

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By DIANA WYATT, CHAIR, on January 10, 1991, at 3.00 P.M.

ROLL CALL

Members Present:

Diana Wyatt, Chairman (D)
Jessica Stickney, Vice-Chairman (D)
Joe Barnett (R)
Arlene Becker (D)
Vivian Brooke (D)
Dave Brown (D)
Brent Cromley (D)
Paula Darko (D)
Tim Dowell (D)
Budd Gould (R)
Stella Jean Hansen (D)
Harriet Hayne (R)
Ed McCaffree (D)
Tom Nelson (R)
Jim Rice (R)
Sheila Rice (D)
Richard Simpkins (R)
Norm Wallin (R)

Staff Present: Bart Campbell (Legislative Council) and Lois O'Connor (Committee Secretary).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: CHAIR WYATT asked members of the committee to introduce themselves. She then introduced her staff secretary Lois O'Connor and Bart Campbell (Legislative Council).

HEARING ON HB 55

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE MADISON, House District 75, stated that HB 55

would revise county bidding laws and increase the dollar amounts when competitive bidding is required. Rep. Madison added that the dollar limits that allow the counties to make bids have not been changed since 1981. The purpose of this bill was due to inflation and the counties wanted more latitude as far as the bidding procedure is concerned.

Proponents' Testimony:

GORDEN MORRIS, Executive Director, Association of Counties, said that HB 55 is primarily intended to address inflationary effects on the cost of doing business at the county level.

JAMES McCAULEY, retired commissioner in Jefferson County, said his primary concern is the cost of inflation on the counties.

K. McKENNA, City Commissioner, would like HB 55 to include cities.

Opponents' Testimony:

DON JUDGE, Montana AFL-CIO, presented testimony. EXHIBIT 1

DON CHANCE, Mt. Building Industry Association, expressed concern about changing the dollar amounts in the bidding process. The change could mean a significant amount of money for smaller contractors and suppliers. He also opposed any changes in the competitive bidding process.

JOANNE CHANCE, Mt. Technical Council, opposes HB 55 because it includes professional services. She said that professional services should continue to be selected by the county.

Questions From Committee Members:

REP. McCAFFREE asked Mr. Morris if going to public auction was \$60,000. Mr. Morris answered that the original \$25,000 had been omitted when the bill was drafted. He wanted to change that amount to \$60,000.

REP. S. RICE asked Mr. Chance if he had a figure in lieu of the \$25,000 figure submitted. Mr. Chance answered no. He stated his principal interest dealt with the acquisition of goods and maintenance of buildings.

REP. D. BROWN asked Mr. Chance if the increase he proposed for roads and buildings was for new construction only. Mr. Chance answered that it was.

Closing by Sponsor:

REPRESENTATIVE MADISON closed by saying that HB 55 is not an anti-labor bill and hoped the committee would pass this bill.

THERE WAS NO EXECUTIVE ACTION TAKEN ON HB 55, BUT A MOTION WAS MADE.

Motion:

REP. WALLIN made the motion that a subcommittee be appointed to check further into HB 55. REP. RICE, REP. BROWN, AND REP. WALLIN were appointed.

Discussion:

REP. D. BROWN stated if they were to take action on it today, he would take the amendment that was offered minus the last item, reinserting all our language, and strike the rest of the amended bill except for the increase in the construction on any building, road or bridge.

REP. SIMPKINS asked REP. D. BROWN if the \$25,000 was okay and if he wanted to leave the \$25,000 construction. REP. SIMPKINS also asked if REP. D. BROWN agreed with the \$60,000 public auction. REP. D. BROWN responded that the only thing he agreed on was the \$25,000 for the building road or bridge. He felt that the public auction remain competitive bidding. Sixty thousand dollars is a lot of money for any construction company. He felt the \$25,000 was fair but the \$60,000 was too much.

REP. S. RICE thought that the opponents and proponents just need to agree on a set of numbers.

REP. MCCAFFREE would support bill in its entirety.

Recommendation and Vote:

CHAIR WYATT recommended that HB 55 be assigned to the Local Government Subcommittee.

HEARING ON HB 50

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE L. NELSON stated that she is carrying this bill for the Montana School Board Association and all the schools that are 200 miles from Helena. She expressed concern that their grievances are reviewed in the Helena district court rather than where the case originated. It is expensive and inconvenient. She stated that this is a local government issue. Hearings begin in local school districts and that is where they should conclude.

Proponents' Testimony:

REPRESENTATIVE M. O'KEEFE stated that taxpayers in Lewis and Clark and Jefferson Counties are paying for court costs of people

who do not live in this area. He would like to see the burden removed from the taxpayers in this district and put into the district where it originates.

REPRESENTATIVE D. CODY read a letter from a constituent. **EXHIBIT 2** She stated it was strictly a common sense approach to have the review hearing in the district of origin.

Bruce Moerer, Mt. School Boards Association, stated the review process should be held in the district of origin strictly for convenience and economics. He felt the court system was equally fair wherever the appeal is heard.

Opponents' Testimony:

Phil Campbell, Mt. Education Association, stated that not all appeals are filed in Helena. People do have the option, but it would depend on who is doing the appealing. He said in many cases the attorneys would be in Helena; therefore, the expense is incurred when the attorneys have to travel. The people filing the appeals do not have to be there. He found it discriminatory that the Office of Public Instruction is the only state agency allowed in this bill to go back to the district court. He said appeals of this nature add to the caseload of judges, but not that much more. He also stated that if the bill is passed, money should be sent to the district courts because it could increase their local load as well. The bill is not necessary because there are options that are in place already.

Questions From Committee Members:

REP. DOWELL asked **Mr. Campbell** if he knew the number of cases heard in Helena courts in a year. **Mr. Campbell** said no.

REP. BARNETT asked **Mr. Campbell** what the rationale is behind overloading the court. If a case is heard in Helena or the district court, there would be a caseload either way. **Mr. Campbell** said there is an overload in all the district courts. It depended on who is doing the appealing.

REP. MCCAFFREE asked **Mr. Moerer** if at any time during the appeals process, do the attorneys need to confer with their clients. **Mr. Moerer** answered that he represented very few districts at the hearings process. He often filed a friend of the court brief to assist them but they retain their own attorney. He was here to change the fact that it is an option to file in a local district court. He wants it mandated. Costs arise when the district has to come to the Helena district court for the appeal. The purpose of the bill is to do away with that option. As an attorney, he would want his client there to help him analyze the case.

REP. WALLIN asked **REP. L. NELSON** why the case mentioned in Exhibit 2 wasn't tried in Wolf Point when they had the option.

REP. NELSON had Mr. Moerer answer for her as he was involved in the case. Mr. Moerer responded that the party that lost at the state superintendent level is the party that appeals. In this case, the teacher lost at the state superintendent level. The teacher filed the appeal in Helena district court. If the school district had lost, they would have had the option to file the appeal in the local district. The problem arises when the teacher files her appeal in Helena, and the school district is forced to spend the time and money to send their administrator to Helena. REP. WALLIN then stated that under the current law, it works both ways. The proposed law would eliminate that option on both sides. Mr Moerer responded yes.

REP. CROMLEY asked Mr. Moerer how he distinguished this situation from the Board of Personnel Appeals or perhaps other agencies that he might commission. Mr. Moerer said that in this case the state agency does everything; the fact finding and makes the decision. In the school situation, the state superintendent merely has an appellate review. The state superintendent does not get involved in the fact finding process. It is all done locally.

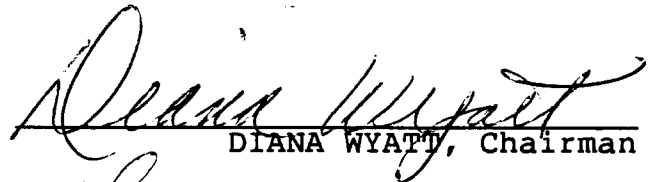
REP. DARKO asked Mr. Moerer to what extent the state superintendent is involved in the review. Do they leave Helena and go to the district courts. Mr. Moerer turned the answer over to Beda Lovitt, Chief Legal Council for the Office of Public Instruction. Ms. Lovitt said on the petitions for judicial review, the superintendent is named as a defendant and does not appear in those cases. However, they do have the option.

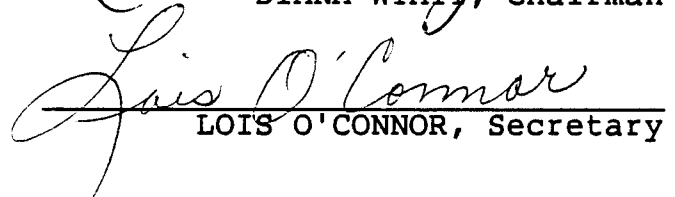
Closing by Sponsor:

REP. L. NELSON stated that district judges are fair and impartial no matter where the case is heard; however, she maintains that this is a local issue.

ADJOURNMENT

Adjournment At: 4:30 p.m.


DIANA WYATT, Chairman


LOIS O'CONNOR, Secretary

DW/lo

HOUSE OF REPRESENTATIVES
LOCAL GOVERNMENT COMMITTEE

ROLL CALL

DATE Jan 10, 1991

NAME	PRESENT	ABSENT	EXCUSED
Rep. Paula Darko			
Rep. Jessica Stickney, Vice-Chair	X		
Rep. Joe Barnett	XX X	XX	
Rep. Arlene Becker	X		
Rep. Vivian Brooke	X		
Rep. Dave Brown	X		
Rep. Brent Cromley	X		
Rep. Tim Dowell	X		
Rep. Budd Gould	X		
Rep. Stella Jean Hansen	X		
Rep. Harriet Hayne	X		
Rep. Ed McCaffree	X		
Rep. Tom Nelson	X		
Rep. Jim Rice	X		
Rep. Sheila Rice	X		
Rep. Richard Simpkins	X		
Rep. Norm Wallin	X		
Rep. Diana Wyatt, Chair	X		

HOUSE STANDING COMMITTEE REPORT

January 15, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Local Government report that House Bill 55 (first reading copy -- white) do pass as amended.

Signed: _____
Diana Wyatt, Chairman

And, that such amendments read:


1. Page 1, line 17.
Following: "~~supplies~~"
Strike: "items, goods, or services"
Insert: "any vehicle, road machinery or other machinery,
apparatus, appliances, equipment, materials or supplies"
2. Page 1, line 18.
Following: "~~\$10,000~~"
Strike: "\$25,000"
Insert: "\$20,000"
3. Page 1, line 20.
Following: "~~\$10,000~~"
Strike: "\$25,000"
Insert: "\$50,000"
4. Page 1, line 22.
Following: "~~\$25,000~~"
Strike: "\$60,000"
Insert: "\$45,000"
5. Page 2, line 11.
Following: "~~supplies~~"
Strike: "items, goods, or services"
Insert: "any vehicle, road machinery or other machinery,
apparatus, appliances, equipment, materials or supplies"
6. Page 2, line 12.
Following: "~~\$10,000~~"
Strike: "\$25,000"
Insert: "\$20,000"
7. Page 2, line 13.

HOUSE STANDING COMMITTEE REPORT

January 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that
House Bill 50 (first reading copy -- white) do not pass .

Signed: 
Diana Wyatt, Chairman

WITNESS STATEMENT

NAME Don Judge BUDGET HB 55
ADDRESS PO Box 1176 Helena MT 59624
WHOM DO YOU REPRESENT? MT STATE AFL-CIO
SUPPORT _____ OPPOSE _____ AMEND X

COMMENTS: Madam Chair, members of the Committee,
My name is Don Judge and I'm here today representing
the Montana State AFL-CIO. I apologize for not providing
the committee with written testimony but my prepared remarks
may no longer be relevant as a result of recent conversat-
ions with proponents.

- we would support efforts to amend HB 55 to the current
language in the statutes. This would alleviate our concern
regarding the interpretation of term "services".
- we do not object to raising the amount listed on line
18 of the bill to the proposed \$25,000 level
- we are concerned, however about the levels proposed
on the sections covering repair or maintenance or
construction of county facilities, roads, bridges or buildings.
- we would be willing to work with this committee to
address the issue of inflation, however, we believe the
proposed amounts may be too excessive.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Thank you

Wolf Point School Districts 45 & 45A
Wolf Point, Montana

59201-1593

PHONE:
SUPERINTENDENT
653-2361



EXHIBIT 2
DATE 1-10-91
HB 50

PHONES:
HIGH SCHOOL PRINCIPAL
653-1200
NORTHSIDE PRINCIPAL
653-1063
SOUTHSIDE PRINCIPAL
653-1480

January 7, 1991

M E M O R A N D U M

TO: CHAIRMAN, LOCAL GOVERNMENT COMMITTEE OF HOUSE OF REPRESENTATIVES, 1991 MONTANA LEGISLATURE

FROM: SARAH LISTERUD, WOLF POINT SCHOOL DISTRICT TRUSTEE *SL*

RE: HB 50 - VENUE FOR SCHOOL DISPUTES WHEN APPEALED

I ask that the following remarks be accepted as my testimony at your Thursday next committee meeting. I am unable to attend and our superintendent is now employed in Alaska and cannot appear.

The need for this legislation arose from an incident in the Wolf Point School District. It took four years to resolve. It involved a tenured teacher who was granted a one-year sabbatical for study leading to a master's degree and included one-half year full pay and benefits. The teacher was terminated for not following the terms of the Board sabbatical policy and the conditions outlined in his application. He was never enrolled or accepted in a graduate program, he worked at various jobs, he traveled to Mexico and the Southwest and he did not apprise the school district of his whereabouts.

The attached chronology will indicate to you the tedious four-year course of this dispute. HB 50 asks that when an administrative hearing decision is appealed to a court, it be remanded to the district court where the dispute arose and where it was first heard before the county superintendent of schools, and not go to the Helena district court.

I wish to present two arguments to support HB 50: (1) the "fairness doctrine" and (2) the unique nature of school dispute resolution as opposed to other dispute resolutions of other administrative boards or officers.

First, opponents of this bill will earnestly protest that an offending tenured teacher can readily be terminated and that the process for that is neatly in place and, further, that any failure of the process is a failure to use it. I believe that the process may well be in place, but with schools, there is an improper step to the process which makes it costly and extremely discouraging for a school district to pursue it. I believe that

January 7, 1991

Page 2

now, when disputes arise, the players do not start from a level playing field and that justice and ultimately the children of a school district are ill-served. It is unfair that a school can be separated from its district court jurisdiction.

Second, school governance is unique. Elected school boards have special responsibilities and functions. These are spelled out in the constitution and in law. Not the least of these conditions is the strong language of the Montana Constitution regarding local control. Most administrative hearings and decisions are rendered by the relative bodies in Helena (i.e. Human Rights Commission or Labor Relations Board, etc.) and if appealed go to the Helena district court. This is proper. Schools, however, have an intermediate hearing process, namely the county superintendent. This makes schools different. Their hearings are at the local courthouse and, therefore, the appeal to a court should be back to the local county courthouse. The legal remedy of HB 50 is needed, just for schools, to reinforce the constitutional mandate for local control.

Thank you for your consideration.

SL/bdm

CHRONOLOGY

- 3-14-83 Teacher terminated by school trustees after hearing
- 7- -83 Teacher files in local district court re "open meeting" (finding in favor of school)
Teacher appeals school trustees' action to county superintendent of schools
- 8-16-83 County superintendent of schools rules in favor of school
- 4-1-84 Teacher appeals the decision to the State Superintendent of Schools (Helena)
Superintendent upholds county superintendent
- 2-13-85 Teacher appeals that decision to Helena District Court (Loble)
Loble sends appeal back to county superintendent - to rule on two items
- 7-26-85 County superintendent renders second decision in favor of school
- 1-22-86 Teacher appeals that decision to State Superintendent, who renders second decision in favor of school
- 6-11-86 Teacher appeals that decision to Helena District Court (Loble)
Loble rules in favor of teacher
School appeals to Supreme Court
- 5-26-87 Supreme Court rules in favor of school

Local Town.

55-

January 10, 1991

Rep. J. Madison

NAME (please print)

RESIDENCE

SUPPORT

OPPOSE

Jordan Morris

MAC

AB 55 ✓

Dave Anderson

Fetterson Co

ALB55

Nine Street

Jefferson Co

HB 55

Shelly Laine

City of Helena

HBSS

James B McCauley

Boulder MT

HB 55

Don CHANG

Mt. Building Ind

✓

Joanne C. Chang, PE

MT Tech Council ^{Helean}

✓

Den Judge

MT STATE AFL-CIO

America/

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

COMMITTEE

BILL NO.

50

DATE _____

January 10, 1991

SPONSOR

Rep. L. Nelson

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.