

**MINUTES**

**MONTANA SENATE  
52nd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON EDUCATION**

**Call to Order:** By SENATOR CHET BLAYLOCK, CHAIRMAN  
on February 8, 1991, at 3:00 P. M.

**ROLL CALL**

**Members Present:**

Chet Blaylock, Chairman (D)  
Robert Brown (R)  
Bill Farrell (R)  
H.W. Hammond (R)  
Dick Pinsoneault (D)  
Mignon Waterman (D)  
Bill Yellowtail (D)

**Members Excused:** Harry Fritz, Vice Chairman (D)  
Dennis Nathe, (R)

**Staff Present:** Eddy McClure (Legislative Council).

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

**Announcements/Discussion:**

State Superintendent of Public Instruction Nancy Keenan appeared before committee to announce that Roger Soder, University of Washington, will speak in Helena, February 21, 22. She also extended a personal invitation to meet with Mr. Soder, the Dean of School of Education and the President of the University of Washington at Ms. Kennan's home on February 21.

Chairman Blaylock announced that there will be a skull session on school funding to be held in Room 312 on February 11, 1991, immediately following adjournment of House Education Committee.

EXECUTIVE ACTION ON HB 104Discussion:

Senator Waterman expressed concern about lessening the number of hours of instruction in a classroom. She said that she was approached by an administrator of the eastern part of the state who did suggest an amendment; i.e., "that any one school day could be reduced by one hour if the total number of hours in the five previous school days are not less than 30 hours".

Discussion followed with the committee coming to the conclusion that the suggested amendment would not be workable.

Recommendation and Vote:

SENATOR PINSONEAULT MOVED that HB 104 DO NOT PASS. Five voted aye; 2 voted no. Senators Farrell, Pinsoneault, Hammond, Waterman and Chairman Blaylock voted aye; Senators Brown and Yellowtail voted no. MOTION CARRIED.

EXECUTIVE ACTION ON SB 82Discussion:

Senator Van Valkenburg discussed SB 82 grey bill which includes the amendments offered by OPI to SB 82.

The sponsor said that the grey bill is essentially what OPI suggested at the time the bill was presented. The bill came out of HB 28 Oversight Committee. He said that at the time he didn't think that the committee fully understood the consequences of putting guaranteed tax basis support in SB 82 with respect to the county levy. OPI suggested that the bill be amended so the guaranteed tax base support would really apply to a county wide levy that would be applicable to both high school and elementary districts rather than trying to treat the two separately. The sponsor said this amendment should make this bill easier to administer. That was one of the significant changes that was proposed and it also should have some effect on reducing the general fund cost of doing this. (1/2 state support and 1/2 county wide levy to pay for the on-scheduled transportation costs and Special Education transportation be funded 100 percent by the state).

Senator Valkenburg said that the real significance of the passage of SB 82 is that it will help to establish a data base with respect to transportation costs in the state and help to provide a step toward equalization by going from 1/3 state scheduled spending to 1/2 state scheduled spending. He expressed hope that the committee would be willing to go that far with SB 82.

Chairman Blaylock asked Senator Van Valkenburg about the possibilities of the legislators being challenged in court and asked what the senator's thinking was on this; i.e. if the committee did pass SB 82 which would fund transportation half and half that the Supreme Court might consider it a beginning.

Senator Van Valkenburg answered "that one of the things I'd also like you to look at if you decide that that is the way to go is the addition of some whereas type clauses into this bill that address the issue of the lack of a data base, the problem with respect to overscheduled costs that are out there and all of the other issues that are involved so that it could be argued that while the state legislature has only taken a very small step, it is doing so in order to establish a better data base for the next session so that bigger steps could be taken then. He said that he would consider this an important part of this whole issue.

In discussion about the bill, Senator Hammond said that if the state is going to pay a greater portion of transportation, it follows that the state will have more to say about the schedule down the road. Senator Van Valkenburg agreed.

Senator Van Valkenburg said that the districts are still going to have almost complete say as with respect to overscheduled costs which are a very significant portion of transportation costs. The sponsor said that he was trying to deal not only with the issue of meeting the transportation costs but meeting the legal requirements of the Montana Supreme Court in terms of equalizing the entire school funding system. He said that the court made specific reference in their decision to transportation costs.

Greg Groepper discussed SB 82. He said that if guaranteed tax base is taken out, there are two options: it will save 1,000,500 because that is about what it would cost to put guaranteed tax base into the county side or funding could be changed from 50-50 to about 60-40. He said that he would remind the committee of previous testimony that this bill doesn't have a four million dollar cost figure and the reason that it does not have a four million dollar cost figure is because right now for elementary on-scheduled costs, the figures are 1/3 state; 1/3 county and 1/3 district.

He said if the committee replaces the district 1/3 with 1/2 state and 1/3 county, the amount that came out of the 33 mills levy for elementary transportation would be available to the foundation program. It amounts to a transfer of revenues from the foundation, 33 mills for elementary levies, over to the transportation program. So, depending on what is decided regarding the foundation program: if nothing is done, it makes about 4 million dollars available in the foundation program that wouldn't be available now because of the way elementary is funded. It's \$2,000,500 if you don't do GTB or 60/40 state and county split depending on what you decide to do.

Mr. Groepper said if they go off the fiscal note, it will cut the impact by 1.5 million. He said what we have been trying to say all along that by doing this you save money in the foundation program and that is where there has been a little bit of difference of opinion here with budget office. You save money in the foundation program, you have to recognize that as a savings-- you are not increasing the schedules yet so that puts 4 million dollars into the foundation program that wasn't there and costs you about 4 million dollars over here so it is a wash.

He said that at the present time the way a school district is paid is that it is figured out how many dollars they should be paid for each student who is there; then we have to look to see how many dollars the county equalization mills will raise so if we owed them a million dollars for the number of students out there and the 33 mills in the elementary district were going to raise \$300,000 of that, we would only pay the district \$700,000. They are raising locally in this example \$300,000. Before we look at that \$300,000 in the elementary district and before we even account for it, they reduce it by 1/3 of the cost of the elementary transportation program so instead of actually getting \$300,000 from this, it might be \$250,000 and our share of the foundation program's support from the general fund goes from \$700,000 to \$750,000 and they have taken \$50,000 locally and put that toward your transportation expense. They don't levy a district mill; they are taking out of the 33 mills for the elementary program.

He said if the committee does what Senator Van Valkenburg is proposing here, we no longer have to pay them for the amount that they moved over to the transportation program. In other words, that 33 mills goes to fund the whole \$300,000 and in this example we save \$50,000 of the foundation program money that we didn't have to reimburse them. It is true that it comes over here in the transportation program now because this money would be coming from the state but when we think of those two things in concert, it doesn't cost additional money to fund this bill because you have a savings in the foundation program through the elementary levy and you have an expense in the transportation program so it isn't 4 million dollars--it's a wash.

Senator Farrell said his understanding is that the county schools may be under guaranteed tax base, sending money to the state to fund school districts that don't have the costs of transportation that the rural schools do.

Greg Groepper answered that the 55 mills (33 for elementary and 22 for high school) there is only one county in the state now under this new equalization bill that ships money into the state and that is Rosebud County. In the HB 28 committee, there was general agreement that there was a need to make the same accounting for transportation whether it was elementary or high school.

Mr. Groepper said that there is information that tells us what the total costs of transportation are in this state but when we try to break it down between elementary and high school because we fund them differently, we have created incentives to shift the costs and we are not able to break it out. The high school levy is presently 1/3 state and 2/3 county. The elementary levy is 1/3 state; 1/3 county and 1/3 comes out of the 33 mills levied for the elementary side so depending on your situation, you could get more county wide mills. It almost creates an advantage to put your costs into the high school side of this thing because it is a county wide levy and it doesn't just impact money going into the budget. We could set up the new reporting mechanism for the transportation schedule that schools are starting in July and a year from this September, we would have a good set of baseline information for what districts are spending for elementary and high school transportation so that at the next session of legislature, we could report to you and make a recommendation. Our first concern is to get the same cost and payment structure for the districts. The second issue is a guaranteed tax base issue.

Jan Thompson, OPI, responding to Senator Van Valkenburg's concern about the level of equalization.

Greg Groepper said that the on-scheduled amount which is 80 cents a bus mile--the state would pay 50 percent and the county-wide levy would pay the other 50% of that cost whether it was an elementary transportation on-schedule cost or high school transportation on schedule cost. Anything above that 80 cents a mile for on schedule cost where transportation programs run by the district are of their own necessity, those would still be paid locally out of a local mill which is permissive. He said in a number of cases, he thought that the county would be paying more than half of the total costs especially now in light of the gas price increases. The total cost of transportation, elementary and high school is \$28,500,000. Total cost of on-schedule transportation, elementary and high school lumped together was \$18 million dollars so if you use these numbers what this bill proposes to do is have the state pay 9 million and have 9 million be paid for through a county wide levy and the remaining 10.5 million would still have to be funded by a district levy if you pass this bill.

Senator Blaylock said that he had read the minutes when this bill was introduced and noted that Kay McKenna had said that school transportation was allowed 80 cents per mile but it was actually costing \$2.00 per mile to run the bus.

Greg Groepper agreed.

Senator Hammond asked if there is a cap on school transportation funds under HB 28. Mr. Groepper answered no. General fund is capped. Transportation, retirement funds, and building funds aren't capped. Senator Hammond said that he was not ready to

vote. He asked for voting to be held until he had an opportunity to call to call superintendents in his district.

Chairman Blaylock granted that permission. The committee agreed to take up SB 82 on Monday, February 11.

#### EXECUTIVE ACTION ON SB 120

##### Discussion:

Senator Pinsoneault said that he had put together amendments on SB 120 which make major changes in SB 120 both judicially and procedurally. He said that Chip Erdman and Bruce Moerer had a chance to look at it and he asked them to comment on their perception of the amendments.

Bruce Moerer said that the way they viewed Senator Pinsoneault's amendments, he kept the heart of SB 120 in the last section but then he went ahead and addressed what we saw to be a separate problem and that was the actual procedures of how we could progress through the appeals level and this would take it to the county superintendent directly into district court.

Mr. Moerer said that his association (MSBA) had not had an opportunity to review these amendments but that it was his opinion that in appearing before county superintendents and going through this process numerous times, the problem isn't necessarily at the state level. The real difficulty he said is the county level (he emphasized that he was not saying anything derogatory about county superintendents) but said that they have been placed in a situation now where they are actually sitting as judges, the rules of evidence apply, they have two attorneys arguing legal cases to them, and it is more complex than they are equipped to handle. These are difficult situations for them. He suggested talking to rest of the educational community over the interim and try to come up with a solution that actually takes away the contested case hearing responsibilities from county superintendents. He suggested positions of one or two hearings officers at OPI, make them like all other state-wide agencies, and train them in education and in law to hear all of the cases from across the state and they would then make a recommended opinion to the state superintendent and once that was adopted or not adopted, the appeal could then go on to district court. That would speed up the process. He said that was his suggestion to Senator Pinsoneault.

Chip Erdman said while they appreciated Senator Pinsoneault's efforts, their concerns is that there is a county superintendent hearing in the proposed amendments which is the essence of their objections to SB 120. They didn't think it would solve any problem. There may be a technical problem in that the amendments would go beyond the scope or the intent of the original bill. He

said that he thought addressed all appeals instead of just appeals of non-tenure period. He felt the amendments offered by Senator Pinsoneault would not solve their problem with the bill.

Senator Pinsoneault said that he didn't care where the administrative review takes place; i.e., OPI, superintendents or county level--that is a question that should be addressed. he said that he was glad that he had brought it to the committee's attention. He said that he thought that suggestions that Chip Erdman had made were valuable and a process that should work. He thanked the committee, Bruce Moerer and Chip Erdman for their attention to the matter. At that time Senator Pinsoneault withdrew his motion.

Senator Brown thanked Senator Pinsoneault for the time and effort he spent in preparing amendments to SB 120.

Senator Brown said that this bill just makes it clear that all the non-tenure teacher is entitled to in the law is a reason for dismissal that has some kind of a basis in fact. The way the courts are ruling now, the statutes are still on the books that say that teachers are entitled to a reason but the reasons don't have to be true. He said that with this bill, we want to make it clear that there isn't any effort to give tenure protection to these people but there ought to be some basis for truth and the reason that they are given. During the committee hearing when we heard this bill, there was some mention made; for example, of a music teacher who was dismissed because people didn't like her choice of music. He said that while that might be reason enough for a non-tenured teacher, it could be a matter of opinion but he said that if something is fallacious on the surface, that shouldn't be a reason. He said that the amendments to SB 120 attempts to make that distinction. The burden would be on the teacher to prove that the reason for dismissal was not true and most of the time it would not be worth the teacher's time to try to prove it unless it wasn't true.

Senator Pinsoneault said that he wished to say that he felt that the committee had really "dumped" on the teacher. He said that he felt that the bill was confusing and unfair to the teacher. I think that there should be requirements that a written evaluation be made and state the reasons for dismissal for non re-election. He said that he was not criticizing the effort but he didn't see that it was doing much for the teacher with whom he was most concerned.

Senator Brown said that the effort was made as a compromise from the viewpoint of the teacher.

Senator Blaylock called upon Bata Lovitt, Attorney for OPI, to comment on the amendment made by Senator Brown. Senator Blaylock asked her if she thought that this takes everything away from the teacher. In discussion, she said that she felt that it was an accurate and reasonable to place burden of proof on the

teacher.

Senator Brown pointed out that this bill is trying to make it clear that they are not talking about tenured teachers but rather non-tenured teachers.

Bruce Moerer said that you talk about insufficient evidence in the amendments. He said that OPI looks at tenure as a property right entitled to due process of the right appeal and the right to a hearing. That gets us back into the same type of problem of getting trained hearing officers that can understand the distinction between abuse and discretion and the process for giving the reasons for nontenure in the hearing versus what tenure really is. He said that he thought it would be very difficult for people to distinguish between these two concepts. He referred to Senator Farrell's question (during the hearing) and that was how to explain to a layman what the difference is between the two concepts of abuse and discretion.

Chip Erdman said that he would like to point out that Senator Brown's amendment may well create a higher burden on the teacher in Subsection C but it is in the alternatives there and the teacher can choose to go under A or B which is just a showing that they disregarded some evidence or that there was insufficient evidence and that again gets us back to the just cause standard and they could ignore C. He felt that the amendments didn't do much from their standpoint.

Phil Campbell said that it was not their intent, and never has been, to give to non-tenured teachers a just cause standard. He said that they would like to but knew it wasn't going to happen. He said that it was their intent to change that language to say that there must be a basis in fact when the reason is given. It doesn't have to be justifiable for actions but it has to have some basis upon which to base the reason. He said that he would like to suggest to the committee that with a review process of any kind, be in a statute or a contract, it makes the decision maker a better decision maker because he knows his decision is going to be reviewed.

Senator Brown and Senator Farrell proposed amendments to SB 120 which are combined into Amendment No. SB012001. On Senator Brown's proposal, there were seven aye; one no. (Senator Pinsoneault). Senator Farrell moved to strike Section 3; Subsection 2; #A and #B leaving #C as written. The vote was unanimous. Amendments adopted.

#### Recommendation and Vote:

SENATOR BROWN MOVED to propose Amendments No. SB013002.aem to SB 120. Seven voted aye; one no. (Senator Pinsoneault).  
MOTION CARRIED.

SENATOR FARRELL MOVED to strike in Section 3; Subsection 2; A and B leaving C as written. The vote was unanimous. Amendments adopted. MOTION CARRIED.

SENATOR BROWN MOVED that SB 120 DO PASS as amended. Five voted aye; Three voted no. (Pinsoneault and Hammond voted no. Senator Nathe who was absent had left a vote of no.) MOTION CARRIED.

Senator Blaylock requested that the Senate Standing Committee Report on SB 120 be held until Senator Fritz (who was absent) could have an opportunity to vote. Senator Fritz voted aye on SB 120 as amended on Monday, February 11, 1991.

ADJOURNMENT

Adjournment At: 4:50 P. M.

  
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SENATOR CHET BLAYLOCK, Chairman

  
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BETSY CLARK, Secretary

CB/bc

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 12, 1991

MR. PRESIDENT:

We, your committee on Education and Cultural Resources having had under consideration Senate Bill No. 120 (first reading copy - white), respectfully report that Senate Bill No. 120 be amended and as so amended do pass:

1. Page 4, line 21 through 24.

Following: line 20

Strike: line 21 through "(c)" on line 24

Insert: "(a)"

2. Page 4, line 25.

Following: line 24

Strike: line 25 through "evidence"

Insert: "lacks any basis in fact"

3. Page 5, line 1.

Strike: "(d)"

Insert: "(b)"

4. Page 5, line 12.

Following: "teacher."

Insert: "The burden of proof rests with the teacher to show an abuse of discretion."

Signed: *Chet W. Laylock*

Chet W. Laylock, Chairman

*B. 2/12/91*  
Amd. Coord.

*SP 2/12* 10:15  
Sec. of Senate

Amendments to House Bill No. 105<sup>104</sup>  
2nd Reading Copy

Requested by Rep Johnson  
For the Senate Committee on Education

Prepared by Andrea Merrill  
February 2, 1991

1. Page 2, line 3.

Following: "day"

Insert: "of pupil instruction"

2. Page 2, line 4.

Following: "by"

Insert: "as much as"

Following: "hours"

Strike: "or one-half of a school day"