

MINUTES

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

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 23, 1997, at 9:00 A.M., in ROOM 410.

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 113, SB 116, SB 118;
1/13/97

Executive Action: None

{Tape: 1; Side: A; Approx. Time Count: 9:02 AM; Comments: N/A.}

HEARING ON SB 116

Sponsor: SENATOR LINDA NELSON, SD 49, MEDICINE LAKE

Proponents: Dave Brown, Butte, Director, Independent
Automobile Dealers Assoc.
Dean Roberts, MT Department of Justice

Opponents: None.

Opening Statement by Sponsor:

SENATOR LINDA NELSON, SD 49, MEDICINE LAKE, said SB 116 eased the requirement that every single used car lot needed a permanent business building to house the records. She said when the 1993

legislature passed the law, it was intended to keep off the fly-by-nighters and to protect the legitimate used car sellers and buyers because the public would know the dealer would be there, in case they needed to return the car in the event it was unsatisfactory. **SEN. NELSON** informed the Committee she found the law to be cumbersome for used car dealers in the small rural communities because often the established business was in one place while the used car lot was down the street, usually within eyesight of the main business. She said it did not make sense to put up a separate permanent building on the used car lot in order to meet the law requirements. **SEN. NELSON** stated SB 116 would allow the used car lot to be located within 1,000 feet of the permanent business. She admitted it could be a problem for some but she was willing to make adjustments so it was workable.

Proponents' Testimony:

Dave Brown, Montana Independent Automobile Dealers Association, said his board was not very keen on extending the distance to 1,000 feet. He suggested amendments which might include the following language on the top of page 3: Strike the 1,000 feet; insert 200; add after "made" on Line 2 "except in towns of population of 2,500 or less the distance may be 1,000 feet." He also suggested "contiguous" could cause problems because it could be a little distance down the street or across the road; therefore, if the Department of Justice were required to enforce the law to its limit, there would be many Montana independent automobile dealers who would like the law changed. **Mr. Brown** contended this was a good opportunity to do that and he commended **SEN. NELSON** for attempting to solve a problem of her constituents. He also said he thought 1,000 feet was legitimate in most smaller Montana communities but not for larger towns, where 200 feet or less would be better. He explained he did not think larger communities would find it desirable to have little buildings stuck back three or four blocks down the road. He commented he was trying to refine the image of the independent auto dealers so he wanted to see it upgraded.

Dean Roberts, Department of Justice, said the Department had no problem with either the amendment or the 1,000 feet.

Steve Turkiewicz, Montana Auto Dealers Association, said they supported SB 116.

Opponents' Testimony: None.

{Tape: 1; Side: A; Approx. Time Count: 9:10 a.m.}

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT commented he was not sure his curiosity was satisfied as to why just 1,000 feet could not be used. He said he was not sure the 200 feet vs. the 1,000 feet upgraded the image of the auto dealers. **Dave Brown** said his Board's concern

was part of the detrimental image in the used car business was fly-by-night operations, and that was why part of the original law was written. He said they were attempting to get the industry into a position where people who were rebuilding and selling salvaged vehicles without identifying them as such or who were deluding the public in other ways would be put out of business. He stated the 1,000 feet could work; however, he said his Board asked if it could be gotten down to a closer range because in the city a lot of things could be done with this that could not be done in the country. **SEN. BENEDICT** said there was an independent auto dealer in his town of 3,000 and wondered what the magic was of 2,500 for population. **Mr. Brown** said there was no magic; he just pulled it out of the air. He commented the biggest concern was in a larger Montana city the 1,000 feet could translate into three or four blocks, which would allow for some hanky-panky to take place.

SEN. BENEDICT asked **SEN. NELSON** if she was comfortable with amending SB 116 and **SEN. NELSON** replied she had no problem with amending it because SB 116 with the amendment would address her situation. **SEN. BENEDICT** suggested it might not address other situations in other towns which were larger but not metropolitan areas, and **SEN. NELSON** agreed.

SEN. CASEY EMERSON remarked SB 116 sounded like a protection for people who were going to make a mistake on their own. He said it was his opinion people should be responsible for themselves; also, perhaps another reason for the existing or amended language was to cause problems for competitors who were just starting out. **Dave Brown** answered he did not see that as an impact but admitted he was uncomfortable in coming before the Committee with so few facts; however, if the Committee wanted to deal with SB 116 without the amendments and if his Board got upset, he would help to work it out in a better fashion before it got to the floor or in the House. He said it was his opinion the Committee should not waste its time working out the details now.

SEN. JOHN HERTEL asked if it would be wise to wait several days so more information could be gathered. **Dave Brown** replied if he did not have it by the time SB 116 hit the floor, he would have to be convinced because he did not think SB 116 was a very good bill to begin with. He said he was not sure why the 1,000 feet could cause the potential havoc and he agreed with **SEN. EMERSON** there could be some of the anti-competitor concern; however, he felt the concern was all competitors operate on the same playing field.

Closing by Sponsor:

SEN. LINDA NELSON expressed appreciation to Dave Brown in coming to her that morning before the hearing to try to get something worked out because she felt it was important to keep as many Montana people satisfied as possible. She suggested if the

Committee wanted to give SB 116 careful consideration before acting on it, it was OK.

{Tape: 1; Side: A; Approx. Time Count: 9:18 a.m.}

HEARING ON SB 113

Sponsor: SEN. BEA MCCARTHY, SD 29, Anaconda

Proponents: Frank Cote, Department of Insurance Commission
Ward Shanahan, Farmers Insurance Group
Susan Good, Montana Association of Life Underwriters
Roger McGlenn, Independent Agents Association of Montana
Tom Hopgood, Health Insurance Association of America

Opponents: Greg Van Horssen, State Farm Insurance Company
Larry Akey, National Association of Independent Insurers
Jacqueline Lenmark, American Insurance Association
Russell Hill, Montana Trial Lawyers Association
Rose Hughes, Alliance of American Insurers

Opening Statement by Sponsor:

SEN. BEA MCCARTHY, SD 29, Anaconda, said she carried SB 113 for the State Auditor and it did three things: (1) Redefined an insurance support organization, which is a person or entity collecting information about people to provide to an insurer or producer for insurance transactions; (2) Allowed, on complaint by the consumer, the commissioner to review the information collected so the commissioner could determine if the information was correct and if it was used by the insurer to refuse coverage; (3) Allowed the consumer to request in writing information from his or her central file. SEN. MCCARTHY said SB 113 also prohibited the insurer or producer to use information the parties believed to be erroneous, i.e. same protection Montanans receive under credit reporting laws. She distributed and explained the amendments in (EXHIBIT 1).

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner, said the Department had received numerous complaints from the consumers regarding use of information in reports by insurers in the area of underwriting, homeowners and auto insurance. He said consumers were telling the Department the information gathered was often inaccurate but was used by the insurance companies to refuse coverage. Mr. Cote stated most of the time consumers had not been able to get the insurers to correct, amend or delete the misinformation from the report and that was why the consumers came to the Department. He declared the Department had no authority to require an insurance reporting entity to change erroneous information. Mr. Cote informed the Committee SB 113

allowed them the authority to order the reporting entity to correct the erroneous information, which he anticipated would be done through the regular hearing process. He used an illustration to depict what he meant and then said these records were permanent and followed a person for life so it was important they contained correct information.

Ward Shanahan, Farmers Insurance Group, said he supported the general intent of SB 113 and he supported Mr. Cote's proposed changes; however, they did not go far enough. He referred to Page 7, Subsection (5), Lines 7-11, and suggested striking "refusal as reasonable" and inserting "information is correct" because the Commissioner had the power to review the refusal of underwriting to determine if the information was correct. He then referred to Page 8, Line 23, Subsection (5), and said if an underwriter could be accused of knowing something was wrong before he or she made the decision, it would be a criminal action. **Mr. Shanahan** reiterated correct information was attempted to be provided which would make the provision unnecessary. He remarked the Commissioner used the super information network and it could be erroneous. He suggested if the intent was to correct information, that should be addressed; if they wanted to get into reasons why people did things, another proceeding should be used. He summarized by saying he felt the issue was correct information and the proposed change would accomplish that.

Susan Good, Montana Association of Life Underwriters, said they were interested in Mr. Shanahan's comments and would be in strong support of SB 113 if those amendments were added because the bill's intent of correct information would be ensured.

Roger McGlenn, Independent Agents Association of Montana, expressed support for SB 113 with the recommended amendments. He said some of his agents had experienced erroneous information.

Tom Hopgood, Health Insurance Association of America, expressed support for SB 113 with the suggested amendments; also, he strongly suggested examining the Montana Administrative Procedures Act to see if it were applicable to the review. He said if it was not, they would endorse an amendment to see that it was.

{Tape: 1; Side: A; Approx. Time Count: 9:32 a.m.}

Opponents' Testimony:

Greg Van Horssen, State Farm Insurance Company, said his company had some concerns in Section 2, Subsection (5), together with Section 3, Subsection (5), explaining it appeared the insurance commissioner was allowed the unilateral authority to order an insurance company to remove information from its files. He reminded the Committee there already was a process in place whereby the insurer could challenge or appeal the insurance

company's decision on the information deemed erroneous. **Mr. Van Horssen** said the difficulty was the language allowed for correction, amendment or deletion according to the commissioner's decision on what was to be done with the information. He charged the Committee the concern should be: (1) How the decision would be made by the commissioner; (2) Would the commissioner's decision (if different from the insurance company's) trigger an administrative formal hearing process to determine if the insurance could or could not keep that information in its files. **Mr. Van Horssen** submitted the decision should be left to the discretion of the insurer to leave or delete the information in the file. He referred to Section 3, Subsection (5), and said State Farm would agree with removing it in its entirety. He stated the difficulty was the language saying the insurance producer had reason to believe the information was erroneous; however, the question to be raised was what threshold would create the obligation for the insurance company -- a phone call from the insurer? **Mr. Van Horssen** suggested the language be more clear.

Larry Akey, National Association of Independent Insurers (NAII), expressed opposition for SB 113, explaining the amendments proposed by the Commissioner's office and by Ward Shanahan ameliorated their concerns. However, they were still concerned, even if the Committee voted to include the amendments with SB 113, because the Insurance Commissioner's office would have the public believe insurance companies made money by capriciously denying coverage. He explained that was not true because there was already in place a very detailed opportunity for the insurance consumer to ask for the information to be corrected without interjecting the commissioner's judgment. **Mr. Akey** wondered why a commissioner's office which already was overworked and understaffed, would want to get involved when a mechanism was already in place which would address the issue. He suggested the Committee adopt both sets of amendments if they passed SB 113; however, it was their preference the bill be left on the table.

Jacqueline Lenmark, American Insurance Association (AIA), expressed opposition for SB 113 in its current form but supported the suggested amendments because the bill would be made better. However, AIA agreed with NAII the amendments still would not make SB 113 a better bill. She cited previous testimony in which it was stated the attempt was made to make those laws parallel to the credit reporting laws but SB 113 went farther than the remedies available to an individual in a credit reporting situation. She explained in the credit reporting, a mechanism was available which was very similar to what was in Subsection (4); a requirement that a reporting agency carry in file and highlight in file when an applicant disputed the agency's information. **Ms. Lenmark** suggested the enforcement of that mechanism be strengthened to allow both the collecting agency and the applicant to correct the information. She informed the Committee if the suggested amendments would be added to SB 113, they would not mind it too much; however, they still could not

give it wholehearted support but would be willing to work on additional amendments.

Russell Hill, Montana Trial Lawyers Association, said he agreed with Larry Akey, explaining if the amendments were adopted the bill was virtually gutless and a waste of paper. He called the Committee's attention to the last amendment on Page 8, Lines 23-25, and said it didn't matter what was done with enforcement and the commissioner's power but the Committee needed to be upfront with both sides of the recommendations of the insurance industry. He explained the insurance company was uncomfortable with language which prevented the insurance company from using the information they had reason to believe was erroneous. It was **Mr. Hill's** opinion that language should remain in SB 113.

Rose Hughes, Alliance of American Insurers, said they had the same concerns as the others. She said **Mr. Shanahan's** amendments addressed the issues but the Alliance felt SB 113 was unnecessary because there currently were laws on the books to deal with those situations. **Ms. Hughes** expressed concern for the language on Page 8, saying it was not a question of using information they truly believed was erroneous; however, the problem was the issue of reason to believe because they were concerned any time an insurer disputed information, it might be deemed they had reason to believe it was not correct. Therefore, the insured would always have the ultimate say in what could be and not be used. **Ms. Hughes** reiterated the main concern was being precluded from using information they had a right to use.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked what happened to SB 113 proponents and opponents coming with prepared amendments. **Ward Shanahan** said he did not know the Commissioner's Office was planning to amend SB 113 until about ten minutes before he entered the hearing. He offered to prepare the amendments and mail them to **SEN. JOHN HERTEL**, if that would be acceptable. **Mr. Shanahan** said if it was the Commissioner's intent to provide correct information, Farmer's Insurance Group did not wish to be on record as opposing legislation for decent consumer information. **SEN. BENEDICT** commented he hoped the lobbyists would take note and be sure to bring written instead of conceptual amendments. **Mr. Shanahan** said in the future he would do that to the best of his ability.

SEN. JOHN HERTEL stressed the amendments should be given to a member of the Committee who would request legal services to draw them up.

{Tape: 1; Side: B; Approx. Time Count: 9:48 p.m.}

SEN. BENEDICT asked **Frank Cote** if he could live with the amendments proposed by **Ward Shanahan** and was told he could live with the first proposed amendment but was not as happy with deleting Subsection (5) on Page 8. **Mr. Cote** said he would rather

have a bill which gave some authority to help people correct erroneous information in their file. **SEN. BENEDICT** asked what SB 113 did if Mr. Cote could live with the amendments. **Mr. Cote** said SB 113 with the proposed conceptual amendments gave the Commissioner the ability to review a refusal to determine if the information used in the refusal was correct (Page 7, Subsection (5) and to order the correction, deletion, etc., of that information. **SEN. BENEDICT** asked if the Commissioner could currently do that and **Mr. Cote** answered, "Not in all cases."

Closing by Sponsor:

SEN. BEA MCCARTHY thanked the Committee for a good hearing and said they would incorporate the two amendments proposed by Ward Shanahan. She responded to **SEN. BENEDICT** by saying yesterday morning Mr. Cote had informed her amendments were being worked on so **SEN. HERTEL** was approached about delaying the hearing. They were told it was not possible because of public notice. **SEN. MCCARTHY** told the Committee she hoped for a DO PASS.

{Tape: 1; Side: B; Approx. Time Count: 10:05 a.m.}

HEARING ON SB 118

Sponsor: **SEN. WILLIAM CRISMORE, SD 41, Libby.**

Proponents: Nancy Ellery, Health Policy & Services Division
Pat Anderson, Montana Bed & Breakfast Association
Bud Williams, Innkeepers Association
Bobbi Uecker, The Sanders, Helena's Bed & Breakfast
Jean Johnson, Outfitters & Guides
Page Dringman, Montana Ranch Vacation Association
Rhonda Carpenter, Montana Housing Providers
Marc Steinberg, Skylodge Bed & Breakfast
Jean Roberts, White Sulphur Springs Bed & Breakfast

Opponents: None.

Opening Statement by Sponsor:

SEN. WILLIAM CRISMORE, SD 41, Libby, said SB 118 dealt with: (1) Defining "bed & breakfast"; (2) Defining "establishment"; (3) Defining the Department of Public Health & Human Services' rulemaking authority with regard to trailer courts and campgrounds; (4) Allowing for staggered license dates for public accommodations, trailer courts and campground establishments; (5) Specifying trailer court or campground rights to renewal of licenses. **SEN. CRISMORE** explained when SB 118 began it was ten pages; however, it was now four pages, even with the amendments he would be offering. **(EXHIBIT 2)** He also distributed copies of a written testimony from **Amy A. MacKenzie** he had received. **(EXHIBIT 3)**

Proponents' Testimony:

Nancy Ellery, Health Policy and Services Division gave her written testimony. (EXHIBIT 4)

Pat Anderson, Montana Bed & Breakfast Association, gave her written testimony. (EXHIBIT 5)

Bud Williams, Innkeepers Association, expressed appreciation for the opportunity to work so closely with the Department to make the amendments; he also expressed support for SB 118 with the changes.

Bobbi Uecker, The Sanders, Helena's Bed & Breakfast, addressed the bed & breakfast section as amended, explaining there were currently about 340 bed & breakfast establishments in Montana who were licensed as tourist homes. She stated that definition did not address food service, which obviously a bed & breakfast establishment provided in the form of breakfast. **Ms. Uecker** informed the Committee there was a regulation which interpreted the definition of tourist home but it was difficult to understand and easy to inconsistently apply. She said she saw SB 118 as an enabling bill for food service in a bed & breakfast because regulations would be drawn up, the benefit of which was decisions would be made as to the number of breakfasts served as well as location of the bed & breakfast (rural or urban). She reminded the Committee SB 118 pertained to food service inspection, not zoning or commerce.

Jean Johnson, Montana Outfitters & Guides Association, said the outfitters industry was interested in SB 118 because for years it had attempted to diversify so outfitters had developed a kind of bed & breakfast service. **Ms. Johnson** stated it was not a problem until commercial establishments complained about area bed & breakfasts. She reported the irony of the situation was the Department of Commerce encouraged rural people to find some way to expand what they did while the Department of Health had rules which did not allow that opportunity. **Ms. Johnson** expressed support for SB 118 as amended; however, they were concerned about the rulemaking authority because outfitters had only one window of opportunity, and that was in April. She maintained the outfitting industry contributed more than \$125 million to Montana's economy annually. She strongly urged the Committee to consider negotiated rulemaking authority because the Department would have to consider the needs of the small and unique businesses.

{Tape: 1; Side: B; Approx. Time Count: 10:20 a.m.}

Page Dringman, Montana Ranch Vacation Association, said she was neither a proponent nor opponent of SB 118. She referred to Nancy Ellery's testimony when she said guest ranches were currently regulated. **Ms. Dringman** said they were, but as hotels or motels. She explained in Montana, the guest ranches in the

Vacation Association were family owned and operated year round as cattle ranches, taking in sometimes 25-30 guests in the summer. She suggested drawing up negotiated rules which would be applicable to the different types of industry.

Rhonda Carpenter, Montana Housing Providers, said her industry rose in support of SB 118 as amended.

Marc Steinberg, Sky Lodge Bed & Breakfast, said he came from Meagher County, which had less than 2,000 inhabitants and was "economically challenged." He informed the Committee there were four bed & breakfasts in the County and one would be put out of business with SB 118 because it had 14 rooms. He also said they do not offer meals other than breakfast, except during hunting and fishing season, when suppers were provided. **Mr. Steinberg** stated if they were not allowed to do that, they would go out of business. He expressed support for the amendments; however, SB 118 delegated regulating authority to the Department but when inspectors came to inspect, the regulations were interpreted very inconsistently -- they should match what was being regulated. **Mr. Steinberg** also turned in a Witness Statement. (EXHIBIT 6)

Jean Roberts, Operator of a bed & breakfast north of White Sulphur Springs, said she favored SB 118 as amended. She stated the bed and breakfast industry was already regulated, even without SB 118; however, SB 118 would clean up regulations which were burdensome for small businesses. She also recommended the industry be part of the negotiated rulemaking process so it would be equitable and fair.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked if there had been documented sanitation or illness problems with Montana bed & breakfast establishments.

Nancy Ellery said in the last two years 250 cases of food-born illnesses had been reported; however, she did not have the information with her as to how many occurred in bed & breakfasts.

SEN. BENEDICT asked **Ms. Ellery** if she would have a problem with negotiated rulemaking and was told she would not because they did all their rulemaking through the negotiated process. **SEN.**

BENEDICT then wanted to know if **Ms. Ellery** would provide negotiated rulemaking language for the Committee. **Ms. Ellery** said she could.

SEN. BEA MCCARTHY referred to Page 1, Line 23, and asked if the figure of "18" could be changed to "20 or 24." **SEN. BENEDICT** asked if whoever answered that question could address the number of guest rooms also. **Kathleen Martin, Bureau Chief of Communicable Disease Control and Prevention Bureau**, said one of the documents they used in administering food service safety was the federal uniform food code, and this code allowed the Bureau to treat bed & breakfasts differently as a food service entity.

She explained this code said a bed & breakfast would not serve more than 18 guests a day, which was the premise for using that number. **SEN. MCCARTHY** said the proposed amendments on Line 21 would change to ten rooms. She said when she traveled with her five children, they used three rooms and seven spots at the table, even though some of the children were three and four years old. **SEN. MCCARTHY** maintained that was not fair to the bed & breakfast establishment and felt expanding the number to 25 was more reasonable. **Ms. Martin** said the Department would be a bit uncomfortable with expanding the number to 25, explaining the number of rooms did not really pertain to the food safety issue; rather, it was the number of meals being prepared, served and stored.

SEN. BENEDICT asked how the Department anticipated being able to monitor how many people were in a bed & breakfast establishment on any given day. **Kathleen Martin** said the establishments would be monitored by the local sanitarians, based on the word of the bed and breakfast owners.

SEN. MCCARTHY mentioned many bed & breakfasts served wedding receptions, and she wondered how the Department handled the food storage rulemaking. **Ms. Martin** replied bed & breakfasts which did that had a separate license for catering which had its own requirements for food storage.

SEN. JOHN HERTEL referred to Pages 2-3 of SB 118 and the list of things the Health Department was interested in, explaining he had heard about the speed with which the Department acted in issuing licenses. He wondered if the extra rules would slow up the Department. **Nancy Ellery** said all the food and consumer safety programs had recently been legislatively audited and the main problem identified was the fees did not cover the costs of inspections; in fact, only 30% of the inspection costs were covered by the fees. She explained that was the reason for so many bills this 1997 legislative session; it was to address fee changing in the food areas. She said the demand for licenses in the state had grown by 20% or more during the past five years while their staff had decreased.

SEN. HERTEL reiterated there really was no time frame during which the business applied for a license and the time the Department could actually get there to inspect and issue the license. **Ms. Ellery** deferred to a person from the Food and Safety Section who said there was not a rule time period for the application process; however, anyone who applied for a new license would have the inspection taken care of on a timely basis at the local level -- usually within 30 days. Once the application had been approved by the local sanitarian, the owner could operate from that point on, and the license would come later.

SEN. HERTEL asked what would have to be done if he were going to set up a bed & breakfast. He was told he would be in contact

with the local sanitarian who could send a list of the rules and information on how to apply for a license. Then he would make an appointment with the local sanitarian to inspect his business. After that the owner would take the signed and approved application and send it with a check to the state.

SEN. CASEY EMERSON asked if there had been any problems between state and county regulations. He was told there were inconsistent applications at the local levels which the Department hoped to correct with new rulemaking through input from regulated industry.

SEN. BENEDICT asked how the Department felt about the local Boards of Health being delegated the authority to resolve appeals and bring agreements among licensees, state regulators and inspectors. He was told local Boards of Health had an equal part in resolving differences because they had an equal share in the licensing process, and issues with the state were handled through an informal negotiating process.

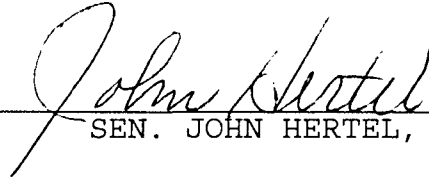
{Tape: 1; Side: B; Approx. Time Count: 10:46 a.m.}

Closing by Sponsor:

SEN. WILLIAM CRISMORE said he felt everything was covered which needed to be done, and the negotiated rulemaking would be important; therefore, it would be important to get that aspect into SB 118. He expressed appreciation for the Department's working with everyone prior to the hearing. **SEN. CRISMORE** asked the Committee for a DO PASS for SB 118.

ADJOURNMENT

Adjournment: The meeting adjourned at 10:50 a.m.



SEN. JOHN HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW