

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - 1st SPECIAL SESSION

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By Chairman Schye, on June 20, 1989, at 1:35 p.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Andrea Merrill, Legislative Researcher
David Cogley, Legislative Researcher
Claudia Johnson, Committee Secretary

Announcements/Discussion: This was a joint hearing between the Senate and House Education Committees in the Senate Judiciary Chambers.

HEARING ON HOUSE BILL 7

Presentation and Opening Statement by Sponsor:

Rep. Gilbert, House District 22, opened stating that HB 7 eliminates the number of instructional days in a school year to 180 days and 7 PIR days. He stated that the 180 days is the accepted number of educational days in the state of Montana. He stated that in talking about equalization between the Legislature and the Supreme Court, that one of the first steps is what will be paid for equally? Rep. Gilbert stated that with almost everyone using the 180 days it should be the logical number to use. He stated that there are some schools that are using more and everyone knows why. Rep. Gilbert stated that this came out of SB 203 that was worked on by the Select Education Committee in the regular session and the Members on that Committee voted unanimously for the 180 days and the 7 PIR days.

Testifying Proponents and Who They Represent:

None

Proponent Testimony:

None

Testifying Opponents and Who They Represent:

Tom Bilodeau, Mt. Assoc. of Education
Bob Anderson, School Board Assoc.
Jack Copps, Deputy Supt. of OPI
Terry Minow, Mt. Federation of Teachers

Opponent Testimony:

Mr. Bilodeau spoke briefly on the direct retroactive impact of the bill as proposed. He stated that technically it is difficult to implement this type of bill when there is an adverse impact on school districts. He stated that the schools are already budgeted for the coming school year. Mr. Bilodeau stated that previous legislation has been presented to the Legislature to back down to the 180 days plus the 7 PIR days. He stated that is what the schools are headed for and the back down provisions were for one day per year. Mr. Bilodeau stated that there are some schools, i.e. Billings and Great Falls that have 189 and 192 days, if this bill is immediately imposed there will be an impact loss of 3 percent of the Foundation Program funding for those districts that already have their budgets in place for the upcoming school year.

Mr. Anderson stated that in light of the fact that the schools have now set their budgets for the year and have hired their staff members the school boards will have to abide by those contracts. Mr. Anderson stated that if this bill passes the schools districts will have to back track and there would be a lot of litigation if the contracts and PIR days are eliminated. Mr. Anderson stated that the idea that came out of the regular session was that the 180 days would be considered as part of some new equitable funding system, but not a part of the old system. Mr. Anderson stated that this bill speaks on the old system and the old contracts have to be honored.

Mr. Copps stated that the OPI stands in opposition to this bill for the same reasons expressed in previous testimony. Mr. Copps stated that during the regular session OPI supported the equalized number of Pupil Instruction Days to 180 days. Mr. Copps stated that the OPI and the Legislature has lead the school districts to believe that they would not be using the shotgun method approach to equalization for this coming year. He said that the OPI supports equalizing the number of days to 180, but would prefer it to begin in 1990.

Ms. Minow stated that MFT opposes this bill for reasons already stated. She stated that equalization must be a comprehensive process not a piecemeal one.

Questions From Committee Members: Rep. Simpkins asked Mr. Copps to clarify his comments about the OPI supporting the bill except for the implementation date, and if the Committee changes the date to July 1, 1990, would that be satisfactory? Mr. Copps stated that the date change would

be acceptable and stated only that the OPI asked for the inclusion of the 180 days in the funding proposal as it has been in the past.

Closing by Sponsor: Rep. Gilbert stated that the issue here was not on quality education because of the 4, 5 or 6 days, and that the length in the school year does not have anything to do with quality education. He stated that this bill does deal with money and the longer the schools are open the more money they will receive. Rep. Gilbert stated that the idea of this bill is not to increase the equalization spending, but to try and maintain a balance on spending. Rep. Gilbert stated that he did not have a problem with this bill going into effect on July 1, 1990. He stated that if those schools that want to go over the 180 days this bill states clearly that the School Foundation Program will not pay for it.

HEARING ON SENATE BILL 5

Presentation and Opening Statement by Sponsor:

Senator Williams, Senate District 15, stated that this bill had been introduced in the 1986 special session and this one item had been overlooked. Senate Bill 5 limits the pupil instruction days to 180 days and the PRI days to 5 days. Sen. Williams stated that the Legislature might not be here today if this bill had been enacted on in a previous session instead of overlooked. Sen. Williams felt that the problem would be addressed with the teachers signing their contracts on a hourly base rate.

Testifying Proponents and Who They Represent:

None

Proponent Testimony:

None

Testifying Opponents and Who They Represent:

Bob Williams, School Board Assoc.
Tom Bilodeau, MEA
Terry Minow, MFT

Opponent Testimony:

Mr. Williams asked that the Legislative Research staff look into this bill in regards to the constitutionality of the impairment of contracts. Mr. Williams stated that he believed that teachers' salaries cannot be cut this time of year because of the change in the 180 days.

Mr. Bilodeau stated that he and the MEA are opposed to this bill. He stated that the hourly wage adjustment is very perplexing in that the teachers do work year around and are paid for 9 months. Mr. Bilodeau stated that the teachers have obligations in the summer months for continuous education requirements and obligations of license. He asked that the Committee not forget those hours of employment obligations that are not paid.

Ms. Minow stated that MFA is in opposition to this bill. She said that the proposal of reducing teachers salaries to an hourly rate base does not deal with this special session and the equalization question and asked that the Committee give SB 5 a do not pass recommendation.

Questions From Committee Members: Sen. Farrell asked Sen. Williams if he had done any research in regards to the hourly base rate as to what happens on Saturdays and after school hours, and if the savings were being spent for those extra hours? Sen. Williams stated that he had not and thought that the merit pay would cover that part of those hours. Sen. Williams stated that he has worked with the Legislative Council and they reported that the merit pay would work fine and it is legal.

Rep. Zook asked Mr. Anderson to comment about his concern for budgets that are already set. Mr. Anderson stated that contracts have already been set for this coming school year and that the preliminary budgets would be finalized the fourth Monday in June.

Closing by Sponsor: Sen. Williams closed.

HEARING ON HOUSE BILL 3

Presentation and Opening Statement by Sponsor:

Rep. Boharski, House District 4, stated that since 1972, the Constitution states in Article X, Section 1, Sub 3, that it is mandated that the Legislature shall provide a basic system for free quality public education in elementary and secondary schools, but in the last 17 years no one has sat down and defined equalization and how it is funded. Rep. Boharski stated that the Legislature is responsible for setting up that system as mandated by the Constitution and determine what the State's share is. He stated that without the basic definition in place that the Legislature will not be able to come up with any equalization bill. Rep. Boharski stated that like everything else HB 3 has a price attached to it. He stated that the Legislative Fiscal Analysts have done a cost analysis of the basic system of education that is currently in HB 3 and could present it at a later date. He felt that the Supreme Court would agree with this definition of basic education, but stated that the

one thing that was missing and seemed like it should belong and that is deadservice or building funds, but he felt that the Supreme Court would probably overlook that because every school in the state of Montana needs a school building. Rep. Boharski asked the Committee to pass this bill and get it down on paper so they can look at the costs and try to equalize to a certain degree what the State's share of that will be, and to allow the school districts that spend money in excess of a basic system of education to be able to spend freely so the system is not creating a democratization throughout the state.

Testifying Proponents and Who They Represent:

Wayne Phillips, Governor Stephen's Liaison

Proponent Testimony:

Mr. Phillips rephrased what Rep. Boharski just presented and stated that the administration strongly supports the concept of this bill. Mr. Phillips stated that this component is essential of everything that the Legislature will do on equalizing when it comes to dollars and the other plans that are presented. Mr. Phillips stated that equalization has been presented too often based on the amount of dollars, but stated that it would not matter how many dollars are spent unless those dollars provide a basic system of education. Mr. Phillips urged the Committee to give this bill a do pass recommendation.

Testifying Opponents and Who They Represent:

Pat Melby, School Districts that were plaintiffs in the underfunded Lawsuit
Claudette Morton, Board of Public Education
Kay McKenna, Lewis and Clark Supt. of Schools
Tom Bilodeau, MEA
Bruce Moerer, Mt. School Boards Assoc.
Jack Copps, Deputy Supt. of Office of Public Instruction
Terry Minow, MFT

Opponent Testimony:

Mr. Melby stated that he had to take issue of two objectives that Rep. Boharski had presented that were not correct: 1) When the new constitution was adopted in 1972, and the provision regarding the basic system of quality elementary and secondary schools had been adopted then in 1973, the Montana Senate had passed a resolution requesting the Board of Education to define basic quality education, and in that resolution it was stated that the purpose of that definition would be for consideration of future budgetary schedules for a quality education not a basic education and stated that was the difference between his clients and the position in this bill, and 2) that Rep. Boharski had stated that the

Supreme Court would accept this bill, but he hoped that the Supreme Court would reject the premise of the bill. On page 22, lines 23 through line four on page 23, it suggests that the Legislature is only responsible for funding the State's share of basic quality education. (See EXHIBIT 1).

- Ms. Morton stated that the Board of Public Education is in support of a system, but the BPE is not a proponent nor an opponent to this bill. She felt that Rep. Boharski has a good start with this bill, but the definition is not complete and that the Legislature needs to define what elements are a part of the system.
- Ms. McKenna reiterated what Ms. Morton had stated and gave a synopsis of what the three words "basic quality education", mean to the different age groups.
- Mr. Bilodeau defined two points: 1) The proceedings that lead to the language out of the Constitutional Convention and a recently filed memorandum that is in support of the plaintiffs' case to the Supreme Court. He stated that "basic" does not refer to curriculum, but to K-12 education, and 2) educational funding and the definition of basic education were discussed by two interim committees between the last two sessions and MEA opposes a legislative dictate on quality education and the curriculum imposition of local control over the school districts and the imposition on the Board of Public Education's constitutional rights to determine mandatory statewide standards.
- Mr. Moerer stated that he concurs in Mr. Melbey's conclusion that this bill is lacking in constitutionality and the Montana School Board Association wanted to go on record in opposition of HB 3.
- Mr. Copps stated that the OPI appears as an opponent to this bill, but they would be an eager and willing participant to carefully study this subject. Mr. Copps stated that if this bill were to pass both the House and Senate today there would not be sufficient time during this Special Session to provide the figures necessary to determine what the funding level should be for education.
- Ms. Minow stated that formulating a definition of basic quality education is too difficult to do in such a short period of time. She asked the Committee to not pass HB 3.

Questions From Committee Members: Rep. Phillips asked Ms. McKenna if she saw anything in this presentation that takes away from the Board of Public Education to outline the curriculum? Ms. McKenna replied that legislators and educators have originally felt that a basic education comes mainly from the standards. She stated that the Board of Public Education has the initial control over those standards after they are ratified by the Legislature.

Rep. Gervais asked Rep. Boharski if there is anything in the bill that relates to sports? Rep. Boharski replied that sports is not addressed in this bill and stated that he hoped it could be discussed. Rep. Boharski said he thought that this academic challenge is in the accreditation standards referred to in the first part of his bill.

Rep. Nelson asked Rep. Boharski if there is a time limit on this basic system, and if he thought that it could be settled before the July 1 deadline date or did he plan on having an interim study? Rep. Boharski stated that there does not need to be a time limit because the bill he just presented will provide a basic system of education and it can be accomplished because the costs and definitions have already been presented in HJR 16.

Rep. Eudaily asked Rep. Boharski regarding the new language if the bill was adopted would the Legislature be locking the State into the 100 percent costs of the Foundation Program plus the allowable costs in special ed and transportation schedules? Rep. Boharski stated that this bill does not address that issue, but felt that even though it is not included in the title or definition that it will work with the Foundation Program itself. Rep. Boharski stated that the Constitution does not mandate that the Legislature fund 100 percent. The Foundation Program will be the support for the Legislature in schemes, subsidized mills, schedules, etc.

Rep. Eudaily commented to Rep. Boharski that the bill clearly states that the State's share of the costs is determined by the Foundation Program which means that whatever the FP has set, plus special ed, transportation and etc., which is the States' share would mean 100 percent. Rep. Eudaily asked if that is what this bill really means? Rep. Boharski replied that if it is assumed that the FP is 100 percent, then it would be yes, but he stated that he did not feel that the FP has been 100 percent in the past nor at this time.

Closing by Sponsor: Rep. Boharski closed stating that he is upset with the opponents to the bill not being able to come up with better arguments than to say that this concept cannot be done. Rep. Boharski stated that this bill came together by using bits and pieces handed down from the last 30 years. He stated that the Legislature would have a starting point with this bill and the cost figures are there. He stated that he is open for amendments anything to be placed on paper to be equalized.

HEARING ON HOUSE BILL 16

Presentation and Opening Statement by Sponsor:

Rep. Grinde, House District 30, stated that this bill requires the school districts to use the Generally Accepted Accounting Principles (GAAP). Rep. Grinde stated that this bill originated out of the Select Committee for Education because of the frustrations of placing numbers together to form a base for equalization. He stated that the only concerns he has on this is on the bottom of page 2, lines 17-20. Some smaller schools are concerned that they will have to purchase computers and components to administer this. He stated that the OPI has developed methods for calculating educational data electronically and the smaller schools will have to go with paper and pencils.

Testifying Proponents and Who They Represent:

Greg Groepper, OPI
Claudette Morton, Board of Public Education
Kay McKenna, Lewis and Clark Supt. of Public Schools
Wayne Phillips, Liaison for Governor Stephens

Proponent Testimony:

Mr. Groepper thanked the House Select Committee on Education for working with the OPI to put the language and requirements together on SB 203. Mr. Groepper stated that there is a need for a sound common base on financial data on what the money is being spent on by the schools.

Ms. Morton stated that the BPE have the cost of education, but does not have the data from the schools. She stated that this is a good bill to help provide that data to help the BPE do their work and it would help everyone in making decisions.

Ms. McKenna stated her support for two reasons: 1) As a very recent director of the Montana Association School Boards Organization (MASBO), and 2) as a member of the Montana Association of County Schools Supt., she hoped that this bill could be part of a total equalization package.

Mr. Phillips stated that the Governor's office strongly supported this bill and feels it is essential and can stand alone or go with any of the other equalization plans.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Sen. Blaylock asked Mr. Groepper about some of the school districts that have developed troubles because of not spending their money

wisely and asked if this would help those schools? Mr. Groepper replied that part of the problem was when those districts ran out of money at the end of the year and with the present system making it easier for them to hold onto some of the bills and pay for them out of next years budget, so they are operating a year behind and GAAP would require that those expenditures to be paid out of that years budget. He stated that there would be a disclosure to the BPE of that situation and it would have to be taken care of in the year it was discovered with the funds from that year and start the next year out fresh. Mr. Groepper stated that he was not sure if it would make it easier to correct the problems, but it will make it more difficult to get into that kind of a problem in the future.

Closing by Sponsor: Rep. Grinde closed.

DISPOSITION OF HOUSE BILL 16

Motion: Rep. Grinde made the motion for a do pass.

Discussion: Rep. Eudaily asked Rep. Grinde if there is a reason for the effective date being 1990 instead of 1989 and if it could be implemented the first year of the biennium or does it have to wait until a new plan is in to start an accountability? Rep. Grinde stated that he did not have a specific reason because the people he had worked with in the OPI on the plan have left. Rep. Grinde stated that he did not have any problem with the plan going into effect immediately.

Rep. Cobb stated that the reason for the wait is that it is an education process to teach the people how to use (GAAP) Generally Accepted Accounting Principles.

Rep. Schye stated that the Select Committee had decided that the education process should start immediately, but the effect where the schools have to start using the (GAAP) starts later and asked Andrea Merrill if that was correct? Ms. Merrill stated that the appropriation does not start until the second year of the biennium but the schools had asked for the appropriation so they could conduct training sessions. Ms. Merrill stated that she thought that the schools would have to find those funds in their existing resources because the schools will not receive that money until next year to do those workshops, etc.

Amendments, Discussion, and Votes: None

Recommendation and Vote: The question was called. The motion CARRIED unanimously to DO PASS.

Presentation and Opening Statement by Sponsor:

Rep. Cobb, House District 42, stated that most of the bills that he will be presenting were a part of SB 203. He stated that HB 1 will do away with the permissive mills and make it a mandatory mill. He said the mills will go from 45 mills to 55 mills. In the title it states that the Foundation Program will fund 100 percent of the FP schedules in elementary and secondary schools and the 55 mills will go into the Foundation Program to fund education.

Testifying Proponents and Who They Represent:

None

Proponent Testimony:

None

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Cobb closed.

HEARING ON HOUSE BILL 9

Presentation and Opening Statement by Sponsor:

Rep. Cobb, House District 42, stated that HB 9 revises the payment of equalization aid due to deficient tax payments and provides a delayed effective date.

Testifying Proponents and Who They Represent:

None

Proponent Testimony:

None

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Cobb closed.

HEARING ON HOUSE BILL 10

Presentation and Opening Statement by Sponsor:

Rep. Cobb, House District 42, stated that this bill is not a part of SB 203. HB 10 abolishes the Education Trust Fund and allocates the money to the Office of Public Instruction for the State Equalization Aid Account. Rep. Cobb stated that at the present time there is a balance of \$29 million. Each year \$3 to 4 million goes into the trust fund. He stated that instead of having to go in and retrieve it all of the time to place it where it is constantly being used.

Testifying Proponents and Who They Represent:

Greg Groepper, OPI

Proponent Testimony:

Mr. Groepper stated that OPI rises as a reluctant proponent. He stated that the problem the schools are in at this time from the funding difficulties for the Foundation Program is because the Educational Trust account has been constantly chipped away on, it generates less interest, and less revenue from subsequent years for the FP.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Cobb closed.

HEARING ON HOUSE BILL 13

Presentation and Opening Statement by Sponsor:

Rep. Cobb, House District 42, stated that this is an act to include allowable cost for special education programs and the costs of the different retirement systems. He stated that at the present time the current law gives money for the special education budget and does not allow the districts to

include the different costs of the retirement funds. This bill allows the State to pay their share of around \$3 million.

Testifying Proponents and Who They Represent:

None

Proponent Testimony:

None

Testifying Opponents and Who They Represent:

Mr. Groepper, OPI

Opponent Testimony:

Mr. Groepper stated that the funding for the special education for the next biennium has been included in HB 100. He stated that in this bill there is not an appropriation to deal with the retirement costs for special education. Mr. Groepper stated that if this bill is passed it would have to have an amendment for appropriations to cover the additional special educational retirement costs.

Questions From Committee Members: None

Closing by Sponsor: Rep. Cobb closed.

HEARING ON HOUSE BILL 14

Presentation and Opening Statement by Sponsor:

Rep. Cobb, House District 14, stated that HB 14 is an act that requires investment of Education Equalization Aid Account income to be given back to the OPI. He stated that currently the aid account is invested and the interest goes into the general fund. This bill will keep the interest in the equalization aid account and will generate about \$200,000 because they will be paying on a monthly basis.

Testifying Proponents and Who They Represent:

Terry Cohea, OPI
Rep. Grinde

Proponent Testimony:

Ms. Cohea stated that the OPI supports this bill and the concept of maximizing earnings on the equalization funds. She stated that it is also a good concept to have the interest flow into the equalization account rather than the general fund account.

Rep. Grinde thanked Rep. Cobb for breaking down SB 203 like this and stated that Rep. Cobb has created an option in case the other bills do not pass through their committees or the floor.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Cobb Closed.

HEARING ON HOUSE BILL 6

Presentation and Opening Statement by Sponsor:

Rep. Schye, House District 18, opened stating that this bill was HB 618 during the regular 1989 Legislative Session. This bill is the 4 percent increase for the first year of this coming biennium for the Foundation Program. Rep. Schye stated that he felt it was imperative that the Legislature give this increase to the schools for this coming year, and that the equalization will start the second year of the biennium. He stated that he has new figures coming from the LFA's office but did not have them printed yet. With the LFA's new revenue estimates and some of the incidents that have happened since, he felt that the Legislature did not need the \$11 million to place this bill into effect. He said that the Committee needs to take the Education Trust Fund that Rep. Cobb had presented earlier for \$29 million. The LFA figures the amount for the Education Trust Fund to be at \$30 million. He said by bringing the schedule up to 0 and placing the \$11 million in, there will be enough money in the Education Trust Fund to bring the Foundation Program up to 0 and give the 4 percent increase without the general fund increase of \$11 million that the bill has. He stated that the bill does have the \$11 million general fund increase in it, but felt that both Senate and House Education Committees should look at the revenue estimates and make sure that it is correct and that the \$11 million increase from the general fund is not needed, because the money can be used from the Education Trust Fund. Rep. Schye stated that the schools have been setting for the last three years at 00 and 1 and they need the increase to bring the schedule back up. He stated that this bill is just a straight 4 percent increase and is not built into the base and does not do anything in the future, it is just for this first year of the biennium until the equalization plan can

start.

Testifying Proponents and Who They Represent:

Nancy Keenan, State Superintendent of Schools, OPI
Don Waldron, Supt. of Missoula Schools
Tom Cotton, Supt. of Deer Lodge Elementary School
Kay McKenna, Lewis and Clark Supt. of Schools
Terry Minow, Montana Federation of Teachers
Bob Anderson, School Board Assoc.
Bill Donahue, Supt. of Superior School
Claudette Morton, Board of Public Education
Phil Campbell, Montana Education Assoc.
Mignon Waterman

Proponent Testimony:

Supt. Keenan thanked both Committees for their support of HB 618 from the regular 1989 Legislative Session. She said that the school districts are "budget holding on" until the Legislature can solve the equalization and funding problem. Supt. Keenan stated that everyone knows that whatever comes out of this Special Session cannot be implemented by this fall of 1989. Supt. Keenan distributed a handout on why the 4 percent increase is needed. (SEE EXHIBIT 2). Ms. Keenan gave an overall view of the chart on Exhibit 2 and explained page 1, which shows where the Foundation Program has stayed at the same level since 1986. The graph on the second page shows how the taxes are levied in Montana. In 1984 there was \$329 million levied in taxes and as of 1988 there was \$299 million levied, a \$44 million reduction in taxes levied for schools. The graph on page three reflects the inflation comparisons from the same years 1984 to 1988. She stated that there was an \$88 million increase in the purchasing power of the dollar from 1984 to 1988. The purchasing power of that dollar is \$82 million less today than in 1984. Supt. Keenan stated that the State is up against a level Foundation Program, less taxes and an increase in inflation over those same years. (See EXHIBIT 2).

Mr. Waldron said he is speaking for the school administrators of Montana. He stated that next Monday night the school administrators will be seated with their school boards trying to balance a budget. Mr. Waldron stated that the schools in Montana are not talking about inflation anymore, but survival. Mr. Waldron urged the Committees to put the school funding level back to where they were a few months ago.

Mr. Cotton stated that he just finished a school year in his district in Deer Lodge that left them with 8/10ths of 1 percent of their budget which amounted to about \$14,000, out of a budget of \$1.723 million. Mr. Cotton stated that there are many districts considering spending their reserves and stated that his district did not have any reserve left to

use. Mr. Cotton said that HB 6 will increase Deer Lodge's spending authority by approximately \$24,000 this coming fiscal year which is a 1.5 percent increase.

Ms. McKenna stated that over the last three years inflation has risen over 13 percent; spending on students less than 5 percent; and the State funding for the schools increased by only 1 percent. She talked about inflation in 1989 and how Montana spends 9 percent less per student than they did three years ago. She stated that there were only two schools in the state of Montana that did not pass their emergency school levies. Ms. McKenna urged the Committees to support this bill.

Ms. Minow stated that this bill is essential, equitable and affordable. She asked that the Committees pass this bill again.

Mr. Anderson stated that this will be a 2 percent increase to the Foundation Program of that portion that is equalized. Mr. Anderson urged the Committees to do pass HB 6.

Mr. Donahue reiterated the previous testimony. He stated that his teachers froze their wages two years ago to keep from losing more programs. He urged the Committees to pass the 4 percent increase.

Ms. Morton stated that the chairperson of the BPE is most interested in the financing of schools and has spent a great deal of time explaining to anyone who will listen about the problems the schools are having in regard to losing money from inflation, and tax freezes, etc..

Mr. Campbell wanted to go on record in support of HB 6. Mr. Campbell stated that it will be impossible for any new system to be generated at this time to take effect for this coming school year. He stated that the schools are on hold, and the teachers are on hold in terms of bargaining because the school districts do not know what kinds of funds they will have to bargain with.

Ms. Waterman reiterated on the Lewis and Clark schools that were affected by the Montana Power trending decision. She stated that a census information was compiled and the voters in Helena overwhelmingly passed the regular and emergency levies for school funding on a 2-1 margin. Ms. Waterman asked for the Committees support in passing the 4 percent increase.

Testifying Opponents and Who They Represent:

Rick Florin, District Clerk for Havre Public Schools

Opponent Testimony:

Mr. Florin stated that his district has approved a preliminary budget that reflects a \$562,000 decrease in budget expenditures since 1986. Mr. Florin stated that after reviewing this bill for his budget that a 4 percent increase is not enough and that is why he is opposed to HB 6.

Questions From Committee Members: Sen. Blaylock asked Greg Groepper if the bill for the Foundation Program fails, does that mean there is no money if they do not get this type of a bill through? Mr. Groepper replied that was correct. He stated that if the appropriation and authorization are not there the money cannot be spent. The Foundation Program has money that is earmarked to be generated to pay the schools, but this is the bill that appropriates the money. Mr. Groepper stated that if this bill does not pass, e.g., the entire amount in HJR 16, the revenue estimate of about \$180 million, and the OPI will not have the authority to pay the schools.

Sen. Blaylock asked Mr. Groepper if the 4 percent is not passed, will the schools be out? Mr. Groepper stated that was correct and the July 15th payment that is due to the schools from the OPI will not be made.

Sen. Farrell asked Mr. Bob Anderson about his contracts and budgets that are already set for the coming school year, could he readjust those with this 4 percent if it passes? Mr. Anderson stated that some of the final collective bargaining contracts had been on hold, but they cannot go back as far as tenure and non-tenure teachers who have been hired and eliminate them.

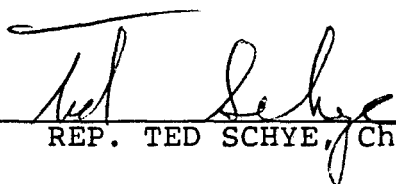
Closing by Sponsor: Rep. Schye closed stating that the Committees had a good discussion. He stated that the 4 percent is necessary for this first school year of 1989/90 than the equalization plan could start the second year. Rep. Schye stated that this is the program that would get the funding up to 00 and 4. Rep. Schye stated that he had some information coming from the LFA on the projections on the trust fund and how it could be funded by using the trust fund and the 4 percent. Rep. Schye stated that a lot of the schools have been waiting to see if the 4 percent is passed to figure their budgets and urged the Committees to support this piece of legislation.

Chairman Schye informed the Committee Members that they will be meeting in the morning at 9:00 a.m. in the old Supreme Court chambers with the Taxation Committee to hear HB 39, Kadas/Ramirez' bill, and then go into the Committee's regular room to take up executive action.

There being no further business the Senate and House Education Committees were adjourned.

ADJOURNMENT

Adjournment At: 4:35 p.m.



REP. TED SCHYE, Chairman

TS/cj

040620.min

DAILY CALL VOTE

EDUCATION AND CULTURAL RESOURCES

COMMITTEE

DATE 6-20-89

NAME	PRESENT	ABSENT	EXCUSED
REP. SCHYE, CHAIRMAN	✓		
REP. DAILY, VICE-CHAIRMAN	✓		
REP. COBB	✓		
REP. COCCHIARELLA	✓		
REP. DARKO	✓		
REP. DAVIS	✓		
REP. EUDAILY	✓		
REP. GERVAIS	✓		
REP. GLASER	✓		
REP. GRINDE	✓		
REP. HARRINGTON	✓		
REP. JOHNSON	✓		
REP. KIMBERLEY	✓		
REP. KILPATRICK	✓		
REP. NELSON	✓		
REP. PECK	✓		
REP. PHILLIPS	✓		
REP. SIMPKINS	✓		
REP. SPRING, JR.	✓		
REP. STANG "SPOOK"	✓		
REP. THOMAS	✓		
REP. WALLIN	✓		
REP. WYATT	✓		
REP. ZOOK	✓		

STANDING COMMITTEE REPORT

HOUSE BILL 16

"An Act Requiring School Districts to Use
Generally Accepted Accounting Principles and Providing
Funds to OPI to Establish Standard Accounting Practices"

June 20, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Education and Cultural
Resources report that HOUSE BILL 16 (first reading copy --
white) do pass.

Signed: _____
Ted Schye, Chairman

IN THE SUPREME COURT OF THE STATE OF MONTANA
NO. 88-381

HELENA ELEMENTARY SCHOOL DISTRICT NO. 1 AND HIGH SCHOOL DISTRICT NO. 1 OF LEWIS & CLARK COUNTY; BILLINGS ELEMENTARY SCHOOL DISTRICT NO. 2 AND HIGH SCHOOL DISTRICT NO. 2 OF YELLOWSTONE COUNTY; et al.

Plaintiffs/Respondents
Petitioners for Continuing Supervision, Supervisory Control or Other Appropriate Relief

and

MONTANA EDUCATION ASSOCIATION; et al.

Intervenors-Plaintiffs/Respondents,

vs.

THE STATE OF MONTANA; and THE MONTANA BOARD OF PUBLIC EDUCATION; and the MONTANA SUPERINTENDENT OF PUBLIC INSTRUCTION,

Defendants/Appellants,

and

C.J. HOLJE, BERNT WARD and ROBERT FREDERICH on behalf of the residents and taxpayers of Sheridan County, Montana, and all others similarly situated,

Intervenors-Defendants/Appellants,

and

HAYS-LODGE POLE ELEMENTARY SCHOOL DISTRICT NO. 50 AND HIGH SCHOOL DISTRICT NO. 50, BLAINE COUNTY; et al. and the ASSOCIATION OF INDIAN IMPACT SCHOOLS OF MONTANA,

Intervenors-Defendants/Appellants.

PLAINTIFFS' MEMORANDUM IN SUPPORT OF CONTINUING SUPERVISION,
SUPERVISORY CONTROL OR OTHER APPROPRIATE RELIEF

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ATTORNEY FOR PLAINTIFFS

I. INTRODUCTION.

On February 1 of this year, this Court held that the State of Montana "...has failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed under Art. X, Sec. 1, Mont. Const." (Slip Opinion, p. 13). Recognizing that it would take time to derive a new system which would meet the Constitution, this Court specified a date of July 1, 1989, by which a new system should be in place and postponed the effective date of the holding until that time.

There has been no legislation to this point which addresses the problem. Because the regular session of the Legislature failed to address the problem, the Montana Governor has issued a call for a special session of the Legislature to meet beginning June 19, 1989. (See letter of Governor for call of special session of legislature, contained in Exhibit 1 to this memorandum).

The Plaintiffs¹ are filing the present Petition and Memorandum before the special session with a request for leave of this Court to amend at a later point in response to any action which may be taken during the special legislative

¹ Throughout this memorandum the 68 Montana school districts which were Plaintiffs in the District Court are referred to as "Plaintiffs," rather than "Petitioners" or "Respondents." This is done for reasons of clarity. In the initial appeal of this case to this Court, the Plaintiffs were "Respondents." Since they are now "petitioning" the Supreme Court for continuing supervision, they should perhaps be referred to as "Petitioners." The reference to the school districts as "Plaintiffs" eliminates confusion.

session, under the most hopeful scenario, there are certain unconstitutional aspects of the public school financing system which will not be addressed. For example, there appears to be a consensus that the issue of equalized funding of capital outlay (school building construction) will be deferred, studied by committee, and addressed in a future legislative session. Given the complexity of the other issues which must be resolved, Plaintiffs have no particular objection to postponing the implementation of a remedy regarding capital outlay. However, they request that this Court continue its supervisory jurisdiction to ensure that the issue will be addressed.

(3) An issue has been raised by bond counsel regarding the ability of school districts to finance school construction by issuance of bonds after July 1, 1989, in light of this Court's decision declaring Montana's system unconstitutional. This Court may wish to address that issue.

(4) On the central issues of inequalities in educational opportunity for students and taxpayer inequalities, it appears that none of the proposals advanced to this date, including the recent Governor's proposal, comes close to meeting the requirements of the 1972 Montana Constitution. The Plaintiffs feel obliged to make this clear in advance of the special legislative session in the hope that the special session will address the constitutional problems. The Plaintiffs further wish to advise this Court as early as possible as to the potential need for continuing judicial shepherding of the

constitutional rights of Montana school children and of Montana taxpayers are not indefinitely disregarded.

A. THE PLAINTIFFS HAVE BEEN EXTREMELY DEFERENTIAL TO THE MONTANA LEGISLATURE.

The Plaintiffs originally retained the undersigned counsel in the fall of 1984 to investigate and advise on the present issue. A tentative decision was made by the Plaintiff group in early 1985 to proceed with litigation. Even then, however, it was decided to postpone filing in the hope that the Montana Legislature would address the problem in the 1985 session. It was not until it became clear that the 1985 Legislature was not going to act that the Plaintiffs authorized the filing of this action.

The problem was not a new one in 1985, of course. The Montana Legislature had for years recognized the serious problems in educational inequality but had failed to act. (See numerous legislative and administrative studies referenced on pp. 3, 6, 29-32 of Brief of Respondents, December 1, 1988). For example, as far back as 1982, the Joint Subcommittee on Education of the Montana Legislature found:

There is very clear evidence that high-wealth districts have lower taxes and higher expenditures per student than do low-wealth districts. This situation exists because a fairly substantial portion of school district expenditures is in the voted levy amount.

* * *

Since the voted levy amount has remained large, the inequities caused by it are very significant.

1982 Joint Subcommittee Report, p. C-2, and Table 1, p. C-3, Pl. Exh. 101.

believe these plaintiffs were left with no recourse but to sue.

Trial Transcript, p. 2104, Vol. 10.

Even after this action was filed in the District Court and pre-trial discovery was progressing, the legislature had opportunity to act to obviate the need for judicial intervention. As the District Court found:

The trial was originally scheduled to begin on December 1, 1986. By agreement of the parties, however, the trial date was continued until May 11, 1987, to afford the 1987 Montana Legislature an opportunity to address the problems complained of by the Plaintiffs.

Dist. Ct. Finding of Fact No. 10, p. 9. Again the Legislature failed to address the problem.

In sum, Plaintiffs have bent over backward in an effort to allow the legislative branch to address this problem. A full generation of Montana school children has passed through the Montana elementary and secondary schools since the adoption of the 1972 Montana Constitution and yet the problem remains unaddressed.

B. THIS COURT AND THE DISTRICT COURT HAVE EXHIBITED GREAT DEFERENCE TO THE LEGISLATIVE BRANCH.

Judge Loble was also extremely deferential to the legislative branch. He found Montana's system of financing its public schools to be in violation of the Montana Constitution, but deferred to the legislature to derive a specific remedy and he provided time within which to do that. He stated:

Solutions to the problems inherent in Montana's school finance system are not simple. However, they can be solved. It would be presumptuous of me to order specific

February 1, 1989, advanced the date by which the new system should be enacted from October 1, 1989, (Judge Loble's date) to July 1, 1989. Id.

In short, the Legislature has long recognized the problem, even prior to the institution of the present suit. It had adequate time to deal with the problem after the Plaintiffs filed the action. It was very clear by January 13, 1989, when Judge Loble released his carefully prepared 17-page Opinion and 126-page set of Findings of Fact and Conclusions of Law, that legislative action was required. If that were not enough, the Legislature was fully aware on the date of this Court's decision (February 1, 1989) that the problem must be addressed.

Yet the problem remains. No legislative action has been taken. On July 1, 1989, if the Legislature has not satisfactorily acted, the time for deference to the legislative branch will have passed.

There can be no doubt that the judicial branch has the power to determine a remedy to constitutional violations. See Jenkins By Agyei v. State of Missouri, 855 F.2d 1295 (8th Cir. 1988), cert. denied 98 L.Ed.2d 34, 108 S.Ct. 70 (1987):

The judiciary's power to determine the rights and liabilities of parties in cases arising under the constitution and laws of the United States is beyond question, and this power is without purpose if it does not carry with it the power to determine a remedy. See Marbury v. Madison, 5 U.S. (1 Cranch) 137, 162-63, 166-67, 176-80, 2 L.Ed. 60 (1803).

855 F.2d at 1310.

differences between high-spending and low-spending school districts of not more than a 1.3 to 1 ratio. SB 203 proposed, however, to protect spending levels for those school districts presently spending above the 130 percent cap level, thus perpetuating a measure of inequity. See Affidavit of Pat Melby, par. 5. As demonstrated below, SB 203 would produce an unconstitutional result.

Recently, in anticipation of the special session of the Legislature, the Montana Governor has issued a separate proposal for school equalization which suffers from similar constitutional defects. The Governor's proposal⁵ proposes to reduce property tax disparities by classifying (for school tax purposes) 80 percent of certain property as state rather than local property.⁶ It further proposes a cap of 25 percent above the state-financed foundation levels. In addition, it proposes to allow school district spending above the cap level to continue to spend at fiscal year [FY] 1988 levels plus 4 percent per year increases (for inflationary adjustment). See Affidavit of C. Jack Gilchrist, par. 11.⁷

⁵ A copy of "A Proposal to Equalize School Funding in Montana, Positions and Recommendations submitted to the June Special Session of the 51st Legislature, May 1989," is attached hereto as Exhibit 1.

⁶ Centrally-assessed property, net and gross proceeds and personal property classes 1, 2, 5, 7, 8, 10, 11, 15 and 17. Governor's proposal, pp. 2 and 13.

⁷ The Governor's proposal has been modified on almost a daily basis. For example, up until approximately two days before the drafting of this Memorandum, the Governor's proposal contained a cap of 20% rather than 25%. See Exhibit 1, p. 5.

districts. In other words, the proposal begs the focal point of Judge Loble's decision, as affirmed by this Court: There are significant disparities in spending for school children among the various school districts in the state of Montana.

This Court could hardly have been clearer in its holding. Justice Weber's opinion states as follows:

The evidence presented at the trial of this case clearly and unequivocally established large differences, unrelated to "educationally relevant factors," in per pupil spending among the various school districts of Montana.

Slip Opinion, p. 11. The Opinion continues:

We conclude that as a result of the failure to adequately fund the foundation program, forcing an excessive reliance on permissive and voted levies, the State has failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed under Art. X, Sec. 1, Mont. Const. We specifically affirm that portion of the District Court's Conclusion of Law 17 which holds that the spending disparities among the state school districts translate into a denial of equality of educational opportunity. We hold that the 1985-86 system of funding public elementary and secondary schools in Montana is in violation of Article X, Section 1 of the Montana Constitution.

Id., p. 13 (emphasis added).

The message is not hard to understand. The central factor in determining equality of educational opportunity is spending per student. If there are substantial disparities in spending per student, unrelated to educationally relevant factors, there is a denial of educational opportunity. It follows that, in order to assess a potential legislative solution, the focus must be on the pattern of spending per student that will likely result from the proposal. Unfortunately, notwithstanding the

all of the various size categories there was substantial inequity. For example, in the school district size category of 18 to 40 students, there was a ratio 3.7 to 1 in the federal range. In other words, the 95th percentile district spent 3.7 times per student as much as the 5th percentile district. For the size group 41 to 100, the ratio was 3.1 to 1; for the size group 101 to 300, the ratio was 2.7 to 1; and for the size group over 300, the ratio was 1.8 to 1. See Plaintiffs' Exhibit 27A. As pointed out in Respondents' (Plaintiffs') Brief before this Court of December 1, 1988, these ratios did not come close to meeting even the definition of equity of the State's own expert witness, Dr. Richard Rossmiller. See Brief of Respondents', p. 26-27.

More significant is the fact that the standard for qualifying for distribution of federal Public Law 874 [PL-874]¹⁰ funds through a state equalization program is that the ratios in the federal range cannot be greater than 1.25 to 1. Tr. 4221, Vol. 20. It is significant that this Court, in its Opinion of February 1, 1989, stated:

We do invite the attention of the Legislature and the Executive Branch to Montana's failure to meet the federal equalization requirements. As a part of the changes to be made in Montana's school funding system, it may be appropriate to meet the federal equalization requirements in order that "874" funding may be factored in the state's equalization formula.

Slip Opinion, p. 18. The evidence at the trial established that none of the elementary size categories and only one of the

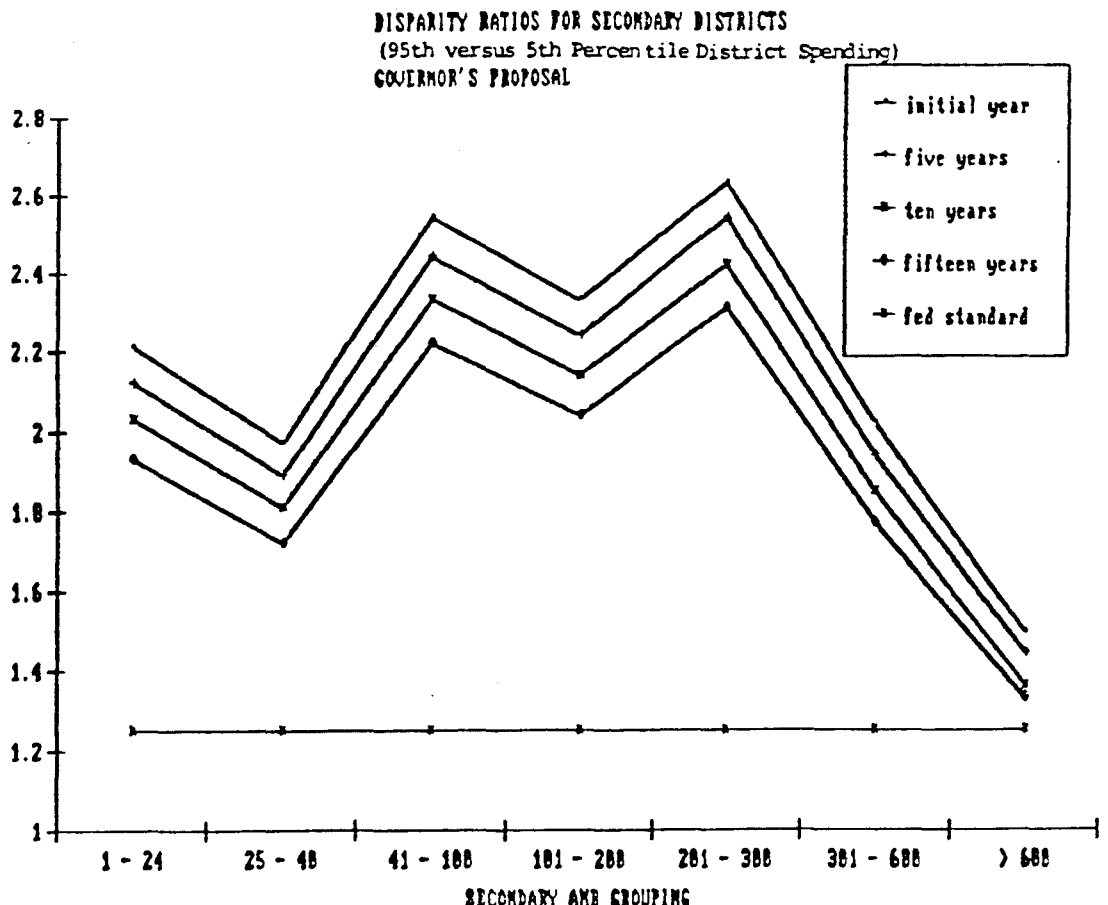
¹⁰ 20 U.S.C. §§ 236-240 (1980) (Public Law 81-874).

in the fifteenth year are as follows:

ANB GROUP	2004-05 (15TH YEAR)
1-9	3.75
10-18	2.78
19-40	2.01
41-100	2.16
101-300	2.01
>300	1.50

Table 1, Gilchrist Affidavit. Thus, even after fifteen years, no districts in the elementary size categories will have reached the federal standard. By that time another generation of Montana school children will have passed through Montana's schools. For secondary schools, all but one size category do not meet the federal standard. See Table 1. This is further graphically illustrated by Dr. Gilchrist in Figure 2 to his Affidavit:

Figure 2



S.B. 203, AS AMENDED

Table 5: Ratio of Total Capped vs. Pre-Capped Funding Per ANB (95th vs. 5th Percentiles, Respectively) by District Type by Plan (RETIREMENT REMOVED)
(Special Education Funds Excluded)

GROUP	ELEMENTARY "203"	SECONDARY "203"
1	3.5	2.0
2	2.8	1.7
3	2.2	2.4
4	2.4	2.0
5	2.0	2.3
6	1.5	1.7
7	---	1.3

It is obvious that none of the size categories in either elementary or secondary are within the federal standard of 1.25 to 1. Thus, while 203 promises some improvement from the existing inequitable system, it still does not come close to the degree of equalization that is necessary to meet the Montana Constitution.

In sum, the central issue in this case is denial of equality of educational opportunity. This denial of opportunity is most focally measured by disparities in spending per student. The projections show that neither SB 203 as amended or the Governor's proposal promise to eliminate the inequities in a meaningful way. While the issues are not yet ripe for judicial consideration since the legislature is still meeting, Plaintiffs offer this information to show the chances of meeting the Court's mandate are bleak unless serious modifications are made to the legislative proposals.

I stress first my personal commitment to the constitutional guarantee that the young people of Montana have equal access to a quality, basic education."

Exhibit 1, p. 1 (emphasis added).

On the same page, the Governor indicates that he will propose legislation to address the "critical issues" of "definition of basic education and accountability in schools." Thus, on the same page, the Governor's proposal begins with a reference to "basic quality education," proceeds to discuss "quality, basic education," and then ends dropping the word "quality" stating that legislation will be introduced to define "basic education." (Emphasis added). None of these terms, of course, appear in the Montana Constitution. Rather, Art. X, § 1(3) is as follows:

The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Mont. Const. Art. X, §1(3) (emphasis added).¹² The Governor's

¹² As originally proposed by the Education Committee, subsection 3 read:

"The legislature shall provide for a system of high quality free public elementary and secondary schools. The legislature may also provide for other educational institutions, public libraries and educational programs as are deemed desirable. It shall be the duty of the legislature to provide by taxation or other means and to distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system.

Majority Proposal, p. 718, App. III-8.

(emphasis added). The sentence was amended, through a proposal by Delegate Habedank, to insert the word "basic" before the word "system."¹⁴

Delegate Habedank explained that the purpose of his amendment was to make more clear the "intention of the committee that the Legislature shall be required to fund a basic system of quality education." Con. Con. Tr. p. 1962, App. III-49. This "basic system" was quite simply intended by the framers to mean elementary and secondary education, as opposed to preschool, vo-tech, or post-secondary education. The addition of the word "basic" in subsection 3 was not meant to weaken in any way the mandate provided for in the subsection. This is clear from the debates regarding subsection 3, and from the text of the subsection itself.

Delegate Habedank explained very clearly the meaning of his amendment in subsequent debate regarding the third sentence of subsection 3:

...[The committee] explained to you that it was their intention...to limit [the mandate of subsection 3] to elementary and secondary schools. In the remarks which was made, they carefully pointed out that they did not intend to saddle the State of Montana with the funding of kindergarten schools, nor to saddle the State of Montana with this free public school, the higher education system. By the insertion of the word "basic" into this program, we clarified, I think, satisfactorily the fears that many people had that the courts would come along and there would be a series of lawsuits to try to compel the Legislature to provide whatever type of elementary and secondary school

¹⁴ The Habedank amendment also added the word "basic" to the third sentence of subsection 3. The purpose and intent of the additions were identical with respect to each sentence.

X, § 1(3) (emphasis added). The committee comments regarding this sentence explain:

The committee also believes that other educational institutions and programs and libraries are important parts of educational activity in the state. The particular sorts of institutions and programs, however, must be left for the legislature to determine, since changing conditions may require a variety of endeavors.

Committee Comments at 724, App. III-14. The word "basic" in subsection 3 therefore has a descriptive, and not a qualitative purpose.¹⁶

All of this is to point out that the State was wrong in its argument that the changes in subsection 3 were meant substantively to weaken the subsection. This is important because the State suggested at trial that its ill-defined concept of "basic quality education" is somehow grounded in the Constitution. Through this suggestion, the State hoped to lend credence to its "accreditation standards" defense. That is, it equated the minimum accreditation standards with the "basic quality education" concept, and argued that this is all the Constitution requires. The phrase "basic quality education," however, is not in the Constitution, nor is the concept as the State defined it or as the Governor now proposes it.

The evidence at trial overwhelmingly demonstrated that the

¹⁶ The other change in the first sentence of subsection 3 was the Martin amendment deleting the word "high" from the original proposal, solely to delete a redundancy since the word "quality" satisfactorily addressed the issue. Con. Con. Tr. p. 1975, App. III-62. This is more fully addressed in Section IV A of this Memorandum.

In sum, the Montana school accreditation standards are minimum standards upon which quality education must be built.

Conclusion of Law No. 18 as modified by this Court is as follows:

Thus, the Montana school accreditation standards do not fully define either the constitutional rights of students or the constitutional responsibilities of the State of Montana for funding its public elementary and secondary schools.

Accordingly, the quest of the proposed legislation for some talismanic definition of "basic education" will be fruitless. Education is never static. It must adapt to the times. There is a particular perniciousness in a legislative attempt to freeze forever, in a static definition of "basic education," a minimal standard, because of a fear of expending additional tax dollars for public education.

Moreover, as demonstrated below in subsection B, the intent of the framers was to ensure a system of high quality education and that "the word 'quality' is an instruction to the legislature to provide not simply a minimum educational system, but one which meets contemporary needs and produce[s] capable, well-informed citizens." Committee Comments, p. 724, App. III-14. See Section IV B of this Memorandum.

The District Judge squarely rejected the argument of the State based on the basic education concept. It held:

The Montana School Accreditation Standards promulgated by the Board of Public Education are minimum standards only. Whether revenues from the Foundation Program are sufficient to permit schools to achieve accreditation status is essentially irrelevant, because the school finance system is rendered

constitutional issues in this case.

B. THE MONTANA CONSTITUTION REQUIRES THAT THE PUBLIC EDUCATION BE OF HIGH QUALITY.

As demonstrated above, the implication of a legislative attempt to define a "basic education" is that education may be financed on a minimal basis. There is a talismanic search for that certain "minimal" level beyond which additional funding is superfluous. Associated with this is the suggestion that equalization may be accomplished by "equalizing downward"--that is, by bringing the wealthier schools down to a common "minimal" level, thereby technically achieving equality of spending per student. Any such minimalist approach is doomed to constitutional failure because the Montana Constitution unequivocally calls for more than that.

The Montana Constitution provides in subsection (3) of Art. I, § 1, that "the legislature shall provide a basic system of free quality public elementary and secondary schools...." There is no doubt that the framers intended that such school systems be of high quality. As originally proposed by the Education Committee, subsection (3) read:

The legislature shall provide for a system of high quality free public elementary and secondary schools....

Majority proposal p. 718, App. III-8.¹⁸ The first sentence of subsection (3) was amended by the Martin amendment deleting the word "high" from the original proposal. The sole purpose of

¹⁸ The reference is to the Appendix [App.] previously filed in connection with the original appeal before the Court.

State has failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed under Art. X, § 1, Mont. Const.

Slip Opinion, p. 13 (emphasis added).

Accordingly, any remedy to the equalization problem must be designed to ensure that it will result in a high quality educational system. Any effort simply to scrape by with minimal commitment of funds will be inconsistent with the Constitution. In a parallel field, that of racial desegregation, the Federal Sixth Circuit stated in Bradley v. Milliken, 540 F.2d 229 (1976), aff'd 433 U.S. 267, 53 L.Ed. 745, 97 S.Ct. 2749 (1977):

Since Michigan state officers and agencies were guilty of acts which contributed substantially to the unlawful de jure segregation that exists in Detroit, the state has an obligation not only to eliminate the unlawful segregation but also to ensure that there is no diminution in the quality of education.

This principle is stated in Hart v. Community School of Brooklyn, 383 F.Supp. 699 (E.D. N.Y. 1974), aff'd 512 F.2d 37 (2d Cir. 1975), wherein the Court described the state's responsibility in a desegregation plan as follows:

"As part of the State's obligation to eliminate segregation, there is, of course, a concomitant obligation to ensure that there is no diminution in the quality of education..." 383 F.Supp. at 741.

540 F.2d at 245 (emphasis added).

In sum, this Court should be diligent in ensuring that any devised solution does not result in diminution in the quality of education in Montana.

children.

While the relative merits of a so-called "accountability" program can be left for future legislative debate, there are certain findings made by this Court and by Judge Loble which demonstrate such approach to be of dubious utility and which further illustrate why such approach would be a serious distraction from the central issues. The proposal for "accountability" carries with it the implication that school districts are prodigal in their expenditure of public monies to support the schools. The evidence is to the contrary. Justice Weber's Opinion states:

The evidence presented at the trial of this case clearly and unequivocally established large differences, unrelated to "educationally relevant factors," in per pupil spending among the various school districts of Montana. The evidence also demonstrated that the wealthier school districts are not funding frills or unnecessary educational expenses.

Slip Opinion, p. 11 (emphasis added). Moreover, Judge Loble's Opinion specifically relied on the blue ribbon study undertaken by experts retained by the Plaintiffs, R. Mattson, M. Pace and J. Picton, Does Money Make a Difference in the Quality of Education in the Montana Schools? Finding of Fact No. 217. Among other conclusions of the Study Team relied upon by Judge Loble are the following:

The differences in spending between the better funded and underfunded districts are clearly invested in educationally related programs.

* * * All twelve school districts in this study exhibited a responsible and judicious use of their financial resources.

equalization of funding. To the contrary, flexibility in local control should be preserved. Indeed, the local control language in what is now Art. X, § 8 of the Constitution was proposed by Delegate Heliker precisely because he recognized that financing of the schools would gravitate increasingly to the state under § 1 of Art. X and he wanted to preserve local flexibility. He stated in introducing his proposal:

...As financing of the schools gravitates toward the state more and more and as we see...the increasing likelihood...that there will be a continuation of that trend.... [T]he fear has been expressed...that the local school boards would lose autonomy as they lost their control over funds.... I feel, therefore, that we should give constitutional recognition and status to the local boards...to allay the fears...concerning the preservation of local autonomy....

Con. Con. Tr. p. 2046, App. III-131.

Speaking on this issue at trial, eminent national expert Dr. Arthur Wise stated that he saw absolutely no conflict between the goal of eradicating inequalities in educational opportunity and preservation of local control. Tr. 1223, Vol. 6. In fact, he testified that there is a reinforcement between the goals of equality of educational opportunity and local control. He stated:

...Nothing could be worse it seems to me than having a monolithic state approach to educational curriculum. To curriculum and instruction. I have already said that I think the best quality education emerges where we have supervision under locally elected officials, but there is a problem. There is a problem and that is today--that in some jurisdictions those locally elected officials have lots of money to expend on behalf of their youngsters and in other jurisdictions the boards of trustees have but a little bit of money to spend in behalf of their clients. So the point of school finance reform litigation in my mind has always

multiple-choice, predictable tests become the driving force of the curriculum, their subject matter and question format become classroom fixtures. Teachers spend hours drilling students on identifying antonyms, multiplying fractions, and filling in answer sheets, focusing on little that is richer, broader or deeper. Thus the legislature's effort to produce equal education ends up degrading learning for all. Individuality, creativity and depth are lost; all that is retained is uniformity, conventionality and trivial skills.

If a state regulates process, it becomes embroiled in regulating nearly every aspect of what goes on in schools. Local boards and teachers are left no choice but to slavishly implement the minutiae dictated from above. Citizens are frustrated that they have no input into their child's education; teachers become discouraged because their professional judgment is overruled or unused; students become bored or dispirited because the fare they are fed is inappropriate to their personal needs. Again the legislature's effort to provide equal education produces nothing but a great deal of frustration and superficial consistency.

Id., p. 36.

In sum, the reference to "accountability" in the Governor's proposal is vague and thus cannot be addressed specifically here. If, however, it implies detailed centralization of the way school districts are applying money for their students' education, it may well run afoul of Art. X, §8 of the Montana Constitution and it will be counterproductive to achieving quality education.

The fact is that enhanced state funding and enhanced equalization in spending per student does not necessarily entail greater state centralization of or regulation of the manner in which local school boards apply the money for educational purposes. In the absence of compelling evidence that local

determine a remedy. See Marbury v. Madison, 5 U.S. (1 Cranch) 137, 162-63, 166-67, 176-80, 2 L.Ed. 60 (1803). In Seattle School District No. 1 of King County v. State of Washington, 585 P.2d 71 (1978), the Washington Supreme Court held that:

Just as the legislature cannot abridge constitutional rights by its enactments, it cannot curtail mandatory constitutional provisions by its silence.

585 P.2d at 86-87. The Court held that once it is determined that judicial interpretation and construction are required, there remains no separation of powers issue. Id.¹⁹

Also addressing the separation of powers objection, the New Jersey Supreme Court in Robinson v. Cahill (IV), 351 A.2d 713 (1975), stated:

This court, as the designated last resort guarantor of the constitution's command, possesses and must use power equal to its responsibility. Sometimes, unavoidably incident thereto and in response to a constitutional mandate, the court must act, even in a sense seem to encroach in areas otherwise reserved to other Branches of Government. Powell v. McCormack, 395 U.S. 486...(1969). And while the court does so, when it must, with restraint and even reluctance, there comes a time when no alternative remains. That time has now arrived.

¹⁹ This and other issues are addressed in a legal memorandum entitled "Judicial Remedies Should Legislature Fail to Revise Current School Funding System," June 1989, by Gregory J. Petesch, Director of Legal Services, Montana Legislative Council. See p. 3. See also Eisenberg & Yeazell, "The Ordinary and the Extraordinary in Institutional Litigation," 93 Harv. L. Rev. 465, January 1980:

The circumstances producing institutional litigation arise not so much because courts take action in conflict with affirmative legislative and executive programs but because courts are asked to act in a vacuum created by legislative and executive inaction or neglect.

Id. at 495, 496 (emphasis added).

order quickly. Because it is viewed so seriously, the contempt power is the most drastic weapon in the court's arsenal, applied only in extreme circumstances when other measures have failed.

Id. at 448, 449. See also U.S. v. Yonkers Bd. of Educ., 662 F.Supp. 1575, 1582 (S.D.N.Y. 1987), aff'd 837 F.2d 1181 (2d Cir. 1987) (The City of Yonkers was placed on notice that if it were found in contempt of the court's order a fine would be imposed for each day of noncompliance. The daily rate was to begin at \$100.00 and would double each day for each consecutive day of noncompliance.)

The other extreme remedy, closure of the schools, was imposed by the New Jersey Supreme Court after numerous years of frustration with lesser remedies. See Robinson v. Cahill (VI), 358 A.2d 457 (1976). The New Jersey Supreme Court stated:

The continuation of the existing unconstitutional system of financing the schools into yet another school year cannot be tolerated. It is the legislature's responsibility to create a constitutional system. As we stated in Robinson I, ...303 A.2d at 298, "The judiciary cannot unravel the fiscal skein." The legislature has not yet met this constitutional obligation. Accordingly, we shall enjoin the existing unconstitutional method of public school financing.²⁰

²⁰ The injunction enjoined every public officer, state, county or municipal, from expending any funds for the support of any free public school with the following exceptions:

1. Payment of principle, interest and redemption of existing school bonds, anticipation notes and like obligations.
2. The cost of maintenance and security of school property.
3. The payment of contractual obligations for capital construction, necessary repairs and like expenses necessary for the protection of school properties.
4. Contribution toward teachers' pensions.
5. Payment of existing obligations for Blue Cross, Blue

Plaintiffs will not be ready to request these drastic sanctions even if the Montana Legislature fails to act by July 1, 1989. These sanctions are discussed only because they are possible future remedies should the Legislature persist in its inaction. Plaintiffs do, however, request that this Court undertake firm remedial action should the Legislature fail to enact a suitable legislative remedy by July 1, 1989.

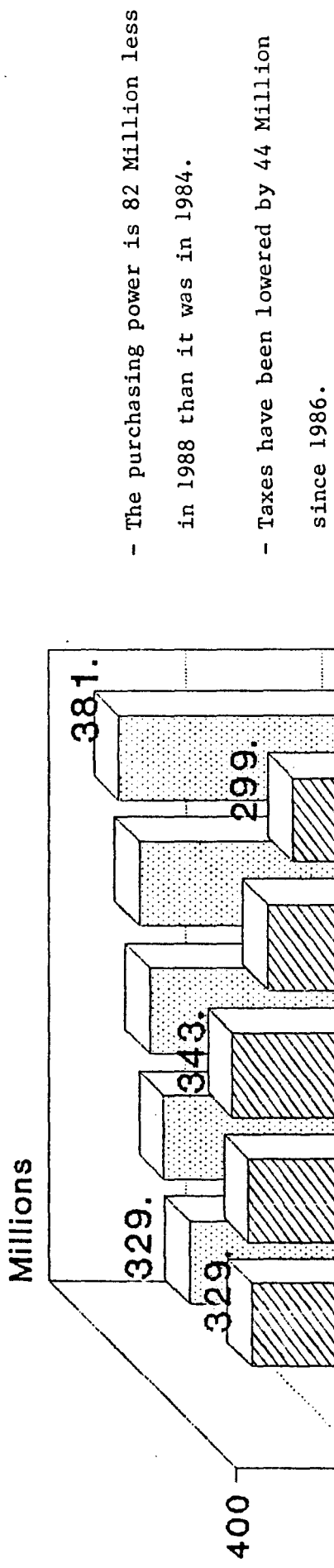
While it is premature to suggest a specific remedy until after the special legislative session, it appears that the most productive approach may be that taken by the New Jersey Supreme Court in Robinson IV, 351 A.2d 713 (1975). In Robinson IV, the court determined that it had the power to undertake an "equitable reallocation of the available funds" in order to ensure that the constitutional mandate of school equalization be carried out. Citing Mills v. Bd. of Educ., 348 F.Supp. 866 (D.D.C. 1972), the Robinson IV court stated:

In the Mills case, supra, the court held that constitutional right, inter alia, dictated that handicapped children were entitled to publicly supported education and that if funds, appropriated by Congress for general education only, were insufficient to encompass the special need, there would have to be an equitable reallocation of the available funds toward that constitutional imperative. Thus, in order to enforce the constitution, the judicial branch of the federal government reallocated funds differently from the appropriation thereof by the co-equal legislative branch of the same sovereignty. 348 F.Supp. at 876. The principle announced is directly apposite here.

351 A.2d at 723. Additional support for equitable reallocation of available funds is found in numerous desegregation decisions. See Bradley v. Milliken, 540 F.2d 229 at 246 (requiring the

Taxes Levied/Foundation Program

EXHIBIT 2
 DATE 6/20/89
 HB 666

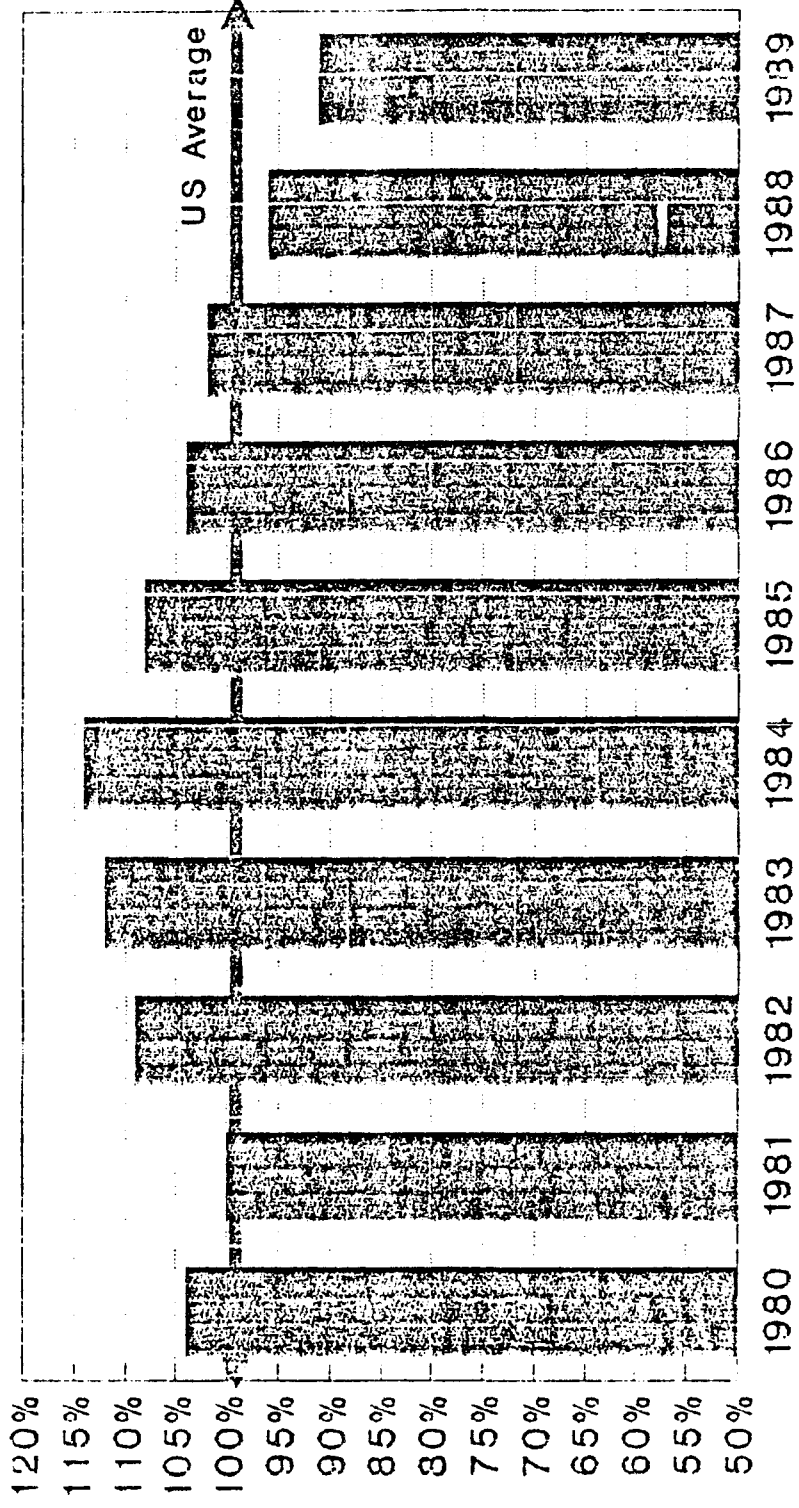


- The purchasing power is 82 Million less in 1988 than it was in 1984.
- Taxes have been lowered by 44 Million since 1986.

1984 1985 1986 1987 1988
 Taxes Levied per DOR Biennial Report
 Foundation Prg. per Gov's Exec. Budget

Ex. # 2
6/20/89
HB 6

Comparison-Per Pupil Expenditure Montana as percent of US average

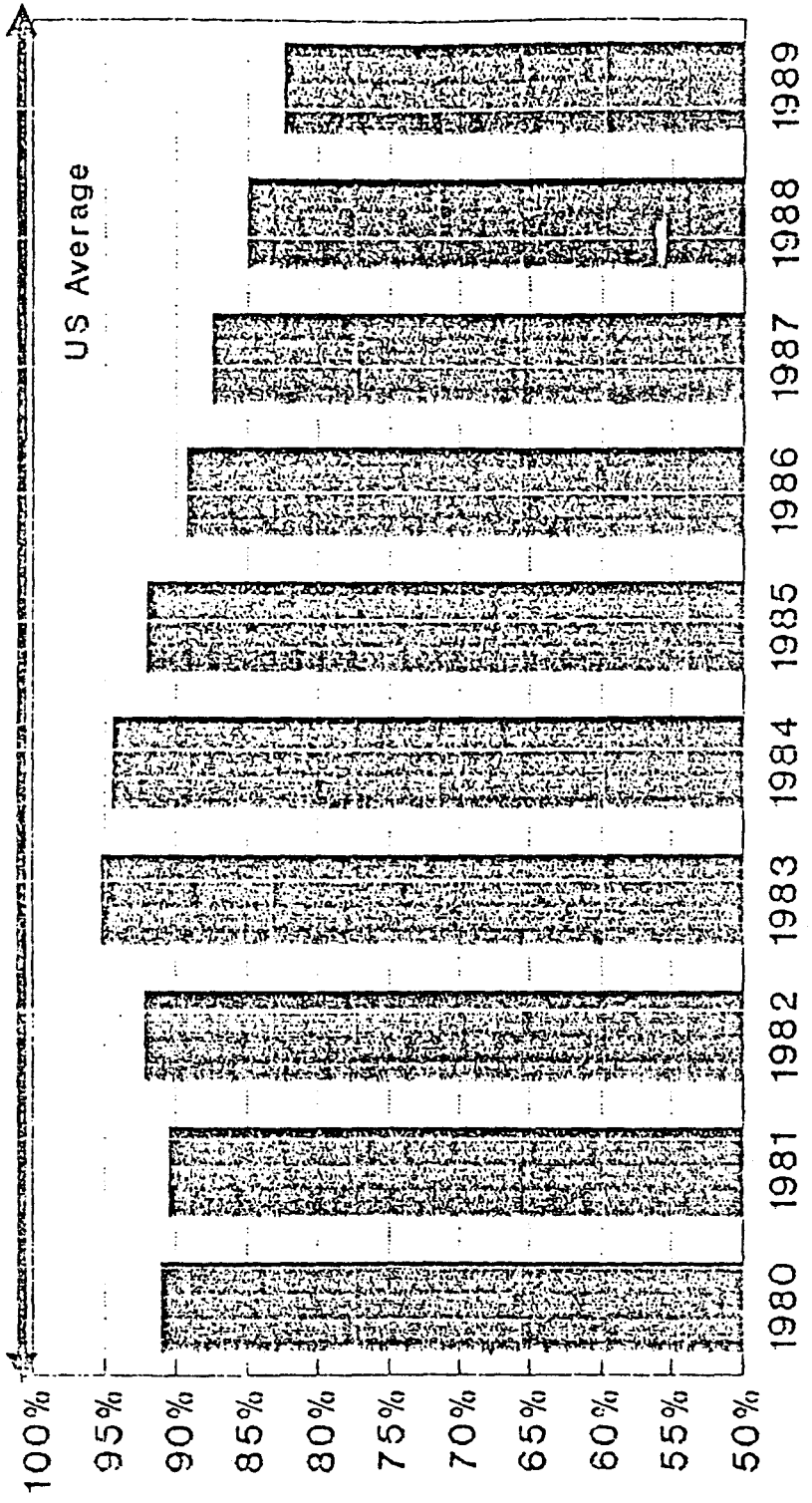


■ Mt. Average

As a result of levying fewer taxes, we quickly dropped below the U.S. average on expenditure per student. Inevitably, this trend will result in lower test scores, and less prepared students.

Ex. # 2
6/20/89
HBC

Comparison-Montana Teacher Salaries Montana as percent of US average



M.T. Average

Teachers' salaries in Montana are 41st in the nation.

VISITORS' REGISTER

EDUCATION

COMMITTEE

BILL NO. HB's 143

DATE 6-20-89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
EW Phillips	Gov's Ofc	✓	
Claudette Morton, (3)	Board of Public Ed		HB-3
Phil Campbell	MSA	HB1	HB 3
Doug Waldb.	Plentwood		✓
Bob Anderson	Helena		HB3
Jack Coffis	OPZ		HB3
Steve Brown	Indian Impact Schools		HB 3

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Education COMMITTEE

BILL NO. HB's 647

DATE 6-20-89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>Don McKenna</i>	<i>Hetera</i>	✓	
<i>Bill Donahue</i>	<i>Superior</i>	X	
<i>Clairetta Morton (6)</i>	<i>Board of Public Col</i>	Ⓞ✓	
<i>Phil Campbell</i>	<i>MSA</i>	<i>HB 6</i>	
<i>Jon Stanton</i>		✓	
<i>Doug Webb</i>	<i>Plantwood</i>	✓	
<i>Alvin Knapp</i>	<i>Middle - MASA</i>	✓	
<i>Bob Anderson</i>	<i>Helena</i>	6	7
<i>Jim Long</i>	<i>SAIM</i>	6✓	
<i>Jack Apps</i>	<i>OPZ</i>	6	7
<i>Dore Waldy</i>	<i>S.P.M.</i>		
<i>Harry De Ewert</i>	<i>Bulverde</i>	6	7

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DATE

6-20-89

H.B.'s

COMMITTEE ON

Education

73 d 14

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Phil Campbell	NEA	HR 13	<input checked="" type="checkbox"/>	<input type="checkbox"/>

(Please leave prepared statement with Secretary)

HB
16

DATE 6-20-89

COMMITTEE ON Education

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Kathy Fabiano	OPT	16	X	
Claudette Norton	Board of Public Ed	16	X	
Tom Hancock	Dell	16	X	
Joe Waldner	S.A.M. Helge, Elmy mch	16	X	

(Please leave prepared statement with Secretary)