

## **MINUTES**

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

#### **COMMITTEE ON FINANCE & CLAIMS**

**Call to Order:** By **CHAIRMAN CHUCK SWYSGOOD**, on March 14, 1997, at 8:06 a.m., in Room 108.

#### **ROLL CALL**

##### **Members Present:**

Sen. Charles "Chuck" Swysgood, Chairman (R)  
Sen. Thomas F. Keating, Vice Chairman (R)  
Sen. Larry Baer (R)  
Sen. Thomas A. "Tom" Beck (R)  
Sen. James H. "Jim" Burnett (R)  
Sen. B.F. "Chris" Christiaens (D)  
Sen. Eve Franklin (D)  
Sen. Loren Jenkins (R)  
Sen. Greg Jergeson (D)  
Sen. John "J.D." Lynch (D)  
Sen. Dale Mahlum (R)  
Sen. Arnie A. Mohl (R)  
Sen. Linda J. Nelson (D)  
Sen. Mike Taylor (R)  
Sen. Daryl Toews (R)  
Sen. Mignon Waterman (D)

**Members Excused:** Sen. Ken Miller (R)

**Members Absent:** None

**Staff Present:** Taryn Purdy, Legislative Fiscal Division  
Sharon Cummings, Committee Secretary

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

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: None  
Executive Action: SB 374, Failed; SB 267, Failed

#### **EXECUTIVE ACTION ON SB 374**

**Amendments:** Amendment #sb037401.a35. (EXHIBIT #1)

**Discussion:** **SEN. TOM KEATING** Subcommittee work on SB 374 is in amendment #sb037401.a35. These amendments are at the suggestion of: 1) the two subcommittee members from the Judiciary Committee; 2) Judge Larson, Missoula, and Judge McCarter, Helena;

and 3) the Bankers Association. **SEN. KEATING** explained the amendment.

*{Tape: 1; Side: A; Approx. Time Count: 8:20; Comments: None.}*

**SEN. LARRY BAER** The only items the subcommittee changed are what I consider to be overreaching by the Department Public House and Human Services (DPHHS). We did not change anything in the federal law because we were told we couldn't. SB 374, in my opinion, is the most intrusive affront to the rights of state sovereignty I've ever seen in violation of the 10th amendment. Our government is so addicted to federal money that the people of Montana will be forsaken but not with my consent. SB 374 isn't for Montana. When are we going to stop letting the federal government take over everything we do?

**SEN. CHRIS CHRISTIAENS** Is there a mechanism in this bill to address an errant parent who is out of the country? **Mary Ann Wellbank, DPHHS** Federal law allows the federal government to suspend passports which will become effective October 1, 1997. We also have reciprocal agreements with some countries.

**SEN. LOREN JENKINS** Are professional licenses in the bill and can they be revoked? **SEN. KEATING** Professional licenses were there before and are still there. DPHHS handles these licenses carefully as they may be necessary for a person's livelihood.

**SEN. JENKINS** Do we have reciprocal agreements with other states? **Ms. Wellbank** We don't need reciprocal agreements with other states, we have a national interstate system.

**SEN. ARNIE MOHL** Is amendment #6 the same advisory board as #1? **SEN. KEATING** Yes, #1 is the title of the bill and #6 is the actual language of the bill.

**SEN. JENKINS** Were the items not required by the federal government taken out? **SEN. KEATING** No, they are amendments to state requirements in sections 46, 47, 48, 56, 72, 98 and 99 of the bill.

**SEN. MOHL** How much federal funding do we receive? **SEN. KEATING** I believe \$52 million. **SEN. BAER** 66% from the federal government and 32% from Montana.

**SEN. MOHL** If we don't pass this bill will we lose \$52 million? **SEN. KEATING** Sanctions could be imposed, we received information on a court decision in Virginia that dealt with federal funding. The state rejected federal government requirements, were sanctioned, went to court and won. It appears the federal government cannot sanction. However, we received a letter from the federal government saying that sanction failed because of specific language in the grant, they feel compliance with federal law in child support enforcement is a different topic and we could be subject to the loss of the funds, which is \$52 million.

**SEN. MOHL** If we adopt this and two years from now the federal government decides not to fund it, would this amount come from the General Fund? **SEN. KEATING** Under the AFDC Medicaid payments for child support, the federal government pays 72% of Medicaid money and the state pays 28% out of General Fund. The sanction would not just be the 66% for child support, it could go as deep as the Medicaid for AFDC.

**SEN. MIGNON WATERMAN** You need to remember that this bill comes out of the welfare reform package. We are required to do a number of things including to comply with what is in this bill to be involved in the federal welfare child support network. The sanction is in whether we receive the federal welfare funds.

**SEN. BAER** This is Title IV-D under the federal social security act. If we turn this down we don't get the money that would be provided for Title IV-D only. The court case in Virginia clarifies this. If they specifically tell you in the grant what your responsibilities are and if you don't fulfill those responsibilities they can refuse to give you the money. They cannot penalize you for not accepting their mandate and take away money that has been given to you in other areas that are not specified in the law they mandated to you and you turned down.

**SEN. MIKE TAYLOR** Did someone study the fiscal note? **SEN. KEATING** Our committee did not get into the fiscal note.

**SEN. TAYLOR** You are adding a number of FTE's, can't people be shifted instead? **Jack Lowney, DPHHS** Two additional people are being added for the quick turnaround needed for income withholding orders and the W-4 new hiring system.

*{Tape: 1; Side: A; Approx. Time Count: 8:35; Comments: None.}*

**SEN. TAYLOR** Is the government providing your software? **Mr. Lowney** We are working with a private contractor to identify our needs. This is funded at the 66%-34% that all Title IV-D is funded. We are hoping to come up with the 34% from our current year funding for state special revenue.

**SEN. TAYLOR** Would you lay these people off if you find you don't need them any longer? **Mr. Purdy** We probably won't hire until we need people.

**SEN. J.D. LYNCH** Other than the intrusiveness of this bill, is there anything that isn't morally right? Is there something that goes beyond getting deadbeat dads? **SEN. BAER** I believe all states have a problem collecting child support. Montana's problem might be unique in that other states don't have the characteristics we have. We should be allowed to correct this problem by way of our own legislature, government, ideas, approach and funding without having the federal government force this down our throats. There are things in this bill that are absolute atrocities. Montanan's would never tolerate this in

creating their own approach to the problem. By conforming to this bill we are mandated to go by what they say and the way they want us to do it. I feel Montanan's should take this responsibility upon themselves.

**SEN. CHRISTIAENS** We talked about a Wisconsin model and the Nelson formula, which model is in this bill? **SEN. KEATING** Judge Larson offered the Wisconsin model as the formula for determining child support. As the chairman of the committee I decided this was too important a policy change for the subcommittee to address.

**SEN. CHRISTIAENS** What is in this bill regarding a formula or method? **SEN. KEATING** We didn't address the funding formula, the formula DPHHS is following remains the same. **Ms. Wellbank** Currently DPHHS has the authority to adopt guidelines. For the past five years we've used a modified Nelson formula publicized in the administrative rules. The department is currently studying this procedure and requesting public input. We are going in the direction of keeping the modified Nelson formula with revisions to make it simpler. **Ms. Wellbank** handed out a memo (**EXHIBIT #2**) clarifying the department's position on this subject. (**EXHIBIT #3**) also handed out.

**SEN. CHRISTIAENS** I hope the formula decision would not be retroactive to previous child enforcement determinations. **Ms. Wellbank** We would never retroactively change an existing order. We would use whatever guidelines are in existence as new orders are established or as parents come in for modification of the order. Our direction is to continue with the modified Nelson formula. Montana's formula has been published nationally as one of the most equitable in the nation.

**SEN. JENKINS** How close are you to being current? **Ms. Wellbank** I don't believe it will ever be possible for any division in the nation to be current. There are people out there who don't use division services, aren't collecting support and are delinquent by the time they come into the division for services. Last year we collected \$44 million and we think about \$170 million is owed either to the State of Montana, custodial parents living in the state or obligated parents living in other states.

**SEN. JENKINS** Does the judge in a divorce case order payment to the child support division as part of the settlement? **Ms. Wellbank** No, this is not required unless one of the parents is on AFDC. If the custodial parent is having difficulty collecting he/she may apply for our services but there is no requirement to go through our division.

**SEN. LYNCH** I think my county is being discriminated against. On the amendment you have a representative county data processing unit nominated by the Montana Association of Counties (MACO). Butte-Silver Bow and Anaconda-Deer Lodge don't belong to MACO. This is not a totally representative group if some counties don't

belong. **SEN. GREG JERGSON** I'm responsible for that language, the original amendment presented by Judge Larson was that it be a representative of the Missoula County data processing unit. Naming one county in statute to be on an advisory committee was offensive to me. I realize that all counties do not belong to MACO, but it is available for them to belong.

**SEN. LYNCH** We should not be in the business of recruiting members for MACO. There must be a better way to do this. **SEN. KEATING** The biggest problem in the subcommittee was determining the county representative.

**SEN. WATERMAN** The other alternative is having the clerk choose a clerk of court representative and a data processing representative.

**CHAIRMAN SWYSGOOD** I feel this is one of the most intrusive pieces of legislation I've ever seen in my eleven years of serving on the legislature. I spoke with Sen. Conrad Burns regarding this legislation asking how the federal congress could pass something as intrusive to state rights as this bill. He seemed to be unaware that many of the things in this bill were in the federal welfare reform act that passed. He asked me to send a list of the areas of concern in this legislation so he can take it up in Washington D.C. I intend to identify the parts that we feel intrude upon state, legislature and citizen rights. The decision you make on this bill is up to you understanding what the ramifications could be. Once again I'd like to thank the subcommittee and DPHHS for their work on SB 374.

*{Tape: 1; Side: B; Approx. Time Count: 8:50; Comments: None.}*

Motion: **SEN. KEATING MOVES TO AMEND SB 374 WITH AMENDMENT #SB037401.A35. (EXHIBIT #1)**

Discussion: **SEN. LYNCH** Are you leaving the MACO nomination in the amendment?

Motion/Vote: **SEN. WATERMAN MAKES A SUBSTITUTE AMENDMENT TO STRIKE SECTION (v) OF ISSUE #6 AND AMEND (ii) TO SAY THAT A CLERK OF COURT AND A REPRESENTATIVE OF A COUNTY DATA PROCESSING UNIT WOULD BE NOMINATED BY THE ASSOCIATION OF CLERKS OF DISTRICT COURT. THE SUBSTITUTE MOTION CARRIED WITH SEN. BURNETT VOTING NO.**

Motion/Vote: **SEN. KEATING MOVES TO AMEND SB 374 WITH AMENDMENT #SB037401.A35 AS AMENDED. THE MOTION CARRIED WITH SEN. BURNETT VOTING NO.**

*{Tape: 1; Side: B; Approx. Time Count: 8:57; Comments: None.}*

Motion/Vote: **SEN. DALE MAHLUM MOVES SB 374 DO PASS AS AMENDED. THE MOTION FAILS 6-10 ON ROLL CALL VOTE.**

{Tape: 1; Side: B; Approx. Time Count: 9:38; Comments: None.}

EXECUTIVE ACTION ON SB 267

**SEN. TOM BECK** The overall philosophy was to get the DNRC under the scrutiny of the subcommittees, into the General Fund and keep the statutory appropriations on the grant funds. There are several different amendments. The yellow handout (**EXHIBIT #4**) shows there will be no impact to the General Fund if all the amendments are included.

**CHAIRMAN SWYSGOOD** We have a white bill which looks like a grey bill #sb0267.01 (**EXHIBIT #5**) All the amendments except one are contained in amendment #sb026701.alm (**EXHIBIT #6**)

**Larry Mitchell, LSD** SB 267 attempts to reallocate the way RIT funds are handled. **SEN. KEATING'S** approach is to stop the diversion of tax proceeds outside the trust and put everything back into the trust. The concept expanded to this large set of amendments (**EXHIBIT #6**) put together by John Tubbs at DNRC. The amendments have some minor technical problems but are substantively correct. (**EXHIBIT #5**) shows how the bill will look with these amendments in it.

{Tape: 1; Side: B; Approx. Time Count: 9:55; Comments: None.}

**John Tubbs, DNRC** You also received a grey sheet. (**EXHIBIT #7**) **Mr. Tubbs** explained (**EXHIBIT #7**) and (**EXHIBIT #4**) Further amendments will be offered to shift revenue that is now going into the school trust to expend them on the school trust management activities conducted by the trust lands division of DNRC. This shift will expend trust fund money for those expenditures thus freeing up \$6.4 million of General Fund. This will fund the management of trust lands from the revenue they generate and will offset the \$7.7 million impact on the General Fund.

**SEN. LYNCH** Where does that money go now? **Mr. Tubbs** It goes to the school trust, is invested and the interest goes to the General Fund and on to schools.

**SEN. LYNCH** So we are cutting schools out of some funding? **Mr. Tubbs** Lost interest earning due to this diversion would amount to approximately \$313,000 in the first biennium. Making available \$6.4 million in the General Fund.

**SEN. TAYLOR** Education will still be able to benefit from this because they will have the opportunity to request money from the General Fund, is that correct? **Taryn Purdy, Legislative Fiscal Division (LFD)** Right now the interest from the common school trust goes into the General Fund and is no longer specifically earmarked for schools. This would be a loss to the General Fund in total, approximately \$313,000 in the first biennium which will grow over the years as the cumulative interest is lost. The

amount that would have not been deposited steadily grows so the interest will be lost on future deposits.

**Mr. Tubbs** SB 377 authorizes the expenditures of penalties and fines that are currently going into the General Fund into the orphan fund. With this bill the Senate made a decision to take those funds away from the General Fund, we are asking that you substitute the \$1.3 million hit with RIT interest instead of penalties and fines. The fiscal note for SB 267 will show a \$1.3 million hit to the General Fund, however the bill strikes the penalty provision in SB 377. There will be no additional impact to the General Fund.

**SEN. TAYLOR** What projects will lose funding if we don't take your recommendations? **Mr. Tubbs** If you elect not to take the \$1.3 million for orphan funds from RIT you could reduce the orphan funds by \$1.3 million and elect not to strike the penalty provisions of SB 377.

**SEN. KEATING** The Board of Oil & Gas still has to go through the grant process to get \$600,000 per biennium for plugging wells. Why not make a statutory appropriation to the oil and gas mitigation account rather than the reclamation and development account? **Mr. Tubbs** There is a benefit in that HB 7 grants are reviewed by long range planning. On the other hand, with the RIGWA proceeds going to it, I think we can reach agreement that the \$600,000 go to the oil and gas mitigation account. I think they should still make requests from the grants program and apply for additional plugging if needed.

*{Tape: 1; Side: B; Approx. Time Count: 10:13; Comments: None.}*

**SEN. KEATING** Does your department get an administrative fee for handling these grants? **Mr. Tubbs** No, we will be a General Fund agency.

**SEN. LYNCH** Is this the \$600,000 that has had top priority in the past? **Mr. Tubbs** Yes. We have had negotiations with the board in the last day, they have agreed to strike the priority provision for receiving grants if they are able to get the \$600,000 RIGWA proceeds for the oil and gas mitigation account. If this amendment should pass the board will directly receive the money and long range planning will no longer see them unless they apply for additional money.

**SEN. LYNCH** What happens if they continue the procedure of not using the money they get? **Mr. Tubbs** The amendment will have to address the amount of money that can be retained in the oil and gas mitigation account.

**SEN. KEATING** On (EXHIBIT #8) under beginning fiscal year 1997 fund balance there is a reserve for continuing appropriations amount of \$2,965,337, why is that an unused appropriation? **Mr.**

**Tubbs** Those are unspent grant funds as of July 1, 1996 that were appropriated in previous sessions.

**SEN. KEATING** I'm trying to point out that there is approximately \$7 million of previously appropriated funds sitting in renewable resources and reclamation and development accounts that is unspent by the people who have been receiving the grants. Prudent spending of the money may mean it stays in the account for awhile but it will eventually be spent for what it was appropriated for.

*{Tape: 1; Side: B; Approx. Time Count: 10:19; Comments: None.}*

**SEN. KEATING** SB 267 was drafted following recommendations from the task force that spent the last two years studying the RIT. The amendments you have before you completely reverse the intent of SB 267. Moving the expenditures of the department into the General Fund doesn't make any difference, moving money from State Special to General Fund doesn't lessen the spending. The committee needs to be cognizant of the numbers involved here.

**CHAIRMAN SWYSGOOD** The figures on (EXHIBIT #8) can be changed by the subcommittees when they address the budgets under current law. We tried to say we want more scrutiny of the agencies that are currently funded by RIT. There is more justification for the expenditures when appropriated out of General Fund. You need to decide if you want to continue to fund reclamation programs statutorily. I believe the oil and gas mitigation account should be statutorily appropriated for \$600,000 and they should be able to compete for grants in the reclamation and development grants program, but not have top priority ranking. We have tried to address some of the concerns involved with RIT, the bill has nothing to do with the tax itself. This bill changes the amount of money flowing into the permanent trust and may enable it to reach the \$100 million cap faster. I believe we are taking a step forward to address the concerns **SEN. KEATING** has had over the years regarding RIT.

*{Tape: 2; Side: A; Approx. Time Count: 10:29; Comments: None.}*

Amendments: Amendment #sb026701.alm. (EXHIBIT #6)

Motion: **SEN. BECK MOVES TO AMEND SB 267 WITH AMENDMENT #SB026701.ALM WITH ADJUSTMENTS TO THE RECLAMATION AND DEVELOPMENT AND ORPHAN FUND ACCOUNTS BY STRIKING RECLAMATION AND DEVELOPMENT GRANTS PROGRAM AND INSERT OIL AND GAS MITIGATION ON PAGE 3, ITEM 19 (B) AND CHANGE THE STATUTORY LIMIT IN THE OIL AND GAS MITIGATION ACCOUNT TO \$600,000.**

Discussion: **SEN. LYNCH** Putting the \$600,000 in statutorily eliminates the scrutiny of the long range building programs doesn't it? If so, I'd like to speak against this. With term limits there isn't going to be any legislators who knows anything



about this account and long range building should continue to oversee this.

*{Tape: 2; Side: A; Approx. Time Count: 10:36; Comments: None.}*

**SEN. KEATING** The subcommittee on natural resources will continue to review these allocations. **SEN. LYNCH** I would like the Board of Oil and Gas to seek more money, but the subcommittee will want to know how the \$600,000 is being spent before granting more money.

**SEN. KEATING** The natural resources subcommittee reviews the budget for DNRC and DEQ and coordinates with long range building. Long range is not looking at all the appropriations only the grants. Your committee doesn't look at the \$480,000 statutory appropriation for MSU-Northern. **SEN. LYNCH** MSU-Northern didn't come in looking for grants in addition to their statutory appropriation. I'd like long range building to see what is being done when they are giving grants to oil and gas reclamation.

**SEN. BECK** If the \$600,000 is statutorily appropriated can it be used for operations, maintenance or whatever they please? **Tom Richmond, Board of Oil and Gas** The language that established the damage mitigation account required the money be spent for the plugging of wells and the clean up of sites, including seismic shot holes.

**SEN. BECK** You have top priority on the reclamation grants now, does it make a difference to you whether it is statutorily appropriated? **Mr. Richmond** It makes a significant difference to us. Grant preparation costs approximately \$2,000 from our operating account.

*{Tape: 2; Side: A; Approx. Time Count: 10:42; Comments: None.}*

**SEN. BECK WITHDRAWS HIS MOTION.**

Motion/Vote: **SEN. BECK MOVES TO AMEND SB 267 WITH AMENDMENT #SB026701.ALM WITH ADJUSTMENTS TO THE RECLAMATION AND DEVELOPMENT AND ORPHAN FUND TO CONFORM TO THE FIGURES ON EXHIBIT #4. THE MOTION CARRIED WITH SEN. KEATING VOTING NO.**

Motion/Vote: **SEN. BECK MOVES TO AMEND SB 267 BY MOVING \$300,000 STATUTORILY INTO THE OIL AND GAS MITIGATION ACCOUNT PER YEAR WITH A STATUTORY CAP OF \$600,000. THE MOTION CARRIED WITH SEN. FRANKLIN, LYNCH AND TOEWS VOTING NO.**

Motion: **SEN. BECK MOVES TO AMEND SB 267 WITH AMENDMENT #SB026701.AGP. (EXHIBIT #9)**

Discussion: **CHAIRMAN SWYSGOOD** This amendment addresses the \$6.4 million shown on the bottom of (EXHIBIT #4) to offset the impact to the General Fund. It takes the \$6.4 million out of the money going to the school trust. An account that administers school

trust lands and state lands will be funded by that before going to the permanent trust. There is a potential impact of approximately \$320,000 that will compound over the years as any other reduction would. This bill does not appropriate money, it implements the appropriation act.

*{Tape: 2; Side: A; Approx. Time Count: 10:53; Comments: None.}*

**Bud Clinch, DNRC** Here is a flow chart (**EXHIBIT #10**) to help clarify what this amendment proposes to do. DNRC is a user of RIT and our trust land management division is a substantial revenue generator. This flow chart shows revenues produced by state trust lands. **Mr. Clinch** explains (**EXHIBIT #10**) This amendment proposes to fund the remainder of this division out of the revenues they produce. The resource development account and the timber sales account are existing accounts that fund a portion of the division. **Mr. Clinch** explains (**EXHIBIT #11**) and passes out and explains (**EXHIBIT #12**). (**EXHIBIT #13**) shows revenues and interest on non-distributable revenues for the last five years. In my visits with the other western states that have school trust lands I have learned that most of the western 22 states use some method of revenues for funding their management activities. Should there ever be a challenge to the constitutionality of this concept most, if not all, of these states would be willing to join the State of Montana in defending that. Montrust is the watchdog for the school trust and they don't interpret this to be unconstitutional. The impact to the schools would be insignificant with this amendment.

*{Tape: 2; Side: A; Approx. Time Count: 10:58; Comments: None.}*

**SEN. CHRISTIAENS** The committee needs to look at what this means in policy. Yes, this is only a hit of \$313,000 this time but that grows when it is invested and in the long term will mean quite a bit more money. It may not be a big hit right now but the loss of that money over a period of years does become significant.

**SEN. DARYL TOEWS** We need to understand that this has nothing to do with savings. This is just a shifting of General Fund money within the system. If this administration is paid out of permanent trust funds it will not be administered as closely as if it was administered out of General Fund. We look closer at General Fund than we do State Special Fund.

**SEN. BECK** I believe this goes directly into General Fund. This department will be faced with budget scrutiny on administration.

**SEN. TOEWS** This will be funded from the revenue from the permanent trust which is not General Fund money.

**Ms. Purdy** **SEN. TOEWS** you are correct, the trust land management division in DNRC will go from General Fund to the State Special

Revenue account. **SEN. BECK** you are also correct, the other programs will go from State Special to the General Fund.

*{Tape: 2; Side: B; Approx. Time Count: 11:01; Comments: None.}*

**SEN. TAYLOR** Accountability is still there, two or four years from now subcommittees will still be able to know where the money is and be able to manage it, correct? **Ms. Purdy** One of the thoughts behind de-earmarking is that the legislature pays more attention to the General Funded agencies. Moving a program to 02 does not automatically result in less scrutiny as long as the budgets continue to come before the legislature for appropriation. It is a legislative choice to spend more time and effort on the General Fund.

**CHAIRMAN SWYSGOOD** It might be a State Special Revenue account but our subcommittee looks at all funds because there still needs to be some accountability as to why it is being spent. I believe the scrutiny is still there. The impact to the General Fund has to be negated. Why shouldn't state lands, who are responsible for administering the school trust, be able to get administration of those state lands and trusts out of the money that flows into that trust? I've been told these amendments are within the scope of the bill.

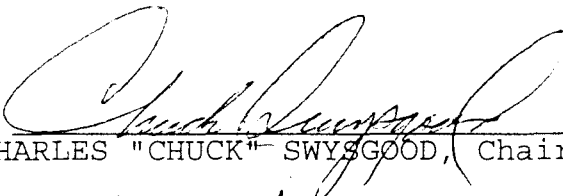
**SEN. LINDA NELSON** How are the funds distributed from the permanent fund to the schools? **Jeff Hagener, DNRC** We distribute these funds quarterly. The Board of Investments notifies us that the funds are available and we transfer it to OPI for distribution to the schools.

Vote: THE MOTION TO AMEND SB 267 WITH AMENDMENT #SB026701.AGP FAILS 8-8 ON ROLL CALL VOTE.

Motion/Vote: SEN. KEATING MOVES SB 267 DO PASS AS AMENDED. THE MOTION FAILS 5-11 ON ROLL CALL VOTE.

ADJOURNMENT

Adjournment: 11:10 a.m.

  
SEN. CHARLES "CHUCK" SWYSGOOD, Chairman

  
SHARON CUMMINGS, Secretary

CS/SC