

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By Senator Dennis Nathe, Vice Chairman, on
January 23, 1989, at 1:00 pm in Room 402

ROLL CALL

Members Present: Senators; H.W. Hammond, Dennis Nathe, Chet
Blaylock, Bob Brown, R.J. "Dick" Pinsonault, William
Farrell, Pat Regan, John Anderson Jr., and Joe Mazurek

Members Excused: None

Members Absent: None

Staff Present: Dave Cogley, Staff Researcher and
Julie Harmala, Committee Secretary

Announcements/Discussion:

None

HEARING ON HB 75

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE, JOHN MERCER, House District #50,
by request of the legislative finance committee, brought HB
75 before this Senate committee to explain that when HB 39
was passed concerning the Vo-Tech Centers, there was a
provision put in the law stating that the expenditure of
fees were not subject to the normal budget limitation laws.
This was necessary during the transition period but now that
the transition period is over, HB 75 is needed to make Vo-
Tech fees subject to the same budget limitation laws as are
university fees. This action requires this budget
amendment. Representative Mercer went on to explain that
the "gist" of the bill is on lines 21-24.

List of Testifying Proponents and What Group they Represent:

JACK NOBLE, DEPUTY COMMISSIONER FOR FISCAL AFFAIRS OF
THE BOARD OF REGENTS

List of Testifying Opponents and What Group They Represent:

NONE

Testimony:

Jack Noble, representing the Board of Regents, stood in support of HB 75.

Questions From Committee Members:

Senator Bob Brown generally wondered why this was done with HB 39 and what changes occurred that make this subject to the budget limitation now. He also wondered why the essential changes had been made and why there was a need to change them back.

Mr. Noble replied that under HB 39, during the period of transition, the Vo-Tech Centers were still non state agencies and were under local jurisdictions and they had reserved some authority in regards to local district fees and revenues. As of July 1, they became state agencies and they became subject to the same appropriation process as does the university system.

Senator Mazurek asked why this issue needs an immediate effective date. Mr. Noble replied that it is necessary in order for it to fit in this fiscal year, but July 1 would be fine also.

Senator Mazurek wondered if this had any impact other than on the Vo-Tech's accounting. Senator Regan responded that this will help set the budget and allow them to set fees when enrollments are larger than anticipated and expenses increase.

Mr. Noble stated that the effective date that the Vo-Tech Centers would prefer is July 1. What might be a dispute here is the additional fees collected last fiscal year and this fiscal year. He stated that with an immediate effective date they would bring these fees forth as a supplemental appropriation and let the legislature determine whether they want to have the Vo-Techs spend those fees. He pointed out that the

legislature had the jurisdiction on this issue.

Closing by Sponsor: Representative Mercer said that as far as the effective date is concerned, he would leave that to the good advice of the committee.

He mentioned also, that it was difficult to present bills before the Senate Committee when the House goes into session at 1:00.

DISPOSITION OF HB 75

Discussion: None

Amendments and Votes: None

Recommendation and Vote: No executive action was taken.

DISPOSITION OF SB 66

Discussion:

Dave Cogley presented the amendments to SB 66 to the committee. He explained that the school employee participating in an interview should be exempted from the confidentiality statute.
[Exhibit #1]

Senator Mazurek asked why "at least" was being struck. Mr. Cogley explained that when the language said "at least the first interview," there was a question whether that authorized participation in any other further interviews besides the first. If the committee wished to authorize further participation it should be specifically amended to allow that, otherwise it is probably limited to the first interview. Senator Mazurek suggested that maybe this is what the social workers had in mind and that is that the school employee should be allowed to participate in only the first interview with the abused child.

Senator Pineseault reminded the committee that the school employee was included to reinforce the idea that a child would be more receptive if someone he/she had trust and confidence in be at

the first interview.

Senator Mazurek questioned if the committee was strictly limiting the school employee to just the first interview.

Senator Blaylock suggested that it would not hurt to insert the word "in any...." interview.

Senator Farrell asked what was considered "appropriate" by the social worker. He wondered if this meant that the social worker had to go to the county attorney to find out if its "appropriate" to be present at the interview. He questioned how "appropriate" was being defined here. Senator Mazurek answered this question by stating that the social worker is the investigator and is charged with this responsibility.

Senator Blaylock stated that he felt that the social workers must have the authority. They are professionals and it is hoped that they are using good judgement.

The committee decided on inserting "any" and striking "at least the first." The committee also decided to insert "county attorney or peace officer," after "social worker," since these investigative officers are included in other provisions of the section being amended. Dave Cogley then read to the committee the way the bill would read, "...if considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child....."

Amendments and Votes: Senator Regan moved that the committee also amend sub section L of the confidentiality statute to include "county attorney or peace officer." She also moved that we adopt all amendments as amended.

Senator Mazurek moved that the committee adopt all amendments.

Senator Pinsoneault called for the motion and it passed unanimously.

Recommendation and Vote: The question was called for, Senator Blaylock responded.

Senator Mazurek moved that SB 66 Do Pass as amended and the motion was carried unanimously.

DISPOSITION OF SB 46

Discussion: Dave Cogley presented the committee with the amendments recommended for SB 46. [Exhibit #2]

Senator Mazurek asked if it could be optional and a point of negotiation, if the surviving district wanted to waive the tuition debt obligation provided in the bill. Mr. Cogley pointed out that waiver is exactly what the amendment to SB 46 provided, and that the waiver is consistent with another statute dealing with assumption of bonded indebtedness. The provision on bonded indebtedness provides for the assumption of the bonded indebtedness by the consolidated district or annexing district and that is exactly what this would be patterned after, which is the assumption of the tuition liability.

Amendments and Votes: Senator Regan moved that the amendments suggested by Senator Hammond be accepted.

The motion was carried unanimously by the committee.

DISPOSITION OF HB 14

Discussion: Senator Regan pointed out that we have under the Department of Justice the Law Academy and a Fire Marshall and that is who should be training firemen. She went on to say that the Fire Service Training School seems to be "a step child being kicked around," and she feels that it belongs with the Fire Marshall because he is the professional who is the head of the entire system.

Senator Mazurek stated that by putting them out there in the hands of the Board of Regents, there is no longer any control and it is no longer a line item budget matter.

Senator Pinsoneault pointed out that if it goes to the Board of Regents, pretty soon we (the legislature) can go home and the Board of Regents can just run everything. He added that he is skeptical as to the Board of Regents motives in this situation.

Claudette Morton said that the audit committee originally asked that the Board of Public Education find a new home for the Fire Service School. The Board spent two years working with the Board of Regents on this transfer and it was one of the few issues the Board of Public Ed. and The Board of Regents has agreed upon. She added that the auditors suggested this because in many other states the Fire Service School is a part of higher education.

Recommendation and Vote: Senator Regan moved that the committee pass consideration for the day on HB 14 and she will talk to the audit committee.

The question was called for by Senator Blaylock. All were in favor and the motion was carried.

DISPOSITION OF SB 127

Discussion: Senator Mazurek pointed out that even the proponents decided that this bill should only apply when you have final and binding arbitration. He stated that he was certain that in the Human Rights Act, the forum to resolve a dispute can not be bargained for, one way or the other. It simply must be that the employee has to go to one and finish and then once completed, the they can go to the other one. But employees are not restrict to only one way.

Senator Brown added that he thought every school board knew that everyone always has their day in court, so once an employee has exhausted the administrative process, then they can get into court. He asked if this was not a fundamental procedure.

Dave Cogley stated that this is a fundamental right, unless there is a contract providing for final and binding arbitration that has been negotiated. Senator Brown wondered if an employee

can contract away a right. Mr. Cogley replied that yes, this certainly can be done, this is the idea of a contract which provides for binding arbitration.

Senator Regan interjected that she feels this is fine to contract away a right, but she does not feel it is the committee's function to take away a right from the teacher. She went on to say that if in negotiations the district and the teacher agrees, then they have given up their right voluntarily in return for something else. She feels that it would be ill advised for the committee to take away this negotiating right.

Senator Mazurek reminded the committee that Chip Erdmann said that if there is final and binding arbitration then the employee agrees in the contract. Senator Regan pointed out that this then is decided upon by negotiation, not by legislation.

Senator Mazurek said that he feels it should be made a condition of this legislation that this only applies when there is final and binding arbitration within a contract.

Senator Regan stated that if the committee passes this bill then they not only give the district an administrative remedy but also this keeps the teacher from being able to go to court.

Dave Cogley explained that this bill would require that the teacher be given the opportunity to go either way, either through the contract procedure and file a grievance in accordance with the contract, or through the statutory appeals process, going to the County Superintendent and then on to the State Superintendent. If this bill, Mr. Cogley added, were amended as Sen Mazurek is suggesting it would require that when there is a contract providing for final and binding arbitration, then the teacher would have to select either the route through their contract that provides for binding arbitration or the statutory route of appeal. The teachers have already agreed that they would accept binding arbitration under their contracts so if they chose that route then the legislation is not requiring them to give up anything they have not already

agreed to give up. It is not being mandated that they give up a right.

Senator Mazurek asked if this bill is passed, does the teacher have to chose. Mr. Cogley replied by stating that this bill does not preclude them from going to court if they want to go that route.

Senator Regan felt that it depended upon how the final and binding arbitration is written by the district. If they say all matters must be submitted then this precludes the right to take the matter to court and this would perhaps be dangerous because there are instances where its better to go to court than going the binding arbitration route.

Senator Pinsoneault pointed out that when an employee agrees to final and binding arbitration, they give up the right to go to court and avoid litigation.

Mr. Cogley pointed out that the bill as it is written does not have that requirement for binding arbitration, but that an amendment has been drafted to require the contract to be one that provides for binding arbitration.

Senator Pinsoneault stated that the end result then is that only in the case of a binding arbitration does this legislation apply.

Senator Regan wondered if the amendatory language clearly pointed out that the party filing the grievance may take either or and by virtue of agreeing to binding arbitration is not forced to take that route. She feels that the language must clarify this point.

Mr. Cogley stated that yes the party would still have the option to pursue the other remedy under the statute as amended. Employees still have a choice, but if he chooses filing a grievance then this precludes his right to go to the county superintendent. He added that this bill does not talk about different issues within the same fact controversy and perhaps this does need clarifying.

Senator Mazurek said he would study a detailed memorandum that Chip Erdmann had given him and

bring the information back to committee.

Mr. Cogley reminded the committee that Mr. Erdmann's concern was that if there is final and binding arbitration this could result in one result, with a different, inconsistent result reached by going through the courts. He stated that if the contract did not provide for binding arbitration, the controversy could wind up in court with both procedures and chances are there would not be inconsistent results. He went on to say that if this amendment were to pass, it would then be required to have a contract that had a binding arbitration provision and if the employee chose this route, then it would end right there. If it was not this kind of contract the bill would not apply at all.

Recommendation and Vote: Vice Chairman, Senator Nathe pointed out to the committee that he felt there was a general consensus that more work needed to be done on this bill.

Mr. Cogley added that the committee should get him any further information before the next meeting and he would work on the amendments.

DISPOSITION OF HB 75

Discussion: Senator Nathe stated that the only question on HB 75 was whether there should be an effective July 1 date or an effective date on passage and approval. Mr. Noble had pointed out, Senator Nathe reminded the committee, that it would be beneficial to the school districts and to the Vo-Techs to have July 1 be the effective date in order to have more time to handle fee money rather than the state handling the money.

Senator Blaylock asked if the state would get more money if the date was made effective immediately. Senator Regan said no that the money is just sitting there and the best way to get spending authority is through a budget amendment through the supplemental.

Senator Nathe explained that HB 39 gave discretionary authority of spending the fees to the school district and now we are changing HB 39

and taking that discretionary authority away from school districts and giving it back to the state.

Senator Farrell pointed out that if the committee does not pass this bill they can spend the money any way they want until July 1. Then this money will not be appropriated. The Board of Regents would not have the authority to spend the money unless its made effective on passage and approval.

Recommendation and Vote: Senator Regan suggested the bill be taken up later after there has been further action taken on the Vo-Tech decision.

ADJOURNMENT

Adjournment At: 2:45 pm


Senator H. W. Hammond, Chairman

HH/jh

Senmin.123

ROLL CALL

EDUCATION COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 1-23-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Swede Hammond	✓		✓
Vice Chairman Dennis Nathe	✓		
Senator Chet Blaylock	✓		
Senator Bob Brown	✓		
Senator Dick Pinsoneault	✓		
Senator William Farrell	✓		
Senator Pat Regan	✓		
Senator John Anderson Jr.	✓		
Senator Joe Mazurek	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

January 23, 1989

MR. PRESIDENT:

We, your committee on Education and Cultural Resources, having had under consideration SB 66 (first reading copy -- white), respectfully report that SB 66 be amended and as so amended do pass:

1. Title, line 7.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "41-3-202"

Strike: ", "

Insert: "AND 41-3-205,"

2. Page 2, line 8.

Following: "worker,"

Insert: "county attorney, or peace officer conducting an interview of the child,"

3. Page 2, lines 9 and 10.

Following: "in"

Strike: "at least the first"

Insert: "any"

4. Page 3.

Following: line 3

Insert: "Section 2. Section 41-3-205, HCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or his guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect; or

(k) a foster care review committee established under 41-3-1115; or

(l) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies. ""

Renumber: subsequent sections

AND AS AMENDED DO PASS

Signed: *H. W. Hammond*
H. W. Hammond, Chairman

*y.c.
1/24/89
8:11
a.m.*

SENATE STANDING COMMITTEE REPORT

January 23, 1989

MR. PRESIDENT:

We, your committee on Education and Cultural Resources, having had under consideration SB 46 (first reading copy -- white), respectfully report that SB 46 be amended and as so amended do pass:

1. Title, line 7.

Following: "DISTRICT"

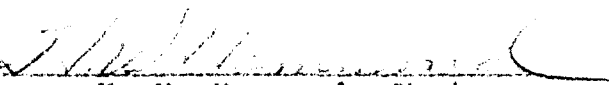
Insert: ", EXCEPT WHEN THE TUITION OBLIGATION HAS BEEN ASSUMED BY THE CONSOLIDATED OR ANNEXING DISTRICT"

2. Page 2, line 9.

Following: "district"

Insert: ", except when the tuition debt has been assumed by the consolidated or annexing district"

AND AS AMENDED DO PASS

Signed: 

H. W. Hammond, Chairman

J.C.
1/24/89
8:11 a.m.

Amendments to Senate Bill No. 66
Introduced Copy

For the Senate Committee on Education

Prepared by Dave Cogley
January 23, 1989

1. Title, line 7.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "41-3-202"

Strike: ", "

Insert: "AND 41-3-205,"

2. Page 2, line 8.

Following: "worker,"

Insert: "county attorney, or peace officer conducting an
interview of the child,"

3. Page 2, lines 9 and 10.

Following: "in"

Strike: "at least the first"

Insert: "any"

4. Page 3.

Following: line 3

Insert: "Section 2. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1)

The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is

treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or his guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect; ~~or~~

(k) a foster care review committee established under 41-3-1115; or

(l) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies. ""

Renumber: subsequent sections

SENATE RESOLUTION
EXHIBIT NO. 2
DATE 1-23-89
BILL NO. SB 46

Amendments to Senate Bill No. 46
Introduced Copy

For the Senate Committee on Education

Prepared by Dave Cogley
January 23, 1989

1. Title, line 7.

Following: "DISTRICT"

Insert: ", EXCEPT WHEN THE TUITION OBLIGATION HAS BEEN ASSUMED BY
THE CONSOLIDATED OR ANNEXING DISTRICT"

2. Page 2, line 9.

Following: "district"

Insert: ", except when the tuition debt has been assumed by the
consolidated or annexing district"