

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on February 11, 2005 at 3:25 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SB 281, 1/26/2005; SB 317,
2/2/2005; SJ 18, 2/8/2005;
Executive Action: SB 71; SB 155; SB 7; SB 287;
SB 308

EXECUTIVE ACTION ON SB 71

Motion/Vote: SEN. COBB moved that SB 71 BE TABLED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 155

Motion/Vote: SEN. COBB moved that SB 155 BE TABLED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 7

Motion/Vote: SEN. ESP moved that SB 7 BE TABLED. Motion carried unanimously by voice vote.

HEARING ON SB 281

Opening Statement by Sponsor:

SEN. CAROL WILLIAMS (D), SD 46, opened the hearing on **SB 281**, Protection of public health & safety & fish & wildlife under permitting decision.

SEN. WILLIAMS told Committee members the Montana Environmental Policy Act, (MEPA), has been Montana's environmental law since 1971. The 2001 Legislature amended the law and prohibited agencies from conditioning or denying permits, based on information gathered during the MEPA process, unless another permitting law allowed it. She added there are no laws allowing agencies to protect public health, safety, fish and wildlife.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 4.3}

Proponents' Testimony:

Jack Nottolsky, Attorney, is from Missoula, has been practicing law in Montana in the natural resources field. He said MEPA is an important act. He said the amendment proposed gives agencies authority, but does not require them to mitigate adverse environmental impact. He said the constitution imposes a right and duty on all citizens and State agencies to protect the environment. He said this amendment puts the policy within the scope of MEPA. When an agency is considering mitigation, it has to be done in a public process, with testimony from both sides. When making a decision regarding this, it should go on the record with a careful analysis.

{Tape: 1; Side: A; Approx. Time Counter: 4.3 - 10.4}

Janet Ellis, Montana Audubon, said currently you are not allowed to mitigate things without an underlying statute. There are underlying statutes in air quality, and water quality laws. They have standards which can be identified. She said the amendment is being put into MEPA because MEPA has a process to address public health and safety. There is a guidebook for MEPA that spells out that process. This guidebook explains how agencies make determinations on impact regarding the resources, what agencies consider when imposing mitigation, how a project sponsor appeals a mitigation decision, and who, within the agency, makes the decision about impact under this bill. These are outlined in the guidebook.

{Tape: 1; Side: A; Approx. Time Counter: 10.4 - 13.9}

Ann Hedges, Montana Environmental Center, said a bipartisan group of people and legislators, in 1999, looked at MEPA and concluded MEPA resulted in better decisions. Despite that finding, in 2001, the Legislature amended MEPA, taking out the authority of State agencies to mitigate impact unless another law allowed it. The law does not protect important impacts on public health, fish and wildlife. She said Department of Environmental Quality (DEQ) has authority to regulate asbestos on site of a facility, but with no ambient air quality standard for asbestos, the DEQ does not have the authority to regulate off-site inspection. She said it is knowledge that off-site asbestos is killing people in Libby.

{Tape: 1; Side: A; Approx. Time Counter: 13.9 - 17.2}

Ceis Barber, a concerned parent, said there is a shooting range near a highway and a bus stop near her home. It could not be relocated because there is no law regarding safety involving this problem. The operator was asked to do an EIS, (environmental impact study), which he could not afford to do. If, under MEPA, an agency could mitigate that permit, the shooting range would not have gone forward. She strongly encouraged support for the bill.

{Tape: 1; Side: A; Approx. Time Counter: 17.2 - 19.3}

Kris Thomas, Montanans Against Toxic Burning, a voluntary citizen's advocacy group working on air quality issues, said they are concerned with burning of dangerous waste. This includes hazardous toxic medical waste and tires in incinerators not designed for that purpose. As MEPA now stands, the Holesome Corporation has a proposal in this week, to burn over one million tires a year and other waste in the Trident cement kiln at the headwaters of the Missouri River. In August of 2003, the DEQ

issued an environment assessment of the tire burning proposal and found a significant impact on burning tires and proceeded with an EIS. The Clean Air Act of Montana does not require any single impact analysis. Consequently they are not allowed to mitigate this.

{Tape: 1; Side: A; Approx. Time Counter: 19.3 - 22.1}

Stephanie Ambrose Tubbs, Helena, writer and conservationist, supported **SB 281** because the State does not have the power to protect the public from disasters, such as what happened in Libby. She added that the area around Three Forks is a cultural center, where Sacajewa was taken from her people and one of the most important landmarks on the Lewis and Clark Trail. It has been culturally significant for centuries to several native American Indian tribes. She was concerned about tire burning in the area and the impact it will have on visitors and future generations.

{Tape: 1; Side: A; Approx. Time Counter: 22.1 - 24.1}

Beth Kaeding, Self, with years of experience as a MEPA compliance specialist gave testimony contained in the following exhibit.

EXHIBIT (phs34a01)

Jerry Iverson, representing himself and Northern Plains Resource Council said he has been active in the permitting and development of the East Boulder Mine outside Big Timber, since 1988. In 1992, the EIS for the East Boulder Mine, identified one of the concerns to residents of Sweet Grass County was the increased danger caused by traffic to and from the mine. His testimony is contained the following exhibit.

EXHIBIT (phs34a02)

John Wilson, representing 3000 conservation minded anglers from Trout Unlimited across the State, spoke to the fish and wildlife portion, saying when MEPA was made procedural, Montana lost ability to protect valuable State fisheries. The Water Quality and Stream Bed Preservation Acts provide only partial protection and do not cover other adverse fishery affects. There were 15 pending water right applications on the Smith River in 2003. In 2001, the river went dry in the lower end. There were documented fish kills. He referred to the bill and how it will protect casualties such as this.

{Tape: 1; Side: A; Approx. Time Counter: 30.1 - 36.5}

Julia Page, River outfitter from Gardiner, Gardiner Chamber of Commerce, in support. Testimony contained in the following exhibit.

EXHIBIT (phs34a03)

Adam Wissen, Missoula, State Chapter of Air Quality, rose in support.

Robin Schocher, Self, rose in support.

Opponents' Testimony:

Don Allen, Montana Western Trade Association, said WETA (Western Environmental Trade Association) was established in 1976, a coalition of representatives from agriculture, business, commercial industry, labor, scientific community, recreation, transportation, and 24 other trade associations, working together to promote member associations and companies. He handed the Committee a WETA brochure for their review.

EXHIBIT (phs34a04)

Michael Kakuk, Attorney representing WETA, Montana Building Association, presented the following exhibit and reviewed it with the Committee. **SEN. CROMLEY** pointed out that the memo, exhibit 5, was marked confidential and addressed to **Mr. Allen**. **Mr. Kakuk** and **Mr. Allen** stated this had been waived.

EXHIBIT (phs34a05)

{Tape: 1; Side: A; Approx. Time Counter: 40.3 - 47}

Bud Clinch, Executive Director, Montana Coal Council, said they provide 750 high-paying jobs and an annual \$31,000,000 contribution to the coal severance tax dollars. He said the bill grants broad authority to State agencies, allowing them to condition any permit based on impact identified in an environmental review to protect public health and safety and protect fish and wildlife in whatever manner the agency may deem appropriate. He said there are already myriad laws on the books addressing those concerns. He listed several acts and said they all have standards and rules governing them. The Montana Coal Council requested a do not pass on **SB 281**.

{Tape: 1; Side: A; Approx. Time Counter: 47 - 51.6}

John Amberg, Montana Farm Bureau Federation, said everything they do in Montana requires some type of permit. He said companies, interested in investing in Montana, are going elsewhere. He asked the Committee for a do not pass on **SB 281**.

Ellen Engstedt, Montana Wood Products Association, said the proposed language in **SB 281** declares MEPA substantive instead of procedural. She pointed out a lawsuit filed with the Department of Natural Resources and Board of Land Commissioners on timber sales in the Swan Valley a year and a half ago through which the plaintiff claimed thermal cover on the Big Deer Winter Range in the sale area should not have been part of the timber sale. Judge Sherlock, in two documents, stated MEPA is a procedural statute and does not dictate any particular results. **SB 281** would disallow Judge Sherlock's ruling. She said this would result in more lawsuits and less safety and asked a no vote on the bill.

{Tape: 1; Side: A; Approx. Time Counter: 51.6 - 54.9}

Jason Todhunter, Montana Logging Association, representing 600 family owned logging businesses, opposed **SB 281** because of the change of a procedural to a substantial law which increases timber sale litigation. Should litigation start, it holds up the businesses for lengthy times and causes great losses in their industry. Her urged a do not pass.

John Bloomquist, Montana Stock Growers Association, was concerned about the degree or level of conditions the department could impose. He said fiscal note two indicates confusion the agency may have implementing it and fiscal note one continues confusion with MEPA as it describes it as the Montana Environmental Protection Act when it is the Montana Environmental Policy Act. One of the problems with MEPA, in the past has been interpretation, he said it is a procedural law. He said there needs to be sideboards on conditions required under the language of the bill.

{Tape: 1; Side: A; Approx. Time Counter: 54.9 - 59.6}

Ronda Carpenter-Wiggers, Great Falls Chamber of Commerce, stated that they have investors interested in developing the electric generation plant in Great Falls, adding to their tax base, and providing jobs, as well as electricity. If MEPA is changed from an informational gathering act to an environmental protection statute, it creates an uncertainty for those investors that may cause them not to invest in this. The Chamber believes the current law is well balanced and working and is asking for a do not pass on **SB 281**.

{Tape: 1; Side: A; Approx. Time Counter: 59.6 - 60.7}

Kerry Hegreberg, Montana Contractors Association, stated that before they can build a project for the highway department, they have to do an environmental review. On any type of work, the owner of the project has to go through an environmental review. No statute in the State of Montana has caused more controversy than MEPA. There is no equivalent of MEPA in the State of Idaho, and Wyoming and their economy has flourished in contrast to Montana's. Montana's economy has started to recover during the past four years. Wyoming has \$1 billion in budget surplus. Equivalent contractors in Wyoming are building \$300 million in new schools over the next eight years. He said that moving the bill forward would move the economy of Montana backward and he urged a do not pass.

{Tape: 1; Side: A; Approx. Time Counter: 60.7 - 63.5}

Glenn Oppel, Montana Association of Realtors, with 3800 members and affiliates throughout the State rose in opposition of the bill for the reasons stated previously. He asked the Committee to table the bill.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 0.1}

Angela Janacaro, Montana Mining Association, rose in agreement with previous testimony in opposition.

Informational Testimony:

Warren Frazier, Chief Engineer, Montana Department of Transportation, handed the Committee a list of permits the Department gets for all its projects. There are 25 regulations on the list. The ones with checkmarks are what they frequently deal with. Their legal department asked if there was an appeal process in the bill, covering conditions which are accepted, or conditions not related to the project impact. With all the agencies involved, sometimes they get conflicting permit conditions. They would like a way to work out these conflicts and how it affects the MEPA process, state dollars and NEPA, (National Environmental Policy Act), federal money, and how to work within the confines of the bill.

EXHIBIT (phs34a06)

{Tape: 1; Side: B; Approx. Time Counter: 0.1 - 3.6}

Steve Welch, Division Administrator, Permitting and Compliance Division, Department of Environmental Quality. They issue approximately 5000 permits annually for licensing and conduct over 2000 MEPA analysis each year. He was present to answer questions.

{Tape: 1; Side: B; Approx. Time Counter: 3.6 - 4.2}

Questions from Committee Members and Responses:

SEN. GRIMES asked **Mr. Kakuk** to respond to **Mrs. Hedges** comment about the 1999 study where MEPA was found to be working. **Mr. Kakuk** said he thought **SEN. GRIMES** asked him to respond because he had drafted **HB 473** which **SB 281** is attempting to repeal. The Environmental Quality Council determined there was a value to MEPA for public participation and fully informed decision making. He said his clients agreed and that is why they did not try to repeal MEPA in 2001. They went in to clarify problems they started to see.

{Tape: 1; Side: B; Approx. Time Counter: 4.2 - 6}

SEN. SCHMIDT asked **Mr. Bloomquist** to explain the sideboards on the bill. He replied, regarding fish and wildlife, they need objective standards by which the agency imposing those conditions would be guided by. When talking about conditions that protect fish and wildlife, they need to know if you are talking about populations, individuals, a particular reach, scope or area. This is difficult to do with fish and wildlife. **SEN. SCHMIDT** asked him about other areas for sideboards. **Mr. Bloomquist** replied there needs to be achievable and economic feasibility of the conditions and how they relate to objectives of the project. They need an objective level of requirements where the conditions can tie back to what the agency may have identified as the issue for the fish and wildlife population for a particular project.

{Tape: 1; Side: B; Approx. Time Counter: 6 - 9.2}

SEN. SCHMIDT asked **Mr. Hegreberg** about similar MEPA laws in North Dakota, Washington and other states. **Mr. Hegreberg** told her he said there is no equivalent to the Montana Environmental Policy Act in Idaho and Wyoming. North Dakota has substantive air, water, hazards waste management, and various other public and health safety standards in statute. He said Idaho and Wyoming have protected their environment and landscapes very well. He felt we could do the same thing without the subjective law this bill creates. **SEN. SCHMIDT** asked about Washington and other states and their laws. **Mr. Hegreberg** said he was not familiar when going beyond adjoining states.

{Tape: 1; Side: B; Approx. Time Counter: 9.2 - 11}

SEN. GRIMES referred to laws appearing unworkable, with unclear applications. The department issues 5000 permits a year, yet the fiscal note showed a zero cost. He asked **Mr. Welch** if he agreed this change in the laws could have a tremendous manpower and fiscal impact on the department. **Mr. Welch** thought he would have to see how it played out when the agencies implemented it. **SEN. GRIMES**, regarding the 5000 permits they currently issue, asked if the Department sees something, do they go to the project sponsor and work that out. **Mr. Welch** answered they have this ability now and applicants would honor that type of agreement.

{Tape: 1; Side: B; Approx. Time Counter: 11 - 14.2}

SEN. ESP asked, with over 5000 permits, when a DEQ employee conditions a problem one way and another employee conditions it another way, doesn't that cause a problem with the constitutional equal protection guarantee. **Mr. Kakuk** hadn't considered this. The bill doesn't speak to it. He assumes the agency gets the rules and everyone within the agency is playing by the same rules. He said it was a good question and has raised an interesting point.

{Tape: 1; Side: B; Approx. Time Counter: 16.6 - 19.7}

SEN. O'NEIL asked **Mr. Welch** whether Montana had any rules or statutes to protect us from tire burning in the Three Forks area. **Mr. Welch** told him we have the Air Quality Act which regulates any source that emits certain levels of pollutants. They must comply with those statutes.

{Tape: 1; Side: B; Approx. Time Counter: 19.7 - 20.3}

SEN. GRIMES asked **Mrs. Hedges** if all the pitfalls she said would happen in previous MEPA bills had come to pass since the changes were applied to MEPA. **Mrs. Hedges** said the agencies were having difficulty meeting time limits. There were a number of examples given during testimony today stopping agencies from mitigating. There are advocates in the economy in jeopardy if the DEQ is unable to actually consider all the impacts. **SEN. GRIMES** thanked her and said he would take that as a "maybe".

{Tape: 1; Side: B; Approx. Time Counter: 20.3 - 22}

SEN. SCHMIDT asked **Mr. Welch** to repeat the statement he made regarding the annual issue of 5000 permits and 2000 analysis. **Mr. Welch** told her they annually issue over 5000 permits and

license authorizations and exceed over 2000 MEPA analysis. **SEN. SCHMIDT** asked, when MEPA went into effect in 2001, had the number of licenses gone up or down. **Mr. Welch** didn't believe there had been any change in the numbers.

Closing by Sponsor:

SEN. WILLIAMS thanked everyone who came to testify. Regarding the constitutionality of the bill, she read **Greg Petesch's** check list about the bill which says; conformity to State and federal constitutional assessments - yes; existing Montana statutes review, to avoid conflict duplication of confusion - yes; internal references - check; contains only one subject; there is no problem with the constitutionality of this bill. Opponents have referenced clean air and clean water acts. She said she believed, if you went back into the study of these hearings, you would find every single person who testified against this bill has testified all the way along the line on clean air, clean water and other environmental standards. The same people went together and gave us **HB 473**. That is why she is here today, trying to correct this. Her bill is before the Committee for one reason only and that is health care of our communities, kids, fish in our streams and wildlife in our mountains. She added that Montanans have a responsibility to put back into the law the considerations for all these projects and let DEQ and Department of Natural Resources think about what this does to health care in these communities. This bill gives them the tools to do it. She had some amendments from the Department to tighten the bill.

{Tape: 1; Side: B; Approx. Time Counter: 22 - 28.3}

SEN. GRIMES wanted to go on record as objecting to the characterization of the election as certainly unclear and irrelevant.

{Tape: 1; Side: B; Approx. Time Counter: 28.3 - 28.6}

(**SEN. WILLIAMS**, during her closing statement, had commented she thought she owed **SEN. YOUNKIN** an apology, now that she knew WETA (Western Environmental Trade Association) had drafted **HB 473** last session. She wondered if **SEN. YOUNKIN** shouldn't be asking for a recount, because she thought the people in her town spoke clearly in the last election about some of the legislation she carried and the penetrability.)

{Tape: 1; Side: B; Approx. Time Counter: 25.4 - 25.8}

At this time the hearing was relocated to Room 317.

HEARING ON SB 317**Opening Statement by Sponsor:**

SEN. GREG LIND (D), SD 50, opened the hearing on **SB 317**, Regulate conversion of health insurer from nonprofit to for-profit status.

SEN. LIND told the Committee the purpose of the bill is to clearly define the role of State regulators and non-profit entities, should they try to convert from non-profit to a full profit status. He said there are public assets at risk. Should the health services corporations convert from non-profit to profit, the bill puts in place a structure for the benefit of Montanans. Should conversion be imposed, the cost associated with proving and regulating the conversion should be borne by the company involved in the conversion and not the taxpayers of Montana.

EXHIBIT (phs34a07)

{Tape: 1; Side: B; Approx. Time Counter: 31.6 - 38.6}

Proponents' Testimony:

Scott Benbow, Consumers Union, said they have found clear statutes on conversion. There are states with comprehensive legislation where the regulator had clear criteria in which to judge the conversion. He said it doesn't mean conversion will actually take place, but he supports having strong legislation in place so the right decisions can be made and the right questions can be asked. This bill gives clear directions for Montana regulators, in the event of conversion, to have companies pay reasonable costs associated with the conversion review. He presented written testimony from **Jane Ragsdale**, Missoula.

EXHIBIT (phs34a08)

{Tape: 1; Side: B; Approx. Time Counter: 38.6 - 46.2}

John Morrison, Montana State Auditor, Insurance Commissioner, told the Committee his Department completed an examination of Blue-Cross Blue-Shield in 2003. On the basis of that examination, he declared Blue-Cross Blue-Shield to be a public entities corporation. Blue-Cross Blue-Shield asked for reconsideration of that finding and a hearing on this has not been held. Since the order, negotiations have taken place and they have attempted to reach an agreement which would bind Blue-Cross Blue-Shield to certain conditions in the event of a future conversion. Blue-Cross Blue-Shield assured him they have no

intention to convert to a for-profit entity. This could change. His office's priority has been to assure that, in the event of a conversion, any and all assets of Blue-Cross Blue-Shield would be sequestered for a public purpose. This legislation puts into place framework for the public hearing process and protects public assets. He urged a do pass.

{Tape: 1; Side: B; Approx. Time Counter: 46.2 - 49.7}

Chris Tweeten, Attorney General's Office, informed Committee members Attorney General Mike McGrath supports legislation which brings certainty to procedural steps that must be followed in the event of conversion by Montana's health service corporations. Charitable trusts are the responsibility of the Attorney General and exist in Montana statutes. He said Blue-Cross Blue-Shield's proposal would take the Attorney General out of the regulatory review of conversion transactions. He urged the Committee to carefully consider leaving this responsibility with the Attorney General's office.

{Tape: 1; Side: B; Approx. Time Counter: 49.7 - 54.2}

Gene Fenderson, Progressive Labor Caucus, rose in strong support of this legislation. This is the largest consumer protection bill he has seen in years. He said this is extremely needed, referencing what has happened with non-profit corporation hospitals and health care plans across the nation. He referred to deregulation of electricity in the State and the consequences of that decision. This legislation will protect the State of Montana and should involve the Attorney General's office. He urged passage of this bill.

{Tape: 1; Side: B; Approx. Time Counter: 54.2 - 57.9}

Pat Melby, Montana Medical Association, said they are very much in support of **SB 317**. He said Blue-Shield was started by a physician and was a membership corporation of physicians. He urged Committee support and a do pass recommendation.

{Tape: 1; Side: B; Approx. Time Counter: 57.9 - 59.5}

John Flink, Montana Hospital Association, also in support of **SB 317**. He said Blue-Cross Blue-Shield holds a prominent place in Montana and, because of that, the assets they hold have an important part in the health care infrastructure of the State. His members urge a do pass.

{Tape: 1; Side: B; Approx. Time Counter: 59.5 - 60.5}

Claudia Clifford, Montana AARP, said the National AARP is strongly in favor of this legislation. This legislation meets the test in their policy for care evaluation of assets for a public process and public purpose of a charitable trust. She hoped the charitable trust would eventually address some problems with medications for people who do not have this coverage. She added, the timing is right as there is not an entity at this point in conversion, therefore we are free from this pressure. She strongly recommended a do pass.

{Tape: 1; Side: B; Approx. Time Counter: 60.5 - 62.4}

Sharon Howard, Montana Nurses Association urged passage of the bill.

Opponents' Testimony:

Tanya Ask, Blue-Cross Blue-Shield Montana, gave the Committee testimony regarding Blue-Cross Blue-Shield's position on **SB 317**. She also included information from **Jerry E. Lusk, Acting Board Chairman, Blue-Cross Blue-Shield of Montana**; proposed amendments to **SB 317** by **Greg Gould**; and a copy of a Gray Bill.

[EXHIBIT \(phs34a09\)](#)

[EXHIBIT \(phs34a10\)](#)

[EXHIBIT \(phs34a11\)](#)

[EXHIBIT \(phs34a12\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 11.2}

Joe Mazurek, Blue-Cross Blue-Shield. He reiterated **Mrs. Ask's** concerns about the level of oversight required and the impact it will have on the company. There is a whole new concept of full fair market value not recognized in the disevaluation concept. He provided a copy of a letter from Anderson Zurmuehlen & Co., regarding the language used in the bill. Transactions coming under the oversight are, in Blue-Cross Blue-Shield's case, 1% of the operational value of the company. This amounts to \$5,000,000.00 which he called it muminimous. He said one of their Board of Directors resigned and another may soon resign when they replace those directors. This is a change in government control, through the bill. He pointed out a conflict in the approval process where, after the Department of Insurance and Attorney General agree and enforce these regulations, there could be a possibility for the Legislature to overturn that transaction. He said the bill does nothing to address major policy issues of health care costs. It will affect the ability of Blue-Cross Blue-Shield and New West to improve their product, address changing market conditions, and making the innovations

Ms. Ask referred to. He gave the Committee a second handout and called their attention to the Excerpts from Consumers Union's "A Model Nonprofit Conversion Act". This refers to Blue-Cross and New West and not other non-profit health providers, and he questioned why Blue-Cross Blue-Shield and New West were singled out. He said this should apply to all non-profit healthcare corporations who have charitable assets.

EXHIBIT (phs34a13)

EXHIBIT (phs34a14)

{Tape: 2; Side: A; Approx. Time Counter: 11.2 - 21.4}

James Senterfitt, New West Health Services, rose in opposition because the bill, as written, creates a burden adding to administrative and operational expense, which is the premium to insurers across the State of Montana. They feel the definition of the bill's conversion and related entities is far too broad. He said New West has no plans to convert to a for-profit status. In the event they would, their assets would be distributed to their sponsoring members. He gave the committee a New West amendment to **SB 317**, designed for clarification and to provide protection for Montana consumers.

EXHIBIT (phs34a15)

Frank Cote, America's Health Insurance Plans, which has approximately 1300 health insurance carriers, said the bill, as drafted, will interfere with the daily operations and functions of insurance companies and add additional unnecessary costs. The people who buy health insurance will pay this. He said, in 2001 New West Health Services purchased the block of business from Montana Benefits and Life. Not one insured Montanan lost their coverage, all proper claims were paid and there was no impact on the general fund because of this. Had this law been in effect in 2002, he was confident this sale would not have taken place. The company could have become insolvent, claims unpaid, insurers lost their coverage, and the general fund would have been hit for millions of dollars. He pointed to competition by saying, in the last twelve years there was about five domestic health insurance companies licensed in Montana. Of the five, there is one still insured in Montana. The more competition, the better it makes a business and this lowers premiums. He added that, the way the bill is written, we will never see competition in insurance healthcare services in Montana.

{Tape: 2; Side: A; Approx. Time Counter: 21.4 - 29.9}

Jani McCall, Deaconess Billings Clinic, said the Clinic and Deaconess Hospital joined together and became a private charitable medical foundation. Last year they provided \$6 million in charity care. They are a major sponsor for New West Health Services. Their intent in helping sponsor New West Health Services was to foster competition in the State and provide alternatives for providers and consumers. They support the bill with **Mr. Senterfitt's** amendments.

{Tape: 2; Side: A; Approx. Time Counter: 29.9 - 30.9}

Kate Gray, CPA, CVA, Anderson Zurmuehlen & Co., referred the Committee to her letter and that she had been asked by Blue-Cross Blue-Shield to define full fair market value. Her letter had already been presented by **Mr. Mazurek** in prior testimony as exhibit 13.

{Tape: 2; Side: A; Approx. Time Counter: 30.9 - 32.8}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. GRIMES asked **Mr. Senterfitt** if this bill was in place, there would have been a strong possibility New West would not be doing business in Montana. **Mr. Senterfitt** told him the way the bill, as written, covering conversion and transactions, their sponsor probably would not have put forth the money to launch New West. **SEN. GRIMES** asked if others entering into the competitive market will view Montana that way as well. **Mr. Senterfitt** couldn't imagine other companies willing to come in the way the bill is written.

SEN. GRIMES asked **SEN. LIND** to respond on the bill eliminating competition in its present form. **SEN. LIND** said he was drawing on experts across the country. He said the purpose is to protect Montana's assets, which are \$500,000,000.00 in asset value, belonging to Montanans, for health care. **SEN. GRIMES** asked if he would be open for amendments to assure we wouldn't be running anyone off. **SEN. LIND** responded, absolutely. That wasn't his purpose.

SEN. COBB asked **Mr. Morrison** to respond to the consumer advocate and business practice in the State. **Mr. Morrison** thought consumers are better protected with these processes in place in respect to the surplus of companies that might convert from non-profit. They are protecting the assets of a non-profit health service company. These assets are accumulated partially as a

result of advantages they enjoy by being non-profit. **SEN. COBB** said his question was referencing normal business practices. **Mr. Morrison** answered the bill says the conversion takes place when control transfers affect more than 10% of the assets or \$5,000,000.00. Investments by one of these health service companies are specifically exempted as long as they include the right to repay.

SEN. WEINBERG asked **SEN. LIND** if non-profit hospitals were excluded. **SEN. LIND** answered, yes. **SEN. WEINBERG** wondered why they were excluded. **SEN. LIND** said there is potential for it to seep down to other charitable care facilities.

{Tape: 2; Side: A; Approx. Time Counter: 32.8 - 43.4}

SEN. ESP asked **Ms. McCall** if they would have been less likely to invest in New West with this bill in place. She answered not the way the bill is now written but, with the amendments they would be more comfortable with the bill.

SEN. ESP asked how they determine what part of the company assets are the people's of Montana and what part are the company's. **Mr. Morrison** said the question is not simple. Premium conversion was a major concern. This is when a non-profit company takes its value and channels it off into subsidiaries where it becomes of less value. The assets that are public assets are those that were accumulated by the non-profit entity through operation or investments. **SEN. ESP** inquired about New West's assets. **Mr. Morrison** said they had not looked at New West's assets. They are concerned with Blue-Cross Blue-Shield. **SEN. ESP** asked if there was another way of defining this. **Mr. Morrison** said he found Blue-Cross Blue-Shield to be a public entity corporation. Blue-Cross Blue-Shield believes they are a mutual benefit corporation. In the event no legislation is passed, and no agreement signed, that question will be raised and the courts will decide.

{Tape: 2; Side: A; Approx. Time Counter: 43.4 - 52.8}

SEN. SCHMIDT asked **Mr. Benbow** how knowledgeable he was regarding other states and this legislation. **Mr. Benbow** told her only Washington has the legislation. He's never done a study by selective terms.

SEN. SCHMIDT asked **Mr. Tweeten's** response to the proposed amendments. **Mr. Tweeten** had just seen them. The gray bill removes the Attorney General completely. **SB 317** fills the void in the Attorney General's ability to regulate conversion of public entity companies. Under existing non-profit corporation

statutes, the Attorney General is required to give a 21-day advance notice that a company can't convert and is obligated, during that time, to decide whether or not they are going to go to court and sue to stop the transaction. His office has no access to experts or attorneys experienced in this area to conduct the detailed review which needs to be made. **SB 317** gives him this access at the expense of the company.

Closing by Sponsor:

SEN. LIND told the Committee there is half a billion dollars at risk of being lost. He said a company had done a conversion locking up all the assets. He referred to line 21 on the first page where it transfers control or governance. He said these are not day-to-day transactions. Entities have come in, converted, and struck their service area; there are creeping conversions. The provision for series of transactions is in place for that reason. He said, across the nation, assets are transferred over time, to the point where the majority of control has gone from non-profit to a for-profit entity.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 11.8}

HEARING ON SJ 18

Opening Statement by Sponsor:

SEN. KEN TOOLE (D), SD 41, opened the hearing on **SJ 18**, Urge President and Congress to support stem-cell research.

SEN. TOOLE handed out information from the University of Wisconsin-Madison regarding embryonic stem-cells. He said stem-cell research is important to people who have Parkinson's Disease, as well as other debilitating diseases. He said surplus embryos are being discarded across the country which could be used for research.

EXHIBIT (phs34a16)

Proponents' Testimony:

Ben Hollings, Self, has had Parkinson's Disease for six years. He said we are talking about therapeutic fertilization, not reproductive fertilization. He asked for the Committee's support.

Winston Swift, Self, has Parkinson's Disease. He said there is no cure for this disease; the cause is unknown. He said stem-cell research provides a powerful chance for treatment and cure for Parkinson's Disease.

{Tape: 2; Side: B; Approx. Time Counter: 11.8 - 27.6}

Rev. Bob Holmes, said this is a partisan issue. He was speaking for those who are too sick to speak. He said these people need hope and stem cell research could give them this hope. He urged pass of this resolution.

Claudia Clifford, AARP, said National AARP supports stem-cell research and she strongly urged support of the resolution.

Chris Tweeten, Self, said he had a personal interest in stem-cell research as he has a genetic disease and had a kidney transplant. The prevention of this disease may be advanced by stem-cell research. He is a strong supporter.

{Tape: 2; Side: B; Approx. Time Counter: 27.6 - 32.5}

Opponents' Testimony:

Eric Schiedermayer, Montana Catholic Conference, rose in opposition. His written testimony and information are in the following exhibits.

[EXHIBIT \(phs34a17\)](#)

[EXHIBIT \(phs34a18\)](#)

{Tape: 2; Side: B; Approx. Time Counter: 32.5 - 38.2}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ESP referred **SEN. TOOLE** to his handout and asked about information of umbilical cords and stem-cell research. **SEN. TOOLE** didn't know much about that but the difference is stem-cells are from adults.

SEN. O'NEIL pointed out all the different stem-cell research centers in the private sector who have no restrictions, and asked **SEN. TOOLE** why the government should be involved in this. **SEN. TOOLE** said researchers in California are making giant strides but, when invetro fertilization and fertilized eggs are being disposed of, rather than being allowed to be used by research scientists who have a federal funding or employment, it should be a federal goal.

Closing by Sponsor:

SEN. TOOLE said other countries, states and the private sector are moving ahead, but he thought the progress was hindered by not having the same kind of federal funding as there is for other types of medical research.

{Tape: 2; Side: B; Approx. Time Counter: 38.2 - 49.7}

EXECUTIVE ACTION ON SB 287

Motion: **SEN. SCHMIDT** moved that SB 287 DO PASS.

Motion: **SEN. SCHMIDT** moved that SB 287 BE AMENDED WITH SB028704.ADN.

Discussion:

EXHIBIT (phs34a19)

SEN. ESP asked about liquid and gel caps. **SEN. SCHMIDT** said gel caps aren't used in making meth. You can purchase them any place. The ones you can crush into powder are going behind the counter.

SEN. GRIMES said the Pfizer representative told him gel caps could be used but the difference is the difficulty in the process.

{Tape: 2; Side: B; Approx. Time Counter: 49.7 - 64.4}

Vote: Motion carried unanimously by voice vote.

Motion/Vote: **SEN. SCHMIDT** moved that SB 287 BE AMENDED WITH SB028702.ASB. Motion carried unanimously by voice vote.

EXHIBIT (phs34a20)

Motion/Vote: **SEN. SCHMIDT** moved that SB 287 BE AMENDED WITH SB028702.ADN. Motion carried unanimously by voice vote.

Motion/Vote: **SEN. SCHMIDT** moved that SB 287 BE AMENDED WITH SB028701.ASB. Motion carried 5-4 by roll call vote with **SEN. CROMLEY**, **SEN. ESP**, **SEN. GRIMES**, and **SEN. O'NEIL** voting no.

EXHIBIT (phs34a21)

Motion: **SEN. GRIMES** moved that SB 287 BE AMENDED BY STRIKING LINES 27 AND 29 PAGE 2 AND BY RENUMBERING THE SECTION.

Discussion: SEN. O'NEIL resisted the motion because having to get Sudafed from a licensed pharmacy was an inconvenience for people. SEN. CROMLEY resisted the amendment as well because of lack of knowledge.

SEN. GRIMES withdrew his motion.

Motion/Vote: SEN. SCHMIDT moved that SB 287 DO PASS AS AMENDED. Motion carried unanimously by voice vote. SEN. WILLIAMS voted yes by proxy.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 13.9}

EXECUTIVE ACTION ON SB 308

[EXHIBIT](#) (phs34a22)

[EXHIBIT](#) (phs34a23)

Shirley Brown, DPHHS, told the Committee the amendments address concerns the Division had the way the bill was drafted. It pertains to notification and that parents may be advised they may have another person present in protective services situations.

{Tape: 3; Side: A; Approx. Time Counter: 13.9 - 17.1}

Motion/Vote: SEN. O'NEIL moved that SB 308 BE AMENDED WITH SB030801.AND. Motion carried unanimously by voice vote.

Motion/Vote: SEN. O'NEIL moved that SB 308 BE AMENDED WITH SB030802.AND. Motion carried unanimously by voice vote.

{Tape: 3; Side: A; Approx. Time Counter: 17.1 - 17.8}

Motion: SEN. O'NEIL moved that SB 308 DO PASS AS AMENDED.

Discussion: SEN. WEINBERG referred to the questions he asked Mrs. Brown during the bill's hearing. The first question was the element of surprise when making calls at the homes. Another question was intimidation, by the parents of the child so the child would not speak about the situation. He said she confirmed that the element of surprise was important. He said if you warn parents he believes it will hurt the kids.

SEN. CROMLEY didn't see that the bill said you had to call before hand to warn the parents.

SEN. WEINBERG wanted to propose an amendment that, when taking kids from their home in an emergency situation and in the

placement of the child, the parents were not given prior notice before the extraction.

SEN. O'NEIL said on line 15 it says, when you pick up the child you place the youth in a protective facility. We are not talking about placement the next day, we are talking about the date the child is picked up and immediately placed. You are not notifying them before you pick up the child. There is no advance notice.

{Tape: 3; Side: A; Approx. Time Counter: 17.8 - 34.7}

Vote: Motion carried 5-4 by roll call vote with **SEN. MOSS**, **SEN. SCHMIDT**, **SEN. WEINBERG**, and **SEN. WILLIAMS** voting no. **SEN. WILLIAMS** voted no by proxy and **SEN. ESP** AND **SEN. COB** voted yes by proxy.

{Tape: 3; Side: A; Approx. Time Counter: 34.7 - 37.1}

A copy of the testimony given by **Shirley Brown**, **DPHHS**, as an opponent of **SB 308** at the hearing, held February 4, 2005, is attached as per her request.

EXHIBIT (phs34a24)

ADJOURNMENT

Adjournment: 8:05 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT ([phs34aad0.PDF](#))