

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By Senator H. W. Hammond, Chairman, on
March 8, 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:

None

HEARING ON HB 299

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE KELLY ADDY, House District #94, stated that
this bill would require single member districts for school
board elections in cities that have 40,000 or more people in
any elementary district where 40,000 or more people reside.

The bill becomes clearest when he explained how the issue
arose. He told how the Billings school board was faced with
a budget crunch in 1987 and they started looking at closing
a school last year. It was thought that school
consolidation would occur first in the "hither-lands" of
Montana but this was not the case, it has happened first in
the larger cities. They were deciding upon the location
that could be closed and they eventually decided to close
North Park Elementary as a cost cutting measure. The people
in the North Park area became quite concerned at this time
and the process had gone quite awry by the time the people
in the neighborhood realized that it was their school that
was being discussed and the school board was serious, that

North Park School was going to be closed. The residents went to a number of public information meetings to give the school board the neighborhood views and they were unsuccessful. North Park Elementary was closed.

The question came up that the North Park Students would have to cross North 27th Street which is really a state high way and would have to proceed through the medical corridor where there are a number of taxis and emergency vehicles. People were concerned about the safety of their children getting to school. They asked for discretionary busing and they found out this was not available. These people became very frustrated and finally got some resolution for the problem through a charitable contribution of a bus. This bus, buses students across North 27th and the medical corridor to McKinley School.

Representative Addy explained that throughout this process, he became involved early, because the residents were bitter toward the school board. He felt he said that the Board was not representing North Park School interests. They could not identify anyone on the Board that would speak for them and since the school board members are elected at large they could not say the "this member of the Board is accountable to the North Park area, neighborhood." The people needed a member they could talk to.

He went on to say that this happens also in the legislative process, someone from a district has an issue that is of great concern and this is how they are identified, they go talk to their representative. This was not the situation with the school board that is elected at large. Another school further west in Billings that was also considered for closure with the close to the same number of students and unfortunately three of the school board members had children attending this particular school. The people in the North Park area became embittered once again because they felt it was a personal decision that was being made rather than a decision that was being made on the basis of what was good for the whole city, "certainly not on what was good for North Park.

He said this bill, HB 299, would require that single member districts be established so that people in this kind of a situation (Rep. Addy thinks it will happen again and again) will have some one on their school board that can be talked to. This is the whole reason for HB 299. As the bill is drafted it was never the intent to require that trustees in this kind of situation be residents of the trustee district. Senator Regan, he said, pointed this out and he does not think this is stated one way or another in the bill. He said he would be very amiable to an amendment that would say

the trustee simply has to run in a district or be a resident in the elementary district and not necessarily a resident of the trustee district.

Again he said the parallel that he thinks of is the legislature, where the legislators can live any place in the county and run in any district in the county.

Representative Addy said that he is concerned about the system because people need somebody on the school board that is their representative who is accountable and gives an explanation or the representative must suffer the consequences at the next election. This is the whole idea behind HB 299. It is limited to elementary districts with 40,000 people or more. He said he grew up in Shelby and in a smaller town like this "everyone is from Shelby," but living in Billings a person can be from the Heights, from downtown, from the west end or from the southside. There is more of a fragmented social structure. With this bill this problem would be addressed and situations could be identified where schools are going to be closed or where adverse decisions are agreed upon concerning certain segments geographically of a community.

He hoped the committee will give every consideration to HB 299.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

KATHARINE KELKER, Chairman of the Billings School Board
PHIL BROOKS, Chairman of the Helena School Board
GREG JOHNSON, Member of District #2 Board of Trustees
in Billings, Montana
DON HAMILTON, Member of the Board of Trustees of the
Great Falls Public Schools
BRUCE MOERER, The Montana School Board Association

Testimony:

KATHARINE KELKER stated that she wanted to spend a few minutes giving a history of what has gone on in recent years in Billings, Montana to show how the school board is a representative of the people. She said she thinks Rep. Addy has only given a part of the story.

Billings has been through some very difficult times in recent history because of a financial restraint and have been faced over the last few years with making some very

deep cuts in the budget. Any time this is done, there is a lot of focus on the school board. She went back even further by explaining that there had been a history in Billings of running trustees for office in slate. There used to be a process in the community where certain citizens would choose certain other citizens to run as a group and provide a great deal of funding for them. These individuals would be elected. She said six years ago when she ran for the first time for the school board, she opposed this kind of process and felt that trustees should run independently, at large. Both times she said that she has run for the school board in Billings she has walked block after block, every where in the city, meeting as many people as she could and handing out 10,000 fliers personally. She said she thinks it is important that when a person is on the school board that they represent the whole community. One of the most difficult things she has to do, she said, is that she as the Chair of the board, is to get the new trustees to think beyond their own little neighborhood school. The tendency is, even though they are elected at large at first, because they know the little school fairly well, to represent this school only and this just can not be done. Most of the issues, the vast majority of issues coming before a school board involves the whole school community. She said a good case in point is the case of having to close a school. She said they looked at eight schools originally when thinking about closure, very carefully. This was over a matter of many months and she said she personally answered over 273 letters from constituents who were concerned about the closing of schools. She said they looked at eight schools, then five, then three and finally settled on one. Although right up to the end, the Board was still looking very carefully at three schools. This was a very difficult and unpleasant process. She personally spent a great deal of time with individual constituents from each part of the community that was effected directly by a possible closure. She thinks the present Board in Billings is very accessible to the public and was extremely accessible during this process. Nothing gets people more upset than talking about consolidation. There were a lot of angry people and this whole process had to be dealt with in a very straight forward way. No one is going to be happy when talking about closing their particular school. She said she "refutes a little bit what Rep. Addy was representing to the committee," because she thinks the North Park constituency was represented.

She said that it can be seen that this bill was aimed at Billings but it would actually affect Great Falls and Missoula as well. She said that she thought it was bad policy to have the notion that school trustees and their business is similar to the legislature or similar to the

city council is absurd. They really are not similar. If looking at the city council it can be seen that there are individual city council people who represent wards, but there is a mayor who is elected at large. In state government individual representatives and senators who have constituencies but there is a Governor who is elected at large. If this bill were to pass it school boards would be set up district by district and nobody elected at large. From her own experience she said, "The hardest part of being a school trustee is continuing to see the big picture because virtually all of the decisions involve looking "at the big picture." If each member of the board is very much " beholden" to a particular constituency there would be nothing but arguing with each other and it would be very difficult to attain decisions. She said she was concerned that HB 299 would be directly aimed at a particular community or two or three. She said she thinks all the school trustees from all communities continue to be very broad minded.

PHIL BROOKS stated that the system that is in place now in terms of electing school trustees at large works very well. This he said is very important in terms of the issues he had dealt with and for the people that have been on this board to have a district wide perspective. It so happens that the Helena Board is dealing with the issue of school closure also. This is only one example where it is critical where there are trustees elected at large to deal with this type of issue, so he said he disagrees with the sponsor of the bill. This bill goes in the opposite way in terms of dealing with sensitive problems that school boards deal with. However the Helena district would not be a part of this particular bill as it is currently written, Helena is somewhat below the 40,000 cut off. After the next census though he said he estimates that the Helena Elementary district would be covered. This is why he is taking the time to stand before the committee but in general he feels it is critical to the thoughtful operation of school boards to have trustees elected at large.

GREG JOHNSON said as the committee has heard three school districts that would be affected by this proposed legislation, he strongly urged the committee not to adopt this measure which in his view has only the thinnest veneer of democratic appeal rather he believes after careful consideration the committee will agree that this measure is rife with "inherit divisiveness." Educational issues must not be decided when influenced by geographic loyalties. City and state government should be representative of geographically distinct constituencies because these governing bodies make decisions that often favor one constituent group over another, but the government of the

public schools must represent the public as a whole and not distinct constituent groups. Equal educational opportunities within a school district require that a board of trustees act in the best interest of all of the students in the district. A single member representation based on geographic districts within a district would make a board of trustees unable to make educational decisions that would be in the best interest of the entire district.

This proposal as written affects three communities that are not cosmopolitan by any means. Nor are they so dangerously different or less homogenous in nature or the type of people who live in these communities than any other place in the state. If this bill makes good sense for these three communities, it makes good sense for Montana, and should be amended so that the vast majority of school districts benefit from this "allegedly virtuous representation. He said he strongly urged the committee not to adopt this measure but if they sincerely believe that this bill will lead to better government of public schools by more representative boards of trustees, "then amend the proposal so that Butte, Bozeman, Kalispell, Helena, Havre, Miles City, Glendive and other school districts in the state also enjoy this benefit."

DON HAMILTON stated that the at large elections serve the purpose of providing the education that the trustees have the responsibility to bring to the students in their areas. The legislation presently on the books allows local options to go to a single member district at this time. HB 299 would simply mandate this requirement. This is a narrow piece of legislation. He pointed out that Great Falls has closed eleven schools in the past fifteen years. He said he would not have wanted to do this with board members who thought they had to protect their particular turf.

This bill calls for politics getting involved in school boards, so he ask the committee to "kill the bill."

BRUCE MOERER, the MSBA, elaborated briefly on the local choice issue that is available now, by reminding the committee that last session legislation was passed that eliminated voting segregation.

Questions From Committee Members:

Senator Pineseault commented that he knew that the focus of this bill centers on school closure but he wondered if the merits of the bill would extend other than to close schools. Rep. Addy replied that he could see busing being an issue. Discipline could be related to the degree of being

accountable of whether students attend this school.

Senator Brown said he was sure this was not a new concept and he wondered if in other states, school trustees were elected on a single district basis. Rep. Addy replied that when a racial imbalance is involved. As an example he said in Big Horn County this was mandated and it was made optional for other school districts. Where race is not involved there is not the constitutional issues that causes notice. He said he does not know of any other state that requires this. School closure is the natural fall out of underfunding or lack of adequate funding.

Senator Mazurek said that there seems to be an assumption by the opponents that if elections from around the community are required that the people elected will be provincial. He asked what was wrong with having balance from around the community. Ms. Kelker pointed out that in Billings with the population that Rep. Addy is talking about is that its a very small group and if districts were to be divided according to population a district would possibly be represented by one person from a large geographical area. So the balance on the Board would be very much the same. The Chair of the Board has to deal with a consensus because even the people who are elected at large must set aside any territoriality. The trustees elected by all the people could not use the argument and would not be as persuasive if the individual were " beholden " to an elementary, junior high, or a high school. In the city council this happens because the council people represent their "own territories to the wire." With the at large process this geographical necessity has been avoided. If people are elected from territories, they are more likely to be "narrowly focused on a territory."

Senator Pinsoneault asked if in handling the North Park closure did the board make any independent effort to select someone from that area to represent their interests. Mrs. Kelker replied that elaborate efforts were made to involve the constituencies from each of the schools involved and in particular North Park. Two of the Billings board members went on a regular basis to the North Park School for the public meetings that were being held and they were lucky to get out alive some evenings. The same two people were accessible and open to the discussion.

Mrs. Kelker went on to say that North Park School had 150 students, which for Billings was by far the smallest school and the next smallest had 250 students. This area of the community had many opportunities to interact with the Board and there were specific individuals who routinely went to the school and met with trustees and a lot of angry parents.

Senator Regan commented that this particular district in Billings was her Senate district and Rep. Addy's House district. When talking about the provincialism of the individual trustees, she said it seemed that because Billings has 23 elementary schools and 3 high schools and visiting all the schools can not be done. There used to be a requirement that all these schools had to be visited once a year. She asked therefore have not these districts been split apart so trustees visit only certain schools. Mrs. Kelker replied that this is the way it works, but any individual trustee visits all the schools about every year and a half.

Senator Blaylock said he remembers this as being a very bitter thing and when Broadwater Elementary was being considered, the students tied yellow ribbons around the fences. He wondered if the bill passed if the closure of any school would be any less difficult. Rep. Addy replied that the closure of any particular school would not be any less difficult but this is just the opposite of the reason why the bill is here. He explained that he wanted to make it even more difficult and have the impact on a neighborhood realized. He also wants neighborhood to feel that they are given the opportunity to give input at a meaningful time.

Senator Blaylock pointed out that Mrs. Kelker said the trustees went to North Park and there were several meetings. He wondered whether they were "shut off from participation." Rep. Addy replied that they were late in buying yellow ribbons and the other schools did a better "PR job." The people in the North Park area felt that the decision was made and the school board did "their best to hold their hands while they closed their school." There never was a flicker of doubt as to which school was going to be closed. This would not have happened if a member of the school board would have been there to say, "Hey, we are serious, this is your school we are talking about." Rep. Addy said that the level of consciousness must be raised early or the school is going to be lost.

Senator Regan said that she felt it was not the committee's function to try and second guess what the action was, Billings has gone through some pretty difficult times and have lost one hundred and ninety some personnel and face further cuts. She pointed out that one of the difficulties in Billings is that as in every large community is that there are areas that are very affluent, where the professionals live, where there are the newer homes, and the newer schools. The other areas have the older smaller houses and often times these areas are some what transient or the residents are minorities. She said, "Thank God there

is sectionalism on the city council or there would be a section that would be completely ignored and not even addressed, which is the Southside of Billings." To some extent she said she thinks there would be factionalism on the Board but there would be the sense that everyone got a fair shake because there was somebody there to speak for them. At least the different areas would have someone to speak for them. In Billings she said that the majority of the school board comes from one quarter of the city.

Senator Brown commented that on the board of county commissioners, the law requires them to live in different parts of the county but the people vote on them at large. Maybe this is a more sensible approach because there is still the broader obligation. Mrs. Kelker said she thought this was an idea that would be worthy of some consideration. The difficulty with the signing of a residency requirement is that sometimes finding people willing to run is difficult or there are fewer candidates who run. She pointed out that in terms of representation in Billings, if the districts were divided geographically and not on the basis of population, this would have to be done arbitrarily. This would be the only way to assure that certain populations would have a representative. This would not be fair because the vast majority of the population live in part of the town and the Heights. This is a large geographical area that does not have a large population and would have only one representative. The one member from the area on the Board did vote against this closure.

She said she wanted to point out to the committee that the "less sophisticated" constituency had zero effect on the process of choosing the school to be closed.

Closing by Sponsor:

REPRESENTATIVE ADDY closed by saying that the reason there were no proponents with him was because it is the poor part of town and these are the low income people but they are still concerned about their children and their little neighborhood school. When the school closed the property values went down. This is not just education that is being talked about, but also taxable value. If looked at in the long run this is a death spiral. Less taxable value means another school and another school, etc., etc.,.

He said this was a difficult decision but the fact of the matter remains, that at large representation decreases accountability and there is inherent divisiveness and adding accountability to any democratic process is necessary, "as a member of the House, I can tell you that this is absolutely

true." Education he stated might not be general government but he believes it is the most important public service that this state performs it is over one half of the state's budget. If a person lives in a part of town where their child is going to be short changed on education, the scope of opportunities that a family has, are changed with these events.

He said that the people in the North Park area believe also that the Board "seeing the big picture" is still difficult for them because they believe the Board's decision to close their school was made on the basis of location and houses rather than on the basis of which school would be best closed.

Finally he said this is not a narrow piece of legislation, in fact the attempt is to broaden membership on the school board, to broaden the point of view, and to make the hardest part of the job get more work than it does at present. He agrees that it is easier to achieve consensus with at large representation but it would be even easier to achieve it if the school board was done away with and let one person make all these difficult decisions. This is not a tidy question and it does not have a tidy impact on the community. "The question of fairness is an inherently messy question," and all he is trying to do is to assure that the school board is accountable the membership is from throughout the city and people from throughout the city feel that they get an equal and fair shake when serious decisions are made by their school boards.

HEARING ON HB 481

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE WILBUR SPRING, House District # 77, stated that this bill was to change the sick fund for school districts to include accumulated vacation and sick leave for all district employees and provide an effective date. At the present time, he said, the only people that do not have this right are the teachers. This bill was suggested by Steve Johnson, the business manager of District #7 in Bozeman, Montana.

He explained that HB 481 proposes two basic changes; to expand the sick leave reserve fund to include vacation leave balances and to allow the fund to include the leave balance for all employees in a school district. Currently the fund can only be used by non teaching employees.

List of Testifying Proponents and What Group they Represent:

JOHN CAMPBELL, The Montana Association of School
Business Officials and School Business Manager
for the Helena School District

Testimony:

JOHN CAMPBELL stated that part of HB 481 is to expand its authority as far as what can be considered for this leave-reserve-fund. He explained that the present law provides for this cash reserve fund for sick leave only and this is one quarter of the accumulated sick leave of the non teaching employees. The present law also limits the amount of reserve to 30%. The reserve is put in to motion by diverting a portion of the cash balance a school district may have at the end of the year to the leave reserve fund. By creating this reserve a school district eliminates the necessity for budgeting for termination pay or severance pay, which ever is chosen to provide a reserve.

He stated that what the amendments in HB 481 propose is to provide a reserve for all school district employees, not just the non teaching employees, and to expand the reserve fund to include vacation leave as well as one quarter of the sick leave. State law provides that upon termination, a person shall be paid one quarter of their accumulated sick leave. This bill would maintain this provision and make it applicable for all employees, and would also incorporate vacation leave as a part of the obligation to be paid from this fund. This bill does not do anything with the 30% cap, that is now provided for, in other words what ever is the school districts obligation, they may only incorporate 30% of that obligation in this reserve fund.

He said that this fund is not financed by direct property taxation. There is no mill levy provided for, to raise the amount of money to finance this fund, its only financing is by transferring from the school district's general fund end of the year cash balance. As far as obligation he cited the Helena School district has a leave termination pay obligation of \$1,212,000.

With this information he said he hoped the committee would give this bill favorable consideration.

List of Testifying Opponents and What Group They Represent:

None

Questions From Committee Members:

Senator Nathe ask if this would basically make the excess funds that are now in the budget, reappropriated cash. He added that reappropriated cash can be used to reduce the mills that people vote on in April. He asked if what was being done was to take excess funds and place them in to this other accumulated sick leave reserve. Mr. Campbell replied that it is not necessarily excess money, it is the board of trustees decision of how much of the end of the year's cash balance is going to be diverted to this fund. So actually the board has three choices where the end of the year cash balance can go; they can place it in the general fund cash reserve, subject to a 35% cap, reappropriate it and therefore reduce property taxes, or they can put it into this leave reserve fund.

Senator Nathe ask if this money was coming from the general fund budget cash balance. Mr. Campbell replied, "Yes."

Senator Nathe went on to say that most budgets are bound and money can not be transferred between budgets so budgets are always built to 4% up to 8% more than what the expenditures are figured to be. A budget must have a cushion. But what is being asked here is for extra slack in the general fund budget. Then they would have the authority to convert not into cash reappropriated funds but put into a new reserve. Mr. Campbell replied that a school district does carry a cash reserve from one year to another so the cash position of a school district is not the same as a budget. There are two different factors and what is being discussed is the tax reserve of the general fund and if they do not spend all of their budget during a given fiscal year and the revenue materializes as anticipated in adopting the budget, yes they will have some money left over and at this point in time the board of trustees makes the decision as to how the money will be utilized.

Senator Blaylock said that the statement was made that this was not tax money. Mr. Campbell replied that this was not direct tax money. This is why the words direct property tax was selectively chosen.

Senator Blaylock asked who in a school district was entitled to vacation leave. Mr. Campbell replied that it was all twelve month employees, custodians, administrators, etc. Mr. Blaylock ask why they just didn't take their vacations. Mr. Campbell replied that it is the employee's choice when they take their vacation and if they take it.

Senator Blaylock commented that he fought hard to get sick leave, to take care of people and help them. He said, "Vacation leave is a privilege and if it is not taken that is to bad." Mr. Campbell replied that this is the way the law is. If sick leave is not used, it accumulates from year to year. It is one quarter accumulated amount of sick leave that will be received as severance pay.

Closing by Sponsor:

REPRESENTATIVE SPRING said that he thought it was a good hearing and he recommended a do pass.

HEARING ON HB 527

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE TOM ZOOK, House District #25, stated that this bill was designed to clear up some confusion that seems to exist among some trustees in some of the smaller rural districts in Eastern Montana. This is at the request of some county superintendents and all it does is to clarify that those trustees have the authority when they have more than one school building within their district and that if one particular building is more convenient to the majority of the population, they can close the one that is being operated and open up another one in another area. He said he was aware of one case in his county where a school has been closed for some time and the population over the years and "thinned out," and one student drives 23 miles right by the closed school to get to the operating school.

He explained that there is quite a process that has to be gone through to open a school.

List of Testifying Proponents and What Group they Represent:

BRUCE MOERER, The Montana School Board Association
CLAUDETTE MORTON, Executive Secretary for the Board
of Public Education

Testimony:

BRUCE MOERER, of the MSBA, stated that this situation caused more confusion over what the existing law says and it is needed to clarify this over what the existing law is, because clearly an existing district can relocate a school or can open or close an existing school, without going through this complicated process. There is a lot of

confusion in the county superintendents' minds and they have tried to force people to do this in the past when they really did not need to. This bill, he said, is good clarification that does not circumvent any other laws. It only allows a move, if the land is already owned, otherwise if the property is not owned then a site election must be gone through. The site selection is not circumvented with this bill and it provides good clarification and should not negatively impact anyone.

CLAUDETTE MORTON, of the B of PE, explained that before she worked with the Board, part of her responsibilities was being a liaison between county superintendents and she visited most of the rural schools in Montana. She said she was concerned when she saw this bill, problem they had was that there was a school on skids and the state could never find it. So the B of PE does support this piece of legislation.

List of Testifying Opponents and What Group They Represent:

None

Questions From Committee Members:

None

Closing by Sponsor:

REPRESENTATIVE ZOOK closed by stating that the bill was very well understood and he hoped for a do pass.

DISPOSITION OF HB 527

Recommendation and Vote:

Senator Blaylock moved that HB 527 do pass.

Senator Nathe called for the question.

THE MOTION CARRIED UNANIMOUSLY.

Senator Hammond will carry HB 527 to the floor of the Senate.

HEARING ON HB 519

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE VIVIAN BROOKE, House District # 56, said that she brought before the committee HB 519, which is a simple bill changing the language in the statute, deleting the permission for certain 4-wheel drive vehicles to be used in rural areas for school buses. The bill was brought out of the transportation office of OPI. The proponents will explain the rationale behind bringing the bill before this committee.

List of Testifying Proponents and What Group they Represent:

TERRY BROWN, Specialist for Public Transportation
Safety
CLAUDETTE MORTON, Executive Secretary for the Board
of Public Education

Testimony:

TERRY BROWN, (See Exhibit #1)

CLAUDETTE MORTON, (See Exhibit #2)

List of Testifying Opponents and What Group They Represent:

None

Questions From Committee Members:

Senator Hammond asked if the vehicle is owned by the school or has to be for the hauling nine children or less. Mr. Brown replied that it can be any personal vehicle and under the emergency section it would be covered.

Senator Hammond said there are people who are over three miles from school bus routes that try to keep the school buses from the high grade and there are snow problems, so one parent may haul two or three families and they use their own vehicle to get students to the bus. He asked if this was involved. Mr. Brown replied, "No. The schools are only reimbursed for the miles that the bus would travel." Parents are reimbursed if they are over a mile and a half from the bus stop.

Senator Hammond ask how this was going to affect the school for the deaf and blind. Ms. Morton replied that this is a concern that the B of PE has had. She explained that they were looking into leasing a small school bus in the education sub-committee. She said this would be a cheaper way rather than purchasing one.

Ms. Morton said that the Board was making sure that it was a real school bus that conforms to the regulations. The Board is responsible for those aspects of the transportation regulations.

Senator Nathe ask that the authorization for the vehicle with a lift would definitely be a school bus. Ms. Morton replied that it would be.

Senator Nathe stated that at times things are put in statutes and he said he realized buses are safe, but as far as being safer than a 4-wheel drive suburban with seat belts, he questioned.

Closing by Sponsor:

REPRESENTATIVE BROOKE closed by thanking the committee for the good questions and she said that she too has been concerned about no seat belts in a school bus. With seat belts though as she was told, it would be less safe.

She urged for the committee's concurrence.

DISPOSITION OF HB 519

Discussion:

Mr. Brown added that basically it needs to be proven that seat belts offer more protection than what has already been built into the vehicle. He said it is true that the smaller buses are not as safe as the larger buses. A couple of studies done with seat belts in crash situation using dummies found that basically because of the extra seat and cutting down on the area that has been compartmentalized, plus the extra padding, the average size child in belts pivots forward and the head crashes forward. To use shoulder harnesses would be good, but windows would have be eliminated along the side of the bus.

He said that the National Highway Traffic Safety Administration is doing testing now and this information should be out this fall. This he said will clear up a lot of questions about seat belts in school buses.

SENATE STANDING COMMITTEE REPORT

March 8, 1989

MR. PRESIDENT:

We, your committee on Education and Cultural Resources, having had under consideration HB 527 (third reading copy -- blue), respectfully report that HB 527 be concurred in.

Sponsor: Zook (Hammond)

BE CONCURRED IN

Signed: *H. W. Hammond*

H. W. Hammond, Chairman

*4/10/89
3:30 p.m.*

SENATE STANDING COMMITTEE REPORT

March 8, 1989

MR. PRESIDENT:

We, your committee on Education and Cultural Resources, having had under consideration HB 519 (third reading copy -- blue), respectfully report that HB 519 be concurred in.

Sponsor: Brooke (Brown)

BE CONCURRED IN

Signed: *H. W. Hammond*

H. W. Hammond, Chairman

*4/10/89
3:04 p.m.*

WITNESS STATEMENT

STATE EDUCATION

EVENT NO. #

DATE:

WALD J. HAMILTON

3/8/89 HB299

P.O. Box 2269

Great Falls, Mt

59403

727-5000

ING WHOM? School District 1 + A Great Falls

ON WHICH PROPOSAL: HB #299

SUPPORT? _____

AMEND? _____

OPPOSE?

3: As persons charged with the responsibility of funding a portion school costs you as our representatives and senators we asked us for efficiency running our schools. HB299 simply putting a roadblock the way of that efficiency by creating a protectionist problem in closing any school. conditions would be made so that no closures would take place, where is the efficiency?

LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HOUSE BILL 481

SENATE JOURNAL
EXHIBIT NO. #1
DATE 3-8-89
BILL NO. 481

I. Present Law - Create Cash Reserve for sick leave obligations upon termination of employment

A. Limitations

1. sick leave only - non teaching employees
2. 30% of district's obligation as of January 15 of the preceding school fiscal year.

B. Financed by transfer of a portion of the General Fund Cash Reserve to this reserve fund -- no direct property taxation.

C. This law eliminates need for budgeting for termination pay in general fund.

II. Bill amendments would change present law to

A. include all school district employees -- teachers are creating obligation too!

B. include vacation leave for all employees creating an obligation

C. cap is still set at 30% of obligation

D. Still financed by transfer from General Fund Cash Reserve

III. Obligations that exist:

A. Helena \$1,212,000 - have \$25,000 available

B. Bozeman \$ 909,000 - available but could not be more than \$25,000

C. This bill will not resolve HSD inadequate position since our GF cash reserves are not adequate for financing of leave obligation but the bill will provide authority for future resolution and will allow other school districts to create an adequate cash reserve for payment of termination pay.



SENATE
EXHIBIT NO. 2
DATE 3-8-89
BILL NO. HB 481
Montana Association of School Business Officials

March 8, 1989

SENATE EDUCATION COMMITTEE

House Bill 481 proposes two basic changes to MCA 20-9-512:

1. Expands the sick leave reserve fund to include vacation leave balances.
2. Allows the fund to include the leave balance liability for all employees of a school district. Currently, the fund can only be used for non-teaching employees.

The Montana Association of School Business Officials supports H.B. 481, "An act to change the accumulated sick leave reserve fund for school districts to include accumulated sick leave and vacation leave for all district employees", for the following reasons:

1. The bill expands the sick leave reserve fund to make it a useful tool for all districts. Under the current law many of the larger districts use the fund while few smaller districts find its use worthwhile.
2. The bill does not require any additional taxes. The bill simply allows a school board to set aside a portion of the end-of-the-year cash balance to offset a portion of the outstanding liability for employees sick and vacation leave balances.
3. The sick leave reserve fund is not likely to be addressed in any new funding structure. The fund is a useful accounting/budgeting tool not effected by the "equalization" question.

Thank you for the opportunity to support this legislation.

Sincerely,

Steven D. Johnson
MASBO Director, Region 6

SDJ/jmd



SENATE EDUCATION

EXHIBIT NO. 1DATE 3-8-89BILL NO. HB 519

OFFICE OF PUBLIC INSTRUCTION

Nancy Keenan
SuperintendentSTATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3095

March 8, 1989

To: Committee Members

From: Terry Brown, Specialist
Pupil Transportation Safety *T. Brown*

Re: House Bill 519

This bill was drafted at the request of the Board of Public Education and the Office of Public Instruction. The history and background of this law and regulation goes back many years, even before I joined the OPI staff in 1977. I would like to explain some of this background information so that you will have a better understanding why this 4-wheel drive vehicle section should be deleted from 20-10-111, MCA.

Background

In the 1950's, 1960's and early 1970's the OPI as a representative of the Board of Public Education used to grant variances to school districts so that they could comply with school bus regulations as best as they could. This procedure was followed until about 1980 when the Board of Public Education and the OPI made the decision to do away with all variances which included transportation along with accreditation standards, etc. One of the main problems was that "school buses" that met the current construction standards were not available in 4-wheel drive. For this reason OPI would grant a variance to school districts to use a 4-wheel drive alternative vehicle, such as a suburban or van to transport students to and from school.

Committee Members

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This began to change in the 1980's when school bus chassis manufacturers began producing 4-wheel drive chassis for the school bus market. Four-wheel drive school buses that meet the school bus construction standards are readily available today.

An Attorney General's opinion also has an affect on why this law and rule should be changed. This opinion was written at the request of Colonel Landon of the Montana Highway Patrol in regard to The Head Start program buses. This is included in Volume No. 39, Opinion No. 63 dated June 14, 1982, which basically states that any child hauled for education purposes shall be transported in a certified school bus. (I have provided copies of this opinion for committee members.)

Please understand that a vehicle manufactured to meet "school bus" construction standards is much safer for our children to ride in than a vehicle that doesn't meet these special safety standards. This also applies to 4-wheel drive "school buses." There is no comparison in the crash protection built into a 4-wheel drive "school bus" compared to a regular van or suburban that you and I could buy off a car lot. These are the reasons why the Board of Public Education has been moving in this direction for the past four years.

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History

Because 4-wheel drive "school buses" were not readily available in the late 70's, legislation was proposed and passed to allow school districts and bus contractors to use 4-wheel drive alternative vehicles to transport children to and from school (20-10-111 (2)(3), MCA).

School districts could accomplish this by making application to the Board of Public Education through OPI. From records in our office I can recall only three school districts that ever applied for variances and later on permission to use 4-wheel drive vehicles that didn't meet standards. They were Luther, Red Lodge and Winnett. After about 1982 only Red Lodge and Luther submitted requests.

The Attorney General's opinion in regard to Head Start buses has an affect on all school transportation as I mentioned earlier.

In 1985 the Board of Public Education made the decision to do away with this special 4-wheel drive vehicle provision. They added the stipulation that those school districts who applied previously could continue to make application through 1990. This would give those districts with 4-wheel drive alternative vehicles a good time line for replacement with a certified "school bus." Red Lodge and Luther made application this school year.

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Let me recap why the Board of Public Education made this decision with support from our office.

1. The Attorney General's opinion in regard to using alternative vehicles instead of school buses to transport children to and from school (Volume No. 39, Opinion No. 63, June 14, 1982).
2. School buses that meet safety construction standards are now available with 4-wheel drive chassis.
3. Board of Public Education policy is to no longer grant variances in their educational policies.
4. The fact that only two schools in the last five years have applied to use a 4-wheel drive alternative vehicle to transport children to and from school.

"School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school. (Emphasis added.)

The statute utilizes both proprietary and functional criteria to define the term "school bus." A school bus may be publicly or privately owned. If privately owned, it must be operated "for compensation." To be considered as a school bus, a motor vehicle must also be used "for the transportation of children to or from school."

Resolution of your question turns on the interpretation given to the terms "school," "compensation" and "public or governmental agency."

For the purposes of the education title (Title 20), section 20-6-501, MCA, defines "school" as follows:

As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. (Emphasis added.)

Under section 1-2-107, MCA, a definition of a word in one part of the Code is applicable anywhere that word appears in the Code unless a contrary intention appears. In my opinion, a contrary intention does plainly appear in the express limitation of that definition to Title 20. The term "school bus" is defined by section 20-10-101, MCA. Again, however, by express statutory provision, that definition expressly applies only to the use of the term in Title 20. Sections 20-6-501 and 20-10-101, MCA, defining "school" and "school bus," respectively, for the purposes of the education title, are not in pari materia with section 6-1-116, MCA, defining "school bus" for the purpose of the Motor Vehicle Code. (See § 61-1-101, MCA.) The two titles govern different subjects. The concern of Title 20 is the administration of the public educational system in particular. The thrust of Title 61 is traffic safety and motor vehicle regulation in general. Furthermore, Title 20 and Title 61 both define "school bus" differently. The definition contained in section 61-1-116, MCA, is plainly broader in scope than the definition provided in section 20-10-101, MCA, which expressly limits "school bus" for the purpose of Title 20, *inter alia*, to motor vehicles owned by, or under contract to, a public school district. Section 61-1-116, MCA, makes no attempt to similarly limit the term.

Legislative intent is the polestar of statutory interpretation and that intent must be determined, if possible, from the plain meaning of the words used in a statute. Haker v. Southwestern Ry. Co., 176 Mont. 364, 369, 578 P.2d 724, 727 (1978). The words used in a statute should be given their usual and ordinary meaning. Rierson v. State, 37 St. Rptr. 627, 630, 614 P.2d 1020, 1023 (1980).

A school, in the ordinary acceptance of the word, is a place where general education is imparted to young people; it refers to an institution conducting a course of general education and mental training similar to that offered to children by a public education system. Cadet-ettes Corp. v.

Brown, 406 N.E.2d 538, 540 (Ohio App. 1977); State ex rel. Church of the Nazarene v. Fogo, 79 N.E.2d 546, 547 (Ohio 1948); 68 Am. Jur. 2d Schools, § 1 (1973). The term refers to "an institution of learning of a lower grade, below a college or university; a place of primary instruction," Cadet-ettes, 406 N.E.2d at 540-41. The word "school" includes private as well as public institutions of learning. 68 Am. Jur. 2d Schools, § 1 at 360, § 307 at 627 (1973). It does not, however, include a "Sunday school" providing solely religious instruction. Fogo, 79 N.E.2d at 547.

According to Webster's New International Dictionary (2d ed. 1941), "compensation" means "[t]hat which constitutes, or is regarded as, an equivalent or recompense;...that which compensates for loss or privation;...remuneration; recompense."

Clearly, privately owned vehicles are "school buses" within the meaning of section 61-1-116, MCA, if their owners are reimbursed in any manner for transporting children to or from school. A private or parochial school which operates any motor vehicle to transport children to and from its school and charges parents for that service, either by way of tuition or by a direct billing, is operating a "school bus" under section 61-1-116, MCA. The statutory definition of school bus is broad enough to include vehicles owned and operated by parochial schools, as well as private vehicles under contract with parochial schools or with public school districts to provide transportation of children to or from school.

By the plain and ordinary meaning of the term, "a public or governmental agency" is broad enough to encompass both federal and state agencies. Whether they are federally or privately owned, Head Start vehicles would, therefore, fall within the ownership criteria of section 61-1-116, MCA. Since the Head Start program would seem to impart general, primary education to the young, the program falls under the broad meaning of the word "school" as used in the statute. Hence, Head Start vehicles transporting children to and from such programs must be considered to be "school buses" for the purposes of Title 61. It is noteworthy that in 1976, the acting chief counsel of the National Highway Traffic Safety Administration (NHTSA) concluded in a memorandum that vehicles carrying children to and from Head Start programs are "school buses" for federal purposes. NHTSA Memorandum of February 18, 1976. There are two definitions of "school bus" in programs administered by NHTSA. Section 201 of the Motor Vehicle and School Bus Safety Amendments of 1974 added a definition of "school bus" to section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. § 1391), as follows:

(14) "[S]choolbus" means a passenger motor vehicle which is designed to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools;

NHTSA accordingly amended its definition of "school bus" in 49 C.F.R. § 571.3, effective October 27, 1976, as follows:

"School bus" means a bus that is sold, or introduced in interstate commerce, for purposes

law complements state regulation of Head Start vans as school buses.

The definition of school bus which appears in section 61-1-116, MCA, is the original definition of "school bus" which appeared in the Uniform Vehicle Code (U.V.C.) from 1934 until 1962. U.V.C. Act V, § 1(e) (Rev. eds. 1934, 1938, 1944); U.V.C. Act V, § 1(f) (Rev. eds. 1948, 1952); U.V.C. § 1-156 (Rev. ed. 1954); U.V.C. § 1-160 (Rev. ed. 1956). As of 1972, a total of twenty states had adopted, with slight modification, the same definition. E. Yaw, National Committee on Uniform Traffic Laws and Ordinances, "Laws Requiring Drivers to Stop for School Buses," 1 Traffic Laws Commentary No. 5 (August 1972), prepared for the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA) at p. 4. In 1957, the Attorney General of Arizona, which had adopted the same U.V.C. definition as has Montana, had occasion to address much the same issue as is presented here. He held that the legislative definition of "school bus" was sufficiently broad to include not only buses owned and operated by school districts but also parochial school buses owned and operated by private institutions. 57-135 Op. Att'y Gen. at 139 (Ariz. 1957). He concluded that the equipment requirements and traffic regulations pertaining to school buses "were enacted for the purpose of protecting not only the children attending public school but all children of the state regardless of what type of school they attend." Id. In other states, the purpose of provisions relating to equipment and operation of school buses has also been declared to be the promotion of the safety of school children riding the bus. See, e.g., Hunter v. Boyd, 28 S.E.2d 412, 414 (1943).

It should be noted that under section 61-9-502(1), MCA, the Highway Patrol is statutorily obliged to conduct semiannual inspections of school buses. Under section 61-9-502(2), MCA, the Patrol is directed to determine whether "the school buses meet the minimum standards for school buses as adopted by the board of public education." Under section 20-10-111, MCA, the board of public education must promulgate uniform safety standards relating to "the design, construction, and operation of school buses in Montana." Because the Legislature has seen fit to incorporate by reference the board of education's safety standards into section 61-9-502(2), MCA, all school buses as defined by section 61-1-116, MCA, whether public or private, must comply with those standards and must be inspected semiannually by the Highway Patrol.

Under section 20-10-111(1)(a)(ii), MCA, the school bus standards promulgated by the board of public education may not be inconsistent with the "minimum standards adopted by the national highway safety bureau," now the National Highway Traffic Safety Administration (NHTSA). See Act of Oct. 15, 1966, P.L. 89-670, § 6(a)(1)(A), 80 Stat. 937, 49 U.S.C. § 1655; Act of Dec. 31, 1970, P.L. 91-605, Title II, § 202, 84 Stat. 1740.

The Legislature amended the aforementioned inspection statute, § 61-9-502, MCA, in 1973 to bring it in compliance with the requirement of semiannual school bus inspection set forth in NHTSA's Uniform Standard No. 17. As discussed above, the federal definition of school bus includes all vehicles equipped to carry more than 10 passengers and are likely to be significant in the transport of primary, primary, or secondary school children to and from school or school events, whether the school be public or private. See

that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation.

In the view of NHTSA a Head Start program designed to afford educational benefits to "preprimary" school children could reasonably be described as a "preprimary school" and its attendees are "preprimary school students." Hence, the NHTSA memorandum concluded that, under 49 C.F.R. § 571.3, a vehicle sold after October 27, 1976, for the purpose of transporting students to and from Head Start programs would have to comply with the school bus safety requirements established under the National Traffic and Motor Vehicle Safety Act.

The definition of school bus found at 49 C.F.R. § 571.3 reflects current congressional policy regarding school buses and, therefore, has a bearing on the scope of the definition of school bus in Uniform Highway Safety Program Standard No. 17 (23 C.F.R. § 1204.4), Pupil Transportation Safety, issued by NHTSA pursuant to its authority under the National Highway Safety Act of 1966 (23 U.S.C. § 401, et seq.). This standard sets minimum requirements for a state highway safety program dealing with pupil transportation and includes requirements for the identification, operation, and maintenance of school buses. Because No. 17's requirements apply to all vehicles while in operation as school buses and because neither NHTSA regulations nor the relevant statutes distinguish between categories of "school," the acting chief counsel of NHTSA concluded in his 1976 memorandum not only that Head Start vehicles are school buses for the purpose of Standard No. 17, but also that both private and public educational institutions, whether profit or nonprofit institutions, were "schools" under the federal definitions.

The conclusions reached by the NHTSA memorandum are reinforced by both the similarities between Head Start and parochial school transportation, on the one hand, and public school transportation, on the other, and by the legislative history underlying the federal definitions. The apparent purpose of transportation is to give children instruction at a central site. The risks encountered by parochial and Head Start school children while traveling to or from the site are the same as those encountered by public school children. The congressional definition of school bus contained in section 102 of the National Traffic and Motor Vehicle Safety Act Amendments of 1974 (15 U.S.C. § 1391) is necessarily broad. It was intended to include a wide variety of passenger vehicles. See H.R. Rep. No. 93-1191, 93rd Cong., 2d Sess. 42, reprinted in [1974] U.S. Code Cong. & Ad. News 6046, 6076. Similarly, the scope of the Highway Safety Act of 1966, pursuant to which Uniform Standard No. 17 was promulgated, is broad. The express purpose of that enactment is the promotion of safety on the nation's highways in general. S. Rep. 1302, 89th Cong., 2d Sess., reprinted in [1966] U.S. Code Cong. & Ad. News 2741, 2743. In promulgating its administrative definition of "school bus" (49 C.F.R. § 571.3), NHTSA construed the congressional definition (15 U.S.C. § 1391) to include private as well as public school buses. See 40 Fed. Reg. No. 251, 60033 at 60034 (1975).

In finding Head Start buses to be "school buses" under Montana law, there is no danger in running afoul of federal law. Far from preempting state law on the matter, federal

15 U.S.C. § 1391(14); 49 C.F.R. § 571.3. The federal definition was not, however, intended to include private motor vehicles used to transport members of the owner's household or other students in a car pool arrangement. H.R. No. 93-1191, 93rd Cong., 2d Sess., reprinted in [1974] U.S. Code Cong. & Ad. News 6046, 6076. It should be noted that Montana law, unlike federal law, does not define "school bus" in terms of the number of students carried. Since the federal definition of school bus applies to private school as well as public school vehicles and since Montana's school bus inspection statute, 61-9-502, MCA, was amended in 1973 in order to comply with the requirements of the federal Uniform Standard No. 17, it is my opinion that section 61-9-502(1), MCA, requires semiannual inspections of both private and public school buses as well as Head Start vehicles.

THEREFORE, IT IS MY OPINION:

Vehicles operated by the Head Start program and privately owned vehicles operated for compensation by or for parochial schools, as well as all vehicles operated by or for public school districts, for the purpose of transporting children to and from school are "school buses" within the meaning of section 61-1-116, MCA. Accordingly, they must comply with the statutory provisions in the Motor Vehicle Code (Title 61, MCA) relating to school bus equipment, operation and inspection.

Very truly yours,


MIKE GREELY
Attorney General

MG/SHJ/ar



Board of Public Education

SENATE EDUCATION

SENATE NO. # 2

DATE: 3-8-89

FILE NO. HB 519

Claudette Morton
Executive Secretary

March 8, 1989

TO: Members of the Senate Education Committee

FROM: Claudette Morton *CM*
Executive Secretary

RE: Testimony in Support of HB 519

It is not often, in fact, this may be a first, that a government entity comes before the Legislature to ask for removal of authority to do something, but that is exactly what the Board is doing in supporting HB 519. To understand this I would like to explain what the Board has done in the rulemaking authority it has had since the section of law, which this bill would strike, went into effect.

This section of law, to give the Board authority to grant permission to school districts to use four-wheel drive vehicles instead of school buses, was enacted into law in the 1981 legislative session. In 1982 the Board enacted 10.64.601-604, or sub-chapter 6 of ARM, which basically set up a mechanism for school districts to apply for this special exemption, through the Office of Public Instruction, to the Board. Each June meeting the Board has received applications and acted on them for schools for the upcoming school year.

When this bill was enacted, it is my understanding that four-wheel drive school buses which transported fewer than 8 students either didn't exist or were very expensive. For the next few years the Board received three or four requests per year under these rules, all of which were generally granted.

In 1985, the Board changed the rule. It added language which said that "effective 2/1/87 any four-wheel drive vehicles purchased for school use shall be specifically manufactured for the purpose of transporting students to and from school," and ~~the~~ said vehicles "must meet the 1985 national minimum standards for school buses." In other words, a vehicle purchased by a school after February first, 1987, that was not a school bus would not be given this special exemption, and a four-wheel drive school bus would not need this exemption. This was because four-wheel drive school buses were available that were not significantly more expensive than the four-wheel drive with the required equipment.

In 1987, it amended the rule further to say that "after July 1, 1990, this entire sub-chapter 6 would be deleted from the rules.

Last year, we had one school apply, and this year we had two schools apply. They are both aware of the changes the Board has made in the administrative rules. We do know from Mr. Brown, at OPI, that four-wheel drive school buses are available, and that it is important for the safety of our students and the liability of the school districts, that schools which need four-wheel drives use school buses.

We ask the Committee's concurrence in HB 519.

Thank you.

