

MINUTES OF THE MEETING
EDUCATION AND CULTURAL RESOURCES COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

The twenty-first meeting of the Education and Cultural Resources Committee was called to order by Chairman Jack Sands, on March 9, 1987, at 1:00 p.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present except Rep. Eudaily who was excused, and Reps. Kennerly and Thomas who were absent.

CONSIDERATION OF SB 38:

SENATOR BOB WILLIAMS, Senate District No. 15, sponsor of the bill as amended, said it would limit the number of pupil instruction days to 180. He explained that 63% of the average cost of the school day is covered by the foundation program and the other 37% is derived from the voted levy. He then advised the committee there would only be a one million dollar saving instead of the two million as intended because of the way the bill was amended in the Senate. He noted that there were a lot of questions brought up about the education programs in Montana during the special session in June of 1986. He then referred to an article in the American School Board Journal, which gave the cost per day in the various states, along with the SAT testing scores. He reviewed the number of total school days in adjoining states, and said our state funds up to ten days more than states that adjoin Montana, such as North Dakota, and the SAT tests show that North Dakota is doing a better job of educating her children than Montana with ten less school days in the year. He advised the committee that over 94% of the kids graduate from high school in North Dakota and that figure is only over 83% in Montana. On a scale of the 50 states, Montana is rated 10th and North Dakota is rated 1st. He also stated that education makes up 42.9% of the general fund and that institutions make up 15.7%; SRS is 23.2%; and that all other government makes up the remaining 18.3% of the general fund. He said they would have to make cuts in many different places, and it was his opinion that this bill would be a way to make cuts without cutting a program or a teachers job.

PROPOSERS:

SANDRA WHITNEY, representing the Montana Taxpayers Association, rose in support of SB # 38. She quoted a section of the codes, "a uniform system of free public schools, sufficient for the education of and open to all school age children of the state shall be established and maintained

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throughout the State of Montana. The state shall aid in the support of its several school districts on the basis of financial need as measured by the foundation program". She noted the constitution requires that we have a quality basic education, and that two portions of the code, "uniform" and "state shall aid on the basis of financial need" should be emphasized.

Ms. Whitney said she saw no reason why a district could not operate at its own expense for more than the mandated 180 days. It does appear the word "uniform" would mean that all schools should be funded by the state for the same number of days each year, and that this bill would change the ANB calculation so that all schools would receive state funding for the same number of days. She noted the amendment that would allow for a phase in period. She also stated the code further requires the state aid should be on the basis of financial need and the decision of a local school board to operate more than 180 days does not represent a financial need requiring state aid. She urged the committee to give favorable consideration to the bill.

CAROL MOSHER, representing the Montana Stockgrowers and the Montana Cattlewomen stated she had supported the bill when it went through the Senate and continues to support it and would like to go on record as such.

OPPONENTS:

BRUCE MOERER, representing the Montana School Boards Association stated he opposed SB # 38 and urged the committee to do the same. Mr. Moerer exclaimed he did not think that every school district in the state of Montana would run their school year up to 200 days if this bill did not pass. He remarked there have been many reports on excellence in education and the need for achieving greater excellence recommend more school time. He commented that the 42.9% of the general fund that was spent on education is for K-12 and also higher education. He felt if the bill did pass it would be very important to protect the phase in amendment, that would allow a school district to lose one day per year.

EARL LAMB, Assistant Superintendent for Business for the Great Falls Public Schools, rose in opposition to the bill. He referred to the report "Nation at Risk" which stated there should be more time allotted to the schools. He reported if Great Falls would have to give up the extra five days that they have over the 180 required days, all at one time,

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that would be approximately \$560,000 that would be removed from their budget, based on \$112,000 per day based on the current enrollment.

KATHI HORESSI, representing the Montana Federation of Teachers said she opposed the bill. She added she appreciated the amendment which would phase in the loss of ANB money, however, she would still oppose the bill because it would penalize those schools who would chose to have more than 180 school days, and felt that should be a local control and quality issue.

QUESTIONS FROM THE COMMITTEE:

REP. NISBET questioned Mr. Stockton from OPI if a school district chose to decrease the number of PI days whether they would have to end up with the divisor equaling the number of PI days used by the school district in the school fiscal year ending June 1987. Mr. Stockton explained the amendment in the bill as it was passed to the House was that it was presumed a school district would keep the higher number of days, and they would increase the divisor until such time as they equaled which would mean one ANB calculated for every child in school. He noted the amendment as it was rewritten would give them the option of not increasing the divisor so if they took 185 days and started dividing by 180 it would have the same numerical effect.

REP. NISBET then asked if that amendment is added along with the one from the Senate if it would be possible to end up with a factor of 183 over 183. Mr. Stockton replied it was.

REP. WILLIAMS quiered Mr. Stockton why there is a discrepancy in the number of days that the different schools use and what is the rationale behind the present program. Mr. Stockton responded that under the present program state law sets a minimum number of pupil instruction days, but not a maximum. He stated this bill would not do away with PIR days but would do away with the advantage of having extra PI days. REP. DAILY asked Mr. Stockton how many schools in Montana have more than 180 school days. Mr. Stockton listed the number of schools that have over 180 days, which total 70.

REP. LORY asked Mr. Stockton if the legal question had ever arisen of paying one school district more than another. Mr. Stockton replied that had never been challenged.

REP. GLASER then asked Mr. Stockton if he envisioned a relationship between the quality of education and the number of

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days that a school is operated, and since the constitution mandates equal education to children is that being done. Mr. Stockton replied he would defer that question to an educator.

SENATOR WILLIAMS closed by reviewing the number of schools who were over the 180 days that were required out of the 541 school districts in the state.

CONSIDERATION OF SB 35:

SENATOR ED SMITH, Senate District No. 10, sponsor of the bill said he had sponsored it to correct some of the nepotism problems in his area. He submitted a letter from Charles Trinder, see EXHIBIT NO. 1, Superintendent of Schools in Brockton, explaining the nepotism problems in his district.

PROPOSERS:

REP. LARRY GRINDE, House District No. 30, rose in support of the bill. He related a scenario regarding the possibility of a nepotism problem in his area, and urged the committee's concurrence in the bill.

ERIC FEAVER, President, Montana Education Association. Mr. Feaver stated this was a problem that affected the entire State of Montana, not only small communities or native American communities. He exclaimed that no employee should be non-renewed or terminated because of an affinity or consanguinity, and no citizen, for the same reason should be denied the opportunity to serve the public on a board of trustees. He noted this has become a problem since the attorney general's ruling last spring and urged the committee to act with dispatch because of the time limit imposed for the renewing of teacher's contracts.

KATHI HORESSI, representing the Montana Federation of Teachers, said she would like to go on record in support of the bill.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE:

REP. WILLIAMS questioned Mr. Feaver; if a person was serving as a teacher and a relative was elected to the school board, and the teacher could continue serving, then why couldn't a school board hire a relative? Mr. Feaver replied

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that the House Education Committee answered that question when they accepted Rep. Dorothy Cody's HB # 83.

A lengthy question and answer period followed concerning whether a person who had lost his job because of nepotism could demand he be rehired since the bill would be retroactive to October 1, 1985. Senator Smith concluded the discussion by explaining the bill would permit the rehiring of a person, not that the board "shall" rehire a person. He noted the language is permissive and should not cause any legal problems.

SENATOR SMITH closed by stating he thought the bill would correct many more problems than it would create and he hoped the committee would give it a do pass recommendation.

EXECUTIVE SESSION:

ACTION ON SB 35:

REP. HARRINGTON moved that SB # 35 BE CONCURRED IN, the question was called, the motion CARRIED.

ACTION ON HB 683:

REP. DAILY moved to take HB 683 from the table. He stated he thought the issue needed to come before the legislature for debate. The question was called, the motion FAILED with 6 favorable and 10 opposing votes.

CONSIDERATION OF SB 232:

SENATOR JOE MAZUREK, Senate District No. 23, sponsor of the bill stated the bill was introduced at the request of the board of public education. He advised the bill is the result of a working committee that was put together by the board of public education in an effort to update and revise the laws relating to the suspension and revocation of teacher's certificates. He reviewed the changes proposed in the bill. Section 1 sets forth the grounds for suspension, revocation and denial of teacher's certificates. Subsection E and F broaden the definition of conviction and the terms under which a teacher (he mentioned that later in the bill the definition of teacher is broadened to apply to administrators as well) certificate could be revoked, suspended or denied. He noted that the board of education will adopt rules and standards which will define immoral conduct and will be a state wide standard rather than what may be

considered immoral conduct in the local community. He said a great deal of faith was being placed in the board of public education and the rules it will promulgate.

SENATOR MAZUREK pointed out the rest of the bill allows the board of public education to act or initiate proceedings of its own, which currently can only be done at the request of OPI. He stated it would eliminate the restriction that OPI can only act on a teacher who has not been employed for the last twelve months. He then referred to subsection 3 which requires trustees to report the fact that a teacher has been terminated or not renewed because of conduct described as moral turpitude or immoral conduct. He noted this would be a protection for teachers as well since a school district would not be able to fire a teacher without just cause as it would have to be reported. He concluded his testimony by saying the bill requires that matters be kept confidential and grants trustees and superintendents immunity if they act in good faith.

PROPOSERS:

CLAUDETTE MORTON, Executive Secretary for the Board of Public Education rose in support of SB # 232. A copy of her testimony is attached as EXHIBIT # 2.

CHRIS TWEETEN, Assistant Attorney General for the State of Montana in Legal Services Bureau, acting as an advisor for the board of public education, said he has served on the task force that had met over a period of two years and drafted the legislation that is SB # 232. He stated the bill is aimed at a very specific and very important problem. If a matter is not prosecuted to a conviction but is plea bargained out or a teacher receives a deferred imposition of sentence and satisfies the conditions of his probation, there will not be a conviction on his record. Without a conviction under the existing legislation the board is not empowered to take action to revoke the teachers certificate.

JOHN VOORHIS, Director of Teacher Education and Certification in the OPI, stated the bill would do two important things that are currently not being done. One, it would allow the superintendent to take immediate action in a case where a wrong-doing has occurred. He related an incident where an administrator had stolen several thousands of dollars, had plea bargained to make restitution, and was on probation for three years. He immediately went from that school to another school district where he was employed in a comparable position, and the OPI was prevented

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from taking any immediate action against him because of his continuous service within the school districts. Secondly, he advised it will require a reporting system to insure that the interests of the State of Montana are protected because there will be a record of persons who have committed offenses.

ERIC FEAVER, President, Montana Education Association. He exclaimed that 99 and 3/4 percent of the teachers in this state will not be affected by this piece of legislation, and that only a very small number of teachers, administrators in the business of education find themselves afoul of the law. He suggested if there was a professional licensing board of educators, who ruled their own profession, this issue would not be before the committee because it would probably have already been taken care of. He advised the committee that SB # 344 will come before them later which will in part address the concern of the lack of authority and empowerment that teachers and administrators have over their certification along with issues of licensing, revocation, suspension and denial.

Mr. Feaver then pointed out that the statutes already contemplate morality in the business of education and for qualification of teaching. He referred to MCA 20-4-104, "to be a teacher one must be of good moral character", and 20-4-207 which states a reason for dismissal or termination would be immorality. So it is not outside the perimeters of current statute that morality is considered as something essential to the teaching profession. He concluded his comments by saying he hoped the committee would pass this legislation.

KATHY HORESSI, Montana Federation of Teachers, rose in support of the bill. She noted the MFT had had adequate input into the writing of this bill, and it seemed a fair way to protect students while also providing due process for teachers.

JESS LONG, School Administrators of Montana, support the bill and asked the committee to concur in it.

LORNA FRANK, representing 3,400 members of the Montana Farm Bureau throughout the state, read her prepared statement, see EXHIBIT NO. 3.

MIKE MC GRATH, Lewis and Clark County Attorney stated he had been asked to give a specific example of how this bill was appropriate. He related an incident within the Helena

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community where a teacher had been sexually involved with several students. The teacher then plead guilty, received a deferred imposition of sentence, (which means he does not have a criminal record). Mr. McGrath then advised the committee that the agreement was the teacher would resign his position at the school, which was the only settlement that was available because the victim was adamant that she did not want to testify. However, the situation is now that the teacher has been applying for teaching positions throughout the state and if fact was the number one candidate for a position at the Mountain View School for Girls and would have been hired had not the superintendent had personal knowledge of the case. He supported HB # 232.

BRUCE MOERER, Montana School Boards Association rose in support of the bill.

BETTY JANE WOOD, representing the American Association of University Women, stated that quality education depends upon quality teachers in the most part and urged the committee to support the bill.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE:

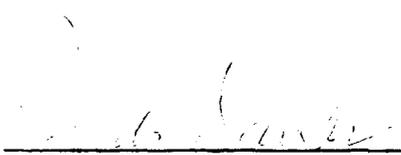
CHAIRMAN SANDS questioned Chris Tweeten if on page 2, lines 9, 10 and 11 if deferred prosecution should be included there. Mr. Tweeten replied deferred prosecution would be reached by subsection F, lines 13 and 14, and the problem with deferred prosecution is that it is handled on an ad hoc basis by county attorneys in each county, who either do or do not defer prosecutions. And since there is no official record made of a deferred prosecution, unlike the situation where you have a deferred imposition of sentence or a guilty plea, it was felt it shouldn't be explicitly dealt with. Chairman Sands then noted that immorality that is referred to in a dismissal action was based on local standards and asked Sen. Mazurek if it was his intention to change that. Sen. Mazurek responded he did not intend to change the termination and non-renewal statutes but only the suspension, denial and revocation of the certificates.

SENATOR MAZUREK closed by calling attention to the remarks that were made that everyone was placing great trust in the board of public education that they will do the right thing when they adopt the rules and implement this bill.

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ADJOURNMENT:

Being no further business to come before the committee, Rep.
Nelson moved to adjourn. The meeting adjourned at 2:35 p.m.



REP. JACK SANDS, CHAIRMAN

DAILY ROLL CALL

EDUCATION AND CULTURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 9, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. JACK SANDS, CHAIRMAN	X		
REP. RICHARD NELSON, VICE CHRMN.	X		
REP. FRITZ DAILY	X		
REP. RALPH EUDAILY			X
REP. WILLIAM GLASER	X		
REP. DAN HARRINGTON	X		
REP. NANCY KEENAN	X		
REP. ROLAND KENNERLY		X	
REP. EARL LORY	X		
REP. JOHN MERCER	X		
REP. GERALD NISBET	X		
REP. JOHN PHILLIPS	X		
REP. TED SCHYE	X		
REP. BARRY STANG	X		
REP. TONIA STRATFORD	X		
REP. CHARLES SWYSGOOD	X		
REP. FRED THOMAS		X	
REP. MEL WILLIAMS	X		

STANDING COMMITTEE REPORT

MARCH 9,

19 87

Mr. Speaker: We, the committee on Education and Cultural Resources

report SENATE BILL NO. 35

do pass

do not pass

be concurred in

be not concurred in

as amended

statement of intent attached

REP. JACK SANDS,

Chairman

TO PERMIT RENEWAL OF EMPLOYMENT CONTRACT UNDER NEPOTISM LAWS

 REP. _____ WILL CARRY THIS BILL IN THE HOUSE OF REPRESENTATIVES

THIRD

reading copy (BLUE)

color

ROLL CALL VOTE

EDUCATION AND CULTURAL RESOURCES

COMMITTEE

DATE MARCH 9, 1987 BILL NO. HB # 683

NUMBER 1

NAME	AYE	NAY
REP. JACK SANDS, CHAIRMAN		X
REP. RICHARD NELSON, VICE CHAIRMAN		X
REP. FRITZ DAILY	X	
REP. RALPH EUDAILY		
REP. WILLIAM GLASER		X
REP. DAN HARRINGTON	X	
REP. NANCY KEENAN	X	
REP. ROLAND KENNERLY		
REP. EARL LORY		X
REP. JOHN MERCER		X
REP. GERALD NISBET	X	
REP. JOHN PHILLIPS		X
REP. TED SCHYE	X	
REP. BARRY STANG	X	
REP. TONIA STRATFORD		X
REP. CHARLES SWYSGOOD		X
REP. FRED THOMAS		X
REP. MEL WILLIAMS		X

TALLY

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10

Snyder Herrin
Secretary

Jack Sands
Chairman

MOTION: REP. DAILY moved to take HB # 683 off the table - motion

FAILED 6 favorable to 10 opposing votes

DATE 3-9-87

Poplar, Montana HB #35
December 11, 1986

Dorothy Cody
Wolf Point, Mt. 59201

Dear Dorothy,

I am writing to you in regards to the nepotism laws and how they have effected our small community of poplar, Montana.

If you recall the first time I spoke to you was during the governors visit to A&S Tribal Industries in June. At that particular time I was the only one on the School Board that was effected by the law. Since that time, the Attorney General has come out with an interpretation that had sweeping effects on our board.

First, my mother-in-law, Betty Holum was not given her contract as a cooks helper after working for the school in that position for nine years. The second person to feel the effects of the law was Mr. George Budak. Since his wife was working as a teachers-aide, he did not run for reelection last April.

The next individual to be effected was our newly elected Trustee, Mr. Arlie Lauridsen. He had an Uncle who could no longer drive the school bus on the far north Mineral Bench route. This is a difficult route to find a driver for because it is so far out in the country. *18 years service*

Next came out Chairperson for the Board of Trustees. Mrs. Donna Snodgrass has a Daughter that just completed her college degree in Education and she was unable to have a contract to work within the school system at Poplar. Then there is the Son-In-Law of Mrs. Snodgrass, who is a tenured teacher in the Poplar Schools. Either He or She will have to go before the end of the current school year.

Just recently, we had to notify Mrs. Betty Reid that she could no longer work as a substitute teacher because her Brother-In-Law, Mr. Rick Reid, was a member of the Board of Trustees.

Just recently, the only member of the School Board who did not have a relative working for the school, resigned. We are now faced with the task of finding a replacement to finish out that term.

Poplar is located on the Fort Peck Indian Reservation and because of the close family structure of our Indian people and the small community that we live in, it makes the task of finding qualified individuals to serve on our Board an almost impossible task.

It seems that most everyone who is interested and qualified to serve on the Board has a relative working for the school in some capacity. This means that we either eliminate them as possible candidates or it means that it will cost someone a job.

Providing a quality education for our children is our number one priority here in our school. I have told you how the current law has effected our community. If you take Poplar as an example of how schools can be effected and multiply that by the number of other small communities and towns that have the same problem of complying with the current nepotism law, you can see how unfair the current law is and that we need a change in the law. We need a law that would have the best interest of our students in mind.

There is one other item that I need to mention here also. I talked primarily about small towns and communities, but I was also told about an Individual in Helena who had to resign their position on the Board, so the current law is not only unfair to small rural areas, but to the larger cities also.

~~I am currently writing letters to other states to get information on how they deal with the nepotism law in their States. I hope to have some responses before the next legislature meets. I will forward copies of that information to you as soon as I receive it.~~

In closing, I would like to express my appreciation for your time and interest in this most important issue. My suggestion would be that whenever a contract for a relative comes before the Board of Trustees for review, that the Board member, who is related to that individual, leave the meeting room during the discussion and that they not be allowed to vote on hiring or renewing that contract.

If you need any further information or if I can be of any assistance, please feel free to call me during the day at 768-5151 EXT 19, or at home in the evenings at 768-3715.

Sincerely,

Charles R. Trinder

Charles R. Trinder
S.R. Box 2082
Poplar, Montana 59255



Board of Public Education

EXHIBIT # 2
DATE 3-9-87
232

TESTIMONY TO THE HOUSE EDUCATION COMMITTEE

ON MARCH 9, 1987

IN SUPPORT OF SB232 - SUSPENSION AND REVOCATION OF
TEACHER CERTIFICATES

Claudette Morton
Executive Secretary

BOARD MEMBERS

EX OFFICIO MEMBERS:

Ted Schwinden, Governor

Ed Argenbright, Superintendent
of Public Instruction

Carrol Krause, Commissioner
of Higher Education

APPOINTED MEMBERS:

Ted Hazelbaker, Chairman
Dillon

Alan Nicholson, Vice-Chairman
Helena

James Graham
Ismay

Sarah "Sally" Listerud
Wolf Point

Arthur "Rocky" Schauer
Libby

Bill Thomas
Great Falls

Thomas A. Thompson
Browning

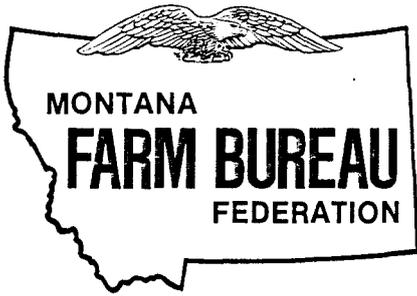
The Board of Public Education requested this legislation and supports its passage. In an effort to provide the Committee with necessary rationale, I would like to present the background on this issue. Almost two years ago, in 1985, it became apparent to the Board of Public Education that several issues needed to be addressed with regard to the denial, suspension and revocation of teaching certificates. In order to address these issues in a comprehensive manner a Task Force was formed in August 1985. The Task Force was made up of representatives from the Office of Public Instruction Certification Department, Montana Education Association, Montana Federation of Teachers, School Administrators of Montana, Montana School Boards Association, Montana College Certification Officers and the Attorney General's Office, who provided legal assistance to the Board. The Task Force was chaired by a Board member. The Task Force had as its major agenda two goals: 1) arrive at a mutual understanding of what procedure the Board and the Superintendent need to follow in order to be in compliance with the law, and 2) identify the areas that need attention and develop the appropriate changes for in-house procedures, rules and changes in the statutes.

The Task Force worked well together and has clarified in-house procedures for the Board of Public Education and the

Office of Public Instruction. It also has developed some proposed modifications to the existing administrative rules, which will clarify roles and responsibilities in this area. However, these rules will not be heard by the Board until the fate of this proposed legislation is known.

As the Task Force worked it became more and more apparent that some adjustments had to be made in the existing legislation to protect the school children of Montana and to clarify some issues which have not been addressed or are unclear. The professionals on the Task Force felt strongly, as you will hear in further testimony from each group, that these proposed legislative changes will strengthen the professional organizations because they very clearly address a small, but a very real, problem, that of immoral conduct related to the teaching profession. Let me assure you this is not a new or unusual way to get rid of just any teacher. Instead, it will protect educators and require school boards to consider a state definition of immorality rather than a local, community standard. Rather than my going into the specific language of the bill I would prefer that Chris Tweeten of the Attorney General's Office present that testimony to you. I will be glad to answer any questions regarding the background or the specifics of this legislation at the appropriate time.

I do want to say that this is one of the few times you will see all of the educational groups standing in support of proposed legislation and I think that is very significant. It shows the importance they place on this. Even the bill drafter commented on how well written this piece of legislation is, which I think speaks to the quality of work and cooperation that has gone into this proposal by all participants of the Task Force. Therefore, I would urge your support for the passage of SB232.



P.O. Box 6400
~~502 South 1st~~

DATE 3-9-87
Bozeman, Montana 59715 # 3

Phone (406) 587-3153

TESTIMONY BY: Lorna Frank
BILL # SB 232 DATE March 9, 1987
SUPPORT XXX OPPOSE _____

Mr. Chairman, members of the committee, for the record my name is Lorna Frank, representing approximately 3400 Montana Farm Bureau members throughout the state.

We believe there must be a high degree of professionalism in education. More consideration must be given in selecting personnel who reflect a high level of moral conduct. We believe the contract of any school administrator or faculty member convicted of immoral or felonious act should be terminated. *and Their Teacher Certificate ~~terminated~~ revoked*

We urge this committee to give SB 232 a do pass recommendation.
Thank you.

SIGNED: Lorna Frank

VISITORS' REGISTER

EDUCATION AND CULTURAL RESOURCES COMMITTEE

BILL NO. SENATE BILL #232

DATE MARCH 9, 1987

SPONSOR SENATOR MAZUREK

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
John Voorhis	OP1	✓	
Don Waldron	S.A.M.	✓	
Lorna Frank	MT. Farm Bureau	X	
MIKE McGRATH	SELF	✓	
Chris Tweeten	Bd of Public Ed	✓	
Claudette Minton	Bd of Public Ed	✓	
Jan W. Lutz	S.A.M.	✓	
Jan Mazurek	SDZB	✓	
Bruce W. Moeres	BSBA	✓	
KATHIE MORRIS	MFT	X	
B Wood	GAUW	X	
Carol Mosher	mt. Stock growers mt. Cattle Women	✓	
Eric Fleave ✓	MEA	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

