

MINUTES OF THE MEETING
EDUCATION AND CULTURAL RESOURCES COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 6, 1985

The meeting of the House Education and Cultural Resources Committee was called to order by Chairman Harrington at 3:10 p.m. on February 6, 1985 in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 18: Senator Joseph Mazurek, District #23, introduced SB 18 as sponsor of the bill. He relayed that this bill was a product of a joint interim committee which studied employment reference and teacher tenure. The bills takes steps to shorten the process of terminating a teacher and deals with non-renewal and dismissal in cases of tenured and non-tenured staff. In Section 2 it requires a superintendent, principal, or a trustee (in the even the district does not have a superintendent or principal) to give notice to the board and the teacher for both parties to come before the board for a hearing. This eliminates need for an additional hearing and it may be more fair since both sides are present. There was no opposition to the bill on the Senate side. He referred any questions to Andrea Merrill who also served on the interim committee.

PROPONENTS: Wayne Buchanan with the Montana School Board Association thanked Senator Mazurek and the interim committee for the work done on the tenure study. Mr. Buchanan felt it was a step in the right direction. It implements a recommendation that the School Board Association has been making for years. The school boards really aren't sitting as an impartial tribunal at present as the law reads that the board make up its mind to dismiss the individual before he can present his side of the story to them. This bill should streamline the process and be more fair.

Eric Fever from the Montana Education Association said SB 18 does provide a slight modification in the hearing process and is supported by the education community.

Terry Minow, Montana Federation of Teachers expressed support of the legislation.

Jesse Long, Executive Secretary of the School Administrators of Montana asked concurrence of the bill as the change has already been occuring at the district level. The bill would clarify the dismissal procedure.

Richard Trerise representing the Montana Association of County School Superintendents offered support of the bill as it provides that the Board of Trustees hears both sides of the argument before they make a decision.

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Bill Anderson from the Office of Public Instruction thanked the interim committee and urged support.

There being no opponents and no further proponents, Chairman Harrington opened the floor to questions from the Committee.

Rep. Peck clarified with Sen. Mazurek that this bill covers non-renewal and dismissal both in Sections 1 and 2 respectively. Rep. Peck said that a person could request a private rather than a public hearing and also wondered if an extension of rulemaking authority needed to be attached. It was a general feeling that it would not be needed. In answer to Rep. Williams, Senator Mazurek assured the committee that the bill applies to tenured and non-tenured teachers who would be dismissed during the contract year.

It was pointed out to Rep. Sands that page 3, line 23, 2-3-203 MCA was the open meeting law as explained by Andi Merrill.

Rep. Mercer questioned whether the language "clearly and explicitly" on Page 2, lines 24 and 25 were excessive. Sen. Mazurek said they reworded the language that was already in the statute. There has been a lot of case law on the subject and it was a request of the MEA that it be left in. Rep. Sands questioned the standards of review and was told that the Montana Administrators Procedures Act applies in this bill. Rep. Mazurek said he believed it was substantial evidence.

Section 1 applies to a tenured teacher who is not renewed and Section 20-4-207 deals with dismissal of a teacher during the contract year. The bill does not apply to a first, second, or third year teacher who has not accepted the fourth (or tenure) contract.

Rep. Montayne asked if the bill removed avenues to contest the dismissal and was told by Senator Mazurek that it did not.

Rep. Williams questioned Wayne Buchanan of the present system used for terminating a first year teacher, to which it was answered that the procedure is very much like what the bill suggests; the differences being that the teacher has a hearing before the board of trustees. Another major change in Section 3 is that the teacher may waive the right to a hearing. It was confirmed that the waiver would have to be in writing and a signature may be required on a statement explaining that they had a right to a hearing and all ramifications are understood.

Rep. Sands questioned if Senator Mazurek had any objections to the bill being amended along the lines of the board notifying the teacher that he or she is entitled to a hearing which would be held only if the teacher requested it. Senator Mazurek said they did not address the standard of review at all. He didn't see much problem with the suggestion from Rep. Sands.

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It was pointed out by Rep. Eudaily that there is a problem if the district does not have a superintendent or principal that the trustee would have to sit in judgement of the employee. In the small districts a trustee has to be given the authority to do so.

Senator Mazurek closed the hearing on S.B. 18 by thanking the committee and hoping they would not be influenced by the bill passing in the Senate at a vote of 44-0.

CONSIDERATION OF H.B. 397 & 399: Chairman Harrington relayed that these bills would be heard together as their nature was complimentary. Representative Tom Jones, District #4, commenced by saying that he served on the interim committee studying teacher tenure and felt a need to do something. In his district of 3,500, 76% were in favor of abolishing tenure. Tenure does not help good teachers, it only protects those who are satisfied with doing a mediocre or poor job. H.B. 397 establishes a system of evaluation and remediation each year and provides an opportunity for a hearing before a hearing officer. In H.B. 399, any teacher recommended for non-renewal of contract will have a similar hearing process. The reasons for non-renewal must be related to professional ability or a reduction in staff. He said he has received several letters in support of these bills and read one to the committee.

PROPONENTS: Marg Green from the Montana Farm Bureau Federation spoke in support of these bills.

Wayne Buchanan from the Montana School Board's Association rose and spoke neither for nor against the bills. He felt the bills are a response to a problem and that tenure is unpopular, but there are some good things connected with tenure. He suggests a solution may be forthcoming in the near future and the last legislative session the negotiations were at hand and hopes to sit down with Eric Fever soon and talk over the problems. He felt it was good to have these bills before the committee, but was not ready to support H.B 399 or 397.

OPPONENTS: Eric Fever from the Montana Education Association said that his association has offered just cause/due process to replace tenure in the past. H.B. 11 and S.B. 18 came from the interim committee as a result of these proposals. He said that tenure statues do not protect incompetence, the statues provide a three year probationary period now which is a great deal of time to establish competence. He felt tenure is a constitutional protection for a right to work at a salary not less than the previous year. H.B. 397 should not give the Board of Trustees the sole responsibility of evaluation and remediation without the teacher's bargaining agent present. There is no guarantee that a comparable salary will be offered teachers upon renewal. There is no mutual designation of a hearing officer. H.B. 399 needs to impel channels of communication between the board of trustees and the employees. The

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reasons for non-renewal need to be delineated. It closes the hearings, limits the teachers to one or two representatives, the board has the final authority, and there is no due process beyond the local board.

Richard Trerise with the Montana Association of County School Superintendents spoke no opposition to the tenure or non-tenure issue but to the procedures outlined. H.B. 397 does not give trustees the right to make a decision and the hearing officer is appointed by the State Superintendent. H.B. 399 removes the appeal process which should be heard at the local level.

Terry Minow with the Montana Federation of Teachers opposed eliminating tenure. The system has worked since 1913. The MFT proposed that school boards and teacher bargaining representative be allowed to negotiate the waiver of statutory tenure rights, but the interim committee did not adopt the provisions on a tie vote.

Phillip Sherman with the Montana Federation of Teachers spoke on behalf of the Montana University System Faculty Coalition. (See Exhibit 1)

There being no further opponents, the floor was opened to discussion. When asked by Rep. Williams, Eric Fever and Wayne Buchanan said their organizations would be willing to negotiate these issues, but not at this session.

There was discussion of tougher standards and the number of tenured teachers that have been dismissed, to which Mr. Fever answered that a better figure to get was how many teachers did not have contracts renewed in their third year. Representative Hannah said he would be interested in knowing how many are dismissed after receiving tenure.

Representative Jones closed the hearing by saying that the statement of the interim committee finding nothing wrong with teacher tenure was erroneous. He recommended putting the bills in sub-committee and asked that members keep an open mind for the best education of the children.

ACTION ON H.B. 79 & 211: Chairman Harrington appointed a sub-committee of the following to study these bills and amendments:

Ray Peck, Chairman
Ray Harbin, Co-Chairman
Gerald Nisbet
John Mercer
Fred Thomas
Richard Nelson

Chairman Harrington said he did not favor sending these bills to the floor or the appropriations committee at this time as there are more revenue estimates to be made.

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Rep. Thomas made a motion that H.B. 211 DO PASS. The motion was seconded by Rep. Mercer. A roll call vote showed 7 for, 11 against, the motion failed. These bills will be sent to the sub-committee for further study. It was noted that H.B. 212 need not be put into the sub-committee, but will be held for the time being.

ACTION ON H.B. 412: Rep. Williams moved a DO PASS to H.B. 412. A motion was made by Rep. Brandewie to strike the word "seriously" in the bill. The motion failed by show of hands as 11 were against the proposal.

Andrea Merrill, Legislative Researcher, said an amendment would be needed for the extension of rulemaking authority. Rep. Brandewie moved that this be done, Rep. Eudaily seconded the motion and it passed unanimously.

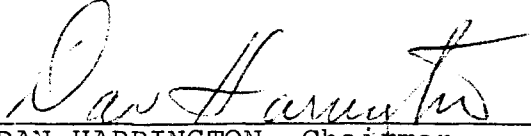
Rep. Hannah moved that on Page 3, lines 20, 21, & 22, the new language be stricken as it expands the authority of the district to provide programs for children under 6. A voice vote and hands showed five against, the new language will be stricken.

Representative Brandewie seconded the motion that H.B. 412 DO PASS AS AMENDED. A voice vote showed unanimous approval.

ACTION ON H.B. 415: Rep. Eudaily moved H.B. 415 DO PASS. Rep. Brandewie seconded the motion. Rep. Eudaily questioned the need for an amendment to provide an immediate effective date. A substitute motion was offered by Rep. Thomas that H.B. 415 DO NOT PASS; Rep. Hannah seconded this motion and a roll call vote showed 13 for the motion and 5 against.

ACTION ON H.B. 397, 399 & S.B. 18: Rep. Harbin made a motion to table these bills. Rep. Sands made a substitute motion suggesting a sub-committee study these bills and make a recommendation. Rep. Hannah seconded this motion and a voice vote and show of hands indicated the motion carried by majority as there were 6 opposed. H.B. 397, 399, and S.B. 18 will be REFERRED TO A SUB-COMMITTEE.

There being no further business, the committee adjourned at 5:00 p.m.


DAN HARRINGTON, Chairman

crf

DAILY ROLL CALL

EDUCATION COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2-6-85

| NAME | PRESENT | ABSENT | EXCUSED |
|-----------------|---------|--------|---------|
| Dan Harrington | ✓ | | |
| Ralph Eudaily | ✓ | | |
| Ray Brandewie | ✓ | | |
| William Glaser | ✓ | | |
| Joe Hammond | ✓ | | |
| Thom Hannah | ✓ | | |
| Raymond Harbin | ✓ | | |
| Roland Kennerly | ✓ | | |
| Les Kitselman | ✓ | | |
| John Mercer | ✓ | | |
| John Montayne | ✓ | | |
| Richard Nelson | ✓ | | |
| Jerry Nisbet | ✓ | | |
| Ray Peck | ✓ | | |
| Jack Sands | ✓ | | |
| Ted Schye | ✓ | | |
| Fred Thomas | ✓ | | |
| Mel Williams | ✓ | | |
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STANDING COMMITTEE REPORT

FEBRUARY 5 19 85

MR. SPEAKER

We, your committee on EDUCATION & CULTURAL RESOURCES

having had under consideration HOUSE Bill No. 412

FIRST reading copy (WHITE)
color

CLARIFYING DEFINITIONS USED IN SCHOOL SPECIAL EDUCATION LAW

Respectfully report as follows: That HOUSE Bill No. 412

BE AMENDED AS FOLLOWS:

1. Page 3, lines 20 through 22.
Following: "services."
Strike: remainder of lines 20 through 22
2. Page 4, ~~LINE 12~~.
Following: line 12
Insert: NEW SECTION. Section 2. Extension
of authority. Any existing authority
of the superintendent of public instruction
to make rules on the subject of the
provisions of this act is extended to
the provisions of this act."

AND, AS SO AMENDED:

DO PASS

STANDING COMMITTEE REPORT

FEBRUARY 6

19 35

MR. SPEAKER

We, your committee on EDUCATION & CULTURAL RESOURCES

having had under consideration HOUSE Bill No. 415

FIRST reading copy (WHITE)
color

ALLOWING OPERATING RESERVE IN THE DEBT SERVICE FUND FOR SCHOOL DISTRICTS

Respectfully report as follows: That HOUSE Bill No. 415

DO NOT PASS

DO PASS

ROLL CALL VOTE

HOUSE COMMITTEE EDUCATION

DATE 2-6-85 HOUSE Bill No. 415 Time _____

| NAME | YES | NO |
|---------------------------|-----|----|
| Dan Harrington | | |
| Ralph Eudaily | | ✓ |
| Ray Brandewie | ✓ | |
| William Glaser | ✓ | |
| Joe Hammond | | |
| Tom Hannah | ✓ | |
| Raymond Harbin | ✓ | |
| Roland Kennerly | ✓ | |
| Les Kitselman | ✓ | |
| John Mercer | ✓ | |
| John Montayne | ✓ | |
| Richard Nelson | ✓ | |
| Jerry Nisbet | | ✓ |
| Ray Peck | ✓ | |
| Jack Sands | | ✓ |
| Ted Schye | ✓ | |
| Fred Thomas | ✓ | |
| Mel Williams | | ✓ |
| Dan Harrington | ✓ | |
| | | |
| | | |

Secretary _____

Chairman _____

Motion: DO NOT PASS, MOTION BY FRED THOMAS
SECOND BY TOM HANNAH

ROLL CALL VOTE

HOUSE COMMITTEE EDUCATION

DATE 2-6-85 H.B. Bill No. 211 Time

| NAME | YES | NO |
|-----------------|-----|----|
| Dan Harrington | | |
| Ralph Eudaily | ✓ | |
| Ray Brandewie | ✓ | |
| William Glaser | ✓ | |
| Joe Hammond | | ✓ |
| Tom Hannah | | ✓ |
| Raymond Harbin | | ✓ |
| Roland Kennerly | | ✓ |
| Les Kitselman | ✓ | |
| John Mercer | ✓ | |
| John Montayne | | ✓ |
| Richard Nelson | ✓ | |
| Jerry Nisbet | | ✓ |
| Ray Peck | | ✓ |
| Jack Sands | | ✓ |
| Ted Schye | | ✓ |
| Fred Thomas | ✓ | |
| Mel Williams | | ✓ |
| Dan Harrington | | ✓ |
| | | |
| | | |

Secretary

Chairman

7 FOR, 11 AGAINST

Motion: 00 PASS - FAILED

MOTION BY FRED THOMAS

SECOND BY JOHN MERCER

EXHIBIT 1

H.B. 399+397

2.6.85

TESTIMONY ON BEHALF OF THE MONTANA UNIVERSITY SYSTEM FACULTY COALITION,
PRESENTED AT THE HEARING ON HOUSE BILLS 397 AND 399 BEFORE THE HOUSE
EDUCATION COMMITTEE, FEBRUARY 6, 1985.

The protection of tenure against unwarranted influences on a teachers proper performance of his/her duties is absolutely essential at all levels of education. Teachers with tenure are not absolutely protected from termination if they are derelict in their duties, incompetent, or guilty of installing improper moral standards. Therefore, efforts to undermine the tenure system are inappropriate, unnecessary, and damaging to our system of education.

W. Bede Mitchell
Montana State University Faculty Council
Room 3, Hamilton Hall
Montana State University
Bozeman, MT 59717

VISITOR'S REGISTER

HOUSE

EDUCATION

COMMITTEE

BILL H.B. 397

DATE 2-6-85

SPONSOR JONES--REPEAL TENURE LAWS

| NAME | RESIDENCE | REPRESENTING | SUP- PORT | OP- POSE |
|----------------|-----------|---------------------------|--------------|-------------|
| Marg Green | Helena | mt. Farm Bureau Fed. | X | |
| Lavina Lubinus | Helena | WIFE | X | |
| Joyce Spicher | Hingham | WIFE | | |
| Kara Stirmutz | Helena | | | |
| Fred Ramsey | Belgrade | | | |
| Richard Treuse | Helena | MACSS | | ✓ |
| John Malee | Butte | M.F.F. | | ✓ |
| Erin Dean | Helena | MSA | | ✓ |
| Levy Minow | Boulder | MFT | | ✓ |
| Spencer | Helena | MT Univ Sys fac Coalition | | ✓ |
| Don Carter | Bozeman | | ✓ | |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE

EDUCATION

COMMITTEE

BILL H.B. 399

DATE 2-6-85

SPONSOR JONES--ELIMINATE TENURE

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE

EDUCATION

COMMITTEE

BILL S.B. 18

DATE 2-6-85

SPONSOR MASUREK--TEACHER NOTICE & HEARING PRIOR TO DISMISSAL

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.