

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON TAXATION

Call to Order: By CHAIRMAN GERRY DEVLIN, on March 21, 1997, at 8:00 A.M., in Room 415.

#### ROLL CALL

**Members Present:**

Sen. Gerry Devlin, Chairman (R)  
Sen. Mike Foster, Vice Chairman (R)  
Sen. Mack Cole (R)  
Sen. Bob DePratu (R)  
Sen. Dorothy Eck (D)  
Sen. Mike Sprague (R)  
Sen. Barry "Spook" Stang (D)  
Sen. Fred R. Van Valkenburg (D)

**Members Excused:** Sen. Wm. E. "Bill" Glaser (R)

**Members Absent:** None

**Staff Present:** Jeff Martin, Legislative Services Division  
Renée Podell, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 395, 3/17/97  
HJR 2, 3/17/97  
HB 566, 3/17/97  
Executive Action: SB 390

#### HEARING ON SB 395

**Sponsor:** SEN. DALE MAHLUM, SD 35, Missoula

**Proponents:** Candace Torgeson, Montana Car Rental Assoc.  
Steve Costley, Montana Car Rental Assoc.  
Dale G. Duff, Rocky Mountain Transportation  
Rob Doyle, Avis Rent-A-Car  
Mike Lucero, Hertz Rent-A-Car  
Margaret Hartman, Hertz Rent-A-Car  
Wayne Stotts, Hertz Rent-A-Car  
Bruce Bradford, Budget Rent-A-Car  
Andy Wilcox, National Car Rental  
Verner Bertleson, citizen  
Mona Jamison, National Trust Historic Preservation

Brian Cockhill, Montana Historical Society  
Mike Penfold, Montana State Parks Association  
Kathy Macefield, City of Helena and Montana  
Preservation Alliance  
Adian Myhre, citizen

Informational: Bud Schoen, Chief of Title Registration in Deer  
Lodge

Dave Galt, Administrator of the Motor Carrier  
Services Division for the Department of  
Transportation

Opponents: Ron Asherbrenner, State Farm Insurance  
Robert Ward, Vice President and General Manager,  
Enterprise Rent-A-Car

Opening Statement by Sponsor:

SEN. DALE MAHLUM, SD 35, Missoula, introduced SB 395. This is a small business bill. Ninety percent of the businesses in Montana are small businesses. These are the hard-working taxpayers of Montana. We have all heard about Nevada City and Virginia City. I am sure that you want to be instrumental in saving these jewels for future generations. This bill is not a tax on Montana residents. It is a tax on the users of rental cars and non-residents of Montana.

Proponents' Testimony:

Candace Torgeson, Montana Car Rental Assoc., commented that the people she represents are local business owners who employ local people and contribute to the economy of the state. The original intent of this bill was to equalize the tax treatment between the car rental agencies that license their cars in Montana and those that license their cars in states like Idaho, where the license costs are much lower. She set up a display which shows the discrepancies between licensing cars in Utah, which uses a flat \$26.00 rate whether it is a Pinto or an Explorer. In Montana, there is quite a bit of difference. Idaho also has a flat rate. She presented a handout, **EXHIBIT 1**. The original intent of this bill was to equalize this tax. As they moved into this they realized it was appropriate for them to help out with a favorite project at the legislature and that was to come up with money for Virginia City and Nevada City.

Steve Costley, Montana Car Rental Assoc., explained that SB 395 addresses two very important issues: (1) the funding for the preservation of Virginia City and Nevada City and (2) the surcharge for reimbursement of taxes and fees paid on rental cars. Their industry is in an economically stressed situation. Escalating costs of their rental fleet, coupled with competitive and corporate pricing pressures have forced all of us into a difficult financial situation. Senate Bill 395 will equalize the cost of licensing vehicles for all. This bill will eliminate any

incentive for out-of-state rental companies to rent vehicles not registered in the state. The majority of their members are bound by franchise agreements to honor commercial contract rates. These rates are priced at or below their cost for operation here in the state. Montana's high registration fee and taxes contribute to their high operating expenses. Portions of the tourist market will oftentimes substitute their travel destinations to lower cost areas.

The reason for the correction in the fiscal note is because the Department of Transportation had asked for a peak fleet number of registrations in the State of Montana. They needed to look at a June 30 - July 1 time frame because that is when all of their rental cars are in the state for the tourist season. They used that figure for the entire 12 month period. This skewed the figures because November through February, the numbers dropped to one-third. During that time period they also have a six month registration plan which 2/3rds of the fleet is registered under. That plan is 50% of the yearly total for a registered and licensed vehicle for a twelve month period.

**Dale G. Duff, Rocky Mountain Transportation**, remarked that his firm operates 200 cars in the Flathead Valley. In any one day he might have 50 out-of-state cars rented within the state. Currently the State of Montana does not realize revenue from those license plates fees. Under this bill those cars would be taxed on the surcharge and the revenue would go back to the State of Montana.

**Rob Doyle, Avis Rent-A-Car**, contended that they are looking for relief because their corporate rates are set in New York City. In Montana those rates don't fly, but they had to abide by them.

**Mike Lucero, Hertz Rent-A-Car**, explained that SB 395 would encourage them to license more of their vehicles in the State of Montana to generate more revenues.

**Margaret Hartman, Hertz Rent-A-Car**, rose in support of SB 395.

**Wayne Stotts, Hertz Rent-A-Car**, rose in support of SB 395.

**Bruce Bradford, Budget Rent-A-Car**, maintained that they need all the relief they can get.

**Andy Wilcox, National Car Rental**, urged the committee to accept this bill.

**Verner Bertleson, citizen**, asserted that this bill would solve two problems very well. There is legislation in the mill which would tend to take money from the Cultural Arts Trust Foundation and use it to purchase Virginia and Nevada City. This would be a much better choice of funding.

**Mona Jamison, National Trust Historic Preservation**, vocalized her support of the bill. She thanked the sponsor of the bill and the industry for stepping up to the plate. This bill is good for Montana business, not only the car rental business but also the tourism industry which benefits from all the visits to Virginia and Nevada City. This is a user fee bill. We don't get any funds from the people who visit Montana. They use all of our infrastructure but there is no contribution back. As a citizen she feels she is subsidizing all of those people with her tax dollars.

**Brian Cockhill, Montana Historical Society**, affirmed that the Board of Trustees of the Montana Historical Society supports the bill and would like to thank **SEN. MAHLUM** and the car rental industry for coming forward with this proposal.

**Mike Penfold, Montana State Parks Association**, spoke in favor of this user fee bill. Currently there is a conference in Helena on tourism and recreation with 400-500 people in attendance. Tourism is a \$1.2 billion industry in this state. We need to focus on the customers to help us pay bills. The trailer and mobile home industry is focusing millions of dollars on the baby boomers who will be buying these kind of facilities. These people care about history, which is one of the principal draws in our state. This is a small cost to the tourists and will not drive any of them away.

**Kathy Macefield, City of Helena and Montana Preservation Alliance**, presented her written testimony **EXHIBIT 2**.

**Adian Myhre, citizen**, conveyed her support of the bill.

**Informational Testimony:**

**Bud Schoen, Chief of Title Registration in Deer Lodge**, commented he is here to provide information to the committee.

**Dave Galt, Administrator of the Motor Carrier Services Division for the Department of Transportation**, remarked that the fiscal note contains a request for an audit position. This bill would have a significant impact on their audit abilities. If this bill passes, he asked the committee to consider their request for a position.

*{Tape: 1; Side: a; Approx. Time Count: 8:32}*

**Opponents' Testimony:**

**Ron Asherbrenner, State Farm Insurance**, we do not oppose the preservation of Virginia City. They do question the position that 95 percent of the car rentals are by out-of-staters. State Farm insures one-third of the insured vehicles in this state. Last year they rented 3,611 cars. That number multiplied by three would mean that there were over 9,000 cars rented. These cars

are rented for people whose automobiles they insure are damaged and have rental policies. State Farm policyholders will see an increase of \$80,628 in premiums. This will represent over \$240,000 of increased premiums to the people who buy insurance in the state of Montana. Funding for Virginia City should come from the General Fund or some other source and should not be a selective sales tax that ultimately goes back to the insurance buying public.

**Robert Ward, Vice President and General Manager, Enterprise Rent-A-Car,** expressed the importance of preserving the historic treasures of Montana but felt that it was unfair to target a specific industry to fund these purchases. Enterprise of Montana actually rents to Montanans three out of every four of their rentals. They rent to the replacement market which consists of auto dealerships, body shops and insurance claims centers.

**Questions From Committee Members and Responses:**

**SEN. MACK COLE** asked **Ms. Torgeson** for further clarification of Sections 2 and 3 of the bill.

**Ms. Torgeson** contended that this bill would allow for people to buy their licenses and the money would go to the counties as is currently the practice. It will work because each rental car contract would have a six percent surcharge tacked on it. That surcharge would be given to the people running the rental car agencies. Once a year they would prove how much they paid out and deduct that exact amount from the amount gathered under the surcharge and remit the difference to the Department of Transportation (DOT). The DOT will then divide that amount up. Seventy percent goes to the Montana Heritage Preservation, that is what is going to Virginia and Nevada City. Twenty percent will go to the DOT, 7.5 percent to the General Fund of all counties, and that is split equally between 56 counties, and 2.5 percent will go to the state General Fund.

**SEN. COLE** asserted the fiscal notes reflects a registration fee of approximately a million dollars.

**Ms. Torgeson** remarked that there is an amended fiscal note. This wasn't signed because of timing.

**SEN. COLE** questioned if that meant \$689,000 would be remitted back to the car rental dealers?

**Ms. Torgeson** affirmed that to be correct.

**SEN. COLE** commented that if the Montana Heritage Preservation received \$482,000, it appears that the car rental dealers would be benefited to the amount of \$700,000.

**Ms. Torgeson** explained that they would keep registration costs of \$942,690.

**SEN. MIKE FOSTER** remarked that **House Majority Whip, REP. KARL OHS** came in after testimony. He asked his reaction to this bill.

**REP. OHS** declared this bill to be a very innovative idea. He suggested that the tax could go to 4 percent, instead of 6 percent, and still get the job done.

**CHAIRMAN DEVLIN** asked **Mr. Asherbrenner** to explain the additional cost.

**Mr. Asherbrenner** clarified that the insurance companies rent rental cars to replace insured's vehicles that are being repaired under a contractual agreement. This is the largest source of revenue for most car rental agencies. Last year they rented 3,611 cars in Montana. The other 2/3rds of the market are probably renting more than 2/3rds of the rental cars that are out there. The surcharge would enhance the rental for 6 percent, this would be passed on to the consumer. The insurance buying public in the state of Montana would pay the bill.

**SEN. MIKE SPRAGUE** asked if rental insurance was provided for the customers who bought liability insurance only?

**Mr. Asherbrenner** remarked that they could buy that as a separate coverage and they would pay a separate premium for it.

**SEN. SPRAGUE** asserted that the customer is already paying for the service whether or not he is in an accident.

**Mr. Asherbrenner** maintained that would be correct.

**SEN. FRED VAN VALKENBURG** asked **Ms. Torgeson** to respond to the opponents testimony that there is a substantially larger number of in state rental car users than the industry maintains.

**Ms. Torgeson** deferred to **Mr. Costley**.

**Mr. Costley** expounded if they are renting 9,000 of our cars and we are running a 4,200 fleet, our cars only get rented twice. The tourist industry itself actually generates somewhere in the 90 to 95 percent range. Enterprise Car Rental is in the insurance replacement business, that is their market niche.

**SEN. VAN VALKENBURG** asked how many vehicles which were registered in Montana were owned by rental car companies?

**Mr. Schoen** stated when they register a rental vehicle its treated like any other registration.

**SEN. VAN VALKENBURG** asked how leased vehicles were treated for taxation purposes?

**Mr. Schoen** conveyed that the lessee of the vehicle pays the taxes.

**SEN. VAN VALKENBURG** inquired about how many fleet operations there were presently in the state of Montana where an individual owner would be licensing ten or more vehicles.

**Mr. Galt** accounted that there were six interstate fleets. He did not know how many rental car fleets exist in the state which are licensed only within the state.

**SEN. VAN VALKENBURG** questioned how many vehicles a large corporation, such as the Burlington Northern, would have?

**Mr. Galt** stated they had six vehicle fleets with over 100 vehicles. These would be Burlington Northern, Montana Rail Link, Montana Power, etc. These six fleets total around 8,000 vehicles.

**SEN. VAN VALKENBURG** summarized that essentially what was being proposed here is that rental car companies shouldn't have to pay any taxes on the personal property that they use to do business with, the fleet. The ultimate user should pay that tax in the form of this surcharge. He is concerned with that precedent in that other businesses could question why they have to pay taxes on the personal property they need to use to do business here. Burlington Northern and Montana Rail Link will be asking to put a surcharge on their customers bill to reimburse them for the property tax they are paying.

**SEN. MAHLUM** remarked that he did not see this as a big problem. They are not worried about the big corporations. They are worried about the person who owns a franchise for a small business. Will this go onto something else? He didn't think it would because it would have to go through the legislature first.

**SEN. BARRY STANG**, referring to the need for an additional auditor, asked how they would determine the difference between what was collected and what was kept by the rental car dealers? Would this be remitted on a quarterly basis? What about bonding requirements?

**Mr. Galt** explained they would preform an audit of the revenue and multiply that by six percent and determine the withholding on the tax. Registration fees would be subtracted. Montana's law allows a six month registration window for rental cars. He thinks they would go with a one year remittance of the fees. He hadn't thought about bonding requirements, but would have no problem with that idea.

**SEN. DOROTHY ECK** commented that the fiscal note did have an extra \$137,862 to the Highway Department and one-quarter FTE plus a full time auditor FTE, she questioned whether they were saying that was not sufficient?

Mr. Galt claimed all they need is the 1.25 FTE. He was just unsure about how the process would work in making sure they received what they were asking for.

Closing by Sponsor:

SEN. MAHLUM expressed that seven years ago this legislature most generously took off the inventory tax for small businesses. It was really appreciated by all small businesses throughout the state of Montana. This would take the inventory tax off for car rental dealers relating to the inventory they need for rentals. When he owned a Coast to Coast store, they were always worried about WalMart coming to town and breaking them. When WalMart came, it really didn't hurt them if they ran a good store. As far as the \$80,000 the gentlemen from State Farm was talking about, he doesn't know whether premiums will be increased. This is a good bill. It doesn't cost the state any money. It does a lot of good for small business.

HEARING ON HJR 2

Sponsor: REP. BOB REAM, HD 69, Missoula

Proponents: Terry Johnson, Legislative Fiscal Division  
Dave Lewis, Office of Budget and Program Planning

Opponents: None

Opening Statement by Sponsor:

REP. BOB REAM, HD 69, Missoula, introduced HJR 2. He presented EXHIBIT 3. The revenue estimating resolution is relatively new. The 1972 Constitution says that appropriations need to be balanced with revenues. Until 1983 that was accomplished by the Executive Branch coming up with revenue estimates or veteran legislators developing revenue estimates.

The responsibility for initiating this process resides with the Revenue Oversight Committee, a bipartisan interim committee. By December 1 the Committee comes up with an estimate of revenues and asks the staff to draft the resolution for the upcoming legislative session. This session there were differences between the executive estimate of revenue and the Revenue Oversight Committee, they were \$64 million apart. The LFD had an extra month to get the latest revenue figures. The differences were narrowed down to eight areas, eight sources of revenue that caused most of the differences.

When the Legislature convened in January, they had some newer information and did take action in early February on the resolution in the House Taxation Committee. Some of the differences were due to the two models used by the two agencies.



It is important to focus on the economic assumptions that go into determining the estimate for each source of revenue. It is easy to get caught in the trap of looking at the bottom line for each source of revenue. In both the Budget Office and LFD, each of those revenue estimates is based on certain economic assumptions. They increased the Revenue Oversight Committee estimate in House Taxation by \$29 million, but \$3 million of that is also an increased appropriation, so the net impact of their action in the House was \$26 million. Most of that was in the area of individual income tax. **EXHIBIT 4** explains the economic assumptions that go into the determination of revenue for each of the tax sources.

**Proponents' Testimony:**

**Terry Johnson, Legislative Fiscal Division**, summarized the action taken by the House Taxation Committee. The House Floor did not adjust the Revenue Estimate Resolution at all thus the handout reflects action by the House Taxation Committee, **EXHIBIT 5**. The net impact of the House Taxation Committee was approximately \$26 million. The first main area of adjustment was the individual income tax. There was an \$8.4 million adjustment there. The corporate income tax area was adjusted by \$5.5 million. Another area was the rail car tax which was the result of the agreement with the rail car companies and it resulted to \$3.6 million. **EXHIBIT 6** is a categorization of the changes made by the House Taxation Committee. New information caused an adjustment of \$11.737 million. The litigation resolution amounted to \$3.6 million. The last item is more optimistic assumptions which amounted to \$13.9 million. The last handout, **EXHIBIT 7**, reflected year to date information.

**Dave Lewis, Office of Budget and Program Planning**, presented a handout, **EXHIBIT 8**, which showed HJR 2 for '97, '98, and '99 and then a total for the biennium. The total for the three periods still has a \$32 million difference. HJR 2 totals equal a one percent difference. If there is a flaw in the program, it is due to the fact that by October they need to make a revenue estimate.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:**

**SEN. VAN VALKENBURG** asked **Mr. Lewis** if he is suggesting that the committee amend the revenue estimating resolution?

**Mr. Lewis** stated the Senate always has the last word on the revenue resolution. They are comfortable with the numbers which have been put forth.

**SEN. VAN VALKENBURG** remarked, if **Mr. Lewis** is comfortable with the numbers he has put forth, is he suggesting that the Committee amend the resolution to add additional revenue equal to the executive budget proposal?

Mr. Lewis stated he would not advise the committee.

SEN. BOB DE PRATU asked Mr. Lewis to explain "more optimistic assumptions" involved in EXHIBIT 6.

Mr. Lewis stated that when they looked at non-ag employment growth, they found we were in the top 15 in the country. We are seeing a respectable growth.

{Tape: 2; Side: b; Approx. Time Count: 8:37}

CHAIRMAN DEVLIN asked if the rail car tax was a one time tax?

Mr. Johnson answered it was a combination. A portion of the revenue will be deposited in the General Fund but there is also an ongoing revenue stream of approximate \$2 million per year in '98 and '99.

SEN. ECK asked if the revenue comes in on an even basis?

Mr. Johnson stated his purpose for providing the information was to give a sense of how we are doing year to date. The two key areas are individual income tax and property tax revenues. In both cases, they are above last year's level based on 20 days worth of collection as compared to 30 days.

SEN. ECK asked if the receipts to date suggest that we should increase revenue estimates?

Mr. Johnson contended that the problem with the individual income tax is that it looks positive at this time but this is a critical time for processing income tax refunds. Refunds are up significantly from last year. If that trend continues to prevail in March and April, that could have a significant impact on collections. There will be a large payment in terms of property taxes in June. This is this first installment.

He is comfortable with the estimates in HJR 2 and would not recommend that they be adjusted upward.

SEN. VAN VALKENBURG commented that in previous sessions, one of the issues has been the Department's analysis of the previous year's experience with respect to the individual income tax, in particular. He asked if the Department has done a thorough analysis of 1995 individual income tax returns?

Mary Bryson, Department of Revenue, stated that was concluded in the fall. She stated this would be provided for the committee.

SEN. VAN VALKENBURG remarked that Mr. Johnson indicated that refunds for 1996 returns, through February, were running 15% higher than the previous year. Is there a reason?

Mr. Bryson remarked that this is the first year they are using the telefile program which allowed persons with simple returns to file on the telephone. Most of these are refunds. They have also enhanced their electronic filing.

SEN. SPRAGUE asked what percentage of difference would be reason for alarm?

Mr. Lewis explained that would be determined by how much slack there was. Another variable would be, what if the money doesn't show up. The statute allows the Governor to reduce appropriations for everything but public schools by across the board percentages. A five or higher percent difference would be difficult for the Governor to cover in the interim.

{Tape: 1; Side: b; Approx. Time Count: 9:50}

Closing by Sponsor:

REP. REAM closed in advance on HJR 2.

HEARING ON HB 566

Sponsor: REP. WILLIAM T. "RED" MENAHAN, HD 57, Anaconda

Proponents: Tom Hopgood, American Council of Life Insurance  
Susan Good, Mt. Assoc. of Life Underwriters

Opponents: None

Opening Statement by Sponsor:

REP. WILLIAM T. "RED" MENAHAN, HD 57, Anaconda, introduced HB 566. This law hasn't been changed since 1947. The amount will be changed from \$50,000 to \$250,000. This would allow an amount of \$250,000 to be given out of your will without going to probate.

Proponents' Testimony:

Tom Hopgood, American Council of Life Insurance, conveyed that the Insurance Commissioner's Office supported the bill in the House Committee. This bill protects the value of an investment in life insurance.

Susan Good, Mt. Assoc. of Life Underwriters, rose in support of HB 566.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

**SEN. DE PRATU** asked if the \$250,000 on a life insurance policy would be in addition to the \$600,000 of the estate that would be transferrable?

**Mr. Hopgood** commented that the \$600,000 figure goes to the federal estate tax. This bill deals with the state tax.

**SEN. ECK** expressed a concern that Montana's estate tax is closely tied to the federal. Could this be extended to the amount of the federal estate tax?

**Mr. Hopgood** explained that under the federal estate tax law, there is an unlimited deduction for transfers to a spouse. In Montana there is an unlimited deduction or credit for transfers to a spouse or to lineal decedents. Under the federal law there is a \$600,000 limit on transfers to anyone except the spouse. In Montana the tax varies with the degree of relationship to persons other than the lineal decedents or your spouse. This bill would apply only to collateral heirs, such as brothers, sisters, aunts, uncles, etc.

**SEN. VAN VALKENBURG** asked if there has been no change in this law for 50 years?

**Ms. Bryson** stated that was correct.

**SEN. VAN VALKENBURG** asked if there was a good public policy reason to tax any insurance proceeds as part of the inheritance tax?

**Ms. Bryson** stated that is a policy decision and it has been applied in the past because it is considered a part of the estate.

**Closing by Sponsor:**

**REP. MENAHAN** stated this would help adopted children.

**EXECUTIVE ACTION ON SB 390**

**Motion:** **SEN. FOSTER MOVED SB 390 DO PASS.**

**Amendments:** sb039007.ate - EXHIBIT 9

**Motion:** **SEN. FOSTER MOVED SB 390 BE AMENDED.**

**Discussion:** **SEN. FOSTER** explained this would extend the freeze for two additional years for residential and commercial customers.

The amendments start on page 18 in the grey bill. On the regular bill they would start on page 11.

**Vote:** **THE MOTION CARRIED UNANIMOUSLY.**

**Amendments:** sb039005.ate - EXHIBIT 10

**Motion:** SEN. FOSTER MOVED TO FURTHER AMEND SB 390.

**Discussion:** SEN. FOSTER remarked these amendments were requested by SEN. THOMAS and reflect the testimony and concerns raised by the Governor's Office. There are 67 items in this set of amendments.

Todd Everts, Staff Attorney for Legislative Services and Director of Environmental Quality Council, explained the amendments. Thirty-one of the amendments are technical or non-substantive amendments.

Amendment no. 1 is substantive in that it amends the legislative policy and balances the interests of Montana consumers with the interests in maintaining the financial integrity of the utilities in the state of Montana.

Amendment no. 2 clarifies the definition of cooperative utility to mean an electric municipal utility as opposed to a water or sewer utility.

Amendment no. 3 nonsubstantive.

Amendment no. 4 is clarification that a transition bond is a bond that is issued by the Board of Investments or other transition bond issuer.

Amendment no. 5 includes within the term conservation investments made prior to the universal system and benefits charge implementation.

Amendment no. 6, page 7 of the grey bill, includes within a term of transitions costs arising from existing generation investments and supply commitments.

Amendment no. 7 is for clarification in that transition costs don't include those costs associated with any renegotiation or buy out.

Amendment no. 8, the term universal systems benefits programs includes low income energy bill assistance. This permits the approval by the commission or a local governing board for a cooperative utility.

Amendment no. 9, page 10 of the grey bill, clarifies the MDU exemption. It does not include the provisions of the Territorial Integrity Act. MDU is subject to the Act.

Amendment no. 11, expands the small utility exemption to include other sections of the act and those sections all listed in that explanation.

Amendment no. 12, page 12 of the grey bill, allows the commission to modify a final order or transition plan as opposed to just approving or denying that plan.

Amendment no. 13 is technical in nature.

Amendment no. 14, page 15 of the grey bill, allows a transition period to be extended for a class of customers.

Amendments no. 15 and no. 16 are technical.

Amendment no. 17 limits the recovery of transition costs and situations of unmitigatable costs of qualifying facility contracts including reasonable as opposed to any buy out or buy down costs.

Amendment no. 18 is technical.

Amendment no. 19, by striking "prudent or", maintains the consistency of existing statutory law and specifically, 69-3-109. Eliminating the showing by the utility to the commission that investments and power purchase contracts must be determined to be used and useful to taxpayers as opposed to the standard of prudent.

Amendment nos. 20, 21, and 22 are technical.

Amendment no. 23 provides that with the commission approval, a utility may have the ability to use incentive or retention rates.

Amendment no. 24 is not relative given passage of **SEN. HARP's** amendments.

Amendment nos. 25, 26, 27, 28 and 29 are technical and nonsubstantive.

Amendment no. 30, page 28 of the grey bill, clarifies that the utility payment for universal systems benefits programs should go to the universal system benefits fund.

Amendment no. 31 allows cooperative utilities to collectively pool their statewide credits to satisfy the universal systems benefits program charge.

Amendment no. 32 allows the co-ops to collectively pool their credits against both the universal system benefits charge and low income energy bill assistance.

Amendment no. 33, the result is that weatherization assistance and low income energy bill assistance are both included in the universal system benefits funding level.

Amendment no. 34 and 35 and technical.

Amendment no. 36, page 29 of the grey bill, clarifies that utility payments for the universal system benefits, if any after applying any of the credits which are allowed, should go to this universal system benefits fund.

Amendment no. 37, 38, 39, and 40 are technical.

Amendment no. 41 clarifies that in order to extend the transition period for certain customers, the commission must make a finding that a workable competition does not exist.

Amendment no. 42, 43, 44 and 45 are all technical.

Amendment no. 46, page 33 of the grey bill, clarifies that the commission may require a licensee to post a bond, should an electric supplier lack financial integrity as opposed to an electrical supplier not being able to operate.

Amendment no. 47 and 48 are technical.

Amendment no. 49, page 34 of the grey bill, clarifies that the commission can impose a penalty to revoke or suspend the license or do both.

Amendment no. 50 is nonsubstantive.

Amendment no. 51 is basically a consumer protection amendment that allows the commission to impose a penalty on an electric supplier that commits fraud or engages in deceptive practices.

Amendment no. 52, 53, and 54 are technical.

Amendment no. 55, page 38 of the grey bill, eliminates language that other members of the transition advisory committee can serve without salary or without reimbursement of expenses.

Amendment no. 56, page 41 of the grey bill, adds additional responsibility for the transition advisory committee to ~~evaluate~~ low income energy assistance programs.

Amendment no. 57, page 41 of the grey bill, basically states that the benefits cost savings, should it occur, the transition bonds must benefit customers.

Amendment no. 58 terminates the financing order if the bonds are not issued within four years of the issuance of that order. This amendment attempts to account for changing market conditions.

Amendment no. 59, page 42 of the grey bill, provides payback terms of transition bonds may not exceed 20 years.

Amendment no. 60 allows that once the bonds are issued, that issuance sets and determines the transition amounts which lock in the bond rating.

Amendment no. 61 is the same as amendment no. 60.

Amendment no. 62, page 43 and 44 of grey bill, restates that the Board of Investments on behalf of the state, agrees not to limit or alter fixed transition amounts, property, financing orders or any rights under obligation until the obligation is discharged.

Amendment no. 63 and 64 are technical.

Amendment no. 65 states that perfection of the security interest is valid if it is attached to a financing statement that is filed with the Secretary of State as opposed to the Public Service Commission.

Amendment no. 66 is the same as amendment no. 65.

Amendment no. 67, page 55 of the grey bill, basically states that cooperatives' property is to be used for the sole purpose of serving customers representing less than ninety-five percent of the record consumers within the incorporated limits of the city and the town greater than 3500 folks and subject to the class 9 property tax.

Questions From Committee Members and Responses:

**SEN. VAN VALKENBURG**, with respect to amendment no. 19, concerning transition costs, the recoverable costs are limited to those that were used and useful to ratepayers as opposed prudent or used and useful, asked if the purpose of the amendment is not only to be consistent with 69-3-109 but also to limit the recoverable cost to only that which is in the rate base as opposed to something beyond that?

**SEN. FOSTER** stated that was accurate. The term "used and useful" is a rate making term that the PSC uses in its examination of whether or not to allow an item or a cost into rate base. If that item is deemed not to be used and useful, then it is out.

**Bob Anderson, PSC**, explained that it is important to realize that this has to do with the recovery of standard costs. This language has to do with items that are not now in the rate base. They might be investments that the companies have made since the last rate case. If they come forward and ask for recovery of those investments, then this is the standard which would apply. Used and useful was the traditional rate making standard. "Used" means actually in service and providing electricity for customers. "Useful" means needed. "Prudent" is a little different. Prudent means based on what you knew at the time or should have known at the time, did you make a reasonable decision. That is more vague. The commission supports those changes.

**Mr. Alke, Montana Dakota Utilities**, expressed that they think "prudent or" should be left in. The reason being "used and



useful" is a rate-based standard and on the rate-based standard they use both "prudence" and "used and useful". Prudence is the only appropriate standard to apply to expense. The used and useful standard is a rate-based standard and not a expense review standard. This paragraph refers to both investments, which would be rate-based, and how to purchase contracts, which would be expense.

**SEN. THOMAS** stated they do not disagree with the Commissioner's explanation. They do think that it is accurate and recommend the amendment.

**SEN. ECK** asked why the word prudent was taken out?

**SEN. THOMAS** answered that it goes back to the point in time when the decision was made and on whether you knew or should have known at that time and bases it on that decision at that time. Whereas the terms "used and useful" currently would be only the things that are used and useful would be considered in transition costs. If you did something in the past that is not used and is not useful at this time, though it was a prudent decision at that time, that would not be included in these transition costs.

**SEN. VAN VALKENBURG**, with respect to amendment 23 regarding utilities filing tariffs that foster economic development or retention of existing customers, asked the reason for the amendment. We were basically moving to a market-based system, yet you want to give the utilities the ability to go out and give someone a better deal below market costs.

**Ed Bartlett, Montana Power**, stated that this particular change came as a result of discussion with the industrial customers to make it very clear that both for economic development purposes and principally for retention of existing customers who may need a special rate, that with the commission's approval, that customer from the utility could go before the commission and ask for that specific change or allowance.

**SEN. VAN VALKENBURG** was concerned about the special treatment aspect of this.

**Mr. Bartlett** didn't see it as a special treatment but as a continuation of PSC authority and practice in the past.

**Commissioner Anderson** stated that this provision did not belong here, not because it is not good practice. As long as a customer is not subsidized by other customers, that is, pays its expenses and contributes to the fixed costs of the system, then they can consider a special rate for a customer, usually an industrial customer, for the purpose of economic development or retaining that customer on the system. It doesn't fit in this paragraph. This paragraph has to do with changing the payment schedule of transition costs.

**Don Quander, Stone Container Corp.**, commented that the reason it was felt to be important to reaffirm the policy is because we are setting up a new cost structure and for a company that finds itself on the edge of survival, we wanted to make sure that we did not inadvertently create the argument that the existing opportunity to make your case to the commission was being foreclosed. Why is this necessary? It is a transitional issue. Once we are full customer choice in a market, the company can go out and execute a contract with customers on such terms as it pleases. The commission won't review those as retention, incentive or otherwise. During the interim, there is still an issue of standard tariff that will be out there. It was put in this paragraph because this is where the misinterpretation or the misunderstanding might arise.

**REP. DAVID EWER, HD 53, Helena**, suggested the committee be nervous about the position of this. It is sandwiched in between the commission's ability to alter customer transition charges. Certain customers are being given the ability to change their schedule.

**SEN. THOMAS** countered that this needs to be subject to commission approval.

**SEN. VAN VALKENBURG**, referring to amendment no. 67, asked **SEN. THOMAS** exactly what is he doing with that amendment? He thought that the amendment allowed that if it is a town greater than 3500 people, they will move into class 9 property tax category, but if they are under 3500 in population they would not.

**SEN. THOMAS** explained that with changes in service in these towns and the integration of competition in utilities, existing properties would not be included in this taxation. New business would be, but not existing.

**Gary Weans, Montana Electric Co-operative Assoc.**, further clarified that the purpose of this amendment is to make sure that existing property within towns is not taxed at 12% and that is property such as cooperative headquarters facilities which are located in the town. There are some power lines running through the town which don't serve any customers within that town.

**SEN. ECK**, referring to amendment no. 14, asked for an explanation of "customer classes".

**SEN. THOMAS** explained the amendment took out the allowance for certain customers and therefore this would leave an allowance only for groups of customers and not a particular customer. The attempt is to deal with customers in classes and not individuals.

**Mr. Anderson** further explained that his understanding is that the transition period ought to be consistent for all customers. When you have a market for electricity supply, it is competitive or not. It doesn't matter which customer or which customer class is

applying for that market. If there is an extension of transition period, it ought to apply to all customers and all customer classes. The term "customer class" has traditional meaning in electricity regulation. The way the classes have developed are: residential, commercial, irrigation, and industrial.

**SEN. ECK**, referring to amendment no. 58 - transition bonds, asked under what circumstances would transition bonds not be needed within four years?

**Mr. Anderson** replied that one example would be if the company chooses to ask the commission for a financing order and based on the merit, the order is granted, it is up to the utility to actually issue the bonds. Whether or not it does depends on such things as interest rates or price of electricity. There is a four year limit.

**SEN. VAN VALKENBURG**, referring to amendments 31 and 32 - co-ops being able to collectively pool their credits to satisfy the universal system benefits program, asked if all the co-ops in the state supported that concept and if that would limit any further growth or participation in universal system benefits by those who are not doing much and put the burden on the co-ops that are providing some universal system benefits.

**Mr. Weans** commented that all co-ops did support that concept. Collectively, they are already exceeding the threshold in the bill. With this pool, there will be accountability created amongst the co-ops so that one co-operative is not bearing a disproportionate share. The large co-ops will not tolerate the smaller co-ops not participating as far as their share.

**SEN. VAN VALKENBURG** asked how they would not tolerate it if the law states that those who are not doing anything get to take advantage of the fact that someone else is doing quite a bit.

**Mr. Weans** thought that the co-operatives are self-regulating because they are owned by the consumers.

**SEN. VAN VALKENBURG** asked to have amendment no. 23 segregated.

**Vote:** THE MOTION TO AMEND SB 390, AMENDMENTS sb039005.ate 1-22 and 24-67 CARRIED UNANIMOUSLY.

**Discussion:**

**SEN. FOSTER** assumed amendment no. 23 was segregated because of comments by **Commissioner Anderson** and **REP. EWER**.

**SEN. VAN VALKENBURG** added there may be an appropriate place in the bill for economic development incentives, etc., but he does not feel it is appropriate in this particular part of the bill.

**Mick Robinson, Governor's Office**, stated this is putting in statute was is current practice. He does not see a problem with location of the issue.

**SEN. VAN VALKENBURG** stated he has doubts that these kinds of special treatments are appropriate in an environment where we are moving to market rates. He questions whether we should continue a practice that the PSC may have engaged in in the past in a different environment entirely. With the placement of the language in with the transition charges we are opening up the potential for special deals. Transitional costs are huge. It would be wiser to leave it out for now.

Motion/Vote: CHAIRMAN DEVLIN MOVED TO ADOPT AMENDMENT NO. 23. THE MOTION CARRIED ON ROLL CALL VOTE with SENATORS ECK, STANG and VAN VALKENBURG voting no.

Amendments: sb039011.ate - EXHIBIT 11

Motion: SEN. FOSTER MOVED TO FURTHER AMEND SB 390

Discussion:

**SEN. FOSTER** explained that this amendment is in response to a matter brought up at the hearing regarding the units of the university system having a desire to be considered a single customer. The amendment would allow that to occur.

**SEN. VAN VALKENBURG** read the amendment to say that the U of M - Missoula, Dillon and Butte are combined together as one customer and MSU - Bozeman, Billings, Havre and Great Falls are combined together as one customer.

**SEN. FOSTER** stated that was not the intent.

**Mr. Ebzery** stated the intent was to put the entire university system together. The statute refers to the University of Montana and the Montana system and within that are the other units. The whole university system is a single unit for the purposes of this.

**SEN. VAN VALKENBURG** asked **Mr. Ebzery** who he was speaking on behalf of?

**Mr. Ebzery** explained he was speaking on behalf of Portland General Electric who asked him to put this together.

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**Mr. Robinson** felt this was a good idea because it would allow the university to negotiate for power as a larger bargaining unit.

**SEN. VAN VALKENBURG** questioned whether it was a good idea to combine the U of M side and the MSU side for this purpose.

**Mr. Robinson** explained that when he originally read the amendment, he did not feel it was combined into a single customer. He viewed it as two customers.

**SEN. THOMAS** stated that the two large campuses qualify now, this would allow them to bring the others with them.

**SEN. SPRAGUE** thought the language allowed for a single retail electric customer "or" consumer with a single individual load.

**SEN. VAN VALKENBURG** stated he originally read it as an "or". **Mr. Ebzery's** answer indicated that it was intended to be an "and".

**SEN. ECK** commented that the administrative system of each university was separate. Combining them for purpose of purchasing would need to go through the Board of Regents.

**Jeff Martin** thought that one way of handling it would be to divide this up into two subsections.

**SEN. SPRAGUE** clarified that he sees this as a rate making base of the whole for economic purposes and/or consumer with a single individual load.

**Mr. Ebzery** stated it was his understanding that they wanted to put the units together so they would be large enough to participate in the best situation. The intent was to put them together for size purposes so they would be a unit that would qualify. He didn't read two into it at all.

**SEN. FOSTER** asked **Mr. Ebzery** if he had communicated with the university systems?

**Mr. Ebzery** explained that there has been communication between counsel for the university and they provided the language. They are in support of the amendment.

**Substitute Motion:** **SEN. VAN VALKENBURG MOVED TO AMEND THE AMENDMENT.**

**Discussion:**

**SEN. VAN VALKENBURG** stated that on line 2 following the word "are" he would insert the word "each". He wants to make it clear that they are separate entities for purposes of being electrical customers. If this is not done, we will force both units to essentially be parties to something they may not want to be parties to. We are creating such a huge customer that we may be limiting the market that can supply these customers who stretch from Billings to Dillon to Great Falls. Smaller competitors would not have the opportunity to serve these customers.

**Vote:** **THE MOTION CARRIED UNANIMOUSLY.**

Amendments: sb039013.ate - EXHIBIT 12

Motion: SEN. FOSTER MOVED TO FURTHER AMEND SB 390.

Discussion:

SEN. FOSTER explained that this amendment came from the co-operatives and had to do with preexisting contracts. This adds language which says that if there are preexisting contracts they will not be superseded.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Amendments: sb039014.ate - EXHIBIT 13

Motion: SEN. FOSTER MOVED TO FURTHER AMEND SB 390.

Discussion:

SEN. FOSTER explained that this amendment is in the penalties section of the bill. It starts at the bottom of page 20 and goes on to page 21. This is a pro-consumer amendment which gives the PSC additional authority saying that each day of a violation constitutes a separate violation. This is consumer protection.

Motion: THE MOTION CARRIED UNANIMOUSLY.

Amendments: sb039016 - EXHIBIT 14

Motion: SEN. FOSTER MOVED TO FURTHER AMEND SB 390.

Discussion:

SEN. FOSTER stated there was some question raised about who has responsibility for the bonding. This wording specifically states that it is not an indebtedness of the state of Montana. It is the responsibility of the utility.

Mr. Everts clarified this could be found in the grey bill. It is on the same page as amendment 64, that paragraph would be stricken and this paragraph inserted.

SEN. FOSTER commented that this amendment was brought by the Office of the Legislative Auditor. The language there was vague.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Amendments: sb039006.ate - EXHIBIT 15

Motion: SEN. COLE MOVED TO FURTHER AMEND SB 390.

Discussion:

**SEN. COLE** stated this amendment insures that utilities, including cooperatives, are given credit against the USBC threshold for their portion of the wholesale purchase costs. That is specifically for conservation, renewable resources, weatherization and low-income energy assistance. This amendment prevents any double counting of the same credit by two different utilities.

**Mr. Everts** explained this could be found in the grey bill on page 27, following programs except as otherwise provided . . . The amendment starts "including those portions. . .".

**SEN. VAN VALKENBURG** commented that the bill has a definition of universal system benefit programs at the very beginning. Why do we need something else that is not exactly the same as the definition later in the bill?

**SEN. COLE** clarified this was not defining but making sure that utilities, when purchasing wholesale power from another generating plant, do get benefits for it.

**SEN. VAN VALKENBURG**, referring to wholesale credit, asked if this needed to take place in Montana?

**Gail Koontz, Bonneville Power Co.**, stated she was not sure. The Board would need to address this.

**Mr. Anderson** didn't believe the language clarified this point. The amendment does not address any double counting problem.

**John Hines, NW Power Planning Council**, stated the intent of this language is to prevent double counting. If a utility, such as Montana Power, has conservation programs in their rates and made a power sales contract to another utility in Montana, a co-op, what they are trying to prevent is utility A (Montana Power) getting credit as far as expenditures toward the USBC and then the co-op, because they paid in their rates to Montana Power for the power purchase, also be able to obtain a credit. There are specific areas where the State of Montana is currently investing in market transformation activities, which are the most cost effective way to influence conservation, and those have to take place at a level greater than the State of Montana. On the low income side, they want to insure that the citizens of Montana receive the funds to help them out.

**Vote:** THE MOTION CARRIED with **SEN. STANG**, **SEN. ECK** and **SEN. VAN VALKENBURG** voting no.

**Amendments:** sb039002.amc - EXHIBIT 16

**Motion:** **SEN. COLE** MOVED TO FURTHER AMEND SB 390.

**Discussion:**

SEN. COLE explained that this amendment referred to the Territory Integrity Act. This assumes that the development of service agreements only need to acquire customer contact procedures. In those cases where poles or wires need to be exchanged or transferred, this could be handled by simply using a map or determining which utility would be most logical to serve customers in an area.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Amendments: sb039009.ate - EXHIBIT 17

Motion: SEN. ECK MOVED TO FURTHER AMEND SB 390.

Discussion:

SEN. ECK commented that most of the objections in the hearing were that the rate of 2.4% be increased. This amendment would take the rate from 2.4% to 4.0%.

SEN. FOSTER stated that 2.4% is a level that was determined as a result of extensive negotiations among all of the parties involved.

SEN. COLE explained that some of the co-ops have stated that 2.4 is as high as they would be willing to go.

SEN. STANG stated that most of the testimony supported a 3.0% rate.

SEN. ECK stated the agreement on the 2.4 was with the co-ops and the other generators. The conservation and low income community never did agree to that. Co-ops are a rather small portion of the people in Montana.

REP. EWER stated that if the language was left in, there would be a race to the bottom. This is a very important amendment.

Vote: THE MOTION FAILED ON ROLL CALL VOTE.

Motion: SEN. STANG FURTHER MOVED TO AMEND SB 390.

Discussion:

SEN. STANG explained he would amend page 16, line 24, by changing 2.4 percent to 3 percent.

SEN. VAN VALKENBURG reiterated that co-ops were going to be able to pool the credits received. Changing this from 2.4 to 3 percent would make us consistent with the other states. He feels that deregulation is going to significantly increase the costs for residential customers as the subsidies come off. There is going to be a greater need for conservation and low income assistance.



**SEN. STANG** closed by saying that the Power Company is putting in substantially more than 3% at this time and it isn't going to hurt them. The co-ops are opposed to it. The customers of the co-op have asked him not to support the bill if this is not brought up to 3%.

**SEN. ECK** felt that we will be the first state with relatively low power costs to do it. The least we could do is stick with the northwest states on the 3% issue.

Vote: THE MOTION FAILED ON ROLL CALL VOTE.

Motion: SEN. ECK MOVED TO FURTHER AMEND SB 390.

**SEN. ECK** explained this involved the second part of sb039009.ate. This is the part that would strike subsection 13 which says the utilities in the state of Montana may not be at advantage or disadvantage. The fear is they will push down the amount that we and any neighboring states put in. She would delete section 13 on page 18 of the original bill.

Vote: THE MOTION FAILED ON ROLL CALL VOTE.

Amendments: sb039012.ate - EXHIBIT 18

Motion: SEN. VAN VALKENBURG MOVED TO FURTHER AMEND SB 390 - Amendment no. 1.

Discussion:

**SEN. VAN VALKENBURG** explained the amendment. The testimony from the PSC was to the effect that they do not presently have clear authority to impose an exit fee, if a customer is leaving the system. This would give the Commission the authority to establish reasonable exit fees. This would prevent someone getting out of the system before all the transition costs could be determined.

**SEN. THOMAS** stated they resisted the amendment. In lieu of the exit fee, they have the transition fee on everyone's bill.

Vote: THE MOTION FAILED ON ROLL CALL VOTE with SENATORS ECK, STANG and VAN VALKENBURG voting yes.

Amendments: sb039004.ate - EXHIBIT 19

Motion: SEN. VAN VALKENBURG MOVED TO FURTHER AMEND SB 390.

Discussion:

**REP. EWER** commented this was necessary to direct the Commission to break down the transition costs into categories that are less recoverable than others.

**SEN. FOSTER** opposed the amendment. He felt the PSC was given ample authority regarding transition charges.

**Denise Peterson, attorney for PSC**, stated that this amendment could be helpful. The transition bond section does not allow the commission to make any changes once the transition costs are determined. If the bonds are paid off, this could make a transition to lower charges.

**SEN. FOSTER** asked who determined the transitional charges?

**Ms. Peterson** explained that they were determined in two phases. They were determined first in an initial proceeding. The commission determines them. However, in the second phase, once they are determined for the transition bond financing order section, they cannot be revisited. If the amounts are paid off, there should be some ability to reduce the transition costs. That is not provided for.

**Vote:** THE MOTION FAILED ON ROLL CALL VOTE with **SENATORS ECK, STAND** and **VAN VALKENBURG** voting yes.

**Amendments:** sb039003.ate - EXHIBIT 20

**Discussion:**

**REP. EWER** asked **SEN. VAN VALKENBURG** to move the amendment which would strike out all the business of the bonds. The bonding mechanism provides no outside protection.

**SEN. VAN VALKENBURG** did not move the amendment. He disagrees with substantial portions of the bill but the bonds are an integral part of financing the transition of this process. If this strikes all of the bonding provisions, that undermines the ability to make this transition.

**Motion:** **SEN. FOSTER** MOVED SB 390 DO PASS AS AMENDED.

**Discussion:**

**SEN. VAN VALKENBURG** stated he has tried to understand the issue and balance the inevitability of electric utility deregulation with the consequences of that on Montana consumer's electricity. He admits that he doesn't think he knows enough to vote on the bill. This is an extremely complex issue. The bill was heard one week ago. They received a grey bill yesterday afternoon which they are being asked to put in place this economic earthquake which will ripple across Montana. With respect to Section 2 of the bill where the legislature makes certain findings that allows that the Montana customers should have freedom to choose their supplier of electricity and related services in a competitive market as soon as administratively feasible is not a finding he can endorse. Montana has some of the lowest electrical rates there are in the nation. He is

concerned about the circumstances of the tax system by passage of this bill. To pass this right now is a situation of haste makes waste. You can regret at your leisure what you engaged in at such a rapid pace now.

**SEN. ECK** emphasized the reason this bill came to the tax committee was because of the tremendous tax implications involved in what we are doing. We have all had information that warns us that we don't know very much about the tax implications. This could very well wait for another two years. The people of Montana are going to have very strong reactions when they start looking at the tax consequences.

**SEN. FOSTER** stated they were after balance. The bill as amended reflects the balance. They are protecting consumer interests. This bill gives the best vehicle possible to keep the rates as low as is possible. There will be tax consequences. This bill does not address taxes. The world of utility rate regulation has worked well but the world is changing in this area. We can't stop it from happening. We can pass a bill to shape a Montana solution to this matter.

**V: THE MOTION CARRIED ON ROLL CALL VOTE with SENATORS ECK, STANG and VAN VALKENBURG voting no.**

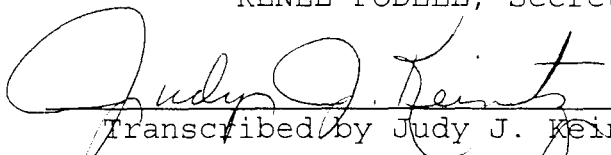
ADJOURNMENT

**Adjournment:** The meeting adjourned at 12:34 p.m.

  
SEN. GERRY DEVLIN, Chairman

  
RENEE PODELL, Secretary

GD/RD

  
Transcribed by Judy J. Keintz