

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By CHAIRMAN STEVE BENEDICT, on February 14, 1997,  
at 3:07 PM, in Room 410.

#### ROLL CALL

##### Members Present:

Sen. Steve Benedict, Chairman (R)  
Sen. James H. "Jim" Burnett, Vice Chairman (R)  
Sen. Larry L. Baer (R)  
Sen. Chris Christiaens (D)  
Sen. Bob DePratu (R)  
Sen. Dorothy Eck (D)  
Sen. Sharon Estrada (R)  
Sen. Eve Franklin (D)  
Sen. Fred Thomas (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division  
Karolyn Simpson, Committee Secretary

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

##### Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 324, SB 316, SB 317, SJ8,  
2/10/97  
Executive Action: SB 156, SB 162, SB 317,  
SB 316, SB 324, SJ8, SB 90

#### EXECUTIVE ACTION ON SB 156, SB 162

Motion/Vote: SENATOR FRED THOMAS moved to take SB 156 and SB 162  
OFF THE TABLE, convert them to regular status, and consider them  
the next executive session. The motion CARRIED UNANIMOUSLY.

Discussion: SENATOR DOROTHY ECK said more amendments have been  
prepared for SB 90.

CHAIRMAN BENEDICT said, because there are four bills to be heard  
today, and when the committee gets to executive action again, she  
can bring it up again.

HEARING ON SB 316

Sponsor: SENATOR SUE BARTLETT, SD 27, Helena

Proponents: Patrick Chenovick, MT Supreme Court

Opponents: None

Opening Statement by Sponsor:

SENATOR SUE BARTLETT, SD 27, Helena, said judges are the only ones who are required to wait until they are 65 years of age to draw retirement benefits under their retirement plan. There are judges leaving the judiciary before age 65 and SB 316 will allow them to retain their insurance under the state insurance plan. The intent of this bill is on pages 2 and 3, subsection 4A. On page 3, lines 4 and 5, is part of the existing law, saying a person who makes use of this possibility is required to pay the full premium for coverage and for that of covered dependents. This is a peculiarity because judges cannot withdraw a retirement benefit before 65 years of age, but if they choose to leave the judiciary, they are not drawing a benefit and so must be dropped from their state insurance coverage after 18 months.

Proponents' Testimony:

Patrick Chenovick, Court Recorder, Montana Supreme Court, said this situation was brought to attention of the chief justice and members of the court when one of the judges chose not to seek re-election and found out he wasn't eligible for insurance and couldn't get benefits from the retirement plan until age 65. SB 316 will amend the statutes so judges will be treated the same as public employees are treated in regards to insurance. This is the first time this situation has come up and it probably won't be occurring on a regular basis in the future.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR FRED THOMAS asked how long it takes to become a vested member of the retirement system.

Pat Chenovick said it takes 5 years.

SENATOR THOMAS asked if that was one term plus one year.

Pat Chenovick said the normal district judge term is six years.

SENATOR BOB DePRATU referred to page 2, lines 25-30, asked if an eligible person left and was covered under another plan, then left and was not 65, could he come back under the state plan.

SENATOR BARTLETT said no and referred to page 3, lines 1-3, the provision this option then terminates the plan may not rejoin the group unless he/she holds a position covered by the plan.

**SENATOR CHRIS CHRISTIAENS** asked how many people would this bill affect.

**SENATOR BARTLETT** said there is only one now and maybe another later, but younger people are becoming judges and after 20 years they may want to retire, and still aren't age 65. The first instances identifying this problem are being seen, but it probably won't be a huge number of judges.

Closing by Sponsor: **SENATOR BARTLETT** made no further remarks.

Close hearing: 3:16 PM

HEARING ON SB 324

Sponsor: **SENATOR SHARON ESTRADA, SD 7, Billings**

Proponents: Rep. Deb Kottel, HD 45, Great Falls  
Dr. Nancy Etchart, Licensed Clinical Psychologist  
Kate Cholewa, MT Womens Lobby  
Claudia Clifford, Auditors Office  
Beda Lovitt, MT Medical Assn.  
Steve Yeakel, Council Maternal and Child Health  
Barbara Booher, MT Nurses Assn.  
Rep. Diane Sands, HD 66, Missoula  
Tanya Ask, Blue Cross and Blue Shield  
Tom Ebzery, Yellowstone Community Health Plan  
Don Allen, MT Medical Benefit Plan  
Lois Fitzpatrick, self  
Mary Alice Cook, Advocate for Children and Families

Opponents: None

Opening Statement by Sponsor:

**SENATOR SHARON ESTRADA, SD 7, Billings**, said SB 324 is an act providing for coverage of postmastectomy care as determined by the physician and patient, reconstructive surgery, requiring written informed consent for patients receiving treatment for breast cancer, and clarifying the small employer health insurance availability act for coverage of mammography. Some insurance companies want to send women home 24 to 48 hours after a mastectomy. **SENATOR ESTRADA** said, based on her own experience, the length of hospital stay should be the decision of the woman. Because this surgery can be devastating, some women choose to have reconstructive surgery and should be allowed to have this surgery and have it paid for by her insurance. Written informed consent for breast cancer treatment is essential because a patient is so afraid, she may not be listening to the doctor and be able to make a decision at that time. She gave the 1994 statistics from the American Cancer Society and the American Society of Plastic Surgeons. Nationally, there were 85,000 mastectomies performed and 29,000 (34%) of these had reconstructive surgery. Those who chose to have reconstructive surgery is broken down by age groups as follows:

18 years and under = 1%  
17-34 years of age = 11%  
35-50 years of age = 54%  
51-64 years of age = 29%  
65+ years of age = 5%

Most health insurance policies cover mastectomies, but there is no pattern of coverage for reconstructive surgery. Some have coverage and others don't. There will be an amendment setting the effective date.

**Proponents' Testimony:**

**REP. DEB KOTTEL, HD 45, Great Falls,** said when she was 36 years old she found a lump and insisted on having a mammogram. She had a biopsy which determined the lump was malignant and the cancer had spread to her lymph nodes. After surgery, she spent four days in the hospital and immediately started chemotherapy, which continued for the next six months. Each woman's mastectomy is different and each deals with it differently. She couldn't imagine going home 48 hours after surgery because she was barely able to cope with the situation after four days in the hospital. Every woman should be able to choose whether she would like to have reconstructive surgery.

**Dr. Nancy Etchart, Licensed Clinical Psychologist,** said she is a three-time cancer survivor and supports both SB 324 and SJR 8. She read a letter from **Christy Hutchins. (EXHIBIT 1)**

**Kate Cholewa, Montana Womens Lobby,** said every 11 minutes three women die to breast cancer and men can also suffer from breast cancer. **(EXHIBIT 2)**

**Claudia Clifford, State Auditors Office,** said consumers are getting nervous about the quality of health care and insurance coverage for that care. Their office has an occasional complaint regarding reconstructive surgery because some companies refuse to cover it, but others do provide coverage. She read a letter from Dr. John Harlan. **(EXHIBIT 3)** In statute, there was a mandated benefit for mammography but the last legislature chose to exempt the small group policies. The Insurance Commissioner feels a mandated benefit should apply to all policies without exemptions for some.

**Beda Lovitt, Montana Medical Association,** said SB 324 is good medicine which the doctors recognize. The length of the hospital stay should be decided by the patient and her physician. It can vary with the individual. The reconstructive surgery is an important issue and the woman should be able to choose that option. Written informed consent is good medicine. Good physicians practicing good medicine should be doing that.

**Steve Yeakel, Montana Council Maternal and Child Health, Montana Public Health Association,** said there is strong support in Montana children's agenda for breast and cervical issues and

urged the committee's support of SB 324 because it will improve the outcome and make for healthier families later in life.

**Barbara Booher, Montana Nurses Association**, said they support SB 324. There are too many families touched by breast cancer.

**REP. DIANE SANDS, HD 66, Missoula**, said she supports this bill and became involved in this issue when a constituent, who is a breast cancer survivor, asked her to get involved. This is a critical issue for womens' health care and is cost effective.

**Tanya Ask, representing Blue Cross and Blue Shield**, said they cover reconstructive surgery and have added reduction of the non-diseased breast. They have a question about augmentation because in the past that has been considered to be a cosmetic procedure. They are offering an amendment regarding the effective date.

**(EXHIBIT 4)** There are a number of provisions going through both the Senate and the House impacting insurance contracts, all of which need to be filed with the Montana Insurance Department then reissued to individuals who have that coverage. Most of these bills will have a January 1, 1998 effective date and would like SB 324 to do the same. She offered comments from **Tom Hopgood, Health Insurance Association of America**, in support of SB 324. Many of the companies he represents offer these services including reconstruction and reduction of the non-diseased breast. He questions the additional mammogram exams under the basic health benefit plan from the policy decision made last session, which is the issue of mandated benefits. While all are good benefits, he questions whether people should have the right to choose those benefits. He said all health plans should be regulated by the State of Montana, not just insured plans, but also any multi-employee welfare arrangements, and political subdivision or state entity, such as the Montana State Benefit plan, Montana University system or any other governmental entity over which the State has jurisdiction, and this particular language should be incorporated into those contracts.

**Tom Ebzery, Yellowstone Community Health Plan**, said they support SB 324. Their health plan does offer this coverage and thinks it's good addition for public policy. They approve of the January 1 effective date and, referring to page 1, line 16, medically appropriate, he suggested striking the word "appropriate" and insert "necessary," because there might be a question what "medically appropriate" really means. He has a question on page 1, lines 15-16 "care for a period of time as determined by the attending physician, in consultation with the patient," and thinks the insurer should be included in this list.

**Don Allen, Montana Medical Benefit Plan**, said they support SB 324 and endorse the January 1 effective date. This is an important type of coverage but thinks, in regard to the basic plan, it is a way to hold down insurance coverage costs for some people and he supports the Hopgood amendment to extend it to the other medical coverage.

{Tape: 1; Side: B; Approx. Time Count: 3:49 PM}

Lois Fitzpatrick, self, said she supports SB 324. She is a breast cancer survivor and urged passage of the bill.

Mary Alice Cook, Advocate for Children and Families, said she is a breast cancer survivor and supports SB 324.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR LARRY BAER asked if women are really discharged 48 hours after a radical mastectomy. He had been an operating room technician in the Navy and assisted in some mastectomies, and can't believe women are discharged so soon after surgery.

Kathleen Martin, Department of Health, said she had a radical mastectomy at 5:00 PM one day and was sent home at 10:00 AM the next day.

SENATOR FRED THOMAS asked if she was covered under the State plan at that time.

Kathleen Martin replied that it was.

Closing by Sponsor:

SENATOR SHARON ESTRADA expressed her appreciation to all the proponents who came to testify in support of SB 324.

Close hearing: 3:54 PM

HEARING ON SJR 8

Sponsor: SENATOR SHARON ESTRADA, SD 7, Billings

Proponents: Rep. Diane Sands, HD 66, Missoula  
Dr. Nancy Etchart, Licensed Clinical Psychologist  
Kathleen Martin, Department of Health  
Steve Yeakel, Council Maternal and Child Health

Opponents: None

Opening Statement by Sponsor:

SENATOR SHARON ESTRADA, SD 7, Billings, said SJR 8 is a resolution urging the U.S. Congress to provide annual screening mammograms for those women who qualify for Medicare. Presently Medicare only pays for one mammogram every two years. Her oncologist asked her to initiate this coverage because most women on Medicare can't afford the cost of an annual mammogram. Women who are over 65 years of age need them the most but can only have one mammogram every two years under Medicare. 78% of women with breast cancer are over the age of 50. If this bill passes both the Montana Senate and House, it will be sent to Montana congressional delegation in Washington DC, to the Department of

Health and Human Services, to the administrator of the Health Care Financing Administration.

Proponents' Testimony:

REP. DIANE SANDS, HD 66, Missoula, said she supports SJR 8. She gave some statistics on the deaths from breast cancer (EXHIBIT 5) and said this is not totally a woman's issue. It is the leading cause of cancer death in women 15-34 years of age, and ages 35-54, and is the second leading cause of cancer death in women 55-74 years of age.

Dr. Nancy Etchart, Licensed Clinical Psychologist, said she supports SJR 8. She read a letter of support from Christy Hutchins. (EXHIBIT 6)

Kathleen Martin, Department of Public Health and Human Services, said she is representing Bob Moon, Department of Health, and submitted his written testimony in support of SJR 8. (EXHIBIT 7)

Steve Yeakel, Montana Council Maternal and Child Health, Montana Public Health Association said they support SJR 8.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SENATOR SHARON ESTRADA made no further remarks.

Break: 4:05-4:14 PM

HEARING ON SB 317

Sponsor: SENATOR DOROTHY ECK, SD 15, Bozeman

Proponents: Mary Alice Cook, Ind. Lobbyist Child & advocate  
Robert Runkel, Office Public Instruction  
Betty Waddell, MT Assn. Churches  
Steve Yeakel, MT Council Women and Children  
Mary Dalton, Department of Health

Opponents: None

Opening Statement by Sponsor:

SENATOR DOROTHY ECK, SD 15, Bozeman, said the committee has seen this bill before, from last session. Many of those people who work with children think Montana should expand the Medicaid eligibility for children. Montana provides Medicaid at the very minimum level. Many other states fund Medicaid at 385% and 200% of poverty for children and pregnant women with infants. At the Federal level, this is looked at as the next stage of health care reform. There are 25,000 children in Montana who are not covered by health insurance and they are less likely to get the necessary medical care when needed, which makes a big difference in the

child's health. They are more likely to become more seriously ill if the problem is not taken care of in the early stages. The reason they don't have health insurance because it costs. In many policies, where one or both parents are covered, the extra cost to add the family is about \$1,600.00 per year. For a while, the number policies that were covering children and families increased, but now it has decreased, but with the cut-backs in spending, many employers are only paying for the health care coverage of the employee and the employee must pay for family coverage. She explained the amendments to SB 317 (**EXHIBIT 8**) saying we take a small step we might get it, to insure, under Medicaid, children up to 100% of the poverty level. Presently children are covered up to the age of 12 and this would increase that coverage up to age 17. That would cost about \$4 million, but only \$1.2 million would be General Fund money for the biennium, which would be \$600,000.00 per year. She is looking at this as a down payment. If we do this time, then it will be a start, and if the federal money comes in, and there is an option to increase Medicaid eligibility, it would allow us to take advantage of it. It will also allow the Department of Health to purchase health care insurance for children. There was an attempt to build into this bill enough flexibility for the Department of Health to make use of federal money. She said it is time to act and think about a policy of health care coverage especially for children in low income families.

**Proponents' Testimony:**

**Mary Alice Cook, Independent Lobbyist for children & families,** said it was stated this legislative session was going to be interested in prevention programs and this bill is one of the greatest preventions and will help those children without health insurance. Statistics from the Children's Defense Fund, claim nine out of ten children of working families are without medical coverage.

**Robert Runkel, Director of Special Education, Office Public Instruction,** said they support this bill because they believe healthy children are better learners. They provide a lot of services in schools for special education students such as speech therapy, occupational therapy, and physical therapy. Some of these services are provided to children who are Medicaid eligible. Montana's costs in special education has been rising considerably, and so far, the state special education appropriation has not increased since the 1989 session. Passing this bill is a small effort but will help some special education programs.

**Betty Waddell, Montana Association of Churches,** asked the committee to recognize the rights of children. Children are entitled to healthy growth and development, and to this end, special care and protection should be provided to children and their parents, including adequate prenatal and postnatal care. She said children with mental or social disabilities should be given special treatment, education, and care, required by their



condition. More figures from the Children's Defense fund claim the United States is the only nation that does not provide health insurance for all its children and the U.S. ranks 18th in keeping newborns alive to their first birthday.

**Steve Yeakel, Montana Council Maternal and Child Health, Montana Childrens Alliance**, said they support SB 317. He thinks the fiscal issues are a result of less than total commitment to prevention made in sessions during the last one to two decades.

**Mary Dalton, Department of Public Health and Human Services** referred to the amendment saying, 14-48 year old children being added are a relatively inexpensive group to add for Medicaid coverage because they only average \$500.00/year. The second part of the amendment is important because of it gives the Department of Health flexibility due to something coming out of the U.S. Congress addressing children's health care needs.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:**

**SENATOR FRED THOMAS** referred to the amendment changing the eligibility from 185% of poverty level to 100% and starting at age 14, and asked about the cost for this program.

**SENATOR ECK** said the Department of Health would need to add 20 new FTE's to accomplish this program. The number of children covered would be at 100-200% of poverty level. A substantial amount of the health care cost for children is mental health costs and that is already covered by Medicaid.

**SENATOR THOMAS** said the amendments (**EXHIBIT 8**) took out section B, page 3, and the intent was to develop sliding scale premiums based on family income, and asked why that was being taken out.

**SENATOR ECK** said with the present language, the Department has the authority to charge premiums on a sliding scale. Looking at cost per child, it's not much more than that, and of that, the feds picks up two-thirds, which would range from \$10 to \$40.00 per month for the insurance premium. In Florida, a school-based program in which all school children are eligible, if they don't have insurance along with their pre-school siblings. The maximum premium is \$50.00 per month paid for by state and federal subsidies plus school money. (**EXHIBIT 9**)

**CHAIRMAN BENEDICT** asked **SENATOR ECK** if this bill could be held in the committee until there is a fiscal note.

**SENATOR ECK** said the easiest way to do that is to first adopt the amendments and then ask for a fiscal statement.

**SENATOR CHRIS CHRISTIAENS** said he had talked with **Dave Lewis** about doing that and he said they wouldn't do anything until an amendment was put on the bill.

CHAIRMAN BENEDICT asked if they would do that if the bill were still sitting in committee.

SENATOR CHRISTIAENS said yes, if the bill were amended.

Closing by Sponsor:

SENATOR DOROTHY ECK said the issue is health care for children. There are a number of ways to go about it and the advantage of the Medicaid option advantage is state pays one-third and federal pays two-thirds.

Charlene Legis, Department of Health, said the 20 additional FTE's is based on 4,074 additional children to the program and the caseload is 200 per employee.

SENATOR ECK said we're looking at expanding health care coverage in other ways. Legislation from the 1995 session requiring health coverage for those children under the supervision of child support, and there may be as many as 10-12,000 child support orders written which will require some sort of health care coverage. She thinks maybe this option should be available to other parents who don't have it available.

{Tape: 2; Side: A}

EXECUTIVE ACTION ON SB 317

Motion: SENATOR DOROTHY ECK moved SB 317 DO PASS.

Motion: SENATOR DOROTHY ECK moved the AMENDMENTS TO SB 317 DO PASS.

Discussion: Susan Fox explained the amendments. Two technical amendments were omitted and have major implications for the bill.

Vote: The DO PASS motion for the AMENDMENTS to SB 317 CARRIED UNANIMOUSLY.

SENATOR ECK withdrew the DO PASS motion for SB 317.

EXECUTIVE ACTION ON SB 316

Motion/Vote: SENATOR FRED THOMAS moved SB 316 DO PASS. The motion CARRIED with SENATOR CHRISTIAENS voting NO.

EXECUTIVE ACTION ON SB 324

Motion: SENATOR SHARON ESTRADA moved SB 324 DO PASS.

Discussion: SENATOR ESTRADA said there are amendments from Blue Cross and Blue Shield.

Motion/Vote: SENATOR ESTRADA moved the AMENDMENTS to SB 324 DO PASS. The motion CARRIED UNANIMOUSLY.

Discussion: CHAIRMAN BENEDICT said there are one more set of amendments.

SENATOR THOMAS asked if the Hopgood amendments were included in the State Employees plan, etc.

CHAIRMAN BENEDICT said they are. Tom Hopgood intended to exempt any self-funded multiple employer welfare arrangement that is regulated by ERISA so there would not be problems being superseded by ERISA.

Motion: SENATOR FRED THOMAS moved the conceptual Hopgood amendments with ERISA provision DO PASS.

Discussion: SENATOR CHRISTIAENS asked for clarification, if the amendment covers just the MEWAs (Montana Employers Welfare Assistance) exempt under ERISA or all MEWAs.

CHAIRMAN BENEDICT said it would exempt those MEWAs that are already covered under ERISA to avoid problems with the federal government with ERISA superseding.

Susan Fox explained the amendments.

CHAIRMAN BENEDICT said the second amendment is striking sub section 5 entirely, which is the coverage for mammography under the basic plan.

SENATOR ECK ask about the rationale for this.

Tanya Ask said under the basic benefit plan, which was part of small group reform that is supposed to be the stripped down version of a health care plan made available to small groups created, last Session, with only the mandate for mental health and chemical dependency. The purpose of the Hopgood amendment was to put it back to its current position with only the mental health and chemical dependency mandates and no others.

SENATOR EVE FRANKLIN referred to section 5, subsection D, coverage for mammography examination, and asked if that is the original mandate passed in 1991.

Tanya Ask said it is. That is the mandate that exists for all policies in Montana.

SENATOR FRANKLIN asked if it is out of the basic plan now.

Tanya Ask said yes.

SENATOR THOMAS said he would like to have these amendments segregated.

Motion/Vote: SENATOR THOMAS moved to reform his motion and moved AMENDMENT 1 of the Hopgood amendments. The motion CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR THOMAS moved the conceptual Tom Ebzery amendment to strike "appropriate" and insert "necessary" on page 1, line 16. The motion CARRIED UNANIMOUSLY.

Motion: SENATOR THOMAS moved conceptual AMENDMENT to SB 324.

Discussion: Susan Fox read the conceptual amendment, page 1, line 16, following physician, add "and in the case of a health maintenance organization, the primary care physician," in consultation with the patient.

CHAIRMAN BENEDICT explained. The gate-keeper in a health maintenance organization, in conjunction with the patient and the patient's physician, would determine the appropriate length of stay.

SENATOR CHRISTIAENS said the phone call has been made for authorization and this is something that could be discussed at the same time.

SENATOR FRANKLIN asked Susan Fox to read the amendment again, then read the whole sentence.

Susan Fox said the additional language is "and in the case of a health maintenance organization, the primary care physician," then she read the whole sentence with the new language inserted.

CHAIRMAN BENEDICT said this doesn't harm the bill and it puts the primary care physician in the loop, in case the patient is covered by an HMO.

Vote: The conceptual amendment motion CARRIED UNANIMOUSLY.

Discussion: SENATOR ECK asked about the basic health benefit plan and what is included.

CHAIRMAN BENEDICT said the only things mandated are chemical dependency and mental health. There is the standard plan and the basic plan. The basic plan allows more people to be covered by plans without the mandated benefits contained in other plans. Mr. Hopgood wants make sure the basic plan will be available to those who would choose the basic plan and not want to pay for mandated benefits.

SENATOR ECK asked if under 33-21-152 there are basic services.

Susan Fox said it's equivalent to the services of the Comprehensive Health Association plan (MCHA), with the risk pool.

SENATOR ECK asked if it will cover child delivery, appendicitis, etc.

Susan Fox read a portion of a list of the 24-25 covered services.

SENATOR CHRISTIAENS referred to line 30 and asked about the augmentation mentioned previously.

CHAIRMAN BENEDICT asked Tanya Ask why strike the augmentation.

Tanya Ask said the question their medical director raised augmentation was, in the normal restorative process or in the process of symmetry to the undiseased breast, a reduction is done to gain symmetry. Augmentation is deemed to be cosmetic rather than being used for symmetry.

SENATOR FRANKLIN asked about reconstructive surgery and thinks of augmentation for someone who has had a mastectomy and Tanya Ask is referring to an undiseased breast.

Tanya Ask said if that is what it refers to, then he (Blue Cross medical director) doesn't have a problem. She referred to subsection 2, page 1, symmetry for the non-diseased breast. If it applies to the diseased breast, then he doesn't have a problem with that.

Susan Fox said that may have been the intent but that is not what is said. It says one reconstructive breast surgery for the diseased breast and one for the non-diseased breast. If the augmentation is for the diseased breast, then it should be clarified.

SENATOR FRANKLIN said in her reading of that section, they are using reconstruction as the heading then adding other things, what does reconstruction, augmentation, reduction, etc. mean.

CHAIRMAN BENEDICT said there is the Hopgood number 2 amendment and if there is no motion, then we will move on.

Motion/Vote: SENATOR ESTRADA moved SB 324 AS AMENDED DO PASS. The motion CARRIED UNANIMOUSLY.

#### EXECUTIVE ACTION ON SJR 8

Motion/Vote: SENATOR SHARON ESTRADA moved SJR 8 DO PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 90

Motion/Vote: SENATOR DOROTHY ECK moved to take SB 90 OFF THE TABLE. The motion CARRIED UNANIMOUSLY.

Motion: SENATOR ECK moved SB 90 DO PASS.

Editors note: amendments (SB009001.asf) were added to SB 90 on January 29, 1997.

Discussion: Susan Fox said the first set of amendments (SB009001.asf), submitted by SENATOR LORENTS GROSFIELD, took a lot of the language of critical point violation out of the bill. The second set of amendments, requested by SENATOR ECK, deals with the fee issue.

SENATOR THOMAS asked if her intention is to leave the first set of amendments on the bill.

Kathleen Martin said that was her intent.

SENATOR THOMAS asked if the second set of amendments will dovetail with the first and not conflict.

Kathleen Martin said yes, then explained the amendments. (EXHIBIT 10) Under the current statute, the regular fee for a pool is \$75.00 and if a pool is attached a public accommodation then the fee is \$50.00.

CHAIRMAN BENEDICT asked if this pertains to both public and private pools.

Kathleen Martin said currently municipal pools, those operated by government or political entity are exempt from the fee.

CHAIRMAN BENEDICT asked, then the fee for those goes from zero to \$100.00.

Kathleen Martin said they are still exempt under this amendment.

CHAIRMAN BENEDICT said it seems the explanation raised all fees to \$100.00.

SENATOR THOMAS asked to which pools does this apply.

Kathleen Martin said motel pools and privately owned pools, but that is not private home pools.

CHAIRMAN BENEDICT asked about pools not operated by a government entity, this would raise the fee from \$50.00 to \$100.00.

Kathleen Martin said fees for pools that are stand-alone services would be raised from \$75.00 to \$100.00. Pools that are associated

with motels, campgrounds, and trailer parks, the fee would be raised from the current \$50.00 to \$100.00.

**Motion:** SENATOR THOMAS moved the amendments (SB009002.asf) to SB 90 DO PASS.

**Discussion:** SENATOR CHRISTIAENS said these are troublesome, and having had a bed and breakfast, which was a five room facility that you get to use during tourist season, and it's your own home, raising the fee to \$100.00 seems unreasonable.

**Vote:** The motion FAILED ON A TIE VOTE with SENATORS FRANKLIN, DePRATU, BURNETT and BENEDICT voting NO, and SENATORS ECK, ESTRADA, CHRISTIAENS and THOMAS voting YES.

**Discussion:** SENATOR THOMAS said where the bill failed a month ago, was the unfunded mandate issue, and this amendment addresses that. He thinks the committee should reconsider their actions, add the amendments, send it to the floor and let the process take place.

CHAIRMAN BENEDICT said this bill is troubling because of the unfunded mandate and he is troubled by the doubling the fees.

SENATOR DePRATU said the problem he has with it is, does this cover the unfunded mandate and has a problem with the small operation having to pay the \$100.00 fee.

SENATOR FRANKLIN said her uncertainty about this is, she wonders how it is really affecting people.

SENATOR ECK said the inspection fees for food establishments are based on risk and wondered if that could be done for swimming pools because those small establishments who have relatively little risk would not have the same fee and large operations that would have their pool open year-round.

Kathleen Martin said she had not considered seasonal pool having a lesser risk than year-round operations. All pools are high risk and there is a high incidence of drowning in Montana. She said they would investigate the possibility of establishing fees based on seasonal, low risk operations versus large, year-round.

SENATOR THOMAS said a lot of the cost of pool inspections is in getting there and if it's a matter of public safety, aren't we dealing with whether this should be done or not and setting fees. By addressing this bill and amendment, if we don't do this, we're not inspecting, and if there is a pool of water, it should be safe.

SENATOR CHRISTIAENS said he is troubled by the fee because it seems high but thinks public safety out-weighs that. If the Department of Health does it, it should break even.

Motion/Vote: SENATOR ECK moved to RECONSIDER THE ACTIONS on the amendments to SB 90. The motion CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR ECK moved the amendments (SB 009002.asf) to SB 90 DO PASS. The motion CARRIED with CHAIRMAN BENEDICT voting NO.

Motion/Vote: SENATOR THOMAS moved SB 90 DO PASS AS AMENDED. The motion CARRIED with SENATORS FRANKLIN, BURNETT and BENEDICT voting NO.



ADJOURNMENT

Adjournment: 5:22 PM



SEN. STEVE BENEDICT, Chairman



KAROLYN SIMPSON, Secretary

SB/ks