

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By Senator H. W. Hammond, Chairman, on
February 1, 1989, at 1:00 pm in Room 402 at the State
Capitol

ROLL CALL

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

Members Excused: None

Members Absent: Senator R. J. "Dick" Pinsoneault

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

Announcements/Discussion:

None

HEARING ON HB 195

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE JIM RICE, House District #43,
stated that the purpose of this bill is to correct
an unworkable time frame that is presently in the
law for the review of a teacher.

He went on to explain that what this bill does not
do is that it does not affect a non renewal of a
tenured teacher for cause. There are other
provisions in the law for this and there are also
other provisions for a non renewal of a non
tenured teacher and this bill does not affect
this.

The bill applies to the "narrow situation" in
which a teacher is terminated during the course of
the school for some gross misconduct. He
explained that presently under the law, when a
school board makes a decision to terminate a
teacher that teacher may appeal that decision to

the county superintendent of schools and under the law that stand now the hearing on that appeal must be held within 10 days after the written appeal is logged. This is much too short of a time frame for either party to prepare for such a hearing. He pointed out that this bill would be to change the same time frame to state that the hearing must be scheduled within 10 days but must not be held until 30 days after the appeal, just to give additional time for the parties to have to prepare before that hearing was held. It also gives the option of the parties setting an entirely new date if they do not want to fall within the criteria of the 30 days. He pointed out that this was a simple bill and he did not think any party was opposed to it.

List of Testifying Proponents and What Group they Represent:

BRUCE MOERER, The Montana School Boards Association
ERIC FEAVER, The Montana Education Association

Testimony:

BRUCE MOERER stated that HB 195 was a resolution passed at the MSBA Convention held last October. When looking at the section of the bill that talks about when a teacher, tenured or nontenure mid contract is terminated, it is definitely for a serious offense. This offense would be abuse of a child. For example when a chemistry teacher exposed students to harmful experiments, he was dismissed on the spot. The requirement for a hearing within 10 days of the date of notice would be impossible to meet and what is being talked about is a very important hearing, both for the teacher and the school board. By the time a teacher and the school board lines up the attorneys and the expert witnesses it is impossible to meet a 10 day dead line. In actuality there is no one who is complying with this law and they are ignoring this legal requirement for 10 days. It seems necessary to amend this to give everyone a fair amount of time to prepare for this important hearing.

He concluded by saying that they recommend a do pass for HB 195

ERIC FEAVER, announced that the association rose as to support HB 195, although they are not totally convinced that it is necessary because

attorneys have been doing this anyway. But the association is in agreement with the intent of the bill. He stated that they did cause an amendment to be adopted by the House committee and it was adopted by the whole house regarding this legislation and there is no reason to defeat this legislation, so they urge the committee's positive consideration of this bill.

List of Testifying Opponents and What Group They Represent:

None

Questions From Committee Members:

Senator Hammond asked Rep. Rice why they had amended 40 days and changed it to 30. Rep. Rice responded by explaining that yes it had been originally written for 40 days but because of a conference that was held with the parties it was decided that this had to get running so this 30 days was amended in the house committee. It is important though to understand he said that a hearing date has to be scheduled within 10 days of an appeal then held within 30 days of that appeal. The maximum length of time is 30 days unless the parties get together and agree to a different date. The House amended the language to read thirty days from the time the notice is lodged.

DISPOSITION OF HB 195

Discussion:

None

Recommendation and Vote:

Senator Mazurek moved that HB 195 be concurred in.

Senator Regan called for the question.

THE MOTION WAS CARRIED UNANIMOUSLY.

Senator Mazurek will carry HB 195 to the floor of the Senate.

HEARING ON HB 213

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE BILL STRIZICH, House District #41, stated that this bill allows the Board of Regents to waive college tuition only to survivors of firefighters or peace officers killed in the line of duty. This bill is proposed because of the very special nature of the job these individuals perform in protecting life and property. The survivors that are specified in the bill include the surviving spouses or children of the full time firemen, law enforcement officers or highway patrolmen. The bill is permissive and although it allows the Board of Regents to permit these waivers, it is not mandatory. The fiscal note that follows the bill has an impact of a little over \$800 per year. Rep. Strizich feels that this small sum indicated by this fiscal note is thwarted by the strong statement of support it will make with the passage of this bill.

He strongly urged the committee to pass HB 213 and show support for those who risk their lives to protect all of us every day.

List of Testifying Proponents and What Group they Represent:

EDWARD FLIES, The Montana State Council of Professional Firefighters
LEROY SCHRAMM, The Legal Council of the Board of Regents
CHUCK O'REILLY, The Montana Sheriff and Peace Officers Association
VERN ERICKSON, The Montana Firemen Association

Testimony:

ED FLIES stated that he and his group support HB 213 because it allows the Board of Regents to waive tuition for surviving family members of law enforcement officers and firefighters that are killed in the line of duty. He told the committee that this bill was amended in the House and his group agrees with the amendment. Without this added incentive, some families that suffer this tragedy may not pursue any further education.

LEROY SCHRAMM stated that the cost of this bill is very minimal considering there were 3000 fees waived throughout the system. The addition of one

or two a year is a cost that is hardly measurable. Even though it is permissive the intention at the commissioners office is to put the matter on the regents agenda for passage to go into effect next fall.

With regard to this permissive nature of the bill, he asked that it be left permissive, "because even though we intend to grant a waiver we run into problems with other fee waivers that are on the statutes, where it says "shall" and there are problems whether or not the Regents can impose a minimum GPA which has been done and it is done to everyone who has a fee waiver whether it is an athlete, statutory waiver, high school good student waiver." But if it says "shall" in the statutes there is always a question.

CHUCK O'REILLY stated that the money is not what our association is concerned with, it is the statement that the legislature could make about supporting its firefighters and law enforcement people. This would be much more valuable than the money question. Speaking for his association he urged the committees positive consideration.

List of Testifying Opponents and What Group They Represent:

None

Questions From Committee Members:

Senator Nathe asked when a firefighter is killed in the line of duty, "what kind of insurance covers him?" Mr. Schramm replied that the surviving spouse can receive a pension and there is worker's compensation. Mr. O'Reilly said that the sheriffs have a retirement system and those benefits would be received.

Senator Blaylock commented that "we all would say that we support our firemen, police, sheriffs and other peace officers, but there are a lot of people doing dangerous work for instance loggers and tanker drivers. Should we say that their children should receive a tuition waiver?" Rep. Strizich replied that they were asking for just police officers and law enforcement people who serve in a public service capacity and even though their jobs are from time to time very dangerous they are well trained making this different from a

logger or tanker driver. "These people are special."

Senator Blaylock asked if volunteer firefighters were covered if they are killed in the line of duty and if not should we discriminate like this. Rep. Strizich said that they were not included and the reason for this was that it was thought that it should be treated as a separate issue. In this bill he explained only a very narrowly defined group is being talked about, making it easier to figure out who is covered. If the doors are opened to volunteers this increases the scope of the bill. This coverage may or may not be included depending on their status as a volunteer. In smaller communities some people serve as volunteers that never go to a fire and may never have any training. These things he feels should be discussed because this would open it to sheriffs posses and reserve officers and may even include Eagle Scout troops that work with law enforcement. He said that he is unsure if the door should be "thrown open" like this. He pointed out that he had discussed this with several volunteers and they seemed to be accepting of this.

Senator Mazurek asked if a fireman is killed if his family would receive social security. Mr. Erickson said that they do not pay into social security and this is system wide for all professional firefighters in the state of Montana.

Senator Regan stated that she believed there were a number of law enforcement groups that opted out of social security, but pay a much higher premium for their retirement and their retirement benefits are compensated this way. It costs us more and they have a shorter period of service toward the retirement. She stated that she felt this was "an oddity that should be addressed."

Senator Farrell questioned how many firefighters have been killed in the line of duty. Mr. Erickson replied that in Missoula in 1958 there were 3 firemen that were killed.

Senator Farrell then asked, "Why are not volunteer forces included?" He said he realized that they were not as well trained but they are still doing the same job. Mr. Erickson said that the rationale for not including them in this bill was

to keep the scope narrow. It was not to cut any one out and certainly he said they believe they need the coverage also, but this should be a separate bill.

Senator Hammond commented that volunteer firemen are in all walks of life and they are almost all under social security. Therefore their children should be covered through social security.

Senator Nathe wondered how many fee waivers there were at the university. Mr. Schramm replied that the university is allowed to waive 2% of the students including native Americans, veteran, etc. This totaled in 1987-88, 3085 fee waivers and that is FTE fee waivers. The cost was about 3 million dollars.

Senator Regan commented to Rep. Strizich that the whole question of social security clouds this bill because many are covered by social security and would receive social security benefits including the ability to go to college. She pointed out that if this was amended to say that "provided an individual is not covered by social security." This would cut some out and there are a number of firefighters that perhaps have second jobs that would be covered by social security. Rep. Strizich stated that he still felt that this benefit should be provided to these public safety people. The permissive nature of the bill could be dealt with by the Regents. He said that he doubted that any double covering was the intention because actually the intent is that when a tragedy occurs this could give encouragement to the spouse and maybe this is all it would take to get a family going again.

Senator Mazurek wondered if in the fiscal note there was a retroactive application. Rep. Strizich replied that he had an amendment drawn up by the legislative council to address the retroactive question. (See Exhibit #1)

Senator Nathe asked, "Why would firemen pick a system that is not as good as social security?" Mr. Erickson replied that the firefighters pension system started in 1911 and he could not explain why this was chosen.

Senator Nathe explained that he was getting the impression that part of the reason that we should

do something here is that the children would not be taken care of by social security. He wondered why would such an inferior system be chose or is it because the retirement is so much better and would the spouse receive the same benefit if their spouse was killed in the line of duty. Mr. Erickson replied that as compared to social security, "it is comparable." This is a move to pick a family up out of a traumatic situation and provide them an incentive. The incentive with this bill is as much intended as the monetary value.

Senator Regan asked Mr. Erickson if the firemen's insurance was built on 20 years of service. He replied that the firemen's retirement was based on 25 years of service and 50 years of age. The sheriffs' retirement was based on 25 years of service and 55 years of age.

Senator Blaylock suggested that there was discrimination with this bill and he wondered if there should be an insurance system set up where all firemen and law enforcement people could buy into a particular plan that is open to paid as well as volunteer firemen and policemen.

Closing by Sponsor:

Representative Strizich reminded the committee that this bill was strictly limited to those people that do this job for 40 hours a week and this is all they do.

He hoped that the committee would find favorable consideration and he added that Senator Walker would carry the bill to the floor of the Senate.

HEARING ON SB 281

Presentation and Opening Statement by Sponsor:

SENATOR JOE MAZUREK, Senate District #23, stated that he and Senator Boylan are sponsors of this bill at the request of the Superintendent of OPI. He commended Dave Cogley for the excellent job of summarizing this bill. (See Exhibit #1)

Essentially what this bill is about is that the United States Congress passed the McKinney Homeless Act which requires the states to change their attendance laws to make sure that the existing attendance laws would not be a barrier to the attendance in our schools by homeless children. The OPI has determined that our current statutes would violate the feral provision in the McKinney Act.

The definition of a homeless person is essentially any child who lacks a fixed regular and adequate residence or one who is temporarily accommodated in a public or private institution other than a prison.

What this bill proposes to do is to require the trustees to admit a homeless child to a school within a district regardless of a child's residence. In an effort to minimize the effect that this bill could possibly have in Montana, the last sentence on Line 8 & 9 on Page 2 is added that says, "tuition for a non-resident child shall be paid in accordance with the tuition provision in this title." Senator Mazurek thinks this is aimed at letting the districts fight out who pays tuition where there is a youth who is at the Deaconess Home or Yellowstone Girls and Boys Ranch and you have to admit a child to the school under the federal law because they are there and they are homeless. This would allow attendance by the youth who has come from a community and is going to Yellowstone Boys and Girls Ranch, while the payment of tuition is worked out between the districts. The key is that there must be the ability to get the homeless child into a school but the right must be preserved to still collect tuition if there is a district that is liable for payment of tuition. And of course tuition in general may go by the way side but as presently figured tuition charges must be maintained where kids are moved into different districts other than for homelessness.

List of Testifying Proponents and What Group they Represent:

JACK COPPS, The Office Of Public Instruction
ERIC FEAVER, The Montana Education Association
JESS LONG, The School Administrators of Montana

Testimony:

JACK COPPS stated that this bill is proposed to put us in compliance with the McKinney Act, a federal law. We need to be in compliance because our existing attendance laws potentially produce a barrier to the homeless youngster. They may not have immediate and reasonable access to the public schools in the community in which the homeless youngster exists. Secondly, in drafting this piece of legislation it appeared important that the tuition requirement be protected, because there are institutions and there are districts that do rely significantly upon tuition revenue that may be realized from the homeless child. The definition of homeless is rather broad, it includes youngsters that are living with relatives and also it includes youngsters who are under temporary foster care at Yellowstone Boys and Girls Ranch. They would have the potential of losing a large majority of their revenue (80% at the elementary level would be lost if the tuition was waived for the homeless youngster). In effect this bill is saying that there will be no barriers, the homeless youngster will be admitted without challenge and if a contest follows regarding tuition, the contest will be between the school districts and the youngster will not be caught in the middle.

He concluded by saying that the OPI encourages the committee's support.

ERIC FEAVER and the MEA rose in support of SB 281. It is the hope of the association that this legislation along with several others that deal with tuition will be taken care of in time with an appropriate remedy to the Loble decision just confirmed by the Supreme Court. It is a part of every proposed remedy that the MEA has been working for with the superintendents, teachers, OPI, and that is that tuition costs be eliminated among school districts. He said that he sees no reason why tuition costs could not be eliminated for other special students like homeless students and not be an issue if indeed the appropriate remedy is written to that decision.

JESS LONG stated that schools are willing to help when dealing with the homeless which is one of societies problems and if SB 281 reduces the barrier they are in favor of this bill and they ask for its support.

List of Testifying Opponents and What Group They Represent:

None

Questions From Committee Members:

Senator Nathe asked permission to make a statement regarding this bill. He went on to say that this bill as far as he is concerned came out to late. The MHSA regulates athletics not because of children but because of adults being involved in the kids sports. If this would have been one year earlier his daughter could have played high school basketball for Plentywood because she transferred from a Class C school to a Class B school and under the definition of homeless she is homeless because she is staying with grandparents and if tuition would have been "knocked out" and she could be moved freely, she could have played ball.

Senator Hammond commented that he feels this bill may cause things like Senator Nathe mentioned to happen.

Senator Hammond asked Jack Copps, knowing that there are some schools that waive tuition for everyone he wondered if the sentence in the bill, "...shall be paid," meant that they would be forced to pay tuition. Mr. Copps replied that it was not the intent of this legislation to force tuition payment but to leave it as an option as provided in a statute.

Senator Mazurek stated that it must be "shall" in order to require tuition payments. Mr. Cobb used Yellowstone Boys and Girls Ranch as an example and he said tuition flows at the elementary level to the Ranch and at the secondary level it flows to the Billings school district. He went on to say that the primary problem with waived tuition is that there are districts that are providing services to special education youngsters and many of these districts would suddenly find themselves without those funds to provide these continuing services. The problem with tuition and why it is included here is primarily for the special education youngsters that may be temporarily housed in a foster facility.

Senator Hammond wondered how a district was going to collect tuition from parents who would not be

responsible for this debt. Terry Tiechrow, a specialist on the McKinney Homeless Act, replied that he did not think this bill would create any new requirements. Tuition is being left in for the protection of those that are currently in the tuition system and are collecting and/or using tuition payments school to school. If someone tried now to collect a tuition payment, we still have a provision for a school to waive for all it or make everyone pay tuition. This protection is still provided.

Mr. Copps commented that a school knows when a juvenile justice system sends a child and in most cases this process just moves with the child. There are questions usually when the child goes back but currently in Montana there seems to be no problems with this legislation that would prohibit payment whether parents are available or not. The school district that they are coming from makes the payment and the juvenile justice system makes the placement.

Senator Hammond says he knows of problems in Whitewater, Montana where they can not collect from anyone if they do not collect from everyone.

Mr. Tiechrow stated that all that is required is that the district attempts to collect from everyone, not that they actually collect from everyone.

Senator Blaylock asked if children are brought from Wyoming does Billings for example have to accept them. Mr. Tiechrow responded, "Yes, only if they meet the requirements of homelessness.

Mr. Copps added that there is the potential for some school districts not to receive any money at all and they would find themselves in this position because of the McKinney Act. They would have to accept and supply the youngster with a free and appropriate education. Senator Blaylock added that the fight then would be between the districts and not involve the children.

In response to a question asked by Senator Hammond, Mr. Tiechrow stated that migrate workers are not residents therefore tuition is not affected.

Senator Mazurek stated that a youngster must apply by July 1st, be approved by the county superintendent and if all requirements are met and residency is established, then move, tuition will follow.

Senator Hammond informed the committee that right now in Montana there are 38 "homeless" students. Mr. Tiechrow added that there are two categories of homeless students, they are children and youth. The youth are without parents and children are with parents so there can be a student without parents.

Closing by Sponsor:

Senator Mazurek closed by thanking the committee.

DISPOSITION OF HB 63

Discussion:

Senator Regan reminded the committee that with this bill she was concerned with county memberships being consistent and when other county officials have their memberships paid it should be a common practice for all, including county superintendents.

Senator Hammond commented that with this bill the legislature would be mandating the counties to do something we should not be mandating. He feels that this would just be adding problems.

Senator Regan went on to say that it could be repealed where the others are mandated and leave it up to the individual counties.

Senator Hammond felt that this could cause a weakening of the membership in the various associations. This could weaken MACO, which is the voice of the counties.

Senator Regan said that there is merit in unity and if other membership are mandated then there is equity in including the county superintendents. Senator Farrell wondered if MACO's authority would be weakened with this proposal. Right now he said the county commissioners have the authority and he would hate to take it away from them.

Senator Blaylock added that at the Constitutional Convention it was considered that all county officials be taken out of the constitution but it was decided that all these offices have constituency and there is no change to be adopted. It would be wrong to mandate, unless the legislature also gave them the money to do what they say.

Recommendation and Vote:

Since Senator Pinsoneault was absent, Senator Regan moved that this bill be deferred to a later time.

The committee was unanimously in favor.

ADJOURNMENT

Adjournment At: 2:50 pm



Senator H. W. Hammond, Chairman

HH/jh

Senmin.201

ROLL CALL

EDUCATION

COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2/1/89

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

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 1, 1989

MR. PRESIDENT:

We, your committee on Education and Cultural Resources, having had under consideration HB 195 (third reading copy -- blue), respectfully report that HB 195 be concurred in.

Sponsor: Rice (Mazurek)

BE CONCURRED IN

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

*y.c.
2/2/89
11:25
a.m.*

Amendments to HB Bill No. 213
2nd Reading Copy

Requested by Rep. Strizich
For the Senate Committee on Education

Prepared by Andrea Merrill
February 1, 1989

1. Title, line 8.
Strike: "AND"

2. Title, line 9.
Following: "MCA"
Insert: "; PROVIDING AN APPLICABILITY DATE; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE"

3. Page 2, line 17.
Following: line 16
Insert: "NEW SECTION. Section 2. Applicability. [This act]
applies to any qualified survivor of a Montana firefighter
or peace officer who is killed in the course and scope of
employment after [the effective date of this act]. "

NEW SECTION. Section 3. Effective date. [This act] is
effective on passage and approval."

Summary of Bills
Heard February 1, 1989

By the Senate Committee on Education

Prepared by Dave Cogley
Committee Staff

SENATE EDUCATION
EXHIBIT NO. #2 *
DATE 2/1/89
BILL SB 281

HB 195

This bill as amended by the House provides that a teacher who has appealed his dismissal by the trustees to the county superintendent must have a hearing within 30 days, rather than the 10 days currently required. Under the bill, the period could be extended by mutual agreement.

HB 213

This bill as amended by the House authorizes the board of regents to waive tuition charges at units of the university system for survivors of paid, full-time firefighters, law enforcement officers, or highway patrol officers who were killed in the course of their employment. A law enforcement officer is defined as a "person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority".

A technical consideration is that the bill has no effective date, so that it would become effective October 1, 1989. That is after the commencement of the regular fall term in most of the university units.

* SB 281

This bill requires a district to allow "homeless" children to attend school regardless of the child's residence, if any, without cost to the child or parent. It does not relieve any obligation of a district or state of residence of the child or his parents, if any, to pay tuition as otherwise required under Title 20, chapters 5 or 7. The bill addresses the requirement of Congress, under the Stewart B. McKinney Act, that any state that has a residency requirement as a component of its compulsory school attendance laws must revise such laws if necessary to assure that the children of homeless individuals and homeless youth are afforded a free and appropriate public education. The term "homeless" is defined in 42 USC 11301 as follows:

- For purposes of this chapter, the term "homeless" or "homeless individual" includes—
- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
 - (2) an individual who has a primary nighttime residence that is—
 - (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
 - (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or
 - (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

