

MINUTES OF THE MEETING OF THE HOUSE EDUCATION COMMITTEE
January 26, 1981

The Education Committee met at 12:30 p.m. on January 26, 1981, in Room 129 of the State Capitol, with Chairman Ralph Eudaily presiding and all members present.

Chairman Eudaily opened the meeting to a hearing on the following bills: House Bills 276 and 298.

HOUSE BILL 276

REPRESENTATIVE CARL A. SEIFERT, District 26, chief sponsor, said HB 276 essentially allows bargaining units comprised of teachers to choose one of two methods of achieving employment security or tenure. The teachers of a school district may either select to bargain some kind of employment security into their collective bargaining agreement or they may opt to forgo collective bargaining and thus remain covered by the tenure statutes. Currently teachers have the advantage of being covered by both. A copy of his testimony is EXHIBIT 1 and part of the minutes.

DUANE JOHNSON, Montana School Boards Association, spoke in support saying he concurred in the comments made by Rep. Seifert. He felt the teachers should have tenure or collective bargaining but not both. He said a number of districts have provisions in their labor agreements that exceed the tenure agreements. He felt the bill was written in such a way it would not leave any teacher without employment protection of some kind.

J.D. LYNCH, Montana Federation of Teachers, said they oppose the bill as they didn't feel tenure was a negotiable item and should not be included in any kind of contract. He felt collective bargaining was being used as a smoke screen. The law is adequate as is.

DAVID SEXTON, Montana Education Association, spoke in opposition. He said there is a legal question - question about the contract between the teacher and the state of Montana. He said the courts have ruled that tenure is a property right to which a teacher is entitled. He questioned what effect this bill would have on that and what kind of litigation could result. He said since most of the teachers (80 to 90%) are covered by collective bargaining agreements, and since most collective agreements do not contain a job security provision, this bill will cause many teachers to have no protection. He felt the bill would need a transition phase of some kind and he suggested that it be so amended. A copy of his suggested amendment is EXHIBIT 2 and part of the minutes.

Rep. Seifert closed and a copy of his closing statement is EXHIBIT 3 and part of the minutes.

Questions were asked by the committee. Rep. Vincent asked of Mr. Johnson why there was no clarification clause - the bill takes away something that has previously been granted. Mr. Johnson said there is no intent in the bill, implied or otherwise, to take away tenure that has been. Rep. Vincent then asked if this then only affects teachers who have not yet received tenure and Mr. Johnson replied "yes." Rep. Vincent asked if Rep. Seifert had proof for his claim that a definite relationship exists between the quality of the teacher and the existence or nonexistence of tenure. Rep. Seifert said he did not have facts available but administrations in some of our school districts are tied to the point of holding on to some unqualified teachers due to litigation problems. Rep. Hannah asked why teachers should have this dual protective system since other employees do not. Mr. Sexton replied that most collective bargaining agreements for teachers do not include an employment security clause. He said if the bill passes they would work very hard to include one. He said as he reads the bill it does away with tenure as it now exists. He said teachers have had tenure since 1913 to give them academic freedom from the whims of the public school boards while collective bargaining for teachers came about in 1975. Rep. Yardley asked if the school board would have any incentive to negotiate job security in -- are school boards being given a sledge hammer. Mr. Johnson said the school boards are ready to make the transition as they are bargaining with teacher units now. He didn't feel it would be a problem. Rep. Williams questioned how this might affect teachers ready for retirement. Chairman Eudaily asked Rep. Seifert if he had considered a clarifying clause. Rep. Seifert said he hadn't but he would be glad to look into it.

HOUSE BILL 298

REPRESENTATIVE MELVIN UNDERDAL, District 12, chief sponsor, said this bill would require a school census be taken every other year. EXHIBIT 4 of the minutes lists his reasons why he feels this is necessary. EXHIBIT 5 is a copy of his suggested amendments which changes the responsibility from the trustees of each elementary school district to the county superintendent of schools.

GLEN DRAKE, County Superintendents Association, spoke in support. He said this was required until a short while ago and he felt it was a mistake to stop requiring it. He apologized for the amendments. He said upon soliciting comments from other school organizations everyone they talked to wanted the responsibility placed with the county superintendents. He said there would have been more superintendents testifying for the bill but he had passed along some wrong information that it wasn't being heard today.

NELLIE SHERMAN, Pondera County Superintendent of Schools, spoke in support. A copy of the facts she presented is EXHIBIT 6 of the minutes.

MARGARET BROWN, Gallatin County Superintendent of Schools, spoke in support. She read a letter from Jackie Stonnell, Nursing Director of Gallatin County, supporting the bill. A copy of this letter is EXHIBIT 7 of the minutes. She said the census will help them know how many kindergarteners there will be. It is a definite help in planning for the future - she cited the district that includes Big Sky - that district had to take an emergency budget three years in a row. A lot of people come in late in the year and unless it is documented the state department won't accept it. If it is documented they can get an anticipated ANB and increase the foundation payment. She said the census will also contain information valuable to the county health officer; a source of names for their 18 year-olds Citizens' Day; authentic records for social security; helps to find children not attending schools; helps to establish school district boundaries; welfare information; for foster home information.

HARRY ERICKSON, Belgrade, County Superintendent of Schools, said he rises in support of the bill. He said as it now is they do not have valid statistics on which to base staff programs or physical plant expectations for succeeding years. He said on that point alone this bill would be worth its money.

There were no opponents.

Rep. Underdal closed. He said it makes sense to know where we are at in the school system. He felt it was a good bill and recommended a do pass.

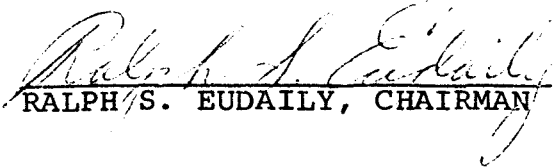
Questions were asked by the committee. Rep. Azzara asked when the census was deleted. Mrs. Brown responded when the Interest and Income way of apportioning funds ceased. Rep. Azzara asked what planning has been done since the census was deleted. Mrs. Brown said each district goes on its best guess. Rep. Hannah said he agreed on the need for a record but felt this bill was too inclusive. Rep. Williams said the idea is valid but how will it be paid for and what will the cost be. Mrs. Sherman said the cost is about \$20,000 statewide per census and this would be every other year for the 200,000 students of the state of Montana. Rep. Dussault pointed out section (d) and mentioned the Boulder River School residents are not members of that school district but the school district from where they have come. Rep. Hanson said he had heard the census was inaccurate as they employed people who were not capable. Mrs. Brown said the last 15 years are more accurate than in the 1910 area. Rep. Vincent asked if the present law prohibits the taking of the school census now. Mr. Drake said if you are not mandated for something you use the money for something you are mandated for. Rep. Anderson asked Mr. Erickson how

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they get their needed information now. Mr. Erickson said they use Montana Power hookups, telephone hookups, surveys, tour the area, etc. He said they did a kindergarten survey this past year and from existing and past data they have a 11 to 12 percent increase in the past years. He said they are not totally in the dark but this bill would help.

Rep. Lory moved to adjourn. Meeting adjourned at 2:30 p.m.

Respectfully submitted,


RALPH S. EUDAILY, CHAIRMAN

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TESTIMONY ON HB 276

This Bill has the potential for tremendous improvement in the instructional process for students of Montana schools

HB 276 essentially allows bargaining units comprised of teachers to choose one of two methods of achieving employment security or tenure. The teachers of a school district may either select to bargain some kind of employment security into their collective bargaining agreement or they may opt to forgo collective bargaining and thus remain covered by the tenure statutes. Currently teachers have the advantage of being covered by both.

HB 276

The bill contains the following provisions:

1. That tenure statutes will not apply when the teachers of that unit are engaged in collective bargaining.
2. That individual contract periods for teachers under a collective bargaining agreement do not accrue for tenure purposes.
3. That the provisions of the bill do not become effective until 90 days after the expiration of their current collective bargaining agreement thus allowing them 90 days to bargain an employment security clause into any subsequent agreement.

The reasons for this change in the law are as follows:

1. *The present system of statutorily providing employment security is not compatible with collective bargaining.*

Obviously, if something is provided by law it does not have to be bargained. Every legislative session the teacher unions attempt to enlarge the tenure statutes, to shorten or eliminate the probationary period or to provide for fewer reasons for dismissal of teachers. They sponsor this legislation with good reason. If they can get something from the legislature they will not have to give up something at the bargaining table to obtain it.

2. *Statutory guarantees dilute the employers bargaining position.*

Such laws actually take away chips from the employer's pile and transfer them to the employees. There always hangs over the bargaining process the idea that "if you don't give it to us we will get it from the legislature." There are 3 main issues in collective bargaining: wages, working conditions, and employment security. If one of those is provided by the legislature more pressure may be exerted by the union on the other two.

3. *Laws are applicable statewide and do not provide for local differences and needs.*

While the present tenure statutes are not a great problem in some of the larger school districts they present real problems in some of the smaller districts. For example, a small district with few nontenure teachers may find itself in the difficult position of having to replace a teacher who teaches 3 periods of math and 2 periods of English. Since the present law does not provide for staff adjustments based on bona fide curriculum adjustments among tenured teachers, then the district is stuck with finding someone who can teach such odd combinations. Problems such as this are partially responsible for the widespread negative feeling that many people have for tenure.

If these issues were bargained then the school districts and teachers could bargain for the kind of tenure or other employment security which best fits the local situation.

4. *Many teacher units and school boards have already included some kind of employment security in their collective bargaining agreements.*

16 of 17 Class 1 school districts and 36 of 107 2nd class districts already have some kind of employment security in their agreements.

Opportunity To Close

Montana Education Association
January 26, 1981

PROPOSED AMENDMENT TO HB 276

Add the following language:

(4) The provisions of subsections (1) and (2) apply to any school district and its trustees and teachers 90 days from the expiration of any current collective bargaining agreement between such trustees and teachers, provided that any successor collective bargaining agreements contain provisions ensuring that termination of a teacher's employment shall be for just cause only and that such termination shall be subject to a grievance procedure culminating in final and binding arbitration by a neutral third party.



The Big Sky Country

Ex 3

My Closing Remarks will answer Concerns of Both
MONTANA STATE HOUSE OF REPRESENTATIVES

J. D. Lynch Mont Sec of Teacher Looking out
Dan Easton MEA ? What's about Tenure
The Bills well written

Rep. Carl A. Seifert
Route 1, Box 45-B
Polson, Montana 59860

Committees:
Judicial,
Labor,
Public Health

In closing I would like to point out that the public has been turning down voted mill levies because of the poor quality of education that is being turned out of some of our public schools.

Section 8 of the new constitution provides that the supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

I feel that this is definitely a step in the right direction in terms of balancing the power of tenure and collective bargaining. The two in combination form a stranglehold on the functioning of the school and give a tremendous advantage to the teacher organization.

This kind of action is not an attempt to do anything that would disrupt the relationship with a teacher who is carrying out their obligations and doing a good job of teaching.

I think essentially it moderates the balance so that the public and the teacher have an effective working relationship.

No other group of employees - State, federal, or private has such job protection.

Presently any tenured teacher who is dismissed, even though the District Board of Trustees has well documented reasons, can involve the District in legal litigation for 4-5 years, resulting in legal fees of tremendous amounts \$20,000 - \$50,000.

If MEA insists on state protected job security, then they should be limited to negotiation only on salaries. Presently they feel that everything is negotiable.

Situations where a good teacher was dismissed for poor reasons (personal revenge, desire by the Board to save money, etc) are limited, but probably would occur if no tenure. However, one bad teacher - kept because the Board of Trustees fears litigation can ruin 20-30 students per year. Who should be protected-- teachers or students. The answer is obvious. Schools exist for students, not teachers.

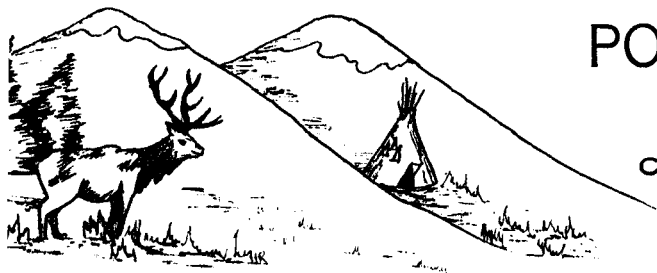
HOUSE BILL #298 - School Census Collecting - Rep.Underdal

- * The resulting information is useful to a number of agencies and concerns, therefore making the information valuable to various people.
- * The data is paramount in projecting pupil enrollments and anticipating budget needs.
- * The two year interval between the collecting of data insures up-to-date information.
- * The cost of the implementation of such a program is not overly excessive. The source of the funds is a question that needs to be answered.
- * As an alternative, the census could be administered by the county superintendent, with adequate financial support. This process would provide for a uniform census process throughout the state. Their lines of communication are already established.

Ex. 5

Amendments to HB 298

1. Page 1, lines 11 and 12.
Strike: "trustees of each elementary school district"
Insert: "county superintendent of schools of each county"
2. Page 1, line 16.
Strike: "trustees"
Insert: "county superintendent"
3. Page 3, line 21.
Following: line 20
Strike: "supplied by the county superintendent and"
4. Page 3, line 23.
Strike: "district"
Insert: "county superintendent"
5. Page 3, line 24.
Following: "submit"
Strike: "its"
Insert: "the"
6. Page 4, line 12.
Following: line 11
Strike: "receives"
Insert: "completes"
Following: line 12
Strike: "from a district as prescribed by [section 7]"
Following: "shall"
Strike: ":"
Following: line 13
Strike: "(a)"
7. Page 4, line 16.
Following: line 15
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections accordingly
8. Page 4, line 25.
Following: line 24
Strike: subsection (b) in its entirety
9. Page 5, line 5.
Strike: subsection (1) in its entirety
Renumber: all subsequent subsections
10. Page 5, line 18.
Strike: section 8 in its entirety

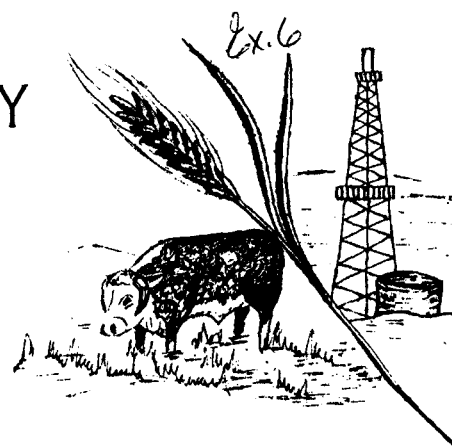


PONDERA COUNTY

20 4TH AVENUE S.W.

CONRAD, MONTANA 59425

January, 1981



TO WHOM IT MAY CONCERN:

With reference to proposed legislative action on reinstating the school census laws, these facts are of extreme importance to show the necessity of having an annual school census.

1. Planning for future kindergarten and school enrollments is facilitated by school census records.
2. Budgeting for future enrollments is inaccurate and difficult without this annual census.
3. School census records are of vital importance in obtaining birth certificates, SOCIAL SECURITY, pensions, passports, and drivers licences.
4. Truant officer and Sheriff officers use these records frequently to determine legal age.
5. Welfare and Social Services often use these records regarding legal guardians.
6. School records are often consulted for voter registration purposes.

Thank you for your consideration.

Yours truly,

Nellie Sherman

Nellie Sherman
County Supt. of Schools

NS:ss

Ex. 7



State of Montana
COUNTY OF GALLATIN

◆
Bozeman
January 26, 1981

Education Committee
Legislature
Helena, MT 59601

Dear Education Committee:

I am writing in support of HB 298 or the reinstatement of school census.

A current census is very important for the schools to use in anticipation of future needs. In my 15 years experience as a community Health Nurse, I have seen a great change in the population and families are much more transient. Without a current and fairly accurate census, how can school districts plan?

The community health nurses have found the census to be a valuable resource for our department and urge you to support this bill.

Sincerely,

A handwritten signature in cursive script that reads "Jackie Stonnell".

Jackie Stonnell, RN
Nursing Director

JS:gh