

MINUTES

MONTANA SENATE 51st LEGISLATURE - 1st SPECIAL SESSION

HOUSE TAXATION AND EDUCATION COMMITTEES AND THE SENATE EDUCATION COMMITTEE

Call to Order: By Chairman Dan Harrington, Chairman Ted Schye,
and Chairman H.W. Hammond, on June 21, 1989, at 9:30 a.m.

ROLL CALL

Members Present: All House Taxation Committee Members present
All Senate Education Committee Members present
All House Education Committee Members present

Members Excused: None

Members Absent: None

Staff Present: Lee Heiman, Legislative Council
Andrea Merrill, Legislative Researcher
David Cogley, Legislative Researcher
Donna Grace, House Taxation Committee Secretary
Claudia Johnson, House Education Committee
Secretary
Jaelene Johnson, Senate Education Committee
Secretary

Announcements/Discussion: Representative Harrington indicated that HB 39 was a joint hearing between the Senate Education Committee, the House Education Committee, and the House Taxation Committee. Representative Harrington asked members of the House Taxation Committee to remain in room 325 following adjournment of the hearing for a short executive session on HB 20.

The minutes were transcribed by Donna Grace, the House Taxation Committee Secretary.

HEARING ON HOUSE BILL 39

"AN ACT TO GENERALLY REVISE PUBLIC SCHOOL FUNDING LAW AND RELATED TAXATION LAW;..."

Presentation and Opening Statement by Sponsor:

Mike Kadas, Representative, House District 55, Missoula, stated that approximately three weeks ago Representative Ramirez told him that the sales tax was dead and that brought up the possibility of a lot of other options. He said he wanted to sit down and talk about them. Since that time they have

developed the legislation contained in House Bill 39. He said that this is a compromise and he would support the bill as would Representative Ramirez. If they would have had their own ways, they probably would have done it different. They both felt that because of the circumstances of the way the regular session ended and the time constraints of the special session, the only way to develop a consensus on a bill of this magnitude was to begin the dialogue early before the session. It would be extremely difficult for the legislature to try to make all the compromises in an area that is this complex in the amount of time they have. Representative Kadas stated that he hoped the committee would take this effort seriously, recognize it for what it is, which is a compromise, and while you might want to change things or see them differently, to restrain those efforts, and look at the entire package.

Representative Kadas stated that he knew there were some things that probably would have to be changed but he did ask that they not tear the bill apart. If that is done, they would be back to scratch and be here longer than two weeks.

Representative Kadas addressed an issue that was in the Great Falls Tribune this morning that this bill was an attack on small schools and the number that was used was that 70% of the equalization aid for the guaranteed state subsidy on the guaranteed tax base went to big schools. It happens that over 70% of the ANB are in the big schools. The ratio of distribution to small schools and big schools in this bill is exactly the same as in Senate Bill 203 heard in the regular session. They have changed the schedule amounts in exactly the same proportion and in that respect it is no different from Senate Bill 203. In relation to this, in talking about winners and losers, Senate Bill 203 left a lot of winners in terms of property taxes. This bill isn't that good. There was \$60 million in property tax relief in SB 203 and it was \$74 million out of balance. Although this bill does have winners and losers, the winners aren't as big and there aren't as many of them. To maintain 1988 funding levels 70% of the taxpayers in this state will be winners and 30% will be losers.

Representative Kadas continued that there is a big bunch of people who only lose by a little bit, zero to five mills and 85% of the taxpayers in the state would see an increase of zero to five mills or less. There is no way to get around not having some losers. Everybody is not going to be happy.

The bill has been set at 95 mandatory mills at 74% of 1988 actual as compared to 90% in Senate Bill 203. They also used a 5% surcharge and they would divert the flow that goes into the education trust, \$3.5 million a year, permanently into the Foundation Program. It also eliminates the principal of the education trust and that is put in the Foundation fund to fund fiscal year 90 at a 4% increase. A small change has

also been made in the percentage of income tax that is going into the Foundation Program. Currently 31.8% goes into the Foundation Program and that has been raised to 33.5%. The reason for this is because of the recent revenue estimate projections say that revenue will be greater. This would be a \$5 million change.

Representative Kadas then discussed some charts he had prepared which visually pictured what the bill would do. An explanation of the material shown on the charts is contained in (Exhibit 1.) He explained that the schedule for general and special ed would be funded at 74% of the 1988 actual. For comparison purposes he showed a comparison with SB 203 which ran 90% of schedules for special ed. The cap was placed at 117% of the average. This will allow for a guaranteed tax base (GTB) of the districts to go from 74% up to 117%. Up to 90% it is a permissive mill so it would be up to the trustees.

He said the principle behind the GTB is that every district be able to pass the same taxable value or the ability to use the same taxable value of the average in the state. You find the average for the state by taking what a mill brings statewide and divide it by the elementary ANB statewide. This would give you \$18 per ANB per mill. You would do the same for high schools which would give you \$43 per ANB per mill. Therefore, if a district levies a mill, it should pay \$18 for each elementary student. The way the district figures out the difference is they take what a mill will bring district-wise and divide the ANB into that.

Representative Kadas said that from a school perspective, the bill being discussed was a better program than that which was proposed in SB 203 because an individual school could get to the same level that they could get under SB 203 with the GTB guaranteed mills. They would not be used only when a district is extremely wealthy. Over the first couple of years he thought that all the districts in the state would be using all their permissive mills to get to 90% funding. Representative Kadas explained further that there would be a guaranteed tax base where the mills would have to be voted but the district is guaranteed at least \$18 per student. The poor districts, which are those where there is the most concern, have the opportunity if they want to make the effort to go all the way to 117%. They could be above average but they have the average ability to be above average. The incentive is for the poor districts to provide an average education and if they have the incentive, they can provide better than average.

Representative Kadas said that the capping mechanism is also better than it was in SB 203. Under SB 203 any district that is lower than 117% can go up to that point and any district that is above is frozen where they are. For the districts that are close to the cap, there is a real

disadvantage. He used as an example, the Butte Elementary at 113%, can grow by 4% and no more. Under the Kadas-Ramirez proposal, when a district goes above 117%, they can do it but for every percent they are over 117%, they will be penalized 2% and that would go back into the State Foundation Program. Representative Kadas said he felt it would be difficult to get people to approve those mills.

Representative Kadas then discussed other changes in this bill. In using the GTB state dollars will be replaced with GTB dollars so that all the state has to do is put in the subsidy. The local district has to levy the mills so it requires a lot more local property tax. GTB is used to fund retirement. The way it is done now is by a county mill determined by the county superintendent and the same mechanism would be used except it would be GTB so the poorer districts would receive an advantage. GTB is also used for funding transportation. The bill provides that one-half of the transportation schedules would be funded with general fund dollars and the other half would be funded with GTB at the district level. This is essentially what was in SB 203. The cap was put in so that it could be studied and in the next session transportation could be equalized. He said that someone had suggested that it would be better, instead of using a district GTB to equalize the second half of the transportation schedule, the county GTB should be used and he suggested that the bill be amended to provide for that.

Representative Kadas noted that they had started out with SB 203 so this bill is basically the same with compromises that he and Representative Ramirez have put into it. He said they had made some other changes in the tax system aside from income tax changes. They attempted to provide some personal property tax relief in the bill. Personal property that is now at a rate of \$11, 13% and 16% would be brought down to 8%. In order to maintain the statewide taxable value at the same level, it will be necessary to put more money into the tax base somewhere else. This has been done by increasing Class 4, residential property and real commercial property which has been increased to 4.3% from 3.86%, an increase of 11%. The reason for doing this is because he would generally not want to argue for raising residential homeowners' taxes and lower business taxes at the same time. He believed there was a problem with the personal property tax system and that it was out of balance. There is the opportunity with this bill because it will provide a considerable amount of residential property tax relief by lowering the number of mills that are levied in a large number of communities and this would eat into some of that decrease in mills. The average taxpayer will look at the bill from the county in November and in most cases it will still be less.

The other area where the tax system has been changed is in net gross proceeds, the taxation of oil, gas and coal. What the

bill does is shift the mechanism that would tax those resources to a flat statewide percentage of the gross value. That percentage has been set between 75 and 80 mills. The rate on coal is 6%, the rate on oil is 10% and the rate on gas is 16%. He said they had struggled over this item and had a difficult time getting accurate data. When accurate figures are received it will be possible to set the actual rates. He acknowledged that this part of the bill would be bitter and he hoped the bill would not be killed because of it. Some change in the way resources are taxed will have to be a part of the compromise and this bill would provide the vehicle to do that. Representative Kadas said he knew there would be a lot of questions and he had spent a considerable amount of time with school administrators and they now understood it better. There are many issues and some new concepts in the bill and it is a lot to be considered in a special session. His opinion was that the Guaranteed Tax Base was the most viable mechanism that he could see of providing the ground on which to reach a compromise.

Representative Kadas expressed his appreciation for the committees' attention and interest in the bill and asked that committee members keep an open mind as they try to reach a solution during this special session that will hold up under the Court. In conclusion, he stated that the bill balances and there is enough revenue in the bill to meet the expenditures and it does provide a significant amount of property tax relief.

Representative Jack Ramirez, co-sponsor of HB 39, stated that he would like to add some comments from a different perspective on the bill. He said that everyone knew that in equalization or correcting inequalities there will be some people who get hurt and that cannot be avoided. In taking the concerns and problems raised over SB 203 and some of the other proposals, they tried to decide exactly what had to be done to try to solve the problems and concerns which had been raised by someone. Taking that approach, this is the bill which they had come up with. They felt it was a compromise on both their parts.

Representative Ramirez discussed the conceptual approach. First of all there were concerns from the wealthier districts that they would be penalized. Except for the 95 mills, and that level was determined as a compromise, there is no penalty in this bill for wealth. There is a disincentive for spending but not for wealth and he thought that this might allay some concerns of the wealthier districts. The second point was the districts that do not or cannot afford to spend as much. If the wealthy districts are not to be penalized, the only way to do this was to subsidize the lower districts and do that on a tax basis. This will save a tremendous amount of money at the state level. Representative Ramirez said he realized that no one wanted to raise taxes at the state level. By using this concept approximately \$50 million

would be saved at the state level even if funding is set at 100%. He said he also believed that the proposal would get credit for all of this in the equalization formula for the argument before the Supreme Court and he realized there would be differences in opinion over this.

Representative Ramirez stated that in some of the arguments that were made before the Supreme Court it was mentioned that in 1950 about 81% was equalized through the Foundation Program. This can be calculated so that the percentage is better under the GTB through a permissive mill levy plus Foundation Program, every district can get 90% of their 1988 average expenditure statewide. They could also get up to 117% if they need to. This will be easier for administrators to deal with and they will have local control to make these decisions. Representative Ramirez said he expected that it would be easier to get voted levies that are reasonable in size and where the control will be at the local level.

The other problems they tried to address in this bill were the concerns of the poorer districts, the wealthier districts and the taxpayers' concern, as well as the concerns of members of the legislature. He said they were aware that they had to cut personal property tax but there is a debate every time the subject comes up. Real property taxes were lowered and the personal property taxes left where they were and that is why the state is in the mess it is in now. It is logical and fair to try to bring the balance back just a bit. It is more important to address personal property tax than anything else because it is killing the state economically. It has driven business out and new business will not come in because of the rates. It is a major state concern and it must be addressed.

One other point Representative Ramirez discussed was the oil, gas and coal situation. They did try to figure out a way to alleviate the impact of the 95 mills on those businesses. If this is not done, those businesses will be driven from the state. Accurate figures were not available so they used the LFA's figures and came up with a figure somewhere between 75 and 95 mills which they felt would be a starting point. He said it was necessary to save the industry and still put this plan together. He encouraged the committee to take the bill in the spirit in which it was offered, a compromise.

Testifying Proponents and Who They Represent:

Jerome Anderson, Shell Western E & P
Ward Shanahan, Chevron, USA
Diana Felton, Toole County
Jim Mockler, Montana Coal Council
Janelle Fallan, Montana Petroleum Association
Dave Abelin, Montana Oil & Gas Association
Gene Phillips, Pacific Power and Light

Ken Williams, Entech

Proponent Testimony:

Janelle Fallan, Executive Director of the Montana Petroleum Association, said she was not appearing exactly as a proponent although she did think that Representatives Kadas and Ramirez were to be congratulated for the work they did on this bill, however, she wished to discuss a couple of elements which appear on pages 29 and 30 of the bill. Very basically, the taxes the state imposes on oil and gas are severance taxes and the proceeds go into the Education Trust Fund. In addition they pay quarterly license taxes, personal income taxes, personal property taxes and other taxes on their plants and equipment. The net proceeds tax is the single largest tax they pay and it stays in the county from whence it came. The Montana Petroleum Association supports the concept of either a flat rate or gross proceeds tax or replacing the gross proceeds tax or severance tax as embodied in this bill. It does provide a method for equalizing for a significant source of revenue in wealthier school districts. They support this for a number of reasons. It is easier accounting and it would make the tax structure more similar to other states. They do believe that it is very important to remain revenue neutral. They are not here asking for a tax break or anything that will have a fiscal impact. There are 32 producing counties in Montana and there are some companies that will pay more because their current rates are lower and there also are companies that will pay less. Revenue neutral does not cost the state money because it doesn't collect more money.

Ms. Fallan indicated that the industry is in trouble. Production is down 26% from 1981 to 1988, the employment in the extraction industries is down 66%. In 1981 oil and gas production was 17% of all non-farm labor and in 1987 it was only 7%.

Specifically addressing the rates in this bill, Ms. Fallan indicated that the 10% rate on oil is a 25% increase over what they believe is revenue neutral. She said she could understand Representative Ramirez' frustration with not getting consistent numbers. However, on old production it looks like 8% would be revenue neutral. There is a 42% increase over the 7% rate on new production which is charged on new wells coming into production since July 1 of 1985. The 16% rate on gas is not quite as great an increase, 5% over revenue neutral, and a 33% increase over new production. She believes that rates of 8% and 15% would be revenue neutral on old production. Old production is that from wells that were producing before July 1 of 1985. She said that it is vital to maintain the difference between old production and new production. They would like to have simplicity as well as anyone else. In 1985 the legislature

passed very significant legislation setting a flat gross proceeds rate on wells producing after July 1 of that year. This was so significant because it told the producers in Montana and the rest of the nation that we were interested in tax stability. It brought investment into the state and there are still people all over the country who are still looking at investment but they are assuming 7% on oil and 12% on gas and to make a change at this point would be an indication that Montana is not a state to be trusted and we don't have tax stability. She urged the committee to amend the bill keeping these points in mind.

Jerome Anderson, registered lobbyist for Shell Western Exploration and Production Company, presented testimony which is contained in (Exhibit 2.) He said his company was not in opposition to the bill but requested modification in the area of the level of taxation of oil and gas by reducing the levels set in this bill.

Following Mr. Anderson's testimony, Chairman Harrington asked if he still wished to be registered as a proponent to the bill? Mr. Anderson replied yes.

Diana Fell, Treasurer of Toole County and representative of the Hi-line area on the county aspect, stated that she would like to expand on the concerns of the people in the oil and gas business. She said that Montana needs this basic industry and she didn't think they should be driven out. Ninety percent of the wealth in the Hi-Line area and Eastern Montana are stripper wells. The major industry has been driven away and we need to encourage them to survive. Every effort should be made to keep them in business, keep the industry here in Montana as well as expand the industry here, put families to work and keep our kids in school. She said they had dealt with the after effects of I-105 both in county government and in school districts. The oil industry is just starting to recover and she asked that the committee realize what it means to every individual within the state because it affects everyone and that the efforts of the industry not be hampered by higher taxes.

The next proponent of the bill was Ward Shanahan, a Helena attorney representing Chevron Corporation. He agreed with Mr. Anderson's comments. He said that since the legislature seemed to be choosing to increase property taxes, he thought the bill should be put into perspective. He reemphasized the point made by Mr. Anderson. The basic bill is a concept that is unique and imaginative and has many good concepts in it but in this discussion the word "equalization" had been given a new twist. There is a demand side and a supply side to equalization. In practicing tax law in Montana in over thirty years, up until now equalization has always meant that the tax burden was equalized among the various classes of property. Since this discussion started, equalization has been equalizing the demand for taxes and he asked that

they put into perspective the notion of equalization in its traditional sense and reemphasize what Mr. Anderson said about fairness in taxation. Particularly, as it applies to oil and gas which has been assessed and taxed at 100% up until now. The bill being discussed now is undergoing a transformation into percentages which are not precise. He asked the committee to consider the equalization of the burdens and make sure that the figures are as correct as possible since the industry is vitally affected. He said his company had been a good citizen but they think they need to be very careful about how the percentages are applied.

Jim Mockler, Montana Coal Council, passed out copies of taxable valuations for the coal industry and stated that they should be of interest to the committee. (Exhibit 3.) He said they did not have a complicated system. All coal is produced in two counties with only one small mine in a third county. There are a total of five mines so it is not difficult to calculate production and value. It is interesting to note that the Fiscal Analyst's Office says that for the coal industry to be revenue neutral would require a gross proceeds tax of 4.75 percent. It is also interesting to note that even with the tax reductions offered in this bill on personal property, these taxes would go up \$78,000 and that doesn't particularly bother them. However, what does bother them is that a gross proceeds tax of 6.5% would raise their taxes \$3.6 million. During the last few years the legislature has sent a message to the people who buy the coal that they do want the industry and the coal tax was lowered. A large majority of the incentives contained in that bill will be finally phased in during 1991. He said he would like to remind the committee that at this time Montana still has the highest coal tax in the nation. He said that 60% of the value of the coal that is produced is produced by people who do not live in Montana. They don't attend Montana schools so the value is produced by people who don't live in Montana and do not receive services provided by the State of Montana. The coal is produced at Decker and Spring Creek Mines and those people live in Sheridan, Wyoming. He said they are still willing to pay their fair share. At 6% Western Energy's taxes will be increased by 50%; Peabody's taxes will be increased by 50%; and some of the smaller mines like Westmoreland will be reduced but, overall, they will be increased substantially and he did not think that this was fair. He said he was speaking for the entire industry and not for the individual mines and they would be willing to pay 5%, which he felt was a substantial increase. He said that they did like the concept of going to a percent of value on the coal and spoke very strongly to that effect.

Ken Williams testified for Entech and their subsidiary, Western Energy. He stated that the last three legislatures have moved aggressively to put Montana back in the coal business and the policy has worked to stabilize the industry. Market activity is up and there is an air of optimism in the

industry and there are some signs for growth in the future. However, this school funding question looms as a fairly dark cloud on the horizon. He said that last week he had testified before the joint tax committee's informational meeting on Senator Gage's proposal to place coal gross proceeds at a flat rate of 4.5% of the contract sales price which was the 15-year average for the Montana coal industry and was also Western Energy's 15-year average. The rate has now been increased to 6% and he thought that a 6% rate would jeopardize spot shipments and discretionary tonnage. In the near term two to three million tons of coal production state-wide could be at risk and the longer term contract renewals could also be jeopardized. A 6% mill rate or its equivalent mill levy would likely send the Montana coal industry into a decline and the resulting loss of jobs and economic activities would be difficult to handle. It would be hard on the workers, the companies, the communities and the state. The irony of such a rate is that it would likely result in less total tax dollars being collected from the coal industry. A flat rate of 4.5% would still increase Western Energy's taxes over what was paid last year by 11%. The 6% rate would mean almost a 50% increase which would translate to \$1.7 million and the marketplace will not handle that and it will cost the industry in tons and jobs and revenues. Mr. Williams said he thought a flat rate for gross proceeds makes sense for stability of the industry and ease of administration but he urged the committee to amend the bill to insure continued coal sales and tax revenues. He said they wanted to pay their taxes but in order to do that they have to have production. His final point was that in addition to Mr. Mockler's suggested amendment in revising the rate downward, he asked that the committee consider placing a clarifying amendment on line 21 on page 31 to clearly define what gross proceeds for taxation purposes means. He said they thought it meant contract sales price but they would like to see the appropriate reference.

Doug Abelin, lobbyist for the Montana Oil and Gas Association, said that he represented the small independent producers. He also said he was a 17-year oil field support company and he has been out and watched the rise and the decline in his local area in Northern Montana. In Cut Bank, there is only one major producer, Union Oil, remaining and the small producers are struggling. His position is that he concurred with the other oil producers and representatives in that they need to get through this and then allow them to develop the mountain front and that would provide new revenue.

Senator Del Gage, representing Cut Bank, Glacier and Pondera Counties, pointed out two problems with the bill that should be looked at very seriously before doing anything drastic with it. He said it was his understanding that the level of taxable value per ANB will be calculated every year based on the tax base of each year for determination of the amount of subsidization. The problem the bill has is that

spending by the state in subsidizing local decisions. His opinion was that one part of the bill had a big engine pushing more spending and they you say you are going to discourage that spending. If you look at the discouragement aspects, which aren't really caps but are supposed to act like caps, they are rather feeble in comparison with the encouragement for more spending. Although there was a concern about what this costs the state in revenue, the taxpayer really cares less about whether his taxes go to the state or through the local channels, you have to be concerned about what this bill does to total school spending in the next several years. The other aspect of the guaranteed tax base which should be looked at closely is the use of tax dollars per ANB. Dr. Nordtvedt said he did not think that was the right measure of what should be used as the relative needs of schools because the Foundation Program Schedules recognize, and the court has upheld, that small schools need more money per student than large schools where the guaranteed tax base is treating all schools alike. The real losers in this bill will be the poor, small schools. The rich, small schools are taken care of very well by this bill as the wealth will be left in the hands of the wealthy schools. The equalization issue is a microcosm in some of the small rural counties and it is not a city versus county rural area. There are poor small schools and they will get seriously short changed by the way this guaranteed tax base works and Dr. Nordtvedt said he felt there was a better way to treat that aspect of the bill. He said he was very concerned about how this bill would push total state spending in the coming years and he hoped the committee would move more toward revenue neutrality on the extractive industries and oppose the notion of funding personal property tax reductions with higher taxes on people's homes. There are better alternatives which will be presented in other bills.

Chairman Harrington asked Dr. Nordtvedt how he should be registered on this bill. Dr. Nordtvedt replied, "Just as my words have been taken down."

Testifying Opponents and Who They Represent:

Nancy Keenan, State Superintendent of Schools
Carl Knudsen, Saco School District
Roger Knapp, Representative, House District 27
Bruce W. Moerer, MSBA
Jim Anderson, Colstrip Schools
Jim Stanton, Baker Schools
Jim Smith, Rudyard/Hingham Schools
Larry Johnson, School District #1, Missoula
Claudette Morton, Board of Public Education
Don Waldron, S.A.M.
Christine Deveny, League of Women Voters of Montana
Chip Erdmann, Local Control
Terry Minow, Montana Federation of Teachers

there are a number of things that haven't been taken into consideration with regard to that calculation. Any mill generated revenue in those counties is not a calculation at that level. That is not quite so serious right now but consider it when net and gross proceeds are taken out of the tax base and, to his knowledge, there is no mechanism in the bill to convert that to a part of the tax base. This problem can be solved but there does need to be a mechanism in the bill to do that. The other problem is that when you convert to gross proceeds on oil and gas, unless you have a means of redistributing that gross proceeds to the counties to keep them neutral, there will be some tremendous swings in affects on counties. There are people out there who are paying in net proceeds tax converted to a gross percentage something in the neighborhood of 4% or 5% on oil, for instance, and if that is raised to 10%, the taxes will be doubled. A county that has an effective tax rate on net proceeds on gas of 22% will go down to 16% of the gross and the revenue will be cut considerably. This also can be solved. He said there is a bill in right now that will be amended into Senator Mazurek's bill which could also be amended into this bill. Senator Gage said he would be willing to work with the sponsors in sharing with them the concerns and the solutions to those concerns. He asked the committee to please address these two concerns before anything is done with the bill.

Ken Nordtvedt, Governor's Office, said that a little progress had been made on the extractive industry tax issue. In January the administration felt that any equalization, even limited equalization which they were trying to do at that time with the Teachers' Retirement, should leave the extractive industries in a revenue neutral situation and now there is a bipartisan bill which at least recognizes that concept to some degree. The administration still feels that the final school equalization bill should leave when the smoke clears the extractive industries revenue neutral. He said the administration felt very strongly that personal property taxes have to be reduced. That is an agenda item as important if not more important, long term, than school equalization but the administration does not feel the way to reduce personal property taxes is by increasing the classification rate on Class Four property, land and residential, and there are other bills and lots of flexibility to consider other revenue sources so he hoped the committee would take that provision out of this bill. There are also a couple of issues with the respect to the guaranteed tax base concept which is basically a subsidy approach to equalization. Former Congressman Kemp said it best, "If you want less of something, tax it. If you want more of something, subsidize it." When you are subsidizing school funding you are playing with fire and that should be taken into account particularly when the guaranteed tax base is used for up to a 66% augmentation of the starting point. That is a long way to go to encourage and promote more

Tom Broderick, M.E.A.

Opponent Testimony:

Nancy Keenan, State Superintendent of Schools, testified in opposition to HB 39. Her comments were as follows. "We are discussing school funding. We have moved away already in the debate very quickly from the issue of school funding to the focus of taxation and what's going to drive the ultimate issue of quality of education in this state. We need to get away from who is in the driver's seat and back to the issue of school funding and what it means to students in this state, what it means to your constituency in the state and ultimately what it means to the future of this state when we talk about public education. Let me go through a few things of why I oppose this bill, with all due respect and commendation to both gentlemen, they have worked hard as did the Select Committee, and we came up with many ideas and proposals. I would submit to you at this point too much in too short a time.

"First you were mandated by the court to fix the disparity. This bill continues the wide disparity in per pupil expenditure. It allows districts to spend between 72% and 117% of 1988 expenditures without a penalty and the penalty for spending above 117% thereby creating even more of a disparity, may be too small. A district that spends 127% of 1988 levels will still be able to keep 80% of the revenues its voted levy raises. The disparity still remains. You have not solved the problem. While the concept of the guaranteed tax base is a very good one, and again, the Select Committee looked at that, the interim committee looked at that, Representatives Kadas and Ramirez have worked very hard. They have talked to me as well but the fact is that this bill only uses the concept in one direction. It takes the poor districts and puts them up while at the same time it takes those with average spending and gives them more ability to generate money -- again the disparity. It continues the disparity. The chief beneficiaries of this bill are a small percentage of our school districts. Seventeen urban school districts receive 71% of the state contribution to the guaranteed tax base under this bill. In addition to state dollars, they will get lower mill levies. It is going only one way. In accordance with the bill's structure, fewer than one-half of the districts receive any revenue as a result of the guaranteed tax base. Over 200 school districts, mainly the smaller ones do not receive any state contribution to the guaranteed tax base but still have to levy to increase mills to spend as much as they did in 1988. In these districts homeowners will pay higher property taxes on their residences since the tax rate will be increased by 11% of which Representative Kadas mentioned. Mill levies will also increase. You have to ask yourself, what you are doing on the tax side of this bill to generate

or drive the engine called school equalization.

"Besides the guaranteed tax base, it includes two major tax policy changes. Taking the \$391 million in net and gross proceeds out of the local tax base and replacing them with a state-wide average severance tax. So you take it out of the base and replace it with a state-wide tax, lowering the tax rate from \$600 million of business and personal property and replacing the revenue by raising the tax rate on homes and main street business in this state. This is a public policy statement you have to make. It's a very complex bill. That, in essence is what is being done here in this bill. While the proposals are suggested to be revenue neutral they cause substantial tax shifts in individual counties and in individual school districts. For example, in Frenchtown the school district loses 18% of its tax base as a result of the personal property tax change in this bill. Other examples of districts that will lose significant tax base are Phillips County, Landusky District, 32% of the tax base is lost; Valley County, Opheim, 19% tax base lost; Fergus County, 15% of the tax base lost; Gallatin, Three Forks, 12% lost; Powell County, Garrison, 31% of tax base lost; Silver Bow, Ramsey, 11% lost. What Senator Gage was alluding to when he talked about what happens to the oil and those taxes as well, the oil revenue. Glacier, Petroleum, Carbon and Liberty Counties lose substantial oil revenue by going to the state-wide average since their current effective oil net proceeds tax rate is higher than the average and the 10% rate in this bill. Glacier is at 11.67%, Petroleum is 11.62, Carbon is 13.48% and Liberty at 12.88% Again, a tax loss for those oil counties."

"There has been insufficient time. They worked very hard but I would remind you that the Select Committee worked very hard. It was not all that I wanted, I still think there has to be discussion there but I would urge you, for the amount of information that is in this bill -- guaranteed tax base, oil severance, personal property -- too much for you to know the implications. Too much for me, insufficient time for me to determine with any certainty the impact not only to the public schools in this state but your responsibility as well of the impact to local governments of this state when we take this kind of major approach to reform. You may find indeed that hasty passage of this bill and thinking that it is the answer may create real problems for local governments and school districts in the long run."

"One technical point and then I will wrap up as I know there are many other people who would like to discuss this bill. In any bill, whether it ultimately is Senator Nathe's bill, Senator Mazurek's bill, Representative Kadas' bill, whatever bill it is that you decide in your wisdom will be the answer to the school equalization situation. There is an implementation cost to my office. I have not seen any of that in any of these bills. In House Bill 100 contingent on

the passage of Senate Bill 203 in the regular session there was \$149,000 appropriation for the implementation. Why? The cost of computers retooling, changing all our report, all the forms that have to be reformed to go along with this process, I would at least make you cognizant of the fact that we can't do this for nothing as well as you change and direct me to somehow equalize and put that plan in effect."

"Lastly, and very briefly, focus the attention on education. Don't be driven entirely by the tax side of this although it plays into it. Let's stop the smoke and mirrors, and I am going to be very candid here because I find that we are down to the wire. We probably would have had a better session had we invited the entire rest of the members because I think we have most of them here. The fact is, the state-wide mill levy average in this state is 167.89. The average mill that is levied across the state to fund schools. The high end is over 400 and at the low end it's about 70. What you want to do is fund schools at 85 or 100 mills when right now you have the revenue over here that is generated by as many as 400 mills. You want to do this and not raise taxes. You want to fund schools at least at a level without going beyond 100 mills. For some reason that's magical, 100 mills, when the average happens to be 167, when the top end happens to be 400 but you want to do it with 100 mills. Well, you have lost a whole lot of revenue locally so now you hear the discussion here and Representative Ramirez saying it's cheaper for the state to do it this way. Indeed it might be cheaper for the state, it is not cheaper for your home districts. They will continue to raise permissive, they will continue to vote, they will continue to raise taxes at home. 96% of the mill levies passed in this state last time. The people at home have said, 400? what's 420? At the same time if you were even to put 167 average mills on you could fund public education at 1988 expenditures and lower the taxes of 80% of the people in this state at 167 mills. We are being driven, however, about the debate from the industry. I hope they are not in the driver's seat. Obviously, I am not in the driver's seat. I think your constituencies at home and the kids of this state should be in the driver's seat. I ask you, please, do not just look at the revenue side of this picture as though it drives all public policy in this state but looks at the long term effects of public education and what they need. It is not cheaper for the state in the long run because you will see welfare rolls, unemployment, illiteracy in years to come and that is what we are all about here. Re-focus the debate on public education. That is all I ask of you. Seriously look at the revenue side. Know that in two years you are going to have to debate the sales tax and you are going to have to debate income tax reform and you are going to have to debate property tax. Don't under-fund schools now in the hopes of not getting into that debate. Let's fight it head to head but don't under-fund schools now because you don't want to politically debate that in two

years. That's all I ask. That's why I'm State Superintendent. I believe in the public education system. I believe in our kids and I know you do, too, but you need to hit it head on."

Roger Knapp, Rosebud and Treasure Counties, stated he was at the hearing as a representative of the richest county and also a representative of one of the poorer counties in the State of Montana. Under this particular bill, it treats both counties just alike -- poorly. He stated that Dr. Nordtvedt had pointed out that the rural counties, rural areas, will pay the largest proportion of this and it is very true. One of the things he really had to play with in his mind was why a poor county would have to pay the same percentage or a higher percentage than the wealthier counties. His conclusion was that there is a new tax to subsidize and it is called a tax on effort. If you go back to the 1949 law when local districts were left up to effort, they started in 1976 in Hysham to run the first local levy and that was three mills. Last year it was 52 mills. They have made a greater effort at the local level for various reasons. He said that when he went to Hysham in 1973 there were 114 students in the high school and today there are 56. As their enrollment has decreased, so has the Foundation Program.

Secondly, the legislature's share of the Foundation Program has decreased from 80% down to 56%. He said that the taxpayers have made a great effort at the local levy to fund their schools with the state mandates and accreditation standards and in doing so this is the only reason that Treasure County will end up paying a lot more taxes because when going to the subsidized levy, obviously, you look at what the Treasure County taxpayers are paying and it's a higher percentage because they have made the local effort. When you subsidize you tax the effort that the local taxpayers have made and transfer that to other districts along with what little wealth they do have in those counties. He said he thought the driving force of this bill is the subsidized levy. This is where the rural areas of Montana really get slammed with this particular bill. It's the only place that there is any logic for why these counties have to pay tremendous increases that Superintendent Keenan referred to. Garfield County will see a 346 mill increase, Carter County a 216 mill increase, and as these things are driven, it will have a tremendous affect on main street business in Jordan, Montana and Hysham, Montana and Wibaux, Montana if this proposal continues to go through. Mr. Knapp asked the committee to take a serious look at what this bill would do. Hopefully this committee in their wisdom will find other ways to work at this problem.

The next opponent to the bill was Pat Melby who represented the school districts that were the plaintiffs in the equalization lawsuit. He said the thought had occurred to him that this is one of the bills where it is really difficult to get up and be an opponent after hearing all the

overwhelming support the proponents have provided. He expressed appreciation for all the hard work and time that Representatives Ramirez and Kadas had put into the bill and commended them for their effort. He said he could understand their concern for putting any more state dollars into education. He disagreed with it but did understand. With all the hard labor they have come up with a very innovative plan to fund education. Unfortunately it widely misses the mark of what is needed in order to solve the equalization problem. He read a couple of excerpts from the Supreme Court decision. "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 quality of educational opportunity guaranteed under Article X, Section 1, of the Montana Constitution. We specifically affirm that portion of the District Court's conclusion of law 17 which holds that the spending disparities among the state's school districts translates into a denial of equality of educational opportunity." On page 11 the Court stated, "The evidence presented at the trial of this case clearly and unequivocally established large differences unrelated to education relative factors in per pupil spending among the various school districts of Montana." The equalization lawsuit has nothing to do with equal access to dollars and that is the problem this plan proposes to resolve. The equalization lawsuit deals with spending differences for each pupil among the various districts. This plan does not address that problem. This bill essentially leaves all the elements in place on which the current system was found unconstitutional. The Foundation Program will not be properly funded because of the desire to avoid putting any more money into the Foundation Program. Schools will still be forced to rely excessively on permissive and local levies to maintain funding levels and provide quality programs. There will remain a great disparity in the per pupil spending among the various school districts.

Mr. Melby continued by saying they were willing to compromise as well but this bill is not a compromise. This would be a sellout if they accepted this plan. Of all the proposals he thought this one came the furthest from meeting the Supreme Court test. There simply is no magical quick fix of this problem. It is going to take a commitment from the state that will take additional revenues at the state level. He concluded by saying he vehemently opposed the bill.

Bruce Moerer, staff attorney for the Montana School Boards Association, stated that he also appreciated the time Representatives Kadas and Ramirez have put in on the bill, especially Representative Kadas for meeting with the school administrators on the previous day spending two and a half hours answering questions which was to the benefit of everyone involved to better understand the proposal. He

said that the position of the Montana School Boards Association in the school funding lawsuit was that they were not a party to the lawsuit. They had member districts as plaintiffs and also as defendants and, as such, the Association's by-laws prohibited them from taking a position on the merits of the lawsuit. They will not be involved, participate in, or make any decision, or participate if there is an appeal. Their main concern at this point in time is compliance with the Supreme Court decision and adequate funding for all the students in the State of Montana. He said he would concur with Mr. Melby that he did not feel the plan currently before the committee equalizes. It is not a magic answer and he did not think there was a magic answer to this problem. The Supreme Court looked at disparities in per pupil expenditures as the test for equity, not what percentage of statewide totals the state provides. This plan does not provide enough help in resolving the disparities. One of the main causes of the problem being faced was that the state was not furnishing a large enough share of the total cost of education and that causes the per pupil spending disparity. He said he believed this bill was designed not to solve the problem because it minimizes the amount of money that is necessary for the state to put into the program. Some form of a guaranteed tax base has some merit and deserves some study and when it comes time to look at voted levies it can be put to use. However, he was concerned that he personally did not have time to fully understand the concept and he didn't think there was enough time in eleven days. When he calls and talks to local school districts and trustees and they ask what this bill does, he wouldn't be able to tell them for sure, and from that standpoint alone he could not support this bill. He said he had a problem with understanding what happened to the districts that were subject to recapture. If the district gets above the 166% level and have to send money back to Helena at a certain percentage, what happens to the district? How many more mills have to be added in the voted levy to allow for what is sent to Helena? Nobody seems to know that and it is a very real concern to the districts. He used Butte High School as an example as they are currently at 165% of their fiscal year '88 expenditure level. If they go to a 1% increase in the schedules or only a .6% increase in their 88 budget, Butte is also subject to the recapture provision at their actual mill value. Mr. Moerer said the guaranteed tax base provision deserves further study and it could possibly be incorporated into other bills but he didn't think it could be understood well enough to do this in eleven days.

Testimony continued with Don Waldron, Chairman of the Legislative Committee of the School Administrators of Montana, stating that they opposed this bill. He said he saw many good points in it but have a lot of reasons to be against it. Some of the strengths seen in the bill are the guaranteed tax base for the low wealth districts, the addition of the

50 mills for statewide education, state aid to offset delinquent taxes, and the monthly payments to the school districts. The problems seen are the percentage of the state equalization is too low, permissive levy is in an area that is unequal, transportation is not properly addressed with the 50% of schedule. Special education retirement is not covered under present special ed state budgets and will be left out on a limb. The reduction in local tax base with changes that are in Section 5 of this bill would adversely affect some of what are called "wealthy districts". Retirement should be a state-mandated and state-collected item and it is not in this bill. He said they had only a few hours to study the bill and did appreciate the time spent on the previous day with Representative Kadas. He urged the committee to oppose the bill.

Carl Knudsen, Superintendent of Schools at Saco, stated that he would rise in opposition to the bill and spoke for about 67 other rural small schools on this issue. With all due respect to the authors of the bill and their efforts to solve a difficult problem, he said he came as a representative of a small school and in his case, a high spending school, and in light of being considered a rich district, he would call it "revenue enhanced". He said he had attempted to examine the cause and effect of House Bill 39. As a starting point he noted that from the onset they had realized that there are winners and losers and in the past they have supported legislation that would equalize funding including Senate Bill 203 that would have raised taxes substantially in his district. It is somewhat evident that in the three categories mentioned that there will be losers found in many combinations. One major cause of Saco's high student cost is the declining enrollment and some of the schools have had up to 50% reduction in the past eight years. Some of the questions he wished to raise were what happens to the value of the mill when the coal or all the tax or oil is moved. It appears that his would be reduced by 75%. Like the Governor's plan, they would have gone from \$12,000 per mill to \$970 per mill. He asked if that meant that the remaining taxpayers in the district and in the state would be responsible to raise the 95 mills Foundation Program mandatory level as well as permissive levy in addition to the amount they need to operate their schools at the current level. They would have only 25% of their tax base to do this. From the information available it appeared that some of the proceeds collected by the state would be returned to the counties to be distributed by some formula of which he was not familiar. It appeared that, considering the information available, that this bill would inhibit the revenue potential to a point down the road where they would be either forced to close their doors and bus students to a nearby populated center and it must be remembered that some of his students currently ride the bus two hours to get to Saco. Of the 67 school districts facing recapture in this bill, 27 are free-standing elementary

districts that face from 10 to 50 mill increases. Twenty-eight of the 67 schools are Class C elementary or high schools that make a total of 55 of the 67 facing the tax raises that are in that category. There are 10 in Class B, 2 in Class A. The courts have recognized that it takes more money per student to operate schools with small enrollments. It appears the schedules in this plan neutralizes the difference in size by using a state-wide average not by school category and also by raising the Foundation Program of the per ANB in his sized schools 8.5% while raising the large schools 18.3%. He noted that unless the guaranteed tax base plan can better address the added educational costs of the rural schools, he found this legislation serving toward forced consolidation or even closure.

Larry Johnson, Business Manager, School District 1, Missoula, stated that he also wanted to thank Mr. Kadas and Mr. Ramirez for their efforts on this bill. He also thanked Mr. Kadas for his efforts in education in general as well as other members of the committee who work very hard for education. He said his district is a winner in this proposal in terms of access to dollars, funding level, mill levy reduction for the voters. Nevertheless, he stands in opposition to the bill because it is fundamentally flawed because it does not address equal opportunity for students and that is what the decision is about. Even though they would be winners in the practical sense, they stand behind that decision and the notion that this is what the legislature is here to address. This bill provides equal access to dollars but not equal educational opportunity. As he understood the Constitution, it does not provide for school boards or voters to have equal access, it provides for equal opportunity for educating students. The level of Foundation is only 74% of the fiscal 1988 expenditures which indicates simply that it is under-funded. He recommended 100% of fiscal 1988 expenditures.

Jim Anderson, Superintendent of Schools at Colstrip, said he was asked to testify because they are the richest district in the State of Montana and are the ones that get batted around quite a bit. They feel that they have to rise in opposition to this bill, not just because they are the richest district, but because they feel it does not meet the decision, that there is disparity and as a representative of the rich schools, they also feel there is disparity for them. As an example, if they were to go to the 1988 expenditures, which any bill does, and they compare it to their 1989 budget they would lose \$455,000. With HB 39 figured in at 166%, not going to the recapture level, they would lose another \$497,000 out of their budget. This would result in approximately \$1 million loss to Colstrip's budget. This comparison can also be made to the other rich districts although their figures would be somewhat different but it does occur. This amounts to between 18 and 20 per cent of their budget even though they are the richest

district and they understand what has to be done. They have no problem with that but they cannot maintain what they do have now without cutting some programs. No one can afford to cut 20% without hurting the kids. The recapture clause at a reduced tax base would more than likely not allow them to pass their levies and most people realize that. His point was they thought it should be funded to their level and they should not need the middle. All kids are not getting the benefit of this. He urged defeat of this bill.

Tom Bilodeau, research director for the MEA, spoke in opposition to the bill. He said that Superintendent Keenan had very clearly outlined some of the data that should be looked at on a statewide basis indicating the impact of this proposal. The administrators have brought it home to the individual districts. Following up on previous testimony, he said that "We gotta do more!" He felt that 74% equalization of 1988 expenditures for general fund and insurance is not sufficient. It does not provide money needed by school districts to provide quality education statewide. It will leave Montana in an unconstitutional position. The test of the Supreme Court is spending equity, the spending of the 95th and 5th percentile. The test is 1.25. This proposal does not get us there. He said a promise had been made to our children, enshrined it in the Constitution, and made a promise to the future for each and every one of us that we will provide a quality education that will produce the quality work force that we presently have and that we will build on the only basis that we have going for us for economic development. He asked the committee to please look at this proposal very carefully, recognize the fact that it doesn't meet the test and deliver on our promise to our children and the future. There were four objectives when the lawsuit began. One was to provide adequate funding for every child in the state to receive a quality education. Second, that the spending disparities between districts be narrowed so that there is equal educational opportunity. Third, the taxpayer effort be addressed and some sort of equal effort be part of our system of funding. The fourth objective is simplicity. There is no reason why we should have to move to a system that is not understood and to a guaranteed tax base which will not meet constitutional muster.

The testimony of Christine Deveny representing the League of Women Voters of Montana is contained in (Exhibit 4.)

Chip Erdmann said he represented an association of over 100 primarily rural school districts in the state. The testimony heard today indicates that the impact of this bill is uncertain to both the taxpayers and the school districts. A number of questions remain. One thing, however, is clear and that is that rural Montana will suffer a disproportionate impact under this bill. Whatever the solution is that the legislature arrives at for the

equalization problem, it was his opinion that the solution should utilize the existing Foundation schedules. These recognize the fact that this legislature has recognized for over forty years. The fact is, it costs more to educate students in smaller rural schools in Montana. That fact was also recognized by the courts, the Supreme Court and the District Court, as an educationally relevant factor in their decision. In other words, they said they recognize the fact that in smaller schools it costs more; therefore, you can have spending differences based on school size and still meet the constitutional test. He said this bill turns its back on that concept by getting away from the schedules by funding through the guaranteed tax base a portion of the formula. He also agreed with Mr. Melby that of all the bills, this one probably falls shorter of the constitutional mark than any of them. He urged the committee's opposition to the bill.

Terry Minow, Montana Federation of Teachers, testified that she was rising in opposition to HB 39. Her objections were briefly summarized in three points. The statewide support for schools contained in this bill is too low. This plan might be workable but it isn't at the inadequate level of funding proposed. There is a concern about the over reliance on voted property taxes to fund the system. This bill may not meet the Supreme Court equity test. More special sessions to resolve this issue are not in the best interests of anyone. In summary, she said she appreciated the hard work and energy Representative Kadas and Ramirez put into this proposal as well as the 4% increase in the Foundation Program and she also said she believed the guaranteed tax base is an idea with merit. However, in its current form, the Montana Federation of Teachers opposes HB 39.

Claudette Morton, Executive Secretary to the Board of Public Education, stated that the committee had heard all the arguments from the proponents and the opponents and Representative Ramirez in his introductory remarks said that someone is going to get hurt. She felt it was clear from the testimony that the taxpayers and the students of Montana and even perhaps the very future of Montana may get hurt under this bill. Therefore, the Board of Public Education asks that you do not concur in supporting HB 39.

Questions From Committee Members:

Representative Schye asked Representative Kadas to respond to some questions. He said that many people had worked long hours on getting people to agree on numbers. He asked if the data passed out had been reviewed by the LFA. Kadas replied that the LFA had put it together and there was a problem because the OPI wasn't involved in working on it. The data base that was used is the same data base that the budget office, OPI, LFA and the auditors came up with during

the regular session. The data base is the same however, the staff from the OPI were not involved and they ran some numbers a couple of days ago that came out fairly differently than the ones the auditor has come up with. Most of the differences have been reconciled at this point.

Schye then asked if Ramirez and Kadas had agreed on the 75 mill levy for oil. Representative Kadas stated that it had been a compromise; Jack was leaning closer to 75 and he was leaning closer to 80 and they started looking at the percentage numbers that would equal or generate the same kind of revenue. The numbers they came up with were a compromise and also a kind of shot in the dark because they both recognized they didn't have very accurate data on this issue.

Schye said he realized that but were they trying to hit the 75 mill levy together? Representative Ramirez said they discussed it. They were trying to find a place to start and his concern was that he did not want to hurt this industry because it is so vital to the state and he knew that Kadas felt the same way. They tried to arrive at a level that would not hurt the industry and give us diminishing returns. He said they didn't know what the appropriate level was. They just took, as a starting point, and leaving the debate open, that 75 was half way between the LFA's rates. If 75 mills would destroy the oil and gas industry, Ramirez said he was not for that amount but they had to start somewhere.

Schye said he realized the industries came in and testified revenue neutral. There was a little increase in coal. He asked if they would accept that. Representative Ramirez replied that the only way to get it through would be to keep it revenue neutral.

Schye's next question was in regard to retirement. On the information passed out the retirement was to be paid by a mandatory levy and he wondered if these levies were included in the total levy. Ramirez said yes.

Representative Darko stated that in her county she has a non-metallic mine which is assessed at net proceeds. She asked Representative Ramirez if there would be any change in assessment in regard to those kinds of mining operations. Representative Ramirez said it was his initial understanding that it would not affect them.

Senator Pinsoneault expressed concern about the rural schools being losers. Representative Kadas responded that in the schedules they have increased category 8, elementary, by about 10% more than the other categories. That is what the Select Committee did in the House. It passed the House and there was an amendment to change that which failed on a 75/25 vote. The reason it failed is because, if you look at the level of the Foundation payments in each category

compared to the level of average expenditure in each category you will see that the state is paying a much larger proportion of school funding in smaller school districts, smaller elementary districts, than it is in larger elementary districts. Another way of looking at this is that larger elementary districts have been forced and willingly done to provide a larger proportion of the funding for their district than elementary districts. A fair system will fund the same proportion across the board. It still won't incorporate that smaller school districts have relatively fewer economies of scale and they will get more dollars per ANB but the relationship between the amount of dollars the district is getting should be about the same across the board as the relationship between average expenditures is across the board. Bigger districts shouldn't have to pay a larger proportion of their total expenditures than a small district should. The fact of the matter is that the state has been over subsidizing the smaller districts in comparison to the larger districts. That was corrected in Senate Bill 203. The second point, there are a lot more smaller districts than there are large districts so when you say more smaller districts are hurt than larger districts that is true. That is because there are so many smaller districts. Make the comparison in terms of ANB. The last point, the average dollars per student per mill is set on a statewide average and that hurts the smaller districts. That is a legitimate point. If that figure were figured on a per category basis the smaller districts would receive a slightly larger subsidy. He said he didn't think it was a big enough amount, it was much simpler to present a system that had just one number statewide. For simplicity's sake it was kept that way. If that is a big problem it could be figured out on a category basis. At a high school level the high schools are uniformly from small schools to large schools about right. The Foundation program reflects average expenditures. They haven't made any adjustments between small and large in high school districts but if you compare the average expenditure of elementary districts versus the average expenditure of high school districts you will see that elementary districts are getting about 10% more than high school districts are. The Foundation schedules have also been adjusted to even that out so that both elementary and high school districts are getting about the same percentage of their average expenditures from the Foundation program.

Representative Driscoll asked if there was anything in the bill that affects other taxing jurisdictions because there will be winners and losers; for example, the City of Billings has mostly real property and Yellowstone County has substantially more personal property so the valuations will change. The city will be a winner and the county a loser but I-105 stops the county from raising mills and the city doesn't have to raise mills to get more money so they will be a winner. Who takes care of those people?

Representative Kadas said they didn't get into trying to change that. If you look at the changes in taxable valuation almost all are within 5% plus or minus. There are some that are greater. Under I-105 if a loss in taxable value occurs greater than 5% compared to 1986 the district can levy additional mills to make up the dollars to get the same number of dollars they got in 1986. They have to cross the 5% threshold.

Representative Driscoll then stated that during the testimony it seemed that there was some discussion of setting 75 mills against the oil and gas and coal and it's 95 against other property but in effect you are putting in 6%. Does that equal 75 mills? Kadas replied that it was 6% on coal which was relatively close to 75 mills. It would generate the same amount of dollars.

Representative Harrington then said that to back up that question that Representative Driscoll had asked about city versus county. In discussing school district versus local government, it was his estimate that local government will take about a 11% cut as far as taxable valuation is concerned. In Silver Bow County there is high class 16 which will go down to 8% as far as personal property is concerned. Is it true that local government will take quite a bite because of this because the amount of money would come back in through the increase in residential property which will not cover that loss. So there would be about a 11% decrease in the local government's ability to levy. Representative Kadas said there would be winners and losers but he thought Butte Silver Bow is a winner by 2 or 3%.

Representative Cobb asked Mr. Melby what they would do to compromise this matter. Mr. Melby said he didn't know and he did not intend to stand before the committee and negotiate. He said they were more inclined to compromise in a phase in of a system which meets equalization than they were in compromising what that system would look like. He said that on every plan that had been suggested so far except for this one they simply had not had time. They conduct an equity analysis. They are concerned about the differences in per pupil spending among the various districts. They are aiming for a system that approaches or reaches the equity analysis used by the Federal Government for determining whether or not a state system meets the P.L. 874 test. That is a ratio of 1.25 to 1.00 difference in spending between similarly situated districts. They would have to take this plan and do some kind of an equity analysis on it. They are also very concerned about the quality of education and that is why they have agreed to phasing in a system to allow the system to catch up with the high spenders. He said they don't want to bring the high spending schools down because they are lighthouse districts that provide the innovation, the experimentation that helps improve the education system in this state. They are not

SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

June 21, 1989

Page 26 of 33

asking for a system that penalizes those schools. What they are proposing is a system that provides for equalization that does not reduce the quality of education. He said there were tests used by the Federal Government uses based on individual states' peculiar circumstances because some states have constitutions that may not require equalization in the same manner ours does. Some states have a constitutional requirement for equalization that this proposal would be very suitable for but this system requires the high spending districts to reduce their spending and that is one of their concerns.

Senator Regan asked what the dollar amount of revenue being lost was, assuming it is not picked up by property tax. Representative Ramirez replied that it was nothing theoretically. He said he didn't think they could do an analysis in that fashion. Overall the tax base of the state is almost exactly the same after you do this but there will be pluses and minuses in different areas. Senator Regan said they must have some figure that shows what kind of loss there would be for tax forgiveness granted. Ramirez replied that you adjust the tax base to make up for it.

Representative Good said that she had not heard Mr. Melby testify before so she asked him how they expected the state to pay for everything that they were asking for. How will the average taxpayer pick up the tab? Mr. Melby responded that the average taxpayer in the state is picking up the tab for what they are asking for. They are doing it through property tax. What they are requesting, and what is necessary for equalization, is for the state to figure out a way, and the sales tax is a dead issue, to collect the funds that are now being spent at the school district levy to collect those at the state level and redistribute them on an equitable basis.

Representative Good then commented that it sounded like they didn't like 203 and now it doesn't sound like they are happy with any of the other plans except the one that funds everything at 100% and that the state come up with those dollars and it seems that they were requesting that the state fund everything totally yet they want to retain local control and it sounds like you are saying "Give us the money" and don't ask us any questions. Her frustration, she said, came from the response she received when she was asked where will the accountability be. She asked that Mr. Melby address this more fully. Mr. Melby said the question was rhetorical but he said that they have never asked that the state fund 100% of anything. They have asked that the Foundation schedules in 1991 be based on 1988 expenditures and sometimes we have said "100% of 1988 expenditures". Representative Ramirez and Kadas are saying 74% of 1988 expenditures. Senate Bill 203 was 90% of 1988 expenditures. 1988 expenditures are virtually the same as 1986

Foundation Program and I-105. One thing they have compromised on already is that they haven't asked for any inflationary increase for between 1988 and 1991. We have suggested and even encouraged that there be a local levy. There is room for that but it should be 40 or 45% of school funding. It shouldn't be all of the retirement but there is room for a local levy.

Representative Harrington stated that Superintendent Keenan would like to answer the question. She said that there is a misconception about 100% funding. She said to imagine salt shakers, general fund, comprehensive insurance, retirement, special ed and other. What the educational community has said is that the thing called general fund, which are the schedules, is the state's responsibility to pick up all of it. Some of transportation is paid, some of comprehensive insurance, some of retirement, some of special ed and some of other. They have never said pick up 100% of all those salt shakers. We have said pick up all of the first one and then let's talk about how much to pay of all the rest. The court said the state has a responsibility to pay the first one but there is also a responsibility to look at retirement because that is educationally relevant. You have to look at transportation because that is also educationally relevant but they said study that if you need to. They said special ed is mandated in this state and it is educationally relevant so the state must look at what proportion they pay. They didn't say pay all of the others they just said pay the first one, the general fund. When they speak of 100% that means 100% of the general fund, not all of education. She then asked how they expected it should be paid for. Right now 1988 expenditures are being paid for. In Butte they are paying for it by levying over 400 mills. In some they levy 70 mills but the fact is that we are paying for it right now. This is where the magic comes in. They are not asking for new money in addition, they are saying that they want the state to pay it but they don't want those people to pay 400 mills and someone else 70 mills. Currently there is a \$100 million shortfall. How are we going to do this? Ms. Keenan said that what they are suggesting is that it has to be paid by a property tax with a mandatory mill, a suggestion has been made that it be paid with a sales tax or you pay it with income tax reform and, in other words, ease the burden on the property tax at home so you can lower the 400 mills. At the same time we are stuck on this 100 mill business. You are trying to fund 1988 expenditures right now and only want to do it with 100 mills where some districts have been levying over 400 mills. It doesn't compute. She said that what she was saying was that if they went to the average mill, 167, and everybody paid that it could be done, you would have \$100 million dollars. Her conclusion was, "do it". Then let's quit posturing about under-funding or too much money in schools because we don't want a sales tax or too little money in schools but they don't want to fight that battle or let's put more money into

schools because we want a sales tax. Let's stop shadowboxing and fight the battle on revenue but you have the money, it's being collected, it's just being collected with disparity.

Representative Good stated that the only thing she was referring to was that when Mr. Melby spoke about lighthouse districts that everybody should attain that goal within the next couple of years and that would call for real high spending. That was her question.

Ms. Keenan replied that Mr. Melby cited the court case and the court said very clearly, on page 14, there is no evidence that the school districts are frivolously spending nor do they have frills. The Superintendent from Colstrip said perhaps they are considered rich. The court found in all the evidence over two years that Colstrip has no frills, just quality. She said that they could differ in debate and say, yes, it is frills, but the court found that there were none. They do spend some money and perhaps that equates to the basic philosophical argument we are getting into right now. She said that all schools would probably never get to the Colstrip level but you cannot penalize those districts in getting the very poor districts at least up to average. This bill, as well as the others being looked at, would not bring schools even up to average.

Representative Swysgood asked Mr. Melby to clarify his statement that the high spending districts would be required to reduce spending. He said he did not understand it that way. Mr. Melby said the way he understood HB 39, those districts whose current spending is over 166% of what they get from the state under the schedules will be required to return 2% of whatever they collect over that amount for every 1% they go over. If they went up as far as 25% above that, it would be the break-even point. Above that they would be sending more money back than they would gain. There are a number of districts that are above that level. They will have their tax rate increased on their residential property, already have an increased number of mandatory mills, and they will simply not vote the mills and the result will be a reduction in the level of expenditures in their school programs.

If that scenario came about, Representative Swysgood asked, would the reduction be below the 1988 spending level? Mr. Melby said that, of course, it would be because many districts are above that level and in order to get back to the 88 spending level they would have to go well beyond 166% of their state foundation payment. Representative Swysgood then asked how many districts that would involve and Mr. Melby said he had not had a chance to look.

Representative Thomas stated that Representative Good has asked a question of Superintendent Keenan and received a simplistic answer in that there is a 167 mill answer. The problem is

that it is too simple and general. What it does, and why this issue is so important on the taxing side and so important and complex and must be addressed so precisely, is that with 167 mills, economies in Montana would be destroyed. Jobs, families and communities would be destroyed. He said there are a lot of us who are not willing to do that.

Representative Cobb said there is a 470 mill disparity because of taxable value. Is there some kind of guarantee tax? Ms. Keenan said that it would simplify matters if property would be taxed at 100% of market value. It simplifies the property tax system but, if there are problems now with oil companies, Shell, Chevron, etc., 100% of market value would cause some real concern. She said she thought it was more fair, lower the value of the mill statewide and 100% of market value and take a look at the property. The appraisal process is five years behind now and the taxes people pay on their homes are five years behind as they are based on 1985 values. There would be problems too complex to address in such a short session. The debate on this will ultimately come in a regular session.

Representative Patterson asked the gentleman from Shell Oil Company regarding the sizeable tax increases for Shell and wondered if he had taken into consideration the property tax reductions the company receives. He replied that the amount of taxes the company paid on machinery and equipment compared with what they pay on net proceeds is minimal. He said the total property tax bill other than net proceeds is somewhere around \$400,000, and this is generally true across the industry. They are different from the mining industry in that they don't have the heavy amount of equipment costs the mining industry does. In any event, relief in the property tax area of machinery is small compared to where they are with net proceeds tax.

Representative Patterson then asked if the drilling rigs were in the Class 8 property. Mr. Anderson replied that was correct but there are very few rigs running in Montana and Shell has only two.

Representative Simpkins asked Mr. Melby to clarify what he had heard him say that if the \$457 million statewide that is currently being spent on the 1988 general fund and redistributed it on an ANB basis that would satisfy him, even though there is still the disparity between the high spending and low spending schools. Mr. Melby said he did not recall mentioning any level of funds. Representative Simpkins then asked if all the money was collected on the state level and redistributed on an equalized basis, ANB basis, per student that amount according to the blue sheet is \$457,000,000 for the general fund and Mr. Melby said that he didn't want an increase, so he was asking if they took care of all the 1988 expenditures, if that was what he

was saying would be satisfactory to the school system? Mr. Melby said if that is the total, if you took the 1988 expenditures for the general fund comprehensive insurance and retirement and collected those revenues at the state level and distributed those through the schedules for general fund and comprehensive insurance through the schedules and reimbursed retirement at actual cost to the school district and allowed for a cap of 117% and freezing those above 117% at 88 levels, that would be perfectly acceptable to the school systems.

Representative Simpkins said that in order to make the point clear, he asked if they would then no longer be dealing with the high ANB costs versus a low ANB cost in the same classification of school but would, instead, be dealing with a dollar amount of distribution. Mr. Melby said that was not correct because when the funds are redistributed through the Foundation schedules, it is done on an equalized basis. He said that if it was done on a per pupil basis, the only differences would be educationally relevant factors based on the school size, whether it's elementary or high school or in the aspects of retirement, it would be based on the maturity of the teaching staff and the teacher/student ratio.

Representative Zook asked Mr. Melby to clarify for sure the court does agree with the schedules as they are according to different classes? Mr. Melby said the court did state that the state's method of distributing what the state did appropriate for the school Foundation Program was distributed in an equitable manner, however, they did find the whole system unconstitutional, including this portion. Mr. Melby said all the parties to the lawsuit agreed that portion was constitutional.

Representative Cohen asked if there was anyone at the hearing from the Budget Office. He said he had hoped they would be able to give the committee some idea of when they would have a fiscal note prepared. He then asked if there was anyone at the hearing from the Department of Revenue.

Closing by Sponsor: Representative Kadas asked that both he and Representative Ramirez be allowed to close. Representative Harrington granted permission.

Representative Kadas stated, first of all, that he would like to respond to Superintendent Keenan. He said she had listed a number of small districts that were going to be hurt by this bill. He said that you could take any bill that had been put in and pick some small districts that would be hurt. As an example, Sunset Elementary will see a 30 mill increase. The fact of the matter is that this school needs 70 mills and gives it about 222% on the scale. Missoula Elementary pays 150 mills and 140% on this scale. Sunset will pay more mills in this process. That is what equalization is

all about. Mr. Melby made the point that there was no additional state revenue in this bill and actually there is \$100 million of additional state revenue between the increased income taxes, coal tax money and the increased millage. He said the state is not adding new revenue which is not true because they are adding \$100 million. Mr. Bilodeau and Mr. Melby both referred to the spending equity test of the federal government with regard to P.L. 874 standards. There is also another P.L. 874 test, two others, and one is called the wealth neutrality test. This bill does meet the wealth neutrality test. That test is based on a district's ability to achieve the same level of funding with an equal effort. In using this test this program is equalized to 85% in the first year of implementation. As you go out into further years, it doesn't get worse like the other bills, it gets better because of the state subsidy. He said the Court requires that the equalization test be met, or at least hinted at that. There is no mention in either decision of meeting any specific test. There is only a reference in the Supreme Court decision to the federal P.L. 874 test and some people have said that the test the court specifically wants to look at is the spending equity test but the fact is they don't require that any test be met. Representative Kadas said that he had argued throughout the session that the goal they should try to get to is one of the tests. He also said it should be clear that this bill does not equalize P.L. 874 money. This bill does meet the wealth neutrality test and will continue to meet it over time. Senate Bill 203 will not meet this test in the next couple of years.

Representative Kadas continued that Superintendent Keenan had made a point that there is some shadowboxing going on and he agreed, there is. There is shadowboxing going on by the oil and coal industries and on the part of the education community in the state and even some on the part of Representative Ramirez and himself. That's politics. He said they were posturing so that they can get the best deal at the end of eleven days. He said they had tried to put aside some of the shadowboxing or get it over with and he hoped that the committee will continue to look at the package as an effort to do that. Consider the package in the context of what is politically possible in this legislature and what is politically viable back home because those are the people we represent.

Representative Kadas said he wanted to make one other point relating to shadowboxing. He said that Mr. Melby said two things, that we should try to meet the spending equity test which brings all districts within from 100% to 125% and he also said that we shouldn't bring down the Colstrip's and Baker's. Colstrip is at about 205% and Baker is at 253%. If you don't bring them down, you have to bring everybody else up. He said he knew there wasn't that much money. Whatever solution it will force the higher spending schools

to come down because there is no way around it.

Representative Ramirez said that Representative Kadas had made an excellent closing and he again thanked him for the work that he as well as others had put in on this bill. The cameras are gone and most of the press is gone, a lot of people watching this are gone so he suggested that they just talk as legislators because, he said, we are the guys that have to make the decision because it is not the people in education or the people from Colstrip. It is not an easy decision and he asked the committee to set aside all the rhetoric heard today because this is what a lot of it was and get down to the practicality of this. We have to get something through this legislature that we can agree on. The ball is in our court. He said he did not want to put a 5% surcharge on people but he was willing to do it if that's the only thing that can be agreed on or even 95 mills. Again, he did not want to do it but would be willing if there would be some agreement.

Representative Ramirez suggested they discuss the options that they have. He said there could be a stalemate and he felt they were heading that direction. He didn't think the people back home would like that. The second option was that if there was a stalemate one of two things will happen. This can be turned over to the court for the court to do it or the court is going to kick it right back and say the schools will not be opened until the job is done. If it is turned over to the court, who will be the winner and who will be the loser? He said he did not think they should risk that. He felt it was the legislature's responsibility and he would not want to be responsible for what the court might do because it might be something even more difficult than the job they have before them. It is necessary to find some way to agree.

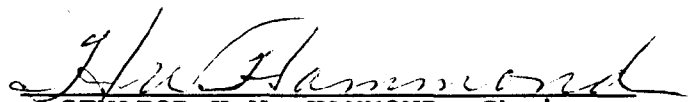
Representative Ramirez said the first thing argued by the Superintendent was that we just needed to get out and raise the money. He said he was the first to admit that if he were to do this he would do it with a sales tax but he said he also knew that it was impossible to get a sales tax through this legislature. She says 167 mills and he asked if there was anyone in the room who believed they could get 167 mills through this legislature. It just couldn't happen. If it did go through, he felt the Governor would veto it. He said that the fellows in oil and gas were upset about 75 mill levy, he didn't know what they would do at 167 mills. SB 203 provides for a surcharge and that could be handled in two ways. He said he had heard that they could take 203, fund it for one year, patch it together with \$41 million of extra revenue that is collected over three years but put it into a one-year expense, take the education trust, patch together \$75 million and put 100 mills on and go home. He said he thought they would be run out of town because the problem would not have been solved. This would

be irresponsible, passing the buck, and it can't be done. There would be a \$150 million deficit in the next biennium. Perhaps they could do 203 some other way. At 95 mills, take 203 and have the same things that are in HB 39, the same revenue sources, because they have already taken a part of the \$41 million, they have taken the education trust money, all the money we can get our hands on, and there is still a need for a 5% surtax. If you do 203 with that same money, it takes a 24% surtax and he didn't think that could be put through the legislature either. Therefore, he asked the committee to be practical about this as well as realistic and really use personal judgment.

Representative Ramirez said this bill has been absolutely raked over the coals as though it is some sort of bizarre irrational approach to this problem and couldn't possible meet the Supreme Court decision, a ridiculous concept. Yet, this concept has been around for a long time. He quoted from a study, "Montana School Finance - A Question of Equity", a report to the 48th Legislature which stated that guaranteed tax base approved by the members of the bipartisan committee which was put together with the Chairman being Stan Stephens and Vice Chairman John Vincent. Representatives Bob Brown, Chet Blaylock, Pat Regan, Gene Donaldson, Esther Bengtson and Ralph Eudaily also served on the committee. The concept was supported by the MEA. This is a valid approach to a difficult problem but it is within grasp and would meet the test of the Supreme Court. He noted that spending and wealth were used interchangeably in the decision and the Supreme Court ignored all of that and used the word "spending". If you look at the analysis of the court, they threw permissive levies into the Foundation Program for a maximum levy without a vote or maximum budget without a vote and he said he did not think they meant to say too heavy reliance on permissive and voted. He said he felt they meant to say too heavy reliance on voted but certainly permissive is o.k. if the value of the mills is guaranteed. He closed by asking individuals to use their own judgment and give this plan the consideration it deserves because it may be the only way to get out of here this summer.

ADJOURNMENT

Adjournment At: 12:30 p.m.


SENATOR H.W. HAMMOND, Chairman

ROLL CALL

EDUCATION

COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date 6/21/89
9:30 am

NAME	PRESENT	ABSENT	EXCUSED
SENATOR ANDERSON	✓		
SENATOR BROWN	✓		
SENATOR BLAYLOCK	✓		
SENATOR FARRELL	✓		
SENATOR REGAN	✓		
SENATOR NATHE	✓		
SENATOR PINSONEAULT	✓		
SENATOR MAZUREK	✓		
SENATOR HAMMOND	✓		

Each day attach to minutes.

DAILY CALL VOTE

EDUCATION AND CULTURAL RESOURCES

COMMITTEE

DATE 6/21/89

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	/		