

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By Senator H. W. Hammond, Chairman, on
February 10, 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, R. J. "Dick" Pinsoneault,
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:

Senator Hammond told the committee that they would
begin working on SB 203 and he said he hoped to
complete it today. He also announced that there
will be an executive action session, Saturday,
February 11, 1989 in Room 402 on adjournment of
the Senate. Action on SB 203 would resume if
necessary as well as action taken on SB 304 and
SJR 6.

DISPOSITION OF SB 203

Discussion:

Senator Hammond presented amendments to SB 203
(See Exhibit #1). They were requested by Senator
Farrell.

Senator Farrell suggested that the "easy one" be
done first therefore he moved that Section 2 of SB
203 be struck, which is the statutory
appropriation section, with the understanding that
it will be inserted in the House and if we do not
do it here it will not be accepted in the House

because it is an appropriation. There is also a corresponding amendment to the Title.

Senator Blaylock asked Senator Farrell if what he was doing was taking all of the money out of the bill.

Senator Farrell replied that this was necessary because of the rules concerning appropriations, which must originate in the house.

Dave Cogley went on to explain that the levy that raises the money would still be in the bill. That is the levy for the retirement will still be included. Only the statutory appropriation of those proceeds is being taken out.

Senator Mazurek stated that as the committee had gone through the bill there had been consensus points adopted on the bill. He wondered if those amendments will be drafted, particularly concerning the number of funds. As we had worked through the issues one by one (See Exhibit #2) and then the superintendents spoke to us and now instead of continuing to work through the issues, we are taking amendments.

Senator Farrell stated that he had presented these as concepts of amendments because if we decided to change one of the points we will want Dave to prepare them before we discuss them. He suggested that the concepts of amendments is a better ideas.

Dave explained that he was concerned with how to deal with Senator Farrell's motion because a number of funds had been combined in to the general fund and there was an "enterprise fund" which consisted of the nonbudgeted funds. These are individually set out in statute and there would have to be an extensive set of amendments to do all this combining.

Senator Mazurek stated that he thought the intention was to leave the enterprise funds alone and to put them all into the same category.

Senator Blaylock asked that if it is called an enterprise fund there would still be these different funds in the statutes therefore there would not really be an enterprise fund.

Senator Mazurek responded by explaining that the

enterprise funds just "hang out there." Different districts use them as they need them and they are already in the statute. This does not need to be changed because they are all basically operating as a self containing fund. The districts collect this money, this is not foundation money and they need to be left this way. The education community had agreed on this. Therefore the four other funds need to be dealt with and the enterprise fund needs to be left alone.

Dave explained that it would be extremely difficult to draft amendments that deal with all the separate funds. Dave suggested that each fund be addressed as they are all spelled out on page 46 of the bill.

Senator Farrell repeated his motion to strike Section 2.

Senator Regan called for the question.

Dave explained that this motion would strike the statutory appropriation and it is assumed that when the appropriation statute is struck it is meant that this includes everything that goes along with taking Section 2 out.

Senator Farrell added that he meant everything that the House would not accept.

Dave went on to say that toward the back of the bill where the appropriation is, Section 2 is referenced in the section dealing with statutory appropriations, where they are all listed. Also a Title amendment is necessary.

Senator Farrell asked if he should amend his motion to take care of those three areas to take the appropriations out.

Dave said that if the motion is to strike the statutory appropriation it will be assumed that this includes all the necessary places in the bill.

Senator Farrell withdrew his first motion and then moved that they strike the three areas that pertain to the statutory appropriation.

Senator Brown asked, "On page 46, concerning the funding business, it says on sub-paragraph (a)

budgeted funds for any funds in order to spend any money from the general fund, transportation...." If it is limited to five, begin on line 5 and strike the word "bus" and everything on line 6 and leave retirement fund in and strike the rest of line 7 and that is where a substitute fund called capitol out lay fund for debt service, leased facilities, building reserve fund and so on. So may be should continue to strike everything on line 8, keep the word fund on line 9. He went on to say that he was not sure how the enterprise fund was included in this section.

Dave explained that there were a number of other statutes which refer to each of these given funds that are listed. To take care of doing what the committee wants to do, we not only have to look at the list of funds but all the sections in all the other statutes that deal with each one of these funds.

Senator Mazurek said this has been a matter of extensive discussion not only with the committee but also with the education community. There has been some agreement and he stated the statutes would have to be gone through exhaustingly but when discussed the other day, it was said what funds would be combined and which ones would not be included. Senator Mazurek agreed with Senator Brown's ideas to take the general fund and add adult education into that, so the term "adult education fund" is struck. Also the transportation fund is combined with bus depreciation.

Dave stated that this is correct and this section must be amended to reflect what is being done.

Senator Mazurek asked if a motion should be placed that just says that there are to be four funds, the general fund, the retirement fund, transportation, and capitol outlay. The general fund will consist of tuition, if there continues to be tuition, comprehensive insurance and adult education, the retirement fund, the transportation fund will include bus depreciation and existing transportation and the capitol outlay, which will include debt service and building reserve.

Dave stated that if the motion also includes adult education it will be combined into the general fund. He will then know what is meant and he can

take care of all the sections that deal with this.

Senator Brown summarized what Senator Mazurek said that essentially then there will be four budgeted funds to include a general fund (tuition, adult basic education, comprehensive insurance), capitol outlay fund (debt service, building reserve), the transportation fund (bus depreciation) and the retirement fund.

Senator Mazurek asked Dave Cogley if the enterprise funds were non budgeted funds. If so then it is not necessary to say that there is a fifth fund, because the enterprise fund would remain as a nonbudgeted fund.

Dave explained that the words "enterprise fund" do not exist in the statute. He said he therefore assumed that when the committee used "enterprise fund" they meant these nonbudgeted funds that are listed on Page 46 of the bill. He said he did not think the court decision was concerned with these nonbudgeted funds because they are a different kind of fund not subject to equalization. He therefore suggested that the committee not worry about these funds and just leave them as they exist.

Senator Blaylock said it could just be left the same way and say nonbudgeted funds rather than "enterprise funds."

Senator Regan asked Dave about the calls she had been receiving from people who are nervous about the adult education program be threatened. They do not want adult education being slighted when equalization takes place. If it is put into the general fund, are there going to be any problems doing this.

Dave replied that the general fund expenditures are supported by the foundation program and the money that comes through the foundation program is distributed on an ANB basis, therefore adult ed will suffer, because not all schools provide this program but all schools will receive equally whatever state support is given to the program.

Senator Regan added that adult ed also is not for K-12, it is not part of the foundation program. After some thought she said she felt that this issue should be raised because she is not sure it

belongs in the general fund because it does not deal with the foundation program. It is a separate kind of thing. Adult ed funding is separate also. It is not equalized, it is an independent fund.

Dave stated that another point that may add to the confusion is that everything that is put into the general fund, unless the current foundation program mechanism is changed, is going to be funded by an ANB distribution and this could create problems in some areas, such as retirement, transportation, where there are not equal needs. Some other mechanism may be needed to distribute money other than the ANB base.

Senator Nathe suggested that the easiest thing would be to move adult basic education over to a fund like transportation.

Dave explained that the reason there are separate funds now, is because of this problem of having special needs in the districts. Retirement has been moved out of the general fund because of the different needs and the only way that this can be dealt with is to get it out from under the foundation program and treat it in each district as you need to. Adult education is one of these types of programs where not all districts provide it and some provide a large program.

Senator Mazurek felt that there were two different things being discussed. One is accounting and the other is funding. This is one issue that he thinks the entire education community agreed to, that is the adult education should be in the general fund for accounting purposes. He stated that he was not sure what kind of detail problem this creates when talking about funding but is the committee making a bigger problem out of this than there actually is.

Senator Nathe asked if the aggregation of funds was new in this bill. What the superintendents had included was what was existing and now the committee is reorganizing it to five funds.

Senator Mazurek replied that he had a consensus report from MASA that said there should not fewer than 13 funds for budgeting, they support the Governors plan including retirement outside the general fund. In the education community adult ed

was included in the general fund category.

Dave Bishop said that the point that Senator Mazurek is referring to is an old report. This was the consensus of the superintendents as a group before the education community came out with a consensus. The OPI (See Exhibit #3) letter addresses the funds speaking of the general fund category as including, tuition, insurance, and adult education. This consensus has been agreed upon by everyone.

Senator Nathe asked who was all involved in the consensus group. He said he felt that Senator Regan brought up a very valid point concerning adult basic education.

Senator Brown said for the purposes of his motion we should recognize something on which there is a general agreement, recognizing it may be a complicated thing for Dave to draft but if there is a general consensus in the educational community this is certainly indeed a way we can address it.

Senator Farrell pointed out that the definition of a budgeted fund is one that must be adopted by each school district to be included in the general fund. Therefore if the school district's trustees do not adopt it, it is not in the general fund. The local school district can either adopt adult education or not adopt adult education. If they do it will be under the general fund with this proposal. What Senator Farrell feels will happen is that everyone will adopt an adult ed program and it will be put into the general fund.

Dave Cogley agreed, but mentioned that whether a school district adopts an item like adult ed in the general fund has nothing to do with the distribution they will receive under the foundation program.

Senator Farrell replied that they must adopt an adult education program first, if they adopt this program it will be in the general fund and then it will fall under the category of redistribution.

Dave said that if the district does adopt an adult education program under this proposal as a part of the general fund, they will receive the same amount of money set by the foundation schedule as

a district not adopting an adult education program, since it is based solely on ANB.

Senator Farrell added that if a school district does not adopt an adult education program there will be no money and no program.

Senator Regan reiterated the conversation by saying, "In distributing money they take ANB and by ANB they mean those who are qualified for K-12 and they count noses and this is the money they receive. Whether they have a budget for adult education or not does not make any difference because they do not count those as ANB, they do not qualify for the foundation program. So the fear of those people in the adult ed is that they are going to get squeezed out because they are not being recognized." She did not believe that they would be equalized.

Greg Groepper stated that he thought what the education community was trying to point out was that (1) they want the general fund simplified and (2) they recognize there will be losers on comprehensive insurance as there will be winners. There will be losers on tuition as well and adult basic education. But by putting money in the general fund and funding it at 100% or the level that SB 203 is talking about, they will have some options at the local level to decide whether to set aside some the general fund money to match the federal money for adult ed or whether they want to do other things. They do not feel he said that all the money will be coming back the same way called for in the general fund because this will not solve anything and there will be losers as a result of this, but the education community in general felt that these funds being included in the general fund would give them the most amount of flexibility and the least amount of damage especially if we have the flexibility capped and they can decide if they want adult basic ed or pay more for better insurance program or have the flexibility. This is why they are there, not because of the concern that the money will not be there.

Senator Regan added that the adult basic education was not addressed by the court and does not have to be equalized and those districts are being penalized that have a lot a illiterate adults that are trying to teach to read and get a GED. She

said that she felt we get "the biggest bang for the buck" with these adult when they are taught to read. Remember this is not a part of the equalization program and therefore she said she would argue that this issue should be held separate.

Senator Pinsoneault responded by saying, "According to what the gentleman just said there is going to money for adult education." "Okay then if I am at the local level I would be stupid for not including adult education whether I have it or not."

Mr. Groepper added that as he understands it adult ed was asked for because the amount of money the state was putting in was matched, but the federal guidelines determined that we could not spend all the money for adult ed GEDs so we had to ask for more money to be able to this. Right now the districts at the board level are deciding if they are going to run an adult basic ed program, and receive some federal money as well as some general fund money, or deciding not to do this. So some districts offer this, which is a board decision and some districts do not. The thinking was in terms of the amount of money here we are talking about a part of the foundation program and the foundation schedule would be increased accordingly. The board would retain that option because we are funding it at the average expenditure level and then there is the five years to bring in the cap. They could still retain that local control and decide whether to do it or not. Also some additional flexibility would be had in case they wanted to meet some insurance costs by cutting adult basic education or do something with tuition. They have this flexibility and there are many sides to why it should be in and why it should not. Rather than rehash this he wanted to speak for the OPI and the education community to say that the consensus is that this gives them the most flexibility, this is not to say that you could not set up a separate fund and fund adult basic education like special education is funded to meet Senator Regan's concern. Obviously this is a matter of legislative policy and the committee will have to decide this on the input that you have.

Senator Regan moved that we exclude adult basic education from the general fund foundation program

because it was not ordered to be equalized by the court, because it does not fit within the foundation program because it is a separate and distinct just as is special education and individual districts may or may not have this program and may or may not chose to fund it.

Senator Hammond commented that much of the adult basic education program deals with the people that do not have a high school diploma therefore, it is under K-12.

Senator Regan stated adult basic education does not count K-12, because the foundation program only covers those through the age of 19. Those that are receiving GEDs outside of high school and are not being funded by school foundation money. This is a different source of funding just as is special education.

Senator Brown said that in the interest of making progress on the bill, he felt that adult basic education should be in the general fund, so he is willing to accept the amendment.

Senator Mazurek again stated that he feels this is an accounting issue vs. a funding issue.

Senator Pineseault added that he did not feel that adult education was going to suffer, in fact it may enhance it.

Senator Regan interjected that adult basic ed would suffer (1) because of the cap (2) another program is being put in along with the foundation program which is going to equalize and this program does not really belong there.

Senator Mazurek stated that he could not believe that the entire education community is going to wash out adult basic education. It is understandable that they want simplified accounting and he said he was unpersuaded.

Senator Hammond said we do have a conflict.

Senator Regan said that she would like to amend the motion to exclude adult basic education from the general fund and have it be a separate budgeted category.

Senator Farrell called for the question.

Senator Hammond asked that all those in favor of the amendment to the motion raise their hands, five were counted in favor of the motion. Four were opposed to the motion. The motion was carried 5 to 4.

Senator Brown called for the question on the motion as amended.

Senator Hammond called for a motion to amend this bill as amended. The motion was carried unanimously.

Senator Mazurek added that we now have five funds and a nonbudgeted fund.

The committee wondered what a nonoperating fund was, and Bruce Moerer of MSBA answered that it was a fund that was almost never used, it happens when a district votes to cease to exist, but they do not want to disband, they want to be nonoperating for a couple of years, but maintain the facilities in case they can start the school up again and this is needed in case the situation comes up once every four or five years. If there is no such fund, the district is forced to close and to reopen, this allows them to stay nonoperating for three years. This happens in the small rural districts.

Senator Farrell moved the first amendment #1 (See Exhibit #1) for the purposes of discussion, to eliminate the district retirement fund and county retirement levy and include retirement in the general fund budget and distribute support through the foundation program. These are put down as concepts without amending each section of the bill, so we can discuss the concept rather than drawing up amendments for the whole bill and each section. May be we can put together something conceptually that we can agree to. He went on to ask if the lottery money was included or are there other bills in the legislature.

Dave answered that the lottery is transferred from retirement equalization to state equalization aid in SB 203.

Senator Brown said that basically what is being proposed sounds to him like what is already in the bill.

Senator Mazurek replied that now this is not the case because Senator Farrell is equalizing at 100%.

Dave explained that the difference between the amendments that Senator Farrell is proposing and what is in the bill is the fact that in the bill retirement remains a separate fund and it is not in the general fund, and Senator Farrell's amendment would put retirement in the general fund.

Senator Brown stated that he thought the committee had settled the business about the funds. So he objected to that part of the motion, but if you just look at what is on the paper, the only thing that is needed to get straight in our minds is whether we want to leave it at 90% or whether we want to go to 100%. Maybe we can focus on just this.

Senator Nathe said there is a far greater issue and that is whether we are going to fund retirement on a basis of ANB or cost, this is the issue. The bill funds 85% to coincide with the other 85% of the foundation money. There is 5% for inflation and the other 10% is picked up by the local voted levy. This is actual cost.

Senator Farrell said current schedules by ANB is the best way but this is the point that needs to be discussed.

Senator Nathe said that ANB is going to benefit large schools because the more students you have in and if you decide to equalize teacher retirement on the basis of \$350 per ANB, the more ANB you have, the more money you are going to get for teachers retirement. You take a little school with low ANB and \$350, and you have a little elementary school maybe 10 or 15 students in it, there is no way that the amount of money generated on this basis will even begin to pay teachers retirement.

Senator Mazurek said that this is one of those areas where it is time to say that you don't care what it does to your district, what is fair, and what it costs. This is what it is based on.

Senator Farrell agreed that if it is based on actual cost, this is why he support this plan.

Senator Blaylock stated that he thought that what the superintendents said yesterday, makes a lot of sense. He feels that it should be left at 90% and keep the retirement at actual costs.

Senator Farrell said it should be put into the general fund and cap the actual expenditures as we go down through.

Mr. Groepper stated that there has been discussion among folks since the issue yesterday came up about shipping in the reports and having the state cut one check to the teachers retirement account if it is funded 100%. Obviously this is a policy issue of this committee of whether you want to fund it at 90% or 100%, but mechanically if you fund it at 100% and have OPI make the payment into the teachers retirement account at 100% there is no funny business in the budgeting. That was a concern of the eastern superintendents. This would be actual cost and if its funded at 100% through the foundation program or a separate retirement account, there would be no way it could be used to levy more mills locally or do something different with it. Mechanically it has some real nice attractions, because by cutting one check at the state level to the teachers retirement bureau you do not have to cut 560 checks out to the school districts and get that many checks back in to the teachers retirement. It also would allow OPI to do the same thing for unemployment insurance which is part of the retirement fund and the same thing for FICA. So it is thought that if the committee chooses to do 100% funding as a policy issue, the district would probably be saved a lot of work by OPI handling that portion of the funds making the payment to retirement, unemployment, and FICA and giving the information back to the districts for what they need for their accounting. This came up as a result of the discussion with the education folks before coming and they feel this makes a lot of sense. Their position has always been to fund it fully and equalize and handle it in this fashion. There then would not be any funny business of some administrators taking advantage of it and there would be a saving of paperwork for a lot of agencies.

Senator Nathe asked Mr. Groepper about OPI making a lot of "guesstimates."

Mr. Groepper replied that it is not unlike the state payroll when the state payroll is being budgeted and there has to be a guesstimate. Then it is paid based on actual expenditures. Starting out there would be reports of what the school districts anticipate would be their contribution to the retirement system and that payment would be made on the first months of the school fiscal year. When the staff was on board in September they would report to the OPI and they would start making distributions to retirement and unemployment insurance depending on if you decide on twelve monthly payments. A reporting schedule would be set up like this where adjustments would have to be deposited into teachers retirement or unemployment insurance based on the last months payroll. An estimate would be made the first month or the second month until the employees got on board. Since money is coming out of here to them to other agencies an easier method would be for the report to come here and the disbursement be estimated depending on how it will be funded.

Senator Brown said that on the basis of what Greg just told us it seemed to him that it might make sense to go with leaving the bill as is SB 203 except that the 90% should be increased to 100%.

Senator Farrell asked that if the general fund expenditures are capped, "Doesn't this basically cap the salaries and does this also put a cap on retirement costs? So that instead of raising salaries very high in one district the retirement is raised in one district which can cause an imbalance that way? Can better retirement benefits be gotten instead of salary increases?"

Bruce Moerer replied that run away retirement is not a problem because retirement is driven by a statute, it is a fixed percentage that is controlled by salary which is capped as a general fund expenditure.

Senator Farrell withdrew his first motion and moved that SB 203 be accepted with 100% funding for retirement. He asked, "But now how do we set the mechanism up that the money is paid by OPI in

one check?"

Dave replied that in the current statutes there are provisions for each district to have a retirement fund. There are also provisions for county retirement levies. These would seem to be unnecessary if the state were to provide 100% funding of those costs. Therefore those provisions could be done away with and a statute written that would direct OPI to write out those checks when they receive the information from the districts.

Senator Farrell stated that then a separate motion would be needed to eliminate the county retirement levy, which is in SB 203 and SB 198.

Senator Farrell moved that retirement be separate and be 100% equalized with a state levy, the lottery money would go to the state, and local retirement money would be eliminated, with OPI writing the check by a single payment to TRS.

Mr. Groepper suggested that OPI could work with Dave to get the mechanics worked out. He was not sure, but he thought that it would be remitted monthly to TRS. There may be quarterly remissions to the unemployment insurance fund. He said the language can be put in there. If the committee's intent is that administratively OPI handles this for the district, the districts then do not have to do all the paper work.

Senator Mazurek repeated then that there would be a direct payment by OPI to TRS.

Senator Nathe pointed out that this would be based on actual costs.

Mr. Groepper said that this was correct, they would show actual costs, then the OPI would be required to make payments at 100% of actual costs.

Senator Brown called for the question.

Dave questioned, "What purpose does a separate retirement fund apart from the general fund serve now under a centralized administrative scheme. It would seem logical to just have a general fund line item for retirement."

Kay McKenna replied that the reason why the

education community would like a separate retirement fund is the fear of not having it fully funded by the state.

Senator Hammond stated that a fund could be eliminated, so what does the committee chose to do.

Senator Mazurek moved that SB 203 be amended to provide that retirement would be 100% equalized with a state levy, lottery money would go to state equalization, the local retirement levy would be eliminated, and OPI would make a direct payment for retirement. Implicit in this motion is that retirement is being eliminated as a separate fund and being put into the general fund.

Senator Nathe thought that maybe the amendment should require that school districts submit actual cost information to OPI.

Dave agreed that this would have to be worked into the language so the school district would know what is required.

Senator Brown called for the question.

The motion carried unanimously.

Senator Hammond asked if there was an amendment to issue #3 (See Exhibit #2) which equalizes special education. This is a general fund item.

Senator Mazurek said they could skip #3 because comprehensive insurance was included in the general fund.

Senator Hammond questioned #4 (See Exhibit #2) and the tuition charges and attendance agreements.

Senator Farrell said that the only problem here was that Mr. Richards (Miles City superintendent) had said that they need the right to refuse. He was concerned with Pine Hills and their special education costs.

Senator Mazurek added that there is the same problem with Deaconess Youth and Yellowstone Boys and Girls Ranch. Tuition currently follows them.

Senator Hammond asked Senator Mazurek if he was concerned about those that attend Yellowstone Boys

and Girls Ranch or those that come from there and attend other schools.

Senator Mazurek said that he thought it could go both ways. For example a student from Helena goes to the Ranch and then goes to a Billings High School. In the past, money would flow from Helena to Billings, and this was both tuition money and ANB money. He understood that the attendance agreements would still allow this sort of thing.

Dave replied that this was not true, and the ANB money would go to the school where the student was attending.

Senator Regan said that when Superintendent Richards spoke yesterday, he said no tuition and the receiving district would be protected, but one of the critical points they made was the whole question of special education, where there are very expensive programs and people will come in to these with no reimbursement and this could be a costly item. She asked how much of a problem this was and she added that she wanted to see the child get a good education but on the other hand there may be a problem here. They did suggest some type of attendance agreement with the receiving schools.

Dave added that there is a problem for the schools that depend on tuition for special education, because in taking out the tuition provisions, tuition was also taken out for special education. This results in the districts that take special education students having only the ANB or the amount that they are reimbursed for special education costs and typically this is not 100% or has not been. They currently use the tuition that would come with this child to make up the difference. This problem would not exist if special education was funded 100% or was 100% equalized.

Senator Hammond added that they are making it work now, but the screening teams have a problem with the kind of students that they allow to come to a school.

Senator Blaylock asked how a school like Miles City is going to be protected against people bringing the profoundly retarded students into the program which is very expensive.

Dave replied that funding special education costs at 100% would be the answer.

Senator Nathe said that Mr. Richards also made the point that there are the kind of special education students that never do get funded 100% of cost and this was a concern.

Senator Farrell moved that his #3 amendment would handle special education funding under issue #18. This amendment equalizes special education at 100% of allowable costs.

Senator Blaylock asked Mr. Groepper how he understood this problem, and he replied that he thought there was a question of whether 100% was of allowable costs or actual costs. The numbers that the education community has been talking about would collect allowable costs, not actual costs. The number that the state pays now is 27.7 million dollars, what was asked for in the supplemental by Superintendent Keenan was an additional 7.7 million to get the state's share up to 100% of allowable costs. Governor Stephens is offering is 6 million, which would go on top of 27.7 million and this would get real close to allowable costs. But this is still 3 or 4 million under actual costs. If it is funded at 100% of allowable costs this is in concert with what the education community expects.

Senator Blaylock asked that if we move this amendment and there is an enriched program like in Miles City then Miles City is "tough luck" if this motion that is pending is carried. They would either just have to eat it or tell these people they can not come here.

Senator Hammond reminded Senator Blaylock that if they move there they are eligible but they can not be turned away.

Senator Pineseault called for the question.

The motion was carried with one no from Senator Blaylock.

Senator Hammond asked the committee if there was anything they wanted to do with issue #9 (See Exhibit #2).

Mr. Cogley pointed out that the figures that were used in drafting SB 203 to adjust the foundation program schedules are based on school FY 87. They are a year out of date. Now that 1988 figures are available everybody that has testified on these bills, has agreed to use actual costs for FY 88. So the foundation program amounts that are shown in this bill will need to be amended to reflect the 1988 costs if the committee so desires.

Senator Blaylock asked if this was the 1.65 figure that the superintendents were talking about.

Dave stated that yes, this was the figure that would change, because using FY 88 costs would increase that factor some what.

Senator Nathe reminded the committee that it was also mentioned that not only do they want to use 1988 figures, but also if there is any increased funding in the meantime they would like this included.

Senator Hammond said that we would not deal with this point right now.

Senator Farrell suggested that in the interest of time today, the ones that are going to require a lot of discussion should be dealt with first.

Senator Mazurek spoke to issue #6 (See Exhibit #2) that the obligation here is the easy part, talking about revenue.

Senator Regan spoke to issue #11 (See Exhibit #2). She said that the court decision said that 874 money may be considered. There is about 8 million dollars to equalize. She said that she would be bring in a report that shows the great inequities that exist in the 874 money, so that at least the committee is aware of what is going on. She suggested that the committee should look at this later because even though the money is not great there seems to be a problem with it.

Senator Pinsoneault stated that the Loble decision said to consider it and the Supreme Court said to leave it alone until it meets the federal equity test.

Senator Regan added that there is about 8 million

dollars that is not necessary to meet that test and there are districts that will have problems.

Senator Hammond said that they would move on and ask Senator Regan to bring this report in tomorrow.

The committee proceeded to look at issue #13, and Senator Farrell had an amendment #2 (See Exhibit #1) to move and he is suggesting with this amendment that if we are going to go to 12 monthly payments, this is what SB 203 does, we reduce the general fund cash reserve to 10% and go with a penalty for non compliance and maybe a comparable reduction in foundation program support and provide authority to OPI to grant emergency variance.

Dave explained that the idea was that if monthly payments or monthly distributions are going to be made of the foundation program support, this would reduce the need for cash reserve in the general fund. The 20% in the bill was a reduction from 35%, but the thought is that there is not even a need for 20% with the payment schedule. 10% could be gone down to, but to provide flexibility in case of an emergency OPI could be given authority to grant a variance. Currently there is no penalty in statute for a violation of the 35% and Senator Farrell felt that if there is a violation of the cap limit there should be some penalty attached to it.

Senator Nathe asked where the money comes from in case of an emergency if there is no reserve.

Dave explained that this variance would be for an anticipated expense that might have to be met on a one time basis.

Senator Farrell said he is not wedded to 10%, but he said he felt 20% was too much. He would be willing to negotiate down from 20%.

Senator Hammond said that it had been agreed that if foundation support came in monthly installments they could live with the 10%.

Senator Brown stated that he felt with the 10% there would be a real savings advantage.

Kay McKenna stated that in her position she had to

be schizophrenic because she had to think urban and rural. In some of the rural districts where they may have \$10,000 in the general fund, 20% is barely adequate and when there is an emergency, this would not be enough to cover the it.

Senator Brown asked Ms. McKenna if it made any difference whether it was 10% or 20%. Maybe the separate individual districts should be addressed. If there is a way to get around it like a slush fund it does not make any difference if its 10% or 20%. If 20% is inadequate 10% would just be more inadequate but still if there is an alternative this would be better.

Kay McKenna replied that 20% would be better than 10%.

Senator Pinsoneault asked if it made any sense to vary the reserves depending on the size of the district or would this be to cumbersome.

Mr. McKenna stated that it really does make a difference in the districts, how much percentage of reserves that there is.

Senator Pinsoneault suggested a sliding scale.

Senator Regan asked Mr. Groepper if he saw the establishment of some kind of an emergency fund where the district clearly identifies a serious problem that was not anticipated. She asked him if he feared that it would turn into some kind of a slush fund or would this create hard feelings.

Mr. Groepper answered that if there was a problem that caused the district trouble then what is being suggested might make some sense as long as the legislature made the districts indicate under what conditions the fund could be drawn down to help out a district or how to set up a mechanism to allow them to get through the problem by levying in later years above their cap to pay it back. He said he thought the concept was workable if there was some legislative direction. Usually there is a problem if there is no direction and then the OPI makes up their minds without legislative direction as to what constitutes an emergency.

Senator Mazurek wanted to clear up what was being talked about. He felt that two things were being

discussed, one was a state fund for emergencies and the other was the authority to grant a variance for OPI, so a district could go above the 10% or 20% if they could make a case at OPI, particularly a small district if they need to have a higher reserve. They could make application to OPI to keep a higher reserve.

Bruce Moerer, MSBA, wanted to go back to the original question that had been brought up about the twelve monthly payments and to avoid the emergency fund at this point because there are two places to get the scheduled amount of money, one is from the 45 mills and the other is from the states's equalization aid. Some districts get 10% of their money from state equalization aid and twelve monthly payments out of this 10% is negligible. Other districts get 10% of their money from the 45 mills and maybe 90% from state equalization aid and twelve payments solves their whole cash flow problem. So when talking about twelve monthly payments, that is twelve equal payments of the entire scheduled amount which are necessary before reserves can be lowered. The danger of talking about twelve payments of just state equalization aid, twelve payments of the entire foundation amount is needed before reserves can be lowered in a lot of the districts. This covers the cash flow problem.

Senator Farrell added that the reserves that are in the districts is a tremendous amount of money and this is not an equalization problem. This is based on money collected at the local level so the districts are going to have a tremendous amount of money on reserve based on what they collect at the local level, not based on the equalization. They will still collect this money at 45 mills at the state level.

Senator Nathe added that the district's levy money does not flow in until November and if they are not getting any money from the state in twelve equal payments, they are getting the bulk of their money from the local levy. Because their FY ends June 30 and the taxes do not come in until November, they have to run their schools through those months without any cash flow. This is where the reserve comes in.

Senator Regan asked Dave to work with Dori to take a look at a couple of models, one being a very

small school that needs a higher reserve and one where there is a tax protest, therefore they only get a small amount in, and then any other exception case and see if there can come out with a model that addresses say three different classes. She said that she would like to keep the reserves and vary the reserve if they fit into the "class" and keep the reserve as tight as possible because the money should come into the general fund for redistribution out. She also suggested that the committee should hit the noncontroversial issues and see if they can all be cleaned up and then maybe there will be just three issues to address tomorrow.

Senator Brown agreed with Senator Regan and felt that in that spirit while the committee is looking at issue #12 we could adopt the HB 575 version with the proviso that we could do something with the 20% figure. Everyone seems to be pretty much in agreement that we just can not agree on the per cent.

Senator Hammond suggested that there be another model in Senator Regan's plan and that is the schools that collect all their money from the local 55 mill district levy.

Senator Regan agreed with Senator Hammond and added that if a couple of models could be worked up, the committee may be able to resolve it and everyone will be treated more fairly.

Senator Brown moved that the committee adopts the concept embodied in HB 575 with the proviso that Senator Regan may be able to devise some way to adjust the 20% that can vary between school districts. But it will be left the way it is for the time being.

Senator Pinsoneault called for the question.

All were in favor except for Senator Nathe, who voted no.

Senator Hammond went on to #13 (See Exhibit #2).

Senator Regan stated that #13 refers to #5 and it has been left to be looked at again.

Dave explained that there is a drafting problem that must be dealt with and that is the inflation

factor. The way the inflation index was drafted results in a real big jump the first year because Dave in drafting used the year 1980 as the base year and it should have been 1988 or what ever year precedes the effective date of this act. This is the automatic increase in the foundation schedule.

Senator Farrell stated that if his #4 amendment were adopted this problem with an automatic increase won't exist, because it may be based on average spending.

Dave explained to Senator Farrell that his amendment #4 is talking about a cap on the general fund expenditures, not on the foundation schedule amount.

Senator Hammond stated that the schedule amounts should be adjusted to reflect 88 expenditures.

Senator Hammond called for a motion to the affect that Dave should adjust this amendment as prepared to the 88 schedule.

Dave said that the base year that he would use is the base year preceding the effective date of this act.

Senator Mazurek added that this would actually be 1989 assuming we do not put this into effect until 1990.

Senator Regan said "So moved."

The motion carried unanimously.

Senator Hammond directed the committee to #14 (See Exhibit #2). This has to do with the 180 day school year.

Senator Brown suggested that this issue be left alone.

Senator Nathe stated that the problem here is whether we are going to stay with ANB or go on average daily attendance. The 180 day idea is left alone in SB 203. It just leaves it as it is being done now. What the legislature passed out of the Senate (SB 162) was to change the divisor so they are not reimbursed by dividing 180 into that number. He asked, "So the only issue here is

do we stay with ANB or do we go to average daily attendance?"

Senator Brown agreed with Senator Nathe and said that he did not think this was something that needed to be dealt with in committee. Whatever happens to SB 162 will happen. It was his opinion that the concept in HB 575 not be adopted and SB 203 should not be amended. (This refers to #14 and #15 of Exhibit #2).

Senator Mazurek stated that his only concern was that he felt the PI days should be equalized and he felt they should be equalized up. But he felt that this was not the time to do this and he feels that there is a basic fairness question here. He said he was trying to look into the future and he realized that there are schools that are trying to scale down.

Senator Brown stated that he did not think the committee was prepared to lock it into 185 PI days and make that commitment. The best thing to do under the circumstances is to just leave it alone for the time being.

Senator Farrell suggested that a PI day change went through on the other bill and if the schools want to go 185 days they still have the payment equalized.

Senator Mazurek stated that his point was that there was a lot of objection to SB 162. If it passes it is going to affect how this point in this bill is implemented. So he said he is trying to look at this bill aside from that and say since a new equalization system is being created, let us do it right.

Senator Farrell asked if it was being suggested to write SB 162 into this bill.

Senator Mazurek asked if there was some way to minimize the impact on some of the districts who are going to be penalized if SB 162 passes and this bill is passed. They are going to be penalized because they are going to be cutting back, Great Falls for example, SB 162 passing and then this bill, it will have a double wami. If the double wami can be eliminated this would be ideal. If they are cut back even a day a year, they will be cut back in 1989, cut back in 1990

and then SB 203 will come in and everything will go forward and they will be hit again.

Bruce Moerer stated that the argument here is similar to the MSBA's argument with SB 162. A good example is Corvallis, one of the low spending districts, under equalization as we all know it under any of these plans, Corvallis is going to come out a winner whenever you implement this plan, but they have more than 180 PI days now, so on an interim basis if SB 162 is passed, Corvallis loses funding next year only to have that funding and more funding reinstated under equalization, which does not make sense. Schools may only be disrupted once if it is built into the correct equalization system down the road.

Senator Farrell stated that this school was reaping a benefit that other people were not with out SB 162. If we are going to start an equal program somewhere there are going to be some schools like Corvallis but we have to start someplace. He said he did not feel an exception would minimize this.

Senator Mazurek wondered if there was any danger that some districts this coming year and the year after are going to go up to 81 and 82, assuming that SB 162 does not pass, so that they will start out higher. He asked if this was a risk.

"If there is a way to find a loop hole it will be found," stated Mr. Groepper. He went on to say that if 1988 actual costs are being used to make the decision we know what these are because they are in the book.

Senator Hammond stated that if this bill goes into effect in 1989, 1988 figures will be used.

Mr. Groepper stated that as he understands the consensus of the education community, they are suggesting that what ever the foundation schedule is out there the adjustment should come in fiscal year 1991, because it is too late already because the districts are now for FY 90. The best numbers there are right now to base decisions on are 1988 actual expenditures. He went on to say that he still thinks that if this is what is going to be done (to base figures on 1988 expenditures adjusted for whatever is decided) then there is not much room for playing games.

Senator Farrell stated that there are any number of ways to implement this program and the legislature has not yet decided, so for purposes of operation in this committee, we are going to have to go with the idea that it will be implemented in 1989.

Senator Hammond directed the committee to #16 (See Exhibit #2). This issue was put into the capitol outlay fund.

The committee went on to #20 (See Exhibit #2) and Senator Farrell stated that he would not have a problem leaving the reserve at 20%, if this helped the cash flow problem that some of the schools might have.

Senator Hammond stated that he thought there was a good cross section of administrators through out the state that had worked on this Bill and if they agreed to this, he said it would be hard for him to disagree with them.

The committee went on to #21 (See Exhibit #2). Dave Cogley explained that the effective date of the bill was July 1, 1989 which makes the bill effective for the FY 1990 as it is written.

Senator Mazurek felt that it should be moved to make it effective FY 1991 so that it can be gotten on the books now, but would not be up and operational until July 1, 1990 for the FY 1991.

Senator Regan stated that the court wanted the legislature to just have the plan by July 1.

Senator Brown added that what Senator Regan said is not known for sure but that this is what is being hoped for. It has been assumed all along that there is suppose to be a plan in place by July 1, 1989 that will address the problem in a reasonable amount of time.

Bruce Moerer explained that there were a couple things that happened in the Weber decision. The Supreme Court changed the date that the decision was effective from October 1 to July 1, but they left out a key phrase. The district court said that you will bring back to me by October 1 a plan to review. The Supreme court left this out and this raises the question that if the plan is in

place by July 1 even if it is not implemented, if nobody takes it back to the Supreme Court for review, is the law suit over because the court will not automatically review it?

Senator Mazurek stated that if so on July 1 it then becomes final. One of the parties would have to take it to the court. If it becomes final, someone else that did not like the plan may file a new law suit. He went on to say that by and large the plaintiffs have said if the legislators come up with a plan they are not going to go back to the court assuming it is a reasonable plan. They are saying this publicly.

Senator Mazurek made a motion to make the effective date with the FY being 1991 and he said that he assumed the caps would have to be moved back to 1996 with the five year phase in. He said that he was anticipating that when this bill was passed we would continue under the old system for the coming fiscal year and operate under this bill beginning July 1, 1990.

Senator Regan called for the question.

Senator Brown asked Senator Nathe if he had a feeling about this one way or the other. Senator Nathe responded by saying that when the superintendents were here, the one thing that they were asking the Governor for, was flexibility, to get things through now so they know where they are financially so they can start getting things ready for the coming school year and to achieve the goal of equalization. The superintendents do not feel that the legislature can implement a plan by July 1, 1989.

Senator Blaylock stated that when Superintendent Keenan met with the Governor her plan that she was asking for, was that there would be a 4% increase in this year and then the plan we adopt can go into effect in 1991.

Senator Nathe ask Mr. Bishop about the implementation and he replied that the superintendents of school boards are working on their budgets for next school year right now, by the time this action could be taken, the budget preparation has already gone by and this is a mechanical problem.

Senator Mazurek pointed out that the first thing on the school administrators' list was the comprehensive solution in FY 90.

Mr. Bishop said the comprehensive solution for 1990 was based on the assumption that initially the mechanics would be worked out and a 4% CPI adjustment would be allowed for this first year, but that it was now too late for a FY 1990 implementation.

Senator Hammond said that all those in favor of Senator Mazurek's motion that would make 1991 instead of 1990, as the effective date. It would be fully implemented in 1996.

The motion was carried with Senator Farrell opposing the motion.

Senator Hammond closed the hearing on SB 203.

ADJOURNMENT

Adjournment At: 2:58 pm



Senator H. W. Hammond, Chairman

HH/jh

Senmin.210

ROLL CALL

EDUCATION

COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2-10-89

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.

Amendments to Senate Bill 203

Requested by Senator Farrell

Concept of amendments

- 1) Eliminate district retirement fund and county retirement levy. Include retirement in general fund budget. Distribute foundation program support for retirement through current schedules (by ANB). Transfer any retirement fund reserves or balances to the district's general fund. *Lettery to state equalization 100%*
- 2) Reduce general fund cash reserve to 10%, impose penalty for noncompliance (maybe a comparable reduction in foundation program support), provide authority to OPI to grant emergency variance. *Cash reserve in general fund.*

3) Equalize special education funding.

4) In addition to the 17% of foundation program cap on voted levies, also impose general fund budget cap based on general fund spending level of each district as follows:

For districts in each ANB category designated in the foundation program schedule:

- (a) if the district general fund expenditures is less than 86% of the average expenditure of all districts in the category, the district may increase general fund expenditures in the ensuing school year by a factor of 1.08 (8% increase).
- (b) if the district general fund expenditures is greater than 85% but less than 115% of average expenditures in the category, the district may increase expenditures by 4%.
- (c) if the district general fund expenditures is greater than 115% of average expenditures in the category, the district may not increase expenditures.

Staff note: Currently the 17% cap in SB 203 would not take effect until school fiscal year 1995. The cap proposed by amendment 4) would be imposed as of the effective date of the bill.

*#6
Farrell
amend.*

A SUMMARY OF
SCHOOL FUNDING EQUALIZATION
PROPOSALS

Prepared for the

Select Committees on Education

House Education and Cultural Resources Committee

Senate Education and Cultural Resources Committee

by

Andrea Merrill, Staff Researcher, Legislative Council

Dave Cogley, Staff Attorney, Legislative Council

Madalyn Quinlan, Associate Fiscal Analyst,
Office of Legislative Fiscal Analyst

Helen MacPherson, Secretary, Legislative Council

February 6, 1989

Some language changes in the bills on the following chart are nonsubstantive. In drafting school funding equalization bills, an attempt was made to use consistent language and style in the areas in which the same issue or goal was addressed. For instance, the term "attendance agreement" replaced "tuition agreement" in the bills that eliminate tuition payments. The term "maximum-general-fund-budget-without-a-vote" is replaced with "foundation program" or "foundation program amount" in the bills eliminating the permissive levy and making the foundation program fund 100% of the general fund budget without a vote.

Other changes reflect clean-up of provisions left over from legislative changes made in the past. For instance, references to "vocational technical center fund" are deleted because of the transfer of those centers to the Board of Regents in House Bill 39 (1987). Some statutes currently contain incomplete references to revenue sources designated by other statutes, and an attempt was made to provide a complete listing of such other statutes for the convenience of the Montana Code Annotated user. For instance, see Section 34 of Senate Bill 203, amendment of 20-9-333(2)(d), MCA.

3/10/87

CURRENT

HB 575,
KADAS

SB 203
NATHE

SB 198
REGAN

- | | | | | |
|----|---|---|---|--|
| 1. | <u>17 funds</u> for all school costs; reserves for each | Only 2 budgeted funds: general, bldg./debt. Reserves for each | Retain current funds except add comprehensive insurance to GF | Retain current funds except add retirement and workers' comp. to GF |
| 2. | County <u>retirement</u> levy, using lottery for equalization; (25-mill average) | Eliminate levy; retirement in GF; lottery \$ to state equalization | Separate fund but 90% equalized with state levy; lottery \$ to state equalization | Eliminate levy; retirement in GF; lottery \$ to state equalization |
| 3. | District levy for <u>comprehensive insurance</u> ; (5-mill average) | Insurance in GF, funded as part of FP | Included in GF as part of FP | Retain as separate fund, but workers' comp. in GF |
| 4. | Separate <u>tuition</u> account | No tuition charges; students counted in school attended. Attendance agreements | No tuition charges; students counted in school attended. Attendance agreements | No change |
| 5. | No limit on total <u>expenditures</u> ; FP schedules not based on actual costs | FP schedules reflect FY 87 ave. expenditures per district size for all budgeted items but bldg./debt; voted cap at 117% of FP payment by 1995 (FP--85%, voted--15%) | FP schedules reflect 100% of FY 88 GF expenditures. Voted cap at 117% of FP | Study of proposed standards used as cost basis for new FP schedules; cap at 125% of FP (FP 80%, voted 20%) |
| 6. | <u>Mandatory 45-mill levy</u> , collected at county (28 mills elem., 17 mills h.s.) | Mandatory 103 mills for elem., 63 mills, h.s. Substitutes for all nonvoted county/district levies except bldg./debt. | No change | No change |
| 7. | <u>Permissive levies</u> for elem. and h.s. | Eliminate permissive levy | Eliminate permissive levy | Eliminate permissive levy |

<u>CURRENT</u>	<u>HB 575, KADAS</u>	<u>SB 203 NATHE</u>	<u>SB 198 REGAN</u>
8. <u>Voted levies</u> unlimited except for I-105	Voted levies limited to 117% of FP plus transp. & spec. ed.; excluded from I-105	Voted levies limited to 117% of FP; excluded from I-105	Retain but cap at 25% above FP by FY 94; phase-in limit until then; 1st 10% of voted equalized by guarantee and recapture
9. <u>State revenue</u> sources earmarked for FP	No change except add lottery	No change except add lottery	No change except add lottery
10. <u>County revenues</u> received from federal forest funds, Taylor Grazing, motor vehicle, misc., used for county equalization	No change	No change	No change
11. <u>PL 874</u> not counted as resource for equalization	PL 874 counted under cap when state meets federal equity test	No change	PL 874 counted under cap when state meets federal equity test
12. <u>General fund</u> <u>reserve limit</u> of 35%; no penalty for exceeding limit	20% limit on GF reserve by FY 95 except districts receiving no state equalization. Excess cash reappropriated or reverted to FP; appeal to OPI in special cases	20% limit on GF reserve except districts receiving no state equalization	No change
13. <u>FP structure &</u> <u>schedules</u> based on school size	No change in categories; adjusted 216% to account for FY 87 average costs	No change in categories, adjust \$ amount by factors to reflect FY 88 GF spending statewide; provide inflation index for automatic adjustment in future years	New schedules w/teacher experience factors and new school size categories

<u>CURRENT</u>	<u>HB 575, KADAS</u>	<u>SB 203 NATHE</u>	<u>SB 198 REGAN</u>
14. Minimum <u>180-day</u> school year with no maximum; no limit on days creates disequity in FP payments	Funding is per student, not per days; see no. 15	No change	No change
15. Payments based on <u>average number belonging</u> (ANB is 150,000, but actual pupils approx. 130,000)	ANB redefined; ANB based on ave. of 6 student counts per year	No change	Retain ANB method for new schedules
16. <u>Building/debt service</u> not equalized	Legislative interim study	No change	No change; study suggested in HJR 16 work
17. <u>Transportation</u> program separate	Transportation in GF. State funding of FY 90 costs-\$30M. OPI & BPE study & distribute for FY 91; subject to expenditure cap	No change	No change; study suggested in HJR 16 work
18. <u>Special education</u> separate appropriation; part of school general fund; separate accounting and OPI oversight	No change but payment subject to expenditure cap	No change	No change
19. Elementary and high school <u>districts</u> may be separate	No change	No change	No change
20. Current <u>payment schedule</u> is 5 times per year	12 monthly payments of at least 8%	Monthly payments with 20% 1st month	No change
21. Additional components or issues	Adult educ. in GF; studies in No. 16 & 17		State guarantee of \$100/ANB for 1st 10% above FP

CURRENT

HB 575,
KADAS

SB 203
NATHE

SB 198
REGAN

22. Phase in

Effective for FY 91
school year; cap in
effect for FY 95;
5-year grace period
for limits on
districts

Effective for FY 90
school year; cap in
effect for FY 95

4-year phase-in
of expenditure
cap, effective
July 1, 1989

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