

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

FEBRUARY 9, 1987

The eleventh meeting of the Senate Education and Cultural Resources Committee was called to order by the Chairman, Senator Bob Brown, at 1:00 p.m. in Room 402, State Capitol Building.

ROLL CALL: All committee members were present.

Senator Brown introduced ROGER SWEARENGEN, State Director, DECA, DECA President DARA WILLIS of Helena, and other officers who were in Helena for State DECA Week.

CONSIDERATION OF SENATE BILL 231: SENATOR YELLOWTAIL, District 50, sponsor of the bill, said it was requested by OPI at the 1985 session. It provides a process for establishing a new high school district in Montana in a two year period as it now exists for elementary schools. He said the two year period is a much more adequate time for establishing a new high school and having it become fully operational.

PROPOSERS:

CHIP ERDMAN, representing the Hart Butte community, said that area had just gone through the process of establishing a high school in one year. It can be done, but it is very tight and two years is a much more reasonable time period. He noted statistics show there is a 70% drop out rate in Indian communities when the high school is not located in the community. That figure drops to national norms when the high school is located in the home community.

There being no further proponents and no opponents, Senator Yellowtail closed.

CONSIDERATION OF SENATE BILL 232: SENATOR MAZUREK, District 23, sponsor of the bill, said the bill was introduced at the request of the Board of Public Education as a result of the Board's review of statutes dealing with revocation, suspension, and denial of teaching certificates. This bill updates and clarifies those statutes. He reviewed the bill section by section. He noted the bill updates language on pages 1 and 2 and adds a new subsection (f) on page 2 which adds the possibility of revocation or suspension of certification for "immoral conduct related to the teaching profession". Changes on page 3 eliminate the requirement that the Office of Public Instruction can only initiate proceedings if the teacher or specialist has been employed for 12 months. Subsection (d) on page 4, by establishing an immunity and good faith clause, ensures that teachers are protected as trustees must have an extremely strong case before they can make an accusation and initiate proceedings. This acts as a protection for the trustees, also.

PROPONENTS:

CLAUDETTE MORTON, Executive Secretary of the Board of Public Education, presented her written testimony in support of the bill (Exhibit #1).

CHRIS TWEETEN, Assistant Attorney General and legal advisor to the Board of Public Education, said some very narrow concerns led to the drafting of the bill. He noted a very substantial loophole exists in the law relating to sexual conduct between a teacher and a student. If a case is not prosecuted to conviction, there is currently no way for the Board of Public Education to revoke certification. He pointed out several important components of the bill:

- 1) On page 2, lines 10-11 new language reading "entry of a guilty verdict, a plea of guilty, or a plea of no contest" was inserted to cover instances when a teacher is on deferred imposition of sentence. In such cases, if the probation term is completed with no problems, the conviction is set aside. Since the guilty plea is withdrawn with the conviction being set aside, the Board is powerless to revoke certification. This amendment covers

situations that fall short of conviction but do have solid evidence of misconduct.

2) New subsection "f" "immoral conduct related to the teaching profession" fills in a hole in the statutes. Situations where there is no question of undesirable conduct having taken place such as the accused resigns and leaves, consideration of the victim, deferred prosecution, can now be subject to Board consideration and action.

3) The stricken material p.3, lines 6-9, strikes the limitation against teachers who have not been employed within 12 months before the request for suspension or revocation.

4) The new material on pages 3 and 4 requires the local trustees to report a termination of employment of a teacher or specialist due to conduct as described in subsection (1) (e) or (1) (f) to the Superintendent of Public Instruction. The Superintendent then reviews the report and if satisfied as to sufficient grounds, he may request action by the Board of Public Education under subsection (2) (b). It also covers confidentiality and immunity for trustees and the superintendent.

5) The new material on Page 5 covers any individual who is a certified teacher, specialist, and/or administrator.

Mr. Tweeten continued by saying this bill narrows and closes existing loopholes and has the support of the Task Force which worked on this bill (see Exhibit #1 for explanation of Task Force membership).

JOHN VOORHIES, Office of Public Instruction, stated support for the bill noting the Superintendent of Public Instruction can take immediate action against administrators who admit guilt or are found guilty under these provisions.

ERIC FEAVER, Montana Education Association, stated the MEA participated in the Task Force and agreed this is the best approach that can be taken. These provisions will only be applied to a minute number - 99 3/4% of the teachers will not be affected by the bill. It protects both teachers and students. Teachers and the public need to know if they engage in immoral conduct they cannot teach anywhere. He

pointed out, however, the MEA will defend those who are accused and continue their advocacy position. He commented on the new subsection (f) saying good morality is a basic requirement for the teaching profession. It is not a new idea to legislate against bad moral conduct.

BRUCE MOERER, Montana School Boards Association, stated the MSBA also participated in the Task Force. He said trustees can fire a teacher now, but the Board of Public Education cannot revoke certification. With this bill, trustees have to report to OPI if a teacher resigns due to immoral conduct. This bill has nothing to do with hiring or firing, that is already covered. It only deals with revocation or suspension of certification by the Board of Public Education through the Office of Public Instruction. It also addresses the situation arising when a teacher resigns due to community pressure by providing an avenue to clear that teacher's name.

TERRY MINNOW, Montana Federation of Teachers, supported the bill saying it protects students and the educational system as well as guaranteeing teachers due process.

JIM KOKE, School Superintendent, East Helena, expressed the support of the School Administrators of Montana.

LORNA FRANK, Montana Farm Bureau, expressed support for the bill.

MIKE McGRATH, Lewis and Clark County Attorney, said he dealt with one case in 4 1/2 years. A teacher was involved with a 14 year old student and it was reported to him. Although the teacher was well thought of, upon investigation, it was discovered that over the years the teacher had been involved with several young people. The student did not want to testify so the County Attorney did not prosecute. The County Attorney deferred and declined to prosecute in exchange for the teacher's resignation. The teacher has applied for other jobs as the County Attorney's office has received calls of inquiry based on his applications. Mr. McGrath assumed the teacher is now employed in a teaching position somewhere at the present time.

ELINOR COLLINS, Montana Association of County Superintendents, supported the bill and the previous testimonies.

There were no opponents to the bill.

DISCUSSION BY THE COMMITTEE:

SENATOR BLAYLOCK asked if this covers conduct between a teacher and student only.

MR. TWEETEN said it could cover other immoral conduct such as production of porno films, distribution of obscenity, child abuse - any conduct which would indicate the teacher should not be teaching.

SENATOR BLAYLOCK asked if cohabitation without the benefit of marriage is still on the books and if it would apply under this bill.

MR. TWEETEN replied he thought not. He said the Board is reviewing abstract questions but that under this bill the incident has to be connected to the teaching profession. Behavior between two consenting adults is another thing. Rules of the Board of Public Education will show that a nexus must exist between the conduct and the teaching profession. The conduct must render a person unfit to teach. There must be a connection between that conduct and the teaching profession.

SENATOR MAZUREK closed by thanking the members of the education community for gathering together and dealing with a sensitive issue in an appropriate way.

ACTION ON SENATE BILL 232:

SENATOR REGAN raised the question of age of consent re students and immoral conduct.

SENATOR MAZUREK replied the age of consent is 16, however, age is not a consideration. Age 18 or 19 is not an issue in the schools re moral conduct.

SENATOR REGAN asked if a student decides to charge a teacher with immoral conduct because he/she doesn't like the teacher, and the teacher resigns rather than have his or her name muddied, can the Board revoke the certification for the rest of that teacher's life?

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Resources Committee
February 9, 1987
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CLAUDETTE MORTON replied the trustees would send it to OPI where a thorough investigation would be done and if OPI felt it was warranted, it would be sent to the Board of Public Education for hearing.

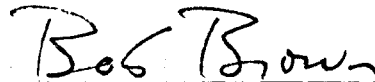
SENATOR REGAN asked if certification can still be revoked if there is no legal charge or conviction of any sort.

ACTION ON SENATE BILL 232:

SENATOR HAMMOND moved SB 232 DO PASS. The motion CARRIED with Senator Regan voting no and Senator Neuman absent.

SENATOR REGAN asked for the committee report on SB 232 to be held until the February 11th meeting. (The standing committee report is attached to the minutes of 2/11/87, however, Senator Regan declined to take any further action on the bill during that meeting.)

There being no further business to come before the committee, the meeting was adjourned.



SENATOR BOB BROWN

jdr

ROLL CALL

SENATE EDUCATION AND CULTURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/9/87

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BOB BROWN	✓		
SENATOR CHET BLAYLOCK	✓		
SENATOR GEORGE MCCALLUM	✓ tardy		
SENATOR ED SMITH	✓ tardy		
SENATOR PAT REGAN	✓		
SENATOR JOE MAZUREK	✓		
SENATOR BILL FARRELL	✓		
SENATOR TED NEUMAN			
SENATOR DICK PINSONEAULT	✓		
SENATOR SWEDE HAMMOND	✓		

Each day attach to minutes.

DATE 3/19/67

COMMITTEE ON

Education

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jim Koike	School Adm. & MT	232	X	
John Voorhis	OP1	232	X	
Bruce W. Moerer	MSBA	232	X	
Lorna Frank	Mont Farm Bureau	232	X	
ERIC FLAVOR	MEA	232	✓	
J Mattocks	CUT BANK SCHOOLS	301	✓	
Charbel Fawcett	Hysham			
Elizabeth L. Feaver	visitor			
John Palmer	Sen. Neuman			
Kathy Guzzi	MFT			
Terry Morrow	MFT	232	✓	
Chip EROMAN	Heart Butte Community	231	✓	
MIKE McBRATT	L & C COMM MITT	232	✓	
Chris Tweeten	Bd of Pub Ed	232	✓	
(NOREE BURDENSON) (ADVISOR)	VT DECA ASSOCIATION OFFICER	VT DECA		
Claudette Morton	Board of Public Education	232	✓	
Eleanor Collins	Mont. Assoc. of Supr.	232	✓	
"	"	276		✓



Board of Public Education

TESTIMONY TO THE SENATE EDUCATION COMMITTEE ON SB232

Claudette Morton
Executive Secretary

By Claudette Morton, Executive Secretary
Board of Public Education

BOARD MEMBERS

EX OFFICIO MEMBERS:

- Ted Schwinden, Governor
- Ed Argenbright, Superintendent of Public Instruction
- Carrol Krause, Commissioner of Higher Education

APPOINTED MEMBERS:

- Ted Hazelbaker, Chairman Dillon
- Alan Nicholson, Vice-Chairman Helena
- James Graham Ismay
- Sarah "Sally" Listerud Wolf Point
- Arthur "Rocky" Schauer Libby
- Bill Thomas Great Falls
- Thomas A. Thompson Browning

The Board of Public Education requested this legislation and supports its passage. In an effort to provide the Committee with necessary rationale, I would like to present the background on this issue. Almost two years ago, in 1985, it became apparent to the Board of Public Education that several issues needed to be addressed with regard to the denial, suspension and revocation of teaching certificates. In order to address these issues in a comprehensive manner a Task Force was formed in August 1985. The Task Force was made up of representatives from the Office of Public Instruction Certification Department, Montana Education Association, Montana Federation of Teachers, School Administrators of Montana, Montana School Boards Association, Montana College Certification Officers and the Attorney General's Office, who provided legal assistance to the Board. The Task Force was chaired by a Board member. The Task Force had as its major agenda two goals: 1) arrive at a mutual understanding of what procedure the Board and the Superintendent need to follow in order to be in compliance with the law, and 2) identify the areas that need attention and develop the appropriate changes for in-house procedures, rules and changes in the statutes.

The Task Force worked well together and has clarified in-house procedures for the Board of Public Education and the Office of Public Instruction. It also has developed some proposed modifications to the existing administrative rules, which will clarify roles and responsibilities in this area. However, these rules will not be heard by the Board until the fate of this proposed legislation is known.

SENATE EDUCATION

EXHIBIT NO. 1DATE 2/9/87

As the Task Force worked it became more and more ~~apparent~~ ^{apparent} that some ~~SB232~~ ^{SB232} adjustments had to be made in the existing legislation to protect the school children of Montana and to clarify some issues which have not been addressed or are unclear. The professionals on the Task Force felt strongly, as you will hear in further testimony from each group, that these proposed legislative changes will strengthen the professional organizations because they very clearly address a small, but a very real, problem, that of immoral conduct related to the teacher profession. Let me assure you this is not a new or unusual way to get rid of just any teacher. Instead, it will protect educators and require school boards to consider a state definition of immorality rather than a local, community standard. Rather than my going into the specific language of the bill I would prefer that Chris Tweeten of the Attorney General's Office present that testimony to you. I will be glad to answer any questions regarding the background or the specifics of this legislation at the appropriate time.

I do want to say that this is one of the few times you will see all of the educational groups standing in support of proposed legislation and I think that is very significant. It shows the importance they place on this. Even the bill drafter commented on how well written this piece of legislation is, which I think speaks to the quality of work and cooperation that has gone into this proposal by all participants of the Task Force. Therefore, I would urge your support for the passage of SB232.

STANDING COMMITTEE REPORT

FEBRUARY 9

37

19.....

MR. PRESIDENT

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

having had under consideration..... **SENATE BILL**

No. **231**

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**ALLOW A NEW HIGH SCHOOL 2 YEARS TO OPEN A SCHOOL BEFORE
CREATION ORDER ENDS**

Respectfully report as follows: That..... **SENATE BILL**

No. **231**

DO PASS

~~DO NOT PASS~~

.....
Senator Bob Brown,

Chairman.