides of an initiative issue, that the Secretary of State's office publishes a voter information pamphlet which presents both sides of the arguments and rebuttals on all ballot measures that come before the voters, adding that a bill will be presented to the Legislature to expand that information. He stated that he believes the initiative process is used when the citizens feel that the Legislature, for whatever reason, has not responded to their interests in a timely manner, that this is a way citizens can make laws when they feel laws need to be made. He pointed out that, at times, a legislative proposal can take several sessions before it garners enough support to pass, adding that the initiative process was created as a result of corruption in the legislative process, and there is no way to corrupt the direct voice of the voters.

SEN. WILSON asked **Mr. Hill** to expand on the mechanics of getting an initiative placed on the ballot.

Mr. Hill referred to the statement about the irony of opposing a bill that puts the vote to the people, and opposing it on the rationale of wanting more public involvement. He indicated that is a problem, but he thinks the best way to address that is that there is no inconsistency. He cited the example of a fraud scheme uncovered in the commodities market regarding the price of gold or platinum. He related that the scam artist would telephone 100 people, telling 50 of them the price of gold would go up in the next thirty days, and telling the other 50 that the price would go down. He indicated that, in thirty days, depending on the outcome, they would call those 50 people back and tell half of them that the price would go up, and the other half it would go down in another thirty days. He pointed out that, after they had gone through this process two or three or four times, there would be a pool of people to whom they had predicted accurately. He stated that this example points out that they would be telling the voters of Montana that it is up to them to decide, but that it is really going to make it much harder for the voters, in the future, to control the acts of the

Legislature, that, as in those last 25 people, the whole picture is not there. He indicated that the initiative process is a Legislature of the people, when the Legislature in this building does not work.

CHAIRMAN HARGROVE referred to the statements made two or three times that, if this passes, a statutory initiative would be no different than a Constitutional Amendment, and that, as a result, there would be more proposed Constitutional Initiatives. He asked **SEN. AKLESTAD** if he thinks this would be true, and what would be the effect in relation to Constitutional Initiatives.

SEN. AKLESTAD responded that, on the surface, you could look at it that way, but pointed out that, when a Constitutional Amendment is proposed, people are very careful about, and suspicious of, changing the Constitution. He stated that he did not think this would create a problem.

Closing by Sponsor:

SEN. AKLESTAD referred to the statement that this is a deceitful measure based on the wording on page 2, and stated that he does not know how they could be any more clear, that it states clearly it is a measure to increase the signature requirements. He indicated that he thinks **SEN. GAGE's** suggestion to amend the wording to read "changing the signature requirements" would weaken it, in that people may not realize that it is increasing the requirement. He stated that the language is very specific, and asked that the Committee not amend that portion. He reiterated that he did not know how they could be more straight-forward than stating that the requirement will be increased.

He then pointed out that this will be put to a vote of the people, and asked if they are afraid to send something out to the vote of the people, indicating that, if this bill passes, it does not become law, it will not become part of the Constitution, that it will be put to a vote of the people and that he, for one, is willing to take the chance and let the people decide if they want to increase these requirements. He added that, if they do not, he will abide by the wishes of the people of the State of Montana.

SEN. AKLESTAD maintained that this is not in response to some of the initiatives in the last election, and stated that none of the people involved with any of those initiatives approached him to present this legislation, that he is sponsoring this bill because constituents across the State have contacted him suggesting that those requirements be increased so that more people can be involved in the process, and to spread that involvement wider in the State. He then indicated that he would agree with an immediate effective date, and encouraged the Committee to adopt that amendment.

He then reported that, according to his facts, there are only fourteen states with a similar process, and that, of those fourteen states, Alaska requires 10% and two-thirds, Idaho requires 10%, and Wyoming requires 15% and two-thirds. He pointed out that this is not more restrictive, that it is, in fact, less restrictive than the states around us, and indicated that he would hope the Committee would look at this bill seriously, and give the people of the State of Montana an opportunity to vote on it and express their desires, adding that he is not afraid to have that challenged, and let the people decide how they want to approach this matter.

CHAIRMAN HARGROVE indicated that the Committee would consider both of the proposed amendments, and delay executive action until next week.

ADJOURNMENT

Adjournment: 11:55 a.m.

SEN. DON HARGROVE, Chairman

MARY MORRIS, Secretary

DH/MM