

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
52nd LEGISLATURE - 2nd SPECIAL SESSION**

**COMMITTEE ON EDUCATION & CULTURAL RESOURCES**

**Call to Order:** By TED SCHYE, CHAIR, on July 15, 1992, at 1:00 p.m.

**ROLL CALL**

**Members Present:**

Ted Schye, Chairman (D)  
Ervin Davis, Vice-Chairman (D)  
Steve Benedict (R)  
Ernest Bergsagel (R)  
Vicki Cocchiarella (D)  
Fred "Fritz" Daily (D)  
Alvin Ellis, Jr. (R)  
Gary Feland (R)  
Gary Forrester (D)  
Floyd "Bob" Gervais (D)  
H.S. "Sonny" Hanson (R)  
Dan Harrington (D)  
Tom Kilpatrick (D)  
Bea McCarthy (D)  
Scott McCulloch (D)  
Richard Simpkins (R)  
Barry "Spook" Stang (D)  
Norm Wallin (R)  
Diana Wyatt (D)

**Members Excused:**

Rep. Robert Clark (R)

**Staff Present:** Andrea Merrill, Legislative Council  
Lois O'Connor, Committee Secretary

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

**HEARING ON HB 62**

**Presentation and Opening Statement by Sponsor:**

**REPRESENTATIVE TED SCHYE, House District 18, Glasgow, said HB 62 is the proposed Committee bill. An informal hearing was held on July 14, 1992 to answer many questions on the bill and so the amendments could be drafted.**

**REP. SCHYE** spoke on the amendments. **(EXHIBIT 1)** He said that these amendments strike lines 21 through 25 which would make HB 62 consistent with **REP. BARDANOUVE'S** bill (HB-12).

Other amendments introduced deal with the PL-874 money, protested tax money, and the carrying over of the reserves for an indefinite period so a school district will not have to spend them all in one year. They also deal with an emergency budget amendment tax levy. **(EXHIBIT 2)**

**Proponents' Testimony:**

**Gregg Groepper, Office of Public Instruction (OPI)**, supported the amendments. They address the concerns that were raised at the informal hearing including the concern of a possible conflict with HB 12 and the concerns over the PL-874 funds. With the amendments, HB 62 will save \$4.3 million in guaranteed tax base (GTB) and \$1.5 million to \$1.7 million in interest earnings caused by the new distribution of the foundation program. HB 62 and the amendments are necessary to resolve the state's cash flow concerns and moves Montana into the direction towards balancing the budget.

OPI rises as a reluctant proponent of HB 62 with the amendments because **Nancy Keenan, Superintendent of Public Instruction**, has taken an oath of office to support and defend the constitution. Montana's constitution guarantees schools a basic quality education. If the earlier lawsuits proved anything, it is that the foundation program is a reasonably constitutional mechanism. If cuts are made in the mechanism, it damages the constitutional responsibilities to provide a basic quality education. It is unconscionable to OPI to make cuts into the foundation program, and they also think it is unconstitutional. HB 62, along with the amendments, is a good alternative to a cut in the foundation program.

**Eric Feaver, Montana Education Association (MEA)**, supported HB 62 with **REP. SCHYE'S** amendments.

**Pat Melby, School Equity Coalition**, reluctantly supported HB 62 with the amendments as an alternative to underfunding the foundation schedules.

**Steve Brown, Indian Impact Schools of Montana**, supports the amendment because they are crucial to the issue of PL-874 reserves. If the Legislature passes a law that is interpreted by the U.S. Department of Education as violating the federal law, the funds that are cut are the funds that are paid directly to the Indian school districts in the state. He urged the Committee to leave the law as it is and adopt the amendments.

**Chip Erdmann, Montana Rural Education Association**, supported **REP. SCHYE'S** amendments. HB 62 is not workable without them.

**Terri Minow, Montana Federation of Teachers**, reluctantly supported HB 62 with the amendments.

**Fred Maker, Superintendent, Superior School Districts**, supported **REP. SCHYE'S** amendments.

**Linda Carlson, District Superintendent, St. Regis**, supported **REP. SCHYE'S** amendments. He said that both Superior and St. Regis have just received a payment from the Bonneville Power Authority (BPA). If the amendments were not included, they would lose the funds to operate their school districts.

**Larry Fasbender, Lobbyist, Great Falls Public Schools; Jim Turner, School Administrators of Montana; and Carl Roosa, Powell County Superintendent of Schools**, supported HB 62 and the amendments.

**REPRESENTATIVE WILLIAM BOHARSKI, Kalispell**, provided amendments for HB 62. (EXHIBIT 3) He stated that HB 62 will save the general fund approximately \$10 million. If the Committee is careful with the amendments added to the bill, it can save the taxpayers \$21 million in property taxes next year.

He had one concern with **REP. SCHYE'S** amendments in how they deal with PL-874 districts and the Indian Impact Aid districts. This is a very dangerous issue to begin playing with. If the state allows every district that receives PL-874 money to go back for as long as they have been receiving it and claim that the money in the reserve fund is PL-874 money, then the \$10 million to be received from HB 62 will drop in half.

**REP. BOHARSKI** explained his amendments. He said that the state needs to decide how much money in the reserves funds is PL-874 money. His amendments would tell the school districts to look at its three previous year's worth of receipts of PL-874 money and compare the percentage to its total budget. For example, a district's revenue was 70.51 percent PL-874 money. If they have \$1 million in their reserve, they can say that 70 percent is PL-874 money and move it to excess reserves. The only amount that would have to be reduced to 10 percent is the remaining \$300,000.

#### Opponents' Testimony:

**Bruce Moerer, Montana School Boards Association**, opposes HB 62. He said that the members of his Association have worked hard and have been fiscally prudent to protect their reserves. They object to those reserves being lowered.

He did, however, support **REP. SCHYE'S** amendments. They are critical to allowing districts to properly manage their protested taxes; and they do not agree that the Legislature does not have the legal authority to pass a law that impacts the PL-874 funds.

**Gordon Morris, Montana Association of Counties (MACO)**, asked to be on the record as a no-ponent. However, he was concerned about Section 1. Having talked with several county treasurers, they are concerned with the estimated payment of all money belonging to the state, plus accumulated interest, that is anticipated to be collected in June. The issue is that the state will be funding money that it anticipates from "what source". There is no funding source to begin with. He requested that this section be struck.

In the 1991 Regular Session, Section 1, subsection 1, was discussed by the Education Committee. It was pointed out by the state treasurers that they were comfortable with the language "may" as opposed to the substitution "shall". The "shall" becomes punitive from the standpoint of county governments.

**VICE-CHAIRMAN ERVIN DAVIS** informed **Mr. Morris** that the section that concerns MACO and the county treasurers has been stricken.

Questions From Committee Members:

**REPRESENTATIVE VICKI COCCHIARELLA** asked **Steve Brown** to comment on **REP. BOHARSKI'S** amendment concerning the PL-874 money. **Mr. Brown** said his answer doesn't matter. If the U.S. Department of Education says that **REP. BOHARSKI'S** amendments will illegally equalizes PL-874 payments, the federal government can refuse to make payments to school districts in Montana. This would not be a loss to the state's general fund but a loss directly to the Indian school districts that depend on the PL-874 payments. If this is something that **REP. BOHARSKI** wishes to pursue, **Mr. Brown** suggested that the issue could be addressed over the next 6 to 7 months. During the next Regular Session, the public policy issue could be debated assuming the U.S. Department of Education and Attorney General both say that **REP. BOHARSKI'S** concept would be permissible under PL-874.

Closing by Sponsor:

**REP. SCHYE** said this is the first time that he has ever introduced legislation that did not put more money into K-12. However, HB 62 is necessary. Does the education community want to cut the foundation program or does it want to find a different way of getting money? He would much rather there be no bill brought before the Education Committee that cuts the foundation program or HB 62. He chose the bill he felt to be least harmful to the students and education system in Montana.

He added that if the Committee and Legislature get into an argument over the PL-874 money, they will not have time to deal with it. The lawsuits are ongoing. HB 62 needs to be passed.

EXECUTIVE ACTION ON HB 62

**Motion:** REP. STANG moved HB 62 Do Pass.

**Motion:** REP. STANG moved REP. SCHYE'S amendments. (See Exhibit 2)

**Discussion:**

REP. SIMPKINS asked if amendment No. 1 was necessary. (See Exhibit 2) CHAIRMAN SCHYE said that amendment No. 1 was a concern of the school board. It provides for an emergency fund levy if an emergency should arise, such as a roof collapsing or a boiler blows up. CHAIRMAN SCHYE referred the question to Bruce Moerer. Mr. Moerer said when the old emergency budget laws were changed and budget amendments were adopted, under the old law, if there was an emergency and there was not enough money in reserves to pay for it, there was an automatic levy the next year to finish paying for the emergency. When a district does not have a way to pay for the budget amendment because it doesn't have enough in reserves, these amendments provide a way to solve the problem.

**Vote:** Motion to accept REP. SCHYE'S amendments CARRIED unanimously. (See Exhibit 2)

**Motion/Vote:** REP. STANG moved REP. SCHYE'S amendment No. 2 which strikes subsection 2 in its entirety. (See Exhibit 1) Motion CARRIED unanimously.

**Motion:** REP. SONNY HANSON moved REP. BOHARSKI'S amendments. (See Exhibit 3)

**Discussion:**

REP. DAILY asked REP. BOHARSKI if his amendments could include a severability clause that would deal with the PL-874 money. If it was found to be in violation of federal statutes, the section would be null and void. REP. BOHARSKI said this was an excellent suggestion.

REP. BENEDICT agreed. He said if the Committee didn't adopt REP. BOHARSKI'S amendments, it would create a loophole in the bill and leave many problems.

REP. GERVAIS said that the PL-874 funds have been discussed for two days. He felt that the Committee should follow the advise of Steve Brown to get an Attorney General's and the U.S. Department of Education's opinion. The issue could then be addressed in the 1993 Regular Session.

**Motion:** REP. GERVAIS made a substitute motion of Do Not Pass on REP. BOHARSKI'S amendments.

**Discussion:**

REP. SIMPKINS said that the opinion is that the PL-874 money is sent to school districts. It sits in limbo until the school board channels the money into an appropriate fund. Once the money is moved into the appropriate fund, the school district can use the money any way they so desire. If it is put into the district's general operating reserve, the money has been committed and may lose its identity as PL-874. He asked for Steve Brown's opinion of his scenario. Mr. Brown said that is the legal question of whether the money loses its identity by being handled or whether it can be segregated and separately identified as PL-874 money. The question is what the federal law allows because the reimbursement to the districts is to offset not being able to collect taxes from the federal lands in the district. REP. SIMPKINS asked if the distribution of PL-874 money can be accounted for once the school district has it. Lynda Brannon said no. Under current law, it is not a requirement of a school district.

CHAIRMAN SCHYE said the severability clause would only work if it were taken to court and the case was lost. There is still nothing to stop the federal government from not paying.

REP. BOHARSKI asked if it would be possible to write a severability clause that states "if subsection whatever is ruled unconstitutional by the U.S. Department of Education to be an invalid appropriation of PL-874 funds, that section is null and void"? Andrea Merrill, Staff Researcher, Legislative Council, said yes, but it wouldn't be called a severability clause. It would be a separate section that stated this.

REP. DAVIS asked if the PL-874 money was 100 percent of the tax dollars if the districts were to get the tax dollars instead of the PL-874 money. Ms. Brannon said no. REP. DAVIS said the PL-874 districts and impact schools are already losing tax dollars. This money is simply an amount that is less than 100 percent, in lieu of taxes, that these districts do not receive.

**Vote:** Motion that REP. BOHARSKI'S amendments Do Not Pass failed 7 to 12 on a roll call vote. (EXHIBIT 4)

**Motion:** REP. DAILY made a substitute motion that an amendment be drafted that states that if a section in HB 62 was found to be in violation of federal law that deals with PL-874 money, that section would become invalid.

**Discussion:**

**Ms. Merrill** said that there is no need for a severability clause with the passage of the **REP. SCHYE'S** amendments. If a severability clause is wanted with **REP. BOHARSKI'S** amendments, it could be done.

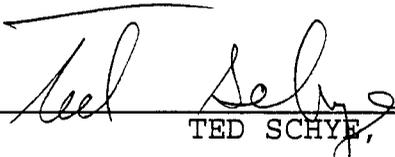
**REP. DAILY** withdrew his substitute motion for a severability clause.

**REP. HANSON** withdrew his Do Pass motion on **REP. BOHARSKI'S** amendments.

**Motion/Vote:** **REP. STANG** moved HB 62 Do Pass As Amended. Motion CARRIED 18 to 1 with **REP. SIMPKINS** voting no and **REP. CLARK** excused.

ADJOURNMENT

Adjournment: 2:00 p.m.

  
\_\_\_\_\_  
TED SCHYE, Chair

  
\_\_\_\_\_  
LOIS O'CONNOR, Secretary

TS/lao

HOUSE OF REPRESENTATIVES

EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL

DATE 7-15-92 BILL NO. \_\_\_\_\_ NUMBER \_\_\_\_\_

MOTION: \_\_\_\_\_

*Roll Call*

*Present Excused*

NAME	<del>YES</del>	<del>NO</del>
REP. TED SCHYE, CHAIRMAN	X	
REP. ERVIN DAVIS, VICE-CHAIRMAN	X	
REP. STEVE BENEDICT	X	
REP. ERNEST BERGSAGEL	X	
REP. ROBERT CLARK	<del>YES</del>	X
REP. VICKI COCCHIARELLA	X	
REP. FRED "FRITZ" DAILY	X	
REP. ALVIN ELLIS, JR.	X	
REP. GARY FELAND	X	
REP. GARY FORRESTER	X	
REP. FLOYD "BOB" GERVAIS	X	
REP. H. S. "SONNY" HANSON	X	
REP. DAN HARRINGTON	X	<del>YES</del>
REP. TOM KILPATRICK	X	
REP. BEA MCCARTHY	X	
REP. SCOTT MCCULLOCH	X	
REP. RICHARD SIMPKINS	X	
REP. BARRY "SPOOK" STANG	X	
REP. NORM WALLIN	X	
REP. DIANA WYATT	X	
TOTAL		

July 15, 1992

Page 1 of 2

Mr. Speaker: We, the committee on Education and Cultural Resources report that HB 62 (first reading copy -- white) do pass as amended.

Signed: \_\_\_\_\_  
Ted Schys, Chairman

And, that such amendments read:

1. Title, line 13.  
Following: "PERCENT;"  
Insert: "PROVIDING FOR AN EMERGENCY BUDGET AMENDMENT TAX LEVY;"
2. Page 2, line 11.  
Strike: "(1)"
3. Page 2, lines 21 through 25.  
Strike: subsection (2) in its entirety
4. Page 4, line 9.  
Following: "(5)"  
Strike: "The"  
Insert: "For fiscal year 1994 and subsequent fiscal years, the"
5. Page 4, lines 12 through 15.  
Following: "81-674"  
Strike: the remainder of line 12 through "year" on line 15.
6. Page 4, lines 16 and 17.  
Following: "received"  
Strike: the remainder of line 16 through "year" on line 17.
7. Page 4, line 25 through page 5, line 1.  
Following: "received"  
Strike: "in the current school fiscal year"
8. Page 5  
Following: line 4  
Insert: "(7) For fiscal year 1993, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the amounts identified

by a school district as one or more of the following:

- (a) any amount received under Public Law 81-874;
- (b) the unused balance of any amount received;
- (i) in settlement of tax payments protested in a prior school fiscal year;
- (ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and
- (iii) in delinquent taxes from a prior school fiscal year; or

(c) any amount received as a general bonus payment under 20-6-401."

9. Page 24

Following: line 15

Insert: "NEW SECTION. Section 11. Emergency budget amendment tax levy. When a budget amendment has been approved by the superintendent of public instruction under 20-9-151(2) and a district does not have sufficient funds, including insurance proceeds, to finance the budget amendment, the district may levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment."

Renumber: subsequent section

10. Page 25

Following: line 1

Insert: "(4) [Section 11 and this section] are effective on passage and approval."

Amendments to House Bill No. 62  
1st Reading Copy

Requested by Rep. Schye  
For the House Committee on Education

Prepared by Andrea Merrill  
July 15, 1992

EXHIBIT 1  
DATE 7-15-92  
HB 62  
*Special Session 2*

1. Page 2, line 11.  
Strike: "(1)"

2. Page 2, lines 21 through 25.  
Strike: subsection (2) in its entirety

EXHIBIT 2  
DATE 7-15-92  
HB 62  
*Special Session 2*

Amendments to House Bill No. 62  
First Reading Copy

For the House Committee on Education

Prepared by Andrea Merrill  
July 15, 1992

1. Title, line 13.  
Following: "PERCENT;"  
Insert: "PROVIDING FOR AN EMERGENCY BUDGET AMENDMENT TAX LEVY;"
2. Page 2, line 11.  
Strike: "(1)"
3. Page 2, lines 21 through 25.  
Strike: subsection (2) in its entirety
4. Page 4, line 9.  
Following: "(5)"  
Strike: "The"  
Insert: "For fiscal year 1994 and subsequent fiscal years, the"
5. Page 4, lines 12 through 15.  
Following: "81-874"  
Strike: the remainder of line 12 through "year" on line 15.
6. Page 4, lines 16 and 17.  
Following: "received"  
Strike: the remainder of line 16 through "year" on line 17.
7. Page 4, line 25 through page 5, line 1.  
Following: "received"  
Strike: "in the current school fiscal year"
8. Page 5  
Following: line 4  
Insert: "(7) For fiscal year 1993, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the amounts identified by a school district as one or more of the following:  
    (a) any amount received under Public Law 81-874;  
    (b) the unused balance of any amount received:  
        (i) in settlement of tax payments protested in a prior school fiscal year;  
        (ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and  
        (iii) in delinquent taxes from a prior school fiscal year; or  
    (c) any amount received as a general bonus payment under 20-6-401."

9. Page 24

Following: line 15

Insert: "NEW SECTION. Section 11. Emergency budget amendment tax levy. When a budget amendment has been approved by the superintendent of public instruction under 20-9-161(2) and a district does not have sufficient funds, including insurance proceeds, to finance the budget amendment, the district may levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment."

Renumber: subsequent section

10. Page 25

Following: line 1

Insert: "(4) [Section 11 and this section] are effective on passage and approval."

Amendments to House Bill No. 62  
1st Reading Copy

EXHIBIT 3  
DATE 7-15-92  
HB 62  
*Special Session 2*

Requested by Rep. Boharski  
For the House Committee on Education

Prepared by Andrea Merrill  
July 15, 1992

1. Title, line 13.  
Following: "PERCENT"  
Insert: ", WITH CERTAIN EXCEPTIONS"
2. Page 3, line 9.  
Following: "(5)"  
Strike: "and (6)"  
Insert: "through (7)"
3. Page 4, lines 13 through 15.  
Following: "year"  
Strike: remainder of line 13 through "year" on line 13
4. Page 5, line 5.  
Following: line 4  
Insert: "(7) A district that received Public Law 81-874 money in a prior year and must reduce its operating reserve to 10% in the manner provided for in this section for the ensuing school fiscal year may consider a percentage of the unreserved fund balance to be an excess reserve amount as provided for in subsection (5). To determine the percentage of the unreserved fund balance that may considered an excess reserve amount, the trustees shall calculate a ratio based on the average of the 3 previous year's ratio of total district general fund revenues to revenue received from Public Law 81-874."

EXHIBIT 4  
 DATE 7-15-92  
 HB 62  
*Special Session 2*

HOUSE OF REPRESENTATIVES  
 EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 7-15-92 BILL NO. \_\_\_\_\_ NUMBER \_\_\_\_\_

MOTION: \_\_\_\_\_  
 \_\_\_\_\_  
*DNP - Rep Boharski*  
*amendments*

NAME	AYE	NO
REP. TED SCHYE, CHAIRMAN	X	
REP. ERVIN DAVIS, VICE-CHAIRMAN	X	
REP. STEVE BENEDICT		X
REP. ERNEST BERGSAGEL		X
REP. ROBERT CLARK		
REP. VICKI COCCHIARELLA	X	
REP. FRED "FRITZ" DAILY	<del>X</del>	X
REP. ALVIN ELLIS, JR.		X
REP. GARY FELAND		X
REP. GARY FORRESTER		X
REP. FLOYD "BOB" GERVAIS	X	
REP. H. S. "SONNY" HANSON		X
REP. DAN HARRINGTON	X	
REP. TOM KILPATRICK	X	
REP. BEA MCCARTHY		X
REP. SCOTT MCCULLOCH		X
REP. RICHARD SIMPKINS		X
REP. BARRY "SPOOK" STANG		X
REP. NORM WALLIN		X
REP. DIANA WYATT	X	
TOTAL	7	12

