

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON EDUCATION

Call to Order: By SENATOR CHET BLAYLOCK
on January 11, 1991, at 1:00 P.M.

ROLL CALL

Members Present:

Chet Blaylock, Chairman (D)
Harry Fritz, Vice Chairman (D)
Robert Brown (R)
Bill Farrell (R)
H.W. Hammond (R)
Dennis Nathe (R)
Dick Pinsoneault (D)
Mignon Waterman (D)
Bill Yellowtail (D)

Members Excused: none

Staff Present: Eddy McClure (Legislative Council).

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

Announcements/Discussion: none

HEARING ON SB 17

Presentation and Opening Statement by Sponsor: Senator Chet Blaylock opened the committee meeting. He asked Senator Fritz to take the position of chairman for this meeting. Senator Fritz then opened the hearing on SB 17. He called upon Senator Blaylock to present SB 17 which he had sponsored.

In presenting background on SB 17 Senator Blaylock explained that he had been the chairman of the Interim Committee's Implementation Committee on HB 28 during the Special Session in 1989. He said that a great deal of work was done on that committee which had been charged by the legislature to follow how HB 28 was working. SB 17 developed out of that.

Senator Blaylock said that he had invited persons to testify today whom he considered to be experts in the education field

regarding this bill. He asked that they would explain technical amendments that are needed to work with HB 28 to make it work more smoothly. Also discussed was what must be done by all school districts in the state of Montana from now on. Schools will be changing the emergency budget procedures and going to a budget amendment rather than the old emergency budget routine.

Persons from the Montana School Board Association were present to offer amendments to SB 17 regarding protested taxes. Persons representing The League of Cities and Towns who are interested in putting back into the bill the language of the tax increment financing were also present.

Senator Blaylock said that he felt probably the most meaningful amendment that would be offered to the bill would involve the funding of the foundation program through the individual income tax of Montana. He said that after that amendment is offered, it will probably be debated more than the others because that is a policy and a philosophical matter for discussion.

At that time Senator Blaylock called upon Greg Groepper from the Office of Public Instruction to present the committee with information regarding the bill.

Mr. Groepper discussed SB 17. He said that he had worked on the committee which developed amendments affecting word changes which would bring school financial issues in compliance with generally accepted accounting principles. He said that they tried to not change the intent of the bill but merely to bring the bill in compliance with the practices that were being used in the school districts; for example, the emergency budget part of the bill. when a way was needed for a school to take care of an immediate problem of maintenance which might not be provided for in HB 28.

Amendments discussed: Section 7 - General operating Funds Reserve. It was explained that they were attempting to correct HB 28 where reserve limits were set for different school districts.

When limits had been drafted, it was the intention of the bill to allow school districts to exceed reserve limits by their PL874 funds by protested tax payments or by bonus payments for school districts that consolidated but the language of the bill needs to state that the sum of all these because some schools might have PL874 money; protested tax payments and bonus payments.

The present law will allow the higher amount of any one but it wouldn't allow districts that have multiple funding sources to use all three. Section 7 amendments deal with this in that it would allow a district that has more than one funding possibility to exceed their reserve unit to use one, two or all three of the funding sources.

Section 8 amendment makes it clear that there is no need to vote for a permissive levy.

Section 11 - budget amendment. The the old budget law never got amended to comply with HB 28. When a cap on a school district of 104% of the previous year's budget has been set, a levy of 104% has been set. At that time a school may have a maintenance emergency or possibly an enrollment increase. Previously there was no way of allowing districts to spend that previous money under HB 28 so Section 11 amends the old emergency budget amendment.

Significant changes are (1) a process to allow districts who have a significant amount of protested taxes build up to do an emergency budget and spend the protested taxes on deferred budget items. They would need to come to the Office of Public Instruction to get approval to spend the money on the budget items and once they got that budget approval, they can spend above their cap on those deferred budget items.

There is also a process that requires the school districts if they are going to go above the 104% cap as a result of the budget amendment, they would need to get the superintendent's approval first before they go above that amount. If they have a budget amendment that doesn't put them above, they don't need the superintendent's approval.

Section 12 amendment explains which ones need approval from OPI. Further into a new section, it is found that there is an additional process whereby budget amendments that they want to carry forward into the next year above that 104% have to get approval from the superintendent to do that; for example, an enrollment increase such as 100 new students coming into a school because of a gold mine opening up in that area.

Instead of doing an emergency budget every year, it would be possible to do an emergency process in the first year to get the enrollment increase and then a process to get that approved to their base in subsequent years. So that going above the caps will have to undertake some scrutiny by the OPI for districts to continue to operate above it.

Section 26 - Maximum General Fund Budget deals with approved budget amendments from the previous school fiscal year to be added to the base for the calculation of the 104% cap. An attempt is being made so that districts will know that they are allowed to carry over their PL874 receipts.

Section 35 - bonding limits for school districts. Although cities and counties were allowed to include coal, oil and gas flat tax in their bonding limits, school districts were omitted. This section makes it clear that school districts can include the value of the flat tax receipts for coal, oil and gas as far as their bonding limits are concerned. It was pointed out that this

was important since taxable value is lost from their tax base for bonding purposes in HB 28.

Section 44 - an amendment to handicapped preschoolers in the definition of eligible transportees. It was recalled that handicapped preschoolers had to start receiving services but since it didn't tie into the transportation program, it would have been difficult for the district to pay for those transportees although it is their responsibility.

Section 47 - State Transportation Reimbursement. HB 28 limited what the state would pay for education to 180 days of pupil instruction. The transportation payment was overlooked at that time so what this does is make it clear that transportation is also paid for 180 days.

Section 48 makes changes to be consistent with past practices in the property tax law whereby there is provision for local government options to give exemptions to newer expanding industries. Under the old law the 45 mills that was there for school equalization, didn't allow the counties or cities to exempt statewide levies. There was a constitutional reason why this could not be allowed.

The changes in Section 48 make it clear that the 55 referred to also applied to the 40 mills statewide levy. Local governments would still have the same authority that they had before but when HB 28 was written, the 40 mill statewide was overlooked and that is added into Section 48.

Section 50 - a new section which would make requirement necessary from OPI in order for districts to add expenditures approved in the previous year's budget amendment to its base. Examples cited were a base building budget amendment like an enrollment increase that was going to go on for future years versus a non-base building amendment like a school boiler blowing up. The speaker explained that if a school boiler should blow up, it would need immediate attention but there would not be a need to levy at that higher expenditure level for each following year because the boiler expenditure would probably constitute a one expenditure for that particular year. To get budget amendments to appear in the base for ensuing years, it will require OPI approval. It could be added in the first year and become part of the base.

The reasons for needing retroactive applicability were discussed as being a way for a school district to address the emergency budget so that sections could be retroactively applicable to the current year so that districts who had had a maintenance emergency or an enrollment increase could take care of that expenditure without exceeding their budget.

Representative Paula Darko, a member of the Interim Committee, proposed an amendment to Section 11 of the bill dealing with protestor tax money, tax audits and delinquent taxes and the

ability to spend above the cap. Representative Darko used as an example a mine in the area she represents which was allowed to protest deductions against their taxes going through district, supreme and circuit courts. They eventually lost their appeal. This was money due the school district. It was anticipated and built into the budget but was not there. The school postponed some projects because they did not have the money expected.

Chip Erdman of the recently organized Montana Rural Education Association also discussed this amendment and presented written testimony which is enclosed. He discussed the exception for when taxes are protested that a budget amendment is allowed for those and that becomes an exception to the cap. That would not be automatic.

Under the bill the trustees would have to make a determination that it was for a project that they deferred in that year that they were protested. At that time the school must apply to OPI for permission to spend the taxes. There are two situations that fall into that situation: (1) Tax audit. Taxes have not been protested but the Department of Revenue does a tax audit determining that more taxes should have been paid for a particular year. The school would have been entitled to the money in that particular year and might have postponed projects because of lack of funds. (2) Delinquent taxes paid in a future year. School district would be deprived use of funds.

It was proposed that both taxes received as the result of a tax audit or delinquent taxes be considered the same way that the bill envisioned; i. e., the settlement of protested taxes be paid. Without this type of amendment, school districts would not have the opportunity to request a budget amendment from OPI.

Senator Nathe asked where the money for protested taxes now goes. Mr. Erdman said that money from protested taxes now go into a protest account. The way it works is that they pay their taxes under protest on time and the treasury is required to hold those in protest account with interest. The funds stay there until a decision is made. There are savings that allow school districts to borrow against the fund. The problem comes when the Department of Revenue doesn't prevail in the tax laws. At that time it would be necessary to pay back money borrowed and interest lost.

Senator Nathe asked about the distribution of funds after the tax dispute is settled, where the money then goes and how is it used.

Mr. Erdman: The freed up money gets distributed back to the taxing jurisdictions based on the mill levy of the year of dispute. So in the case of the Bonneville Power litagations, there have been protested taxes building up since 1985. They are in a protesting fund and eventually some portion of those will be distributed. Each year they were paid under protest, they get distributed on those mill levys. Cities and counties can use

that money because they are not under a budget cap but the school districts are not able to spend that money in the year they receive it.

Senator Nathe: What fund does it go into for the school district?.

Mr. Erdman: The money goes into the same fund that it would have gone into the year that the taxes were protested. A portion might go to general fund, a portion to transportation, building bonds, etc.,

Senator Nathe: Does the money go into the reserve funds or where?

Mr. Erdman: In the year that it is receipted, the money would go into the general fund. Because it couldn't be spent, at the end of the year, it would go to the reserves.

Senator Nathe: If the money went to reserves, would it be used to reduce mill levys?

Mr. Erdman: If the money went to reserves, it would be used to reduce mill levys the next year.

Dorie Neilson, MREA, discussed working on the bill in which she described a "cleanup" policy of terms by striking one word and inserting another without changing the meaning but rather clarifying the direction of the bill.

Madeline Quinlan, OPI, testified on behalf of an amendment asking the committee to reestablish the individual income tax and corporate license tax allocations to the public school equalization account. (Written testimony is attached). SB 28 established allocations of the individual income tax and the corporate license tax to the school equalization account for Fiscal 1990-91 but those allocations expired in that bill.

Because the allocations expired, the revenues were undesignated and state law says that when revenues are undesignated, they automatically go to the general fund. Ms Quinlan said that as a legislative staff person last session, it was her recollection that they had the revenue estimates for the individual and corporate license tax in Fiscal 1990-91 and they set the allocations accordingly to fund the school account. She said that she believed it was the intention at that time to come into the current session and reestablish those allocations based on future revenue estimates. The allocations to the school account were established 50 years ago in the 1941 session and schools have received money from these two sessions ever since.

The allocations that are being requested are 41.3% of the individual income tax and 28.5% of the corporate license tax plus the same allocations that we have now in Fiscal 91. The amount

of money being considered according to the LFA estimate is 290 million. The executive estimate is 295 million. The executive budget already has 240 million dollar general fund appropriation built in for schools.

If the allocations are restored, it will bring in revenue to fully fund the foundation program at 4.5% increase in Fiscal 92 and 4.8% increase the following year. (It is compounded on the Fiscal 92 increase). In total, the increase would be approximately 58 million dollars. There would be 19 million the first year and by compounding, it would be brought up to 39 million the second year.

Ms Quinlan pointed out that by passing the amendment, it will also restore the debt service payments. The long range individual income tax and corporate license tax have up until now been allocated to the debt service account to pay off long range building or general obligation bonds of the state. These allocations also were eliminated in HB 28.

Senator Blaylock called upon Eddy McClure to present any other amendments which she might have from OPI. Ms. McClure said that the amendment she had was the one presented by Dorie Nelson, OPI, Amendment No. 24, which included the change on Page 51 which would change the word "amount" to "permissive amount" for clarification.

Senator Fritz called for the testimony of any other proponents the bill. He also requested that persons in the room sign the witness register.

Bruce Moerer, SBA, in support of the amendments (Section 11) presented by Representative Darko. He cited as example, the particular needs at present time of the Sidney School District. He said that they are having problems with a certain type of roof, 10 years old, which is cracked and in need of repair because of heavy snows. Right now they don't have enough budget authority to repair the roof unless they use monies designated for other school plans such as the purchase of computers, repair and maintenance work, etc., They need something like this budget amendment to allow them to increase their expenditures. They have enough monies in their reserves but without the budget amendment process, they can't spend their reserves to repair the roof.

Mr. Moerer discussed the need to be able to use monies received late from a tax audit to accomplish those expenditures deferred from previous years. He said that they are legitimate functions on a one time basis that are needed. The speaker also stated that he felt that Section 7 and Section 11 need to be consistent in that the reasons given for exceeding reserves and for exceeding budget need to be the same.

Mr. Moerer discussed the Bonneville Power litigation and how it

had affected the schools in Boulder, Deerlodge and Superior.

Testimony was offered by Tom Cotton, Superintendent of School District I, Deerlodge. He said that the school has over one million dollars in protested taxes which they have not been able to use. They want to know that they will be able to use the funds once they are released with monies going into accounts that they they were originally intended to go into.

Mr. Cotton expressed concern that their school district has not advanced in the areas of educational technology because they haven't had the funds to buy computers, textbooks and other needed equipment. He also expressed major concern regarding a serious need for maintenance and repairs that need to be made to school buildings, repair and replacement of busses and other transportation vehicles. He said that they have deferred replacement of items that they cannot do without any longer. He mentioned that seven western Montana counties are facing similar situations and are gravely concerned regarding school needs. They feel that their school children are suffering as a result.

Senator Nathe: The lawsuits go on where you are involved with a federal entity. Is there any way that they are going to be able to try to move this into a federal district court and continue for another 7-8 years.

Mr. Erdman: We are concerned that the power companies have been lobbying the solicitor general to have the federal supreme court hear it and if that happens, we are looking at another year and a half. The problem is that all of these cases are not put together. We just got a three year decision but each one was an individual case. We are now looking at 1987-89 as individual cases. Those have not yet been brought before the Montana State Supreme Court.

Senator Nathe: Were they trying to move directly to the Supreme Court?

Mr. Erdman: Yes.

Senator Nathe: They were by-passing the federal district court and the circuit court of appeals?

Mr. Erdman: Yes, that is correct.

Senator Nathe: And that has been denied in your case?

Mr. Erdman: Only in the 1984. 1985, 1986 and 1987 have just been heard. They have 90 days to appeal that to the solicitor general. If they put it into the U. S. Supreme court, they will decide and we are looking probably at 18 months whether that will be heard.

Senator Nathe: You will know in 90 days for sure whether you

have your million dollar settlement?

Mr. Erdman: Not really. I don't know how long it can be held before it is appealed. They have 90 days to decide whether they will appeal it.

Senator Paul Svrcek testified in support of SB 17. Mineral County which is affected by the BPA protest is in his jurisdiction. The school districts in Mineral County have been under the weight of this protest for several years and they have asked me to give voice to their support for this bill. Senator Svrcek said that the people have asked him to assure the committee that if and when these protested funds come in, that they will be used for deferred expenditures and will not be used to pump up the caps.

The following people testified in support of SB 17 as amended on Page 53:

Alec Hanson, Montana League of Cities,
Craig Jones from D. A. Davidson,
Judy Tilman, Director of Butte-Silverbow Revitalization Committee

They discussed the integrity of bonds and also the reduction in school levies which has occurred across the state in many places as a result of HB 28 which has interrupted the revenue stream.

In 1989, the Legislature agreed in the language which is stricken from the amendment that there would be a reimbursement to cities who would lose as a result of lower school levies. Problems have arisen as a result of the interpretation of that particular section.

Intentions were to (1) clarify some of those questions with regard to how reimbursement is calculated and (2) to reinsert the language to make sure that this dedicated revenue for the payment of these bonds is protected. There are six cities involved which have increment districts. Five of the cities would receive reimbursement under this amendment. The reimbursement is the difference between the amount generated by the increment district on school taxes in 1989 and the amount generated in subsequent years. Once the school levies in those particular areas reach 1989 levels, there would be no more reimbursement.

Discussion led by Craig Jones regarding bondholders having a right to expect this protection and that tax increment financing is a development tool that has worked very well for the cities. He said that he hoped that the committee would agree with this amendment.

Mr. Jones said that a removal of a source of revenue dedicated to the repayment of those bonds sends a message that bonds have no backing and there will be no guarantees once bonds are issued. It will cause much discontent in the capital market place which

may affect the borrowing rate of future local governments.

Mrs. Tilaman said that their city has bonds outstanding and are depending upon that revenue. She said that she also wanted to point out that they have a 10 year, \$100,000 a year obligation to the Butte-Silverbow School District. They use these funds to make the bond payment on the high school renovation. Eliminating this reimbursement could affect our ability to reimburse them the amount owed.

Richard Moe, Superintendent, Boulder Public Schools: During the height of the protest situation, for 1986-87, for example: the Jefferson High School (in our district) experienced a shortfall of \$153,366 in one year. The elementary school district that same year experienced a shortfall of \$97,000. The school district which is only composed of about 470 students and has experienced a quarter of a million dollar shortfall in one year in the general fund budget.

He said that the school has not been able to do the programming or buy the textbooks needed by our school classrooms. Even with the equalization law which has improved the situation for the school, it is calculated that this year because of the local levy and the impact of the protested taxes on local levies, there will be a shortfall in the local high school district of \$40,622 and a shortfall in our elementary district of \$58,721.

Also testifying in support of SB 17:

Senator Tom Beck
Tom Bilodeau, Montana Education Association
Terry Minow, Montana Federation of Teachers
Jess Long, Montana Superintendents Association
Kay McKenna, MT School Superintendents.

Senator Fritz called for opponents to SB 17.

There were no opponents.

HEARING ON SENATE BILL 29Presentation and Opening Statement by Sponsor:

Senator Jerry Devlin, District 13, presented SB 29 which he had sponsored. In his opening statement Senator Devlin sought to change the term of service for an elected school district trustee from April to July 1 with the term of service for each trustee position beginning July 1 following the trustee's election to office. He said that under the present law a trustee taking office in April does not begin work until the following fall which is the beginning of the school term and by doing this, half of the year has been used in an unproductive manner since the trustee's duties do not begin until the school term.

Proponents' Testimony:

Persons testifying in support of SB 29 were Paul Stahl and Debra Kehr from Helena School District #1. Bruce Moeres from Montana School Board Association explained that the MSBA had not had time to consider the bill. At the present time they could not give an opinion. He said that they would consider it and give a written testimony for further consideration of the committee.

Opponents' Testimony:

none

SENATOR PINSONEAULT MOVED to table SB 29. Vote was unanimous.

HEARING ON SB 32Presentation and Opening Statement by Sponsor:

Senator Thomas Keating of District 44 introduced SB 32 which he described as being an amendment to the Montana Constitution which would guarantee educational opportunity. Senator Keating said that the decision from the Supreme Court says that we do not find it necessary to consider the equal protection analysis under Article 2, Section 4 of the Constitution. That is the only reference to the equal opportunity article of the Constitution. What the decision is dealing with is just the determination of the word "equality of education" as it applies to education.

Opponents' Testimony:

The following persons were present and registered opposition to

SB 32: Chip Erdman of Montana Rural Education Association; Jack Copps of OPI; Kathleen Holden of OPI; Bruce W. Moerer of Montana School Board Association and Erin Fleur of Montana Education Association.

Closing Statement by Sponsor:

Senator Keating thanked the chairman and members of the committee. He said that he realized that the people who were present to oppose this measure are a part of the system and he understands that. They are rightfully concerned.

However, I would like to point out that the testimony that you heard about quality of education being removed begs the question. We have had a quality education in spite of the fact that the word "quality" didn't get into the Constitution until 1972 and our system was already a quality system. It is in the hearts of the people and the school boards to determine whether it is a quality education and the word "quality" is not definitive. Quality to one is not the same as quality to another and the reason it is being deleted is so it doesn't become a point of contention.

The legislature can, in its policy, require quality education or ask for quality education. The school board seeks quality education not because the word quality is in the Constitution but because that is the desire of the people.

It is Friday afternoon and I am sure that there are a lot of people out there who are finishing up their week's work. They have been toiling all week to earn their living and to pay their taxes. And those are the people who are impacted by our legislation, by the system of funding that we establish as legislators and it is their desire to pay for their children's education but they are busy earning a living and they do not have time to be here. They are not paid to be here and I submit to you that I think that, in my opinion, that I am here representing those working taxpayers who are going to have to pay for everything that we deliberate in this system whether it is "state" money or "county" money, it still belongs to the working public but they don't have time to come here and either support or object to this bill but the Legislature can give them that opportunity to make that decision in their own spare time if you will pay this measure and let it be on the ballot and let it have a fair hearing from all of the people and not just a few of us.

Senator Blaylock said that SB 17, SB 29 and SB 32 would be considered when the committee meeting meets January 14, 1991.

ADJOURNMENT

Committee meeting adjourned at 2:55 P. M.



SENATOR CHET BLAYLOCK, Chairman



BETSY CLARK, Secretary

CB/bc

Exhibits 1-3 were not transmitted with the minutes.

Exhibits 1-14-91

20-9-360(2) For the benefit of each municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1989, the state treasurer shall distribute each fiscal year from the state equalization levy to the municipality the amount, if any, equal to the product of the incremental taxable value of the urban renewal area times the "reduced school district levy" for the area, each calculated for the fiscal year. The "reduced school district levy" for a fiscal year is the difference between the aggregate amount of all property tax levies for school district purposes in the urban renewal area, expressed in mills, in the fiscal year ended June 30, 1989, and the aggregate amount of all property tax levies for school district purposes in the area or the district, expressed in mills, in the fiscal year (including the state equalization levy). The state treasurer shall distribute the amounts to municipalities in two equal installments on November 30 and May 31 in the fiscal year.

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SENATE EDUCATION

EXHIBIT NO. 4

DATE 1-11-91

BILL NO. 29

the State under the Foundation Program and for the districts under the voted levy system. We are not able to reach that type of a conclusion. As previously indicated, the 1985-86 school funding involved more than 20 different funds. The control of such funds is primarily in the Legislature. Our opinion is not directed at only one element of the system of funding public schools in Montana, as we recognize that the Legislature has the power to increase or reduce various parts of these elements, and in addition to add other elements for such funding.

While this opinion discusses spending disparities so far as pupils are concerned, we do not suggest that financial considerations of that type are the sole elements of a quality education or of equal educational opportunity. There are a number of additional factors which are a significant part of the education of each person in Montana, including but not limited to such elements as individual teachers, classroom size, support of the parents of students, and the desire and motivation on the part of the student which moves him or her to seek earnestly after an education. By not discussing these elements, we do not in any way suggest they are irrelevant; for the financing of education is only one aspect of equal educational opportunity. Our opinion is intentionally limited to the elements discussed in the opinion.

II

Should this Court clarify the District Court's findings regarding the accreditation standards promulgated by the Montana Board of Public Education?

Under Art. X, Sec. 9(3), Mont.Const., the Montana Board of Public Education (Board) has general supervisory power over the public school system. The Board has adopted state-wide accreditation standards for elementary and secondary schools. Those standards require teachers to be certified by

SENATE EDUCATION

EXHIBIT NO. 5

DATE 1-11-91

ARTICLE XI
EDUCATION

Section 1. It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.

Sec. 2. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government known as school lands; and those granted in lieu of such lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to the state for general educational purposes.

Sec. 3. Such public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings, under the restrictions to be provided by law.

Sec. 4. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, which shall have the direction, control, leasing and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law.

Sec. 5. Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds shall be apportioned annually to the several school districts of the state in proportion to the number of children and youths between the ages of six (6) and twenty-one (21) residing therein respectively, but no district shall be entitled to such distributive share that does not maintain a public free school for at least six months during the year for which such distribution is made. The remaining five per centum (5%) of all the interest received on the school funds of the state, and the remaining five per centum (5%) of all the rents received from the leasing of school lands and of all other income from the public school funds, shall annually be added to the public school funds of the state and become and forever remain an inseparable and inviolable part thereof.

Compiler's Comments
1919 Amendment: This section is given as effective under governor's proclamation
amended by chapter 149, Laws of 1919, December 6, 1920.
approved at election of November 2, 1920.

Sec. 6. It shall be the duty of the legislative assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free common school in each organized district in the state, for at least three months in each year.

Sec. 7. The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years.

Sec. 8. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or

indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

Sec. 9. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex.

Sec. 10. The legislative assembly shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for.

Sec. 11. The general control and supervision of the state university and the various other state educational institutions shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eleven members, the governor, state superintendent of public instruction, and attorney general, being members ex-officio; the other eight members thereof shall be appointed by the governor; subject to the confirmation of the senate, under the regulations and restrictions to be provided by law.

Sec. 12. The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.

ARTICLE XII

REVENUE AND TAXATION

Section 1. The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.

Sec. 1a. The legislative assembly may levy and collect taxes upon incomes of persons, firms and corporations for the purpose of replacing property taxes. These income taxes may be graduated and progressive and shall be distributed to the public schools and to the state government.

Compiler's Comments

1933 Enactment: This section was enacted as chapter 83, Laws of 1933, approved by the people at the general election of November 6,

1934, and became effective by governor's proclamation. December 6, 1934.

Sec. 1b. No monies paid into the state treasury which are derived from fees, excises or license taxes relating to registration, operation or use of

Schools consider court challenge

KEVIN McRAE
Helena Bureau

HELENA — Several of the state's smaller school districts say the school funding plan adopted by the 1989 Legislature denies their students educational opportunities guaranteed by the Montana Constitution.

A fledgling coalition of rural districts is preparing to challenge the system in court if the 1991 Legislature doesn't increase the small schools' share of state funding so they can offer the variety of programs found in larger towns.

Charles Erdmann, a Helena attorney who will lobby for the group this winter, estimated that it could cost \$500,000 to fund such a lawsuit. "Usually, these types of suits are filed at the drop of a hat," he said.

The schools also intend to hire an attorney to study the constitutional issues and lay the groundwork for a lawsuit if the Legislature doesn't change the system.

Residents in several rural areas say their taxes increase while their school districts' share of state money declines, Erdmann said. The spending caps in the new funding system take away much of their ability to raise money for educational programs through locally voted taxes, he said.

"We're not saying this means the state needs to find new money for the smaller schools," Erdmann said. "It just needs to be redistributed. This is a big-vs.-little, rural-vs.-urban issue."

School leaders from nearly 100 elementary and high school districts met in Lewistown Monday and endorsed the idea of forming the Montana Rural Education Association, he said. The size of the coalition's membership is not yet known because local school boards will meet the next several weeks to decide whether to join.

A steering committee was appointed made up of members from

“If everybody has to pay the same in terms of taxes, the educational opportunity should be the same, too.”

—Jim Foster
coalition member

Chester, Hariem, Circle, Roundup, Choteau, Frenchtown, Medicine Lake, Victor, Fort Benton, Saco and Gardiner.

The 1989 Legislature passed the new school funding plan after a state district court and the state Supreme Court ruled that the old system was unconstitutional because it denied students equal educational opportunities.

The courts said the old system relied too heavily on local property taxes, and as a result created too much disparity in the amount of money each district spent per student.

The Legislature increased the state's contribution to the school funding pot, boosting the statewide tax mill levy.

Chester school Superintendent Jim Foster, chairman of the rural school coalition's steering committee, said that "if everybody has to pay the same in terms of taxes, the educational opportunity should be the same, too."

Foster said examples of program disparity include cases in which larger schools offer a variety of foreign languages, home economics or business courses, while many small schools go without.

"How does that fit the mandate of equal opportunity?" Foster said. "All the kids have to compete in the

Education lobby lacks goals, officials report

HELENA (AP) — The education coalition, an effective lobbying force in the past, is in disarray heading into the 1991 legislative session.

"The education community is not pointed cohesively toward a common goal. And I'm greatly concerned about that," said Great Falls Superintendent Larry Williams.

"All the pre-Legislature talk is pretty grim," said Eric Feaver, president of the Montana Education Association. "Clearly we're in for a period of upheaval."

But Nancy Keenan, the state school superintendent, said factions are still talking and trying to work out differences.

"If we stop talking, then I see the coalition breaking down," said Keenan.

The education lobby was successful during the last legislative session in getting more money into education.

But now, many small schools are upset so much of the money is

going to big schools.

Jim Foster, superintendent in Chester, said the new statewide school finance formula, funnels half of the new tax money raised to large Class AA schools and 25 percent to Class A schools. Some 338 small districts get nothing from the tax, he said.

On Monday, representatives of 89 smaller school districts met in Lewistown and formed the Montana Rural Education Association to lobby to change the school-funding formula and get more money for small schools.

Some educators worry the effort will set off a war between small and big schools. Feaver said he agrees that small schools should be able to offer the same educational efforts as larger schools, but warns the effort may backfire. He said lawmakers may try to force consolidation on small districts to improve the educational opportunities for the students.

same melting pot when they go to college or wherever they go down the road."

The rural schools are the second group to wield the threat of a lawsuit before the start of this winter's legislative session.

Pat Melby, a Helena attorney and lobbyist for the school districts that successfully challenged the old funding system, said earlier this month that his group would file an-

other lawsuit unless the Legislature further reduced disparities in school funding.

Melby said in an interview Wednesday that he hopes the school funding debate this session will be more "cosmic" and broader than simply a fight between big and small schools. He said the group he represents consists of rural and urban districts.

New schools to be costly, study says

HELENA (AP) — State efforts to equalize the financing of school construction will be costly because much of the need is in districts least able to raise the money locally, a recent legislative study concludes.

Four out of every 10 Montana school districts will have to construct or remodel buildings in the next five years and the price tag could be \$177 million, according to the report by the fiscal analyst's office.

The study, which also shows that nearly one out of five school buildings is inadequate, was prepared for a committee that is considering additional changes in the school-financing laws for the 1991 session.

Lawmakers last year adopted a new system that equalizes most funding by replacing money generated through local taxes with state revenue. But the Legislature did not take action on several smaller budget items for schools — transportation and capital construction.

The Oversight Committee on School Funding Implementation was directed to study possible ways of equalizing those costs, an issue that is certain to come before the 1991 Legislature.

A survey of 443, or 80 percent, of Montana's school districts indicates the most severe problems with existing buildings are in those districts with the lowest property tax value per student.

About half the districts that complained of having poor or inadequate facilities were among the least-wealthy districts. Only 8 percent of the wealthiest districts reported buildings that are inadequate.

Moreover, more than a third of the building or remodeling projects planned by the 1995-96 school year are concentrated among the poorest districts, the study shows.

"It appears the wealthier districts may have been more able to replace and remodel buildings and, therefore, show less need currently," wrote Curt Nichols, deputy fiscal analyst.

"The concentration of deficient buildings and classrooms in relatively poor districts indicates that costs of equalizing capital construction may be high," he said.

The survey, which covered 595 buildings, found that just over half the facilities were built between

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TESTIMONY OF CHIP ERDMANN

IN OPPOSITION TO SB 32

The Montana Rural Education Association is an association of rural school districts in Montana. One of the formal position statements adopted by the MREA is that the Association is committed to providing all students of Montana equality of educational opportunity regardless of their geographic location. The constitutional amendment proposed in Senate Bill 32 would be a significant step backwards in the educational commitment this state has historically made to the education of its youth.

The amendment would remove the "equality of" language in Section 1 of Article X of the Constitution. Presumably the removal of this language is an attempt to prevent a lawsuit similar to the successful underfunded school lawsuit. Interestingly, even if this language were removed from Article X, the result in the underfunded suit would have been the same since the district court found that the school funding system violated both the "equality of educational opportunity" guarantee and the equal protection clause found in Article II, Section 4 of the Montana Constitution. The Supreme Court declined to address the equal protection clause finding since they found that the system violated the equality of educational opportunity clause. While this amendment would not, in all probability, achieve the results envisioned by the proponents, even a vote to place it on the ballot would send a disturbing message about Montana's commitment to education.

When this provision was adopted by the 1972 Constitutional Convention, the majority report noted that: "The principle of equal educational opportunity, as a corollary to the right of equal protection of the laws, stands as a fundamental maxim for the public educational system." The majority report went on to quote the U.S. Supreme Court case of Brown v. Board of Education where the court stated:

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken

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BILL NO. 32

to provide it, is a right which must be made available to all on equal terms.

SB 32 would also delete the term "quality" from the provision requiring the legislature to provide a basic system of free quality public elementary and secondary schools. It is interesting to note that when this language was initially proposed to the Constitutional Convention by the Education Committee, the term was not only "quality" but it called for a "system of high quality, free public elementary and secondary schools." Again, the majority report on this provision noted that: "The word 'quality' is an instruction to the legislature to provide not simply a minimum educational system, but one which meets contemporary needs and produce capable, well-informed citizens."

To strike the term "quality" from this provision implies that we will settle for a less than quality educational system, and indeed may be a message to the legislature that a minimum education will suffice.

Perhaps the most disturbing provision of SB 32 is the language found at the top of page two. The current constitutional language requires the legislature to fund and distribute the state's share of the cost of the basic elementary and secondary school system. The amendment would change the requirement to be that the legislature must provide the "means" for school districts to finance the school system. The importance of this distinction cannot be overstated. The state would no longer be required to fund public education in Montana, it merely would be required to provide a mechanism to fund education.

While these proposals have the potential to devastate the educational system in Montana, I think a significant concern is the message that this action would send. We hear a lot about the economic development efforts of the state and local communities and citizens groups in Montana. In attracting businesses to Montana one of the primary concerns is the quality of the educational system. This bill would open the door to educational inequalities from one region of the state to another; it would say that we in Montana are willing to settle for a minimum educational system for our youth; and it would remove the commitment of the state to fund education for the first time since the creation of the state. This isn't the type of educational system we want for our children nor is it the message that we want to send to those trying to develop additional businesses in Montana.

DATE 1-11-91

COMMITTEE ON Education

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Tom Cotton	Dist # 1		✓	
WALT PIPPO	SUPT - DENVER DIST # 211		✓	
Paul Stahl	self	SB 29	✓	
Debra Kehr	Helena School Dist # 1	SB 29	✓	
PAUL SURLEN	Sen. DIST 26	SB 17	—	
Paula Danko	H.D. # 2	SB 17	✓	
Sam B. Lyant	Supt. Puyallup			
Eri Lee	NEA	SB 32		✓
Jim W. Long	S.A. 14	SB 17	—	
Terry Minow	NET	SB 17	✓	
Jim Dan Bond	Gen Dist # 24	SB 17	✓	
Richard Moe	Supt. - Boulder Dist # 17	SB 17	✓	
Alce Hansen	League of Cities	517	amend	
Judie Tilman	Butte-Silver Bow	517	amend	
Jerry Helason	PC HS. Deer Lodge	517	✓	
TOM BLODEAU	MEA	SB 17		
CHIP FROMANN	MT Rural Ed Assocn	SB 17 WAMW ✓ SB 32		X
Jack Capps	OPI	SB 32		X
Kathleen Holden	OPI	SB 32		X
Bruce W. Moerer	MCSA	SB 32		X
"	"	SB 17	X	
"	"	SB 29		