

MINUTES OF THE MEETING
EDUCATION AND CULTURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 4, 1983

The meeting of the Senate Education and Cultural Resources Committee was called to order by Chairman Bob Brown on March 4, 1983, at 1:00 p.m. in Room 442, State Capitol.

ROLL CALL: All members were present except Senator McCallum who was excused.

HOUSE JOINT RESOLUTION 6: Representative Kitselman, District 60, sponsor of the resolution, stated it is the result of an interim study on business. He said the bill encourages courses in economic education as it relates to the economic development of the state and community. He said many students can't even balance their checkbooks and need to have more exposure to courses which teach them basic money management and the interrelation between labor, business and government and how that interrelation affects the economy.

PROPOSERS

Dave Hess, representing the Billings Chamber of Commerce, stated economic development is a very important field in this day and age and a knowledge of economics a most important educational tool for people at all job levels. He stressed a sound economic background is essential both in the job market and business.

There were no opponents to the bill.

ACTION ON HOUSE JOINT RESOLUTION 6: Senator Severson moved HJR 6 BE CONCURRED IN. The motion carried unanimously with Senators Haffey, McCallum and Blaylock absent.

HOUSE BILL 653: Representative Sands, District 68, said the bill and also HB 657 are housekeeping bills submitted at the request of the Office of Public Instruction. He said House Bill 653 states a high school student would have to have permission from both the in district and out of district trustees and Superintendent to attend school out of his home district of residence but in the same county. Outside the county, the county superintendent is the approval agent.

The bill also clarifies the retirement fund transfer.

There were no proponents or opponents to the bill.

HOUSE BILL 657: Representative Sands, District 68, stated the bill removes the necessity for teachers to maintain three separate certificates. A teacher who is in an administrative or advisory position currently has to maintain three certifications; if the bill passes, he would only have to maintain one.

PROPOSERS

John Voorhies, Certification and Teacher Education Director, Office of Public Instruction, stated the bill is strictly a housekeeping measure which would require a teacher to only have to maintain one certification. He urged the committee to support the bill.

There being no further proponents and no opponents, the hearing was closed.

EXECUTIVE SESSION

HOUSE BILL 653: Senator Mazurek expressed some concern about who or how many parties must agree to the out of district placement. He asked to have Bob Stockton attend the next meeting for clarification.

ACTION ON HOUSE BILL 657: Senator Berg moved House Bill 657 BE CONCURRED IN. The motion carried unanimously with Senators McCallum and Elliott absent.

ACTION ON HOUSE BILL 457: Senator Mazurek moved the amendments as per the attached committee report (exhibit #1).

Senator Mazurek moved HB 457 BE CONCURRED IN. The motion carried unanimously with Senators McCallum and Elliott absent.

ACTION ON HOUSE BILL 166: Chip Erdmann, representing the Montana School Boards Association, gave the committee an Attorney General's opinion (exhibit #2) concerning provisions addressed in the bill.

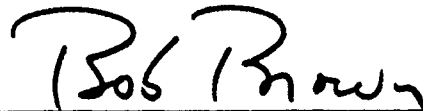
Senator Mazurek moved the amendments as per the attached committee report (exhibit #3). The motion carried unanimously with Senator McCallum absent.

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Senator Elliott moved House Bill 166 BE CONCURRED IN AS AMENDED.
The motion carried unanimously with Senator McCallum absent.

HOUSE BILL 192: Letters from Chip Erdmann, Montana School Boards Association, and Dave Sexton, Montana Education Association, were given to the committee regarding the proposed amendments (exhibits #3 and #4). The committee took no action on the bills at present.

ADJOURN: There being no further business, the committee adjourned.

A handwritten signature in cursive script that reads "Bob Brown". The signature is written in dark ink and is positioned above a horizontal line.

Senator Bob Brown, Chairman

jdr

ROLL CALL

EDUCATION AND CULTURAL RESOURCES

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 3/4/83

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Bob Brown, Chairman</u>	X		
<u>Senator Ed Smith, V. Chairman</u>	X		
<u>Senator Roger Elliott</u>	X		
<u>Senator Delwyn Gage</u>	X		
<u>Senator George McCallum</u>			X
<u>Senator Elmer Severson</u>	X		
<u>Senator Harry Berg</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Jack Haffey</u>	X		
<u>Senator Joseph Mazurek</u>	X		

TO: The Senate Committee on Education and Cultural Resources

FROM: Lee Heiman, Committee Counsel

DATE: March 4, 1983

RE: Summaries of House Bills 653, 657, and 746, and House Joint Resolution 6.

House Bill 653 (Sands). Clarifies provisions relating to high school tuition by differentiating between in- and out-of-county tuition approval and rates.

House Bill 657 (Sands). Provides that an administrative and supervisory certificate may be issued to a person who is eligible for a teacher's certificate (rather than holding one) for teaching in the school in which he would be an administrator or supervisor.

House Bill 746 (Darko). Provides for establishing, after an election, community college service regions that comprise a local government unit or school district that is not within a community college district. Provides for the service to be provided to the region by the community college and for funding such services. Bill also changes annexation to a community college district by requiring the annexed school district area to be in a county contiguous with the community college district. Allows some discretion in the community college district trustees regarding the annexation.

House Joint Resolution 6 (Kitselman). Encourages the Superintendent of Public Instruction to develop and expand economics programs in high schools, colleges, and universities.

March 4, 1983

Education & Cultural Resources

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

NAME: Dave Goss DATE: 3/9/93

ADDRESS: Billings, MT

PHONE: 245-4111

REPRESENTING WHOM? Billings Chamber of Commerce

APPEARING ON WHICH PROPOSAL: HSR 4

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

March 4,

19 83

MR. PRESIDENT

We, your committee on EDUCATION AND CULTURAL RESOURCES

having had under consideration HOUSE JOINT RESOLUTION Bill No. 6

Kitseiman (McCallum)

Respectfully report as follows: That HOUSE JOINT RESOLUTION Bill No. 6

BE CONCURRED IN

~~XXXXXX~~

NAME: John R Voorhis

DATE: 3/4/83

ADDRESS: 4432 RED FOX

PHONE: 449-3150

REPRESENTING WHOM? OPI

APPEARING ON WHICH PROPOSAL: HB 657

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: This bill is a house keeping
bill that will do two things:

- 1) allow an administrator to only pay
for one certificate rather than two
- 2) Reduce the work in OPI for the
additional certificate.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

March 4, 1983

MR. **PRESIDENT**

We, your committee on **EDUCATION AND CULTURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **657**

Sands (Gage)

Respectfully report as follows: That **HOUSE** Bill No. **657**

BE CONCURRED IN
DECEASE

h.c.

3/4/83

STANDING COMMITTEE REPORT

March 4, 1983

MR. **PRESIDENT**

We, your committee on **EDUCATION AND CULTURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **457**

Eudaily (Berg)

Respectfully report as follows: That **HOUSE** Bill No. **457**

third reading copy, be amended as follows:

1. Page 2.

Following: line 6

Insert: **"NEW SECTION. Section 2. Coordination. If House Bill 99 is passed by the 48th Legislature and approved the following further amendments are made in section 1:**

(1) in the amended language of the last sentence following "school year by", "1/90th" is replaced with "an amount equivalent to 2 days of such aid"; and

(2) in the amended language of the last sentence following "school day less than", "180" is replaced with "the required number of"."

And, as so amended, **BE CONCURRED IN**
XXXXXX

3/4/82

ABC/aw

10 September 1981

Robert L. Deschamps, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion on the following question:

Does section 20-9-204(3), MCA, require a school district to let a contract for a project which costs more than \$4,000 if a portion of the \$4,000 cost includes salaries of district employees?

Section 20-9-204(3), MCA provides:

Whenever the estimated cost of any building, furnishing, repairing or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$4,000, the work done or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void.

That section requires the district to estimate the cost of any building, furnishing, repairing or other work it desires to be done. The components of the cost will vary with the type of project. If it is the purchase of furnishings, the labor costs will probably be nil. If it involves construction, then labor costs will be significant.

Thus, as a district lists the estimated costs for a construction project it will allocate thereto the salaries of the district personnel who would do the work if it were to

Robert L. Deschamps, Esq.

Page 2

10 September 1981

be done by the district. If all those totaled costs, including salaries, are over \$4,000 then 20-9-204(3) requires the work to be done pursuant to contract let to the lowest responsible bidder.

A successful bidder may have higher or lower labor costs than those estimated by the district, and almost certainly will use his own personnel. That, however, is not the issue. The crucial point is that 20-9-204(3), MCA, requires a cost estimation and personnel salaries would be part of that estimation.

Very truly yours,

MIKE GREELY
Attorney General

STANDING COMMITTEE REPORT

March 4, 1983

MR. **PRESIDENT**

We, your committee on **EDUCATION AND CULTURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **166**

Miller (Elliott)

Respectfully report as follows: That **HOUSE** Bill No. **166**

third reading copy, be amended as follows:

1. Title, line 6.

Strike: "FORMAL"

Strike: "CLARIFYING THE BIDDING"

2. Title, line 7.

Strike: "REQUIREMENTS; AND"

XXXXXX

PC

3. Page 3.

Following: line 3

Strike: lines 4 through 23

Insert: "(3) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$7,500, the work done or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void.

(4) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids."

4. Page 3, line 24.

Following: line 23

Strike: "(D)"

Insert: "(5)"

And, as so amended, BE CONCURRED IN,

(5) The trustees of any district may not knowingly employ or continue to employ a teacher who is under contract, for the same contract period, to teach in another Montana school district unless:

(a) the teacher has received a written release from the trustees of the district holding the contract; or (b) the teacher notifies or has notified the district holding the contract of his resignation no later than 30 days prior to the opening day of school; or (c) there exists good cause beyond the personal control of the teacher.

Section 2. Section 20-4-110, MCA is amended to read:

20-4-110. Suspension, revocation, and denial — appeals. (1) The board of public education shall have the power and authority to suspend or revoke the teacher or specialist certificate of any person for any of the following reasons:

(a) making any statement of material fact in the application for a certificate which the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher or specialist certificate to such person if it had been known at the time such certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction in this state or any other state or country of a criminal offense involving moral turpitude;

ete — ~~(f) substantial and material nonperformance of the employment contract between the teacher or specialist and the trustees of a district without good cause or the written consent of the trustees; or~~

~~(g)~~ ^(f) denial, revocation, suspension, or surrender of a teacher or specialist certificate in another state for any reason constituting grounds for such action in this state.

(2) The board shall initiate proceedings under this section if, and only if, a request for the suspension or revocation of the teacher or specialist certificate of any person is made to it by:

(a) the trustees of a district as to a teacher or specialist employed by that district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction as to a teacher or specialist not employed by any district within the 12 months immediately preceding receipt of the request by the board.

(3) The board shall give a 30-day written notification to any person when the board intends to consider the suspension or revocation of his certificate. The board shall conduct an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing the board shall afford the person an opportunity to defend himself and his qualifications against the charge.

(4) After a full investigation and proper hearing, the board may suspend or revoke the person's teacher or specialist certificate, except that in the case of a first violation under subsection (1)(f) above, the maximum penalty shall not be more than a 2-year suspension of the person's certificate.

(5) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher or specialist certificate to a person, he may appeal the denial to the board of public education. The appeal shall be heard in the same manner provided for in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board shall be final.

3/4/83



MONTANA SCHOOL BOARDS ASSOCIATION

501 North Sanders
Helena, Montana 59601
Telephone: 406/442-2180
Wayne G. Buchanan, Executive Director

MEMORANDUM

TO: Senate Education Committee

FROM: Chip Erdmann

Senator Mazurek asked the School Board Association to propose amendments to HB 192 which would:

- 1) Make a contract void where the teacher is already under contract to another district; and
- 2) Insert a "good cause" standard for a teacher breaking the contract.

After analyzing the new language on line 23, page 2 through line 3, page 3, we do not believe an amendment in either area would be advisable.

The bill states that a board may "not knowingly employ or continue to employ a teacher who is under contract." We feel this will require a board to make a diligent check to see if the teacher is currently under contract. This would include, but is not limited to, asking the teacher. If the board did not discover the teacher was already under contract they would not be in violation of section (5). They would, however, have made an effort to ascertain the teacher's employment status. If, at any time during the period of the contract, it comes to light that the teacher was under a contract to another district, the second contract would be void under the provisions of sections 28-2-701 and 28-2-803.

If we were to insert language that the second contract was void the boards would not have as much incentive to investigate the teacher's employment status. In reality, the contract would only be void if it were discovered during its term that the teacher was already under contract. If a district wanted a particular teacher, it would be to their advantage to not make any investigation into the teacher's employment status. The end result of it would be the same under the current language of the bill or an amendment that directly voids the contract. Under the current language, however, the Boards would be under a duty to investigate the teachers employment status, which we feel would alleviate much of the problem in this area.

If "good cause" language were placed in the bill, nothing would be achieved. Every contract would then be subject to litigation as to what constitutes "good cause". As was pointed out in the hearing, most districts do not have to have financial resources to pursue this type of effort. Our view is that a contract is a contract, and both parties should be held to the terms of the contract unless there is mutual agreement to terminate.

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School districts are currently held to the contract, but teachers are not. The procedure before the Board of Public Education to revoke a teacher's contract is simply not working. The Board does not feel it is appropriate to revoke a teacher's certificate in these instances. Further, they have interpreted professional advancement to be "good cause" for breaking a contract. In the House the Board representative testified that the Board did not feel comfortable getting involved in contract disputes.

It is clear that something must be done. By this bill we wanted to create an obligation on the school boards to check into a teacher's employment status. If the school board enters into a teaching contract and knows the teacher is already under contract, the second contract is void. If the board discovers during the term of the contract, that the teacher is already under contract, the second contract is void.

This will create an incentive for districts to carefully check the employment status of teachers before they are hired. A district will not want to enter into an employment contract that will be voided. They would then have the problem of recruiting a teacher in mid-year and disrupting the classes of the teacher involved.

The teacher, under this bill, would also have an incentive not to enter into a second contract without obtaining a release from the original district. If the teacher knows his second contract will be void, there will be little incentive to jump the first contract. Additionally, the teacher is not punished. All the bill requires them to do is perform the original contract unless they can get a release. As noted in the testimony, if a replacement can be found, a school district will not force a teacher to stay under contract.

We therefore urge the committee to vote a "do pass" on HB 192 as it is currently written.