

HOUSE EDUCATION COMMITTEE MINUTES  
February 4, 1981

The House Education Committee convened at 12:30 p.m., on February 4, 1981, in Room 129 of the State Capitol, with Chairman Eudaily presiding and all members present except Rep. Teague who was excused, and Rep. Kennerly who was absent.

Chairman Eudaily opened the meeting to a hearing on HB 404.

HOUSE BILL 404

REPRESENTATIVE MICHAEL KEEDY, District 18, chief sponsor, said this bill removes the qualification that a person must be a citizen of the United States to be certified as a teacher in Montana. He said one of the reasons for introducing the bill was that it raises a constitutional question under Article 2, section 4 of the Montana Constitution. It says that no person is to be denied the equal protection of the law. He said the law as it is presents some very real discriminatory problems. As a practical matter he didn't see any connection with nationality and the ability to teach. Certification standards are based on education and training to determine who is qualified to teach. He felt current law tends to set the teaching profession apart. He said he couldn't think of any other profession which can or should require citizenship as a qualification. Finally, he thought the current law has the effect, even if only occasionally, of denying the Montana children a chance to have excellent teachers. A person may not be a citizen by choice but be a permanent resident and potentially the best possible choice to teach a foreign language. That kind of opportunity would be lost. He stressed the importance of a foreign language and said we face something of a crisis in that area and this could help remove one additional small impediment in the way of solving that problem. Couple of small technicalities: the oath requirement would be removed. It would be inconsistent if you remove the citizenship requirement and not remove the oath. He said this was an oversight on the draftsman's part.

There were no opponents. Rep. Keedy closed.

Questions were asked by the committee. Rep. O'Hara asked if under existing law they can't teach. Rep. Keedy said somebody on the exchange basis can teach with a provisional certificate.

Rep. Lory said the oath was declared unconstitutional in 1972 in Missoula and should have been taken out when we recodified. Rep. O'Hara asked how many people would this effect. Rep. Keedy said a relatively small number. He said the law caught him by surprise when it was brought to his attention.

Chairman Eudaily closed the hearing and opened the meeting to a consideration of the following bills:

EXECUTIVE SESSION

HOUSE BILL 272 - Rep. Anderson explained the amendments which are EXHIBIT 1 and attached to the minutes. Rep. Lory moved the amendments:

be adopted and this motion passed unanimously with those present (absent were Reps. Kennerly and Teague). Rep. Williams moved DO PASS AS AMENDED and this motion carried unanimously with those present. Absent were the same as the above vote.

Chairman Eudaily appointed a subcommittee to study HBs 276, 400 and 401 - the tenure bills. This subcommittee will be: Reps. Donaldson, Chairperson, Vincent, Hanson and Yardley.

HOUSE BILL 347 - Rep. Williams said he would like to get a legal understanding from OPI as to whether this is unconstitutional. He felt through the using of 2 hours which this bill would raise to five we are supporting religious instruction through the foundation program.

Rep. Andreason felt the provisions of this bill supporting religious education is worthwhile - it would free teachers at certain times to better serve other students. It would take a load off the schools rather than put a load on them. Several states have it such as Idaho, Utah, Arizona. He didn't feel there was anything unconstitutional about it.

Rep. Vincent said there was some confusion as to how to interpret the five hours. Some confusion as to how ANB money is calculated. As long as the student is in school for over half the day the ANB money is counted. The number of hours isn't as important as we might think as far as application for ANB money.

Rep. Kitselman said since the school has only 6 hours a day these extracurricular activities should be outside normal school hours.

Rep. Andreason said it is true it is not an extracurricular activity but an elective. There are several reasons for having it during the regular school day like bus schedules. He said this won't take place overnight but will take years. Makes sense to put the facility within the general constraints of the school day in order to hire the instructor for those programs. There is a need to have set times and a full instructional program completely flexible around the hours of the school. The school doesn't have to reschedule.

Rep. Williams moved DO NOT PASS.

Rep. Azzara asked where the law provides for a definition of qualified religion that can be provided and what will prevent abuses. Rep. Vincent said he felt the school board would have the opportunity to make the decision.

Rep. Azzara asked if this could put the school board in a position for law suits. Rep. Vincent said possibly but unlikely.

Rep. Andreason reminded the committee this concept was not new, it was just expanding on it.

Rep. Dussault said she was in favor of the motion. She said it is clear what we are doing. We are extending the hours and making it more convenient for religious groups to establish religious educational programs. We are doing this in a number of ways. They will have access to transportation. Not the responsibility of the state to do that, particularly when parochial education is optional. After school and on week-ends they could have religious education. Bad policy. Serious constitutional issues.

Rep. Williams said there is another important factor. You will note the school teachers association testified against. Mr. Buchanan testified against it. Those who testified are residents of the area. He felt the bill was going the wrong direction.

Rep. O'Hara said he didn't see anything wrong with that. Whole family can't afford to go to a parochial school. Not going to interfere with classroom time. Anything that can help combat the drug problems has to have merit.

Rep. Dussault said the assumption is that this is going to be done during a study hall. Five hours in any week and it does not say it is going to be done in a study hall. We are assuming the model established in other areas will be established here. The bill does not say that.

Rep. Andreason said it is a totally permissive program. Schools do not have to set it. Don't think it will be that much of a burden on the schools that do.

Rep. Vincent said he didn't want the impression left that hundreds of kids would be leaving school if this passes. He didn't feel this would be the case. He said as a teacher of junior and senior high kids he felt the number leaving his class for this reason will be a drop in the bucket compared to those leaving for other reasons.

Rep. Williams said extracurricular activities are accepted as part of our educational activity.

Rep. Vincent said as a teacher he does see the need for this statute.

Chairman Eudaily said he didn't feel there was any immediate need - sometime down the road perhaps. He questioned the need to raise the release time from 2 to 5 hours.

Rep. Andreason said in order for the programs to be established they won't spring up overnight. What he was alluding to is these wouldn't spring up everywhere all over the place. We need the five hours to have a full instructional program and to hire an instructor.

Question was called and the motion carried with 7 voting for and six against (Andreason, Hannah, Meyer, O'Hara, Vincent, Anderson) and one pass (Azzara) and three absent (Donaldson, Kennerly and Teague).

Rep. Lory suggested a check be made on the oath requirement for teachers.

Rep. Williams made a motion to have a ruling made on the constitutionality of the past bill HB 347.

Rep. Andreason said it was unfortunate to have the bill killed on such a narrow margin without hearing the amendments.

Rep. Yardley moved to reconsider action on HB 347. The motion carried. Rep. Andreason presented the amendments which are EXHIBIT 2 of the minutes and discussed them. He felt this would take care of the major objections to the bill.

Rep. Dussault questioned whether the state can waive their responsibility for liability. And, she said the first amendment is of little or no value unless they choose to do so.

Upon being asked Mr. Lee Heiman, staff researcher, said insurance companies would get together to be sure there is coverage and intent at the time. What it does is provide where the liability comes from. It will be done through an insurance company and is not a waiver of liability.

Rep. Yardley said the school can't waive their liability. Chairman Eudaily said when a student leaves home, during school and until he returns to his home the school is liable.

Rep. Williams said it would create more confusion for administrators and he opposed both amendments.

Rep. Hanson asked what happens with the attendance records. Rep. Andreason said this is to maintain accountability of the students.

Rep. Williams moved a substitute motion of BE NOT ADOPTED on the amendments and this motion carried with 8 voting for, 5 opposing (Andreason, O'Hara, Vincent, Yardley, and Anderson) and one pass (Azzara) and three absent (Donaldson, Teague and Kennerly).

Rep. Williams moved DO NOT PASS and this motion carried with 8 voting for, 5 opposed (Andreason, Hannah, O'Hara, Vincent, Anderson), 1 pass (Azzara) and 3 absent (Donaldson, Teague and Kennerly).

HOUSE BILL 365 - Rep. Lory moved DO NOT PASS. Rep. Hannah felt there could be potential merit to the bill. He felt smaller districts might make use of this. Rep. Kitselman said once you have voted out you can't come back in. Rep. Lory said one teacher could throw the district into an election. The question was called and the motion passed unanimously with those present. Absent were Reps. Donaldson, Teague, Kennerly.

HOUSE BILL 367 - Rep. Dussault said the bill needs a lot of work. She said she would like a straw vote taken to see if the committee was

interested enough in the bill to warrant the work.

Rep. Williams questioned the need of the bill - what has occurred to warrant the bill. Chairman Eudaily mentioned the Indian Studies. He asked concerning subsection 2: problem with intent on specific funds created. He said school districts are reluctant to set up special funds. Who makes the final determination on cost. Rep. Dussault said subsection 3 on page 2 gives the Board of Trustees the full right and it serves as a determining body.

Rep. Andreason moved that Rep. Dussault be instructed to check into this further. The committee agreed and she was so instructed.

Rep. Dussault said there was coop program subcommittee background work needed and she would try to get the subcommittee together later.

Rep. Hanson moved the meeting adjourn. The meeting adjourned at 2 p.m.

Respectfully submitted,

  
\_\_\_\_\_  
RALPH S. EUDAILY, Chairman

eas

SUGGESTED AMENDMENTS TO HOUSE BILL 272, introduced copy.

1. Title, line 7.

Following: "20-4-302,"

Insert: "20-4-402,"

2. Page 2, lines 10 through 12.

Following: "action"

Insert: "."

Strike: balance of subsection

3. Page 2.

Following: line 21

Insert: "Section 2. Section 20-4-402, MCA, is amended to read:

**" 20-4-402. Duties of district superintendent or county high school principal.** The district superintendent or county high school principal shall be the executive officer of the trustees and, subject to the direction and control of the trustees, he shall:

(1) have general supervision of all schools of the district and the personnel employed by the district;

(2) implement and administer the policies of the trustees of the district;

(3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;

(4) select all textbooks and submit such selections to the trustees for their approval in accordance with the provisions of 20-7-602;

(5) select all reference and library books and submit such selections to the trustees for their approval in accordance with provisions of 20-7-204;

(6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of this title, and have the authority to suspend for good cause any pupil of the district ~~until the trustees may consider such suspension;~~

(7) report the cumulative pupil attendance and pupil absence of the district and any other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent or county superintendents when reporting for a joint district, immediately after the conclusion of the school instructional year and before July 10; and

(8) perform any other duties in connection with the district as the trustees may prescribe."

Renumber: subsequent sections

4. Page 3, lines 9 and 10.

Following: "employed"

Insert: "."

Strike: balance of the subsection

AMENDMENTS TO HOUSE BILL 347

1. Page 1

Following: Line 20

Insert: "(2) The provider of religious instruction shall maintain weekly attendance records and shall make them available to the school each students attends.

(3) The trustees shall specify requirements on liability involving students on released time and before a student may be released for religious instruction either the students' parents or the provider of religious instruction must meet the requirements."

Renumber: subsequent subsections