

MINUTES

MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By Rep. H.S. "Sonny" Hanson, Chair, on January 8, 1993, at 3:02 p.m.

ROLL CALL

Members Present:

Rep. H.S. "Sonny" Hanson, Chair (R)  
Rep. Alvin Ellis, Vice Chair (R)  
Rep. Ray Brandewie (R)  
Rep. Fritz Daily (D)  
Rep. Ervin Davis (D)  
Rep. Ed Dolezal (D)  
Rep. Jack Herron (R)  
Rep. Bob Gervais (D)  
Rep. Bea McCarthy (D)  
Rep. Norm Mills (R)  
Rep. Bill Rehbein (R)  
Rep. Sam Rose (R)  
Rep. Dick Simpkins (R)  
Rep. Wilbur Spring (R)  
Rep. Norm Wallin (R)  
Rep. Diana Wyatt, Vice Chair (D)

Members Excused: Rep. Harrington and Rep. McCulloch

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council  
Susan Lenard, Committee Secretary

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

Committee Business Summary:

Hearing: HB 40, HB 83, HB 25  
Executive Action: HB 53

HEARING ON HB 40

Opening Statement by Sponsor:

REP. J. JOHNSON, House District 23, Glendive, stated HB 40 revises the criteria for the dismissal of a teacher under contract. Lines 10 - 15 in section 1 of statute 20-4-207 are the

areas under consideration in HB 40. REP. JOHNSON also offered an amendment to the bill to restore the word "incompetence."

**EXHIBIT 1**

**Proponents' Testimony:**

**Loran Frazier, Director for School Administrators of Montana,** noted the organization's support of the bill with the amendment offered by the sponsor. **Mr. Frazier** commented by clarifying the word "incompetence" both teacher and administrator evaluations would be improved. He noted the language would assist in better defining job descriptions. The State of Colorado was used as an example where such language was introduced and where 30 credit hours of training are now required by those individuals responsible for performing evaluations.

**Fred Anderson, Principle of Custer County High School, Miles City,** noted he believed the change in language offered by the bill was timely and appropriate. **Mr. Anderson** commented the tenure of an administrator and a teacher should be based on her or his performance, not on the duration of their employment. He stated HB 40 could improve education in Montana.

**Robert Richards, Superintendent of Schools, Miles City Unified School District,** said the addition of the term "unsatisfactory performance" as a condition for the dismissal of a tenured teacher under contract would send a message to the people of Montana that the Legislature was serious about the quality of education in the state. **Mr. Richards** noted the public has expressed annoyance at the difficulty of improving the performance of tenured teachers. He added that tenured teachers can, and are, fired under contract in Montana. In his experience, such cases were the result of immorality, insubordination, and failure to follow board policies. He stated he could not recall a case where a teacher was fired for being unfit.

**Bruce Moerer, Montana School Boards Association,** asked for favorable consideration of HB 40.

**Don Waldron, Montana Rural Education Association (MREA),** noted MREA's support of HB 40.

**Jim Anderson, Superintendent of Schools, Colstrip,** stated the "unsatisfactory performance" criteria would improve evaluation procedures. He urged support for the bill.

**Ron Stegmann, Superintendent of Schools, East Helena School District,** noted the evaluation system should be in agreement with the accreditation standards. He said this would require "satisfactory performance" to be included as a criteria in the evaluation process.

Jack Regan, Assistant Principal, Custer County High School, sent in written testimony. EXHIBIT 2

Jack Nesbit, Self, Miles City, sent in written testimony supporting HB 40. EXHIBIT 3

Opponents' Testimony:

Phil Campbell, Montana Education Association, stated his opposition to HB 40 is not because he opposes the evaluation procedure, but because statute 20-4-207 has nothing to do with tenure. He said this law applies to both tenure and non-tenure. Mr. Campbell described the difference between dismissal and termination. He defined dismissal as a firing while under contract during the middle of the year. Mr. Campbell explained that termination during the contract period can only occur for immorality, unfitness, incompetence, failure to follow board policy. He indicated teachers may be fired for unsatisfactory performance under the present evaluation procedure, and that tenure was not an assurance of life-long employment. Mr. Campbell disagreed with Mr. Frazier that the bill would improve the evaluation process. He stated the Colorado statute, noted earlier, contained further language, "just cause" and "due process", which made the Colorado bill more comprehensive.

John Malee, Montana Federation of Teachers, noted his opposition to HB 40 for the reasons stated by Mr. Campbell.

Questions From Committee Members and Responses:

REP. DOLEZAL questioned Mr. Frazier about the determination of unsatisfactory performance as it differs from incompetence. Mr. Frazier noted that job descriptions within each school district would determine the performance standards for teachers and administrators. REP. DOLEZAL asked for a response to the comment made by Mr. Campbell with regards to the evaluation procedures already making provisions to dismiss an individual at any time because of unsatisfactory performance. Mr. Frazier said this was true but that most cases end up in litigation. He indicated too much time and money are spent arguing about the confusion surrounding the definition of incompetence. Mr. Frazier noted it was helpful to add more to the definition of performance.

REP. SPRING requested Mr. Campbell to comment on his opposition to the bill if it did not improve the situation. Mr. Campbell responded this type of dismissal can occur now and he was fearful it would make it easier to break a contract during the middle of the school year. Mr. Campbell stated it was much harder to prove incompetence than unsatisfactory performance.

REP. DAILY asked Mr. Frazier to define the terms incompetence and unsatisfactory as they relate to performance. Mr. Frazier defined incompetence as ineffectiveness, and unsatisfactory as an unfulfillment of a job description. REP. DAILY stated he did not know the difference between the two and asked if evaluation of performance was in the dictionary with reference to the word unsatisfactory. Mr. Frazier commented that lawyers he had spoken with over the past few days agreed there was little distinction between ineffectiveness and incompetence. He said he did not speak with them about the term unsatisfactory.

REP. DAILY asked REP. JOHNSON who had requested this piece of legislation. REP. JOHNSON replied it was requested by Mr. Anderson.

REP. BRANDEWIE asked if it was fair to allow students to be subjected to a teacher who was not performing his or her job. He stressed in such cases the teacher would not be preparing the students for future classes in subjects that are essential building blocks for further knowledge. Mr. Campbell explained standards between districts may differ. He said if a teacher is blatantly unable to perform, they would most probably be considered incompetent.

REP. DOLEZAL asked Dr. Richards how many teachers at Miles City he could not dismiss because of the difference in the proposed definition. Dr. Richards replied he could not give a specific instance where that was the situation. REP. DOLEZAL asked if there were cases in which proper evaluation procedures were followed and dismissal could still not take place. Dr. Richards remarked there were instances where dismissal was thwarted by the language of the present law. REP. DOLEZAL asked if this could be addressed within contract negotiations at the local level in individual district evaluation procedures. Dr. Richards responded it could not.

REP. ELLIS asked Mr. Anderson if the bill does indeed not change anything, as remarked by Mr. Campbell. Mr. Anderson noted he disagrees with Mr. Campbell. He commented the difficulty with the word incompetence was in its definition and with the inability to prove an individual's incompetence.

REP. BRANDEWIE requested Dr. Richards to comment on a situation where a school board of trustees could not dismiss a teacher in the middle of a contract. He asked if the only option of the board would be to buy the contract back from the teacher. Dr. Richards responded there was no reason to buy back the contract unless it could be proven the teacher could be fired under the current law. Dr. Richards remarked he did not see it as a viable option.

REP. ROSE asked Mr. Campbell how many tenured teachers were let go in Montana last year and at what cost to the school districts. Mr. Campbell answered he did not have that information with him

but could provide it if desired.

REP. WYATT asked Mr. Anderson whether, in his opinion, the role of the Legislature was to address the perception or the realities of the inequities in law. Mr. Anderson noted the Legislature has the role of establishing the law, and if inequities exist to address them as well. REP. WYATT asked why Mr. Anderson did not perceive this piece of legislation as interfering with his responsibilities as an administrator. Mr. Anderson responded it was true the responsibility does lie with the administrator, but he stated not all individuals perform satisfactorily throughout the duration of their employment. He said he believed HB 40 would assist in the evaluation process.

REP. DOLEZAL asked whether Mr. Anderson's district allows for continued evaluation during the time of employment to assess the rate of progress of a teacher. Mr. Anderson said in his district, non-tenured teachers are evaluated twice per year, and then once per every second year, minimum, on tenured individuals.

REP. SIMPKINS requested Mr. Anderson to respond to the statement that instructional ineffectiveness would be an output measurement, and that unsatisfactory performance would be an input measurement. Mr. Anderson did not agree. He said performance can be measured as an output product. He noted the main reason for including the language of unsatisfactory performance was to simplify the definition of instructional ineffectiveness. REP. SIMPKINS stated perhaps the only proper way to measure instructional ineffectiveness was by a student's ability to learn, i.e. her/his performance, whereas unsatisfactory performance is the ability of the teacher to provide input to a student. Mr. Anderson remarked that student performance is a measure of instructional effectiveness, but not the only measure.

Closing by Sponsor:

REP. JOHNSON indicated HB 40 would not make the dismissal of a teacher any easier. He stated it would merely put words into present law that are more comprehensive and readily understood.

HEARING ON HB 83

Opening Statement by Sponsor:

REP. DAILY, House District 69, Butte, stated he introduced HB 83, his own piece of legislation, because of decisions made by the Legislature regarding school funding over the past few sessions. He said the bill affects tenured teachers and would require the rehiring of teachers who lost their jobs because of financial reasons. REP. DAILY indicated rehiring would take place if the financial situation improved over the subsequent four years.

Proponents' Testimony:

John Malee, Montana Federation of Teachers, noted MFT's support for HB 83.

Phil Campbell, Montana Education Association, asked that MEA be put on record in favor of HB 83.

Opponents' Testimony:

Bruce Moerer, Montana School Boards Association, stated MSBA opposes HB 83 because of the term "resolved." He commented on difficulties that occur when a school levy is defeated, reduced, then passed. He questioned the criteria used to decide which of those teachers originally let go should be hired back. Program reduction changes could also create problems. Mr. Moerer suggested HB 83 would sacrifice present rules of the collective bargaining process.

Don Waldron, Montana Rural Education Association, announced MREA was not against the intent of the bill, but believed it should be left for individual district negotiations.

Loran Frazier, School Administrators of Montana, noted the intent of the bill was desirable, but suggested it affected smaller schools unfairly and complicated circumstances surrounding program cuts. Mr. Frazier questioned how one decides when a district is financially solvent enough to rehire the teachers.

Questions From Committee Members and Responses:

REP. SPRING asked REP. DAILY if he would be amenable to changing line 12 on page 3 to read "within the next year" in place of "within the next 4 years." REP. DAILY responded that would be acceptable.

REP. MILLS remarked about the possible condition where an individual might not want to be hired back, but the language of the bill uses the word "must." REP. DAILY commented with the use of the word "must", the option to be rehired is inherent.

Closing by Sponsor:

REP. DAILY asked for favorable consideration of the bill, stressing teachers and administrators need to work together. He said he would work on an amendment to the bill regarding program cut backs. He emphasized the intent of the bill was to offer individuals some degree of re-hire assurance.

HEARING ON HB 25Opening Statement by Sponsor:

REP. DAILY, House District 69, Butte, explained HB 25 is designed to change the structure and current membership of the Board of Regents. It is offered as an amendment to the Constitution, Article 10, section 9, and would provide for nine members instead of seven. REP. DAILY offered that three members would be chosen from the House of Representatives, three would be members of the Senate, and three members would still be appointed by the governor. He stated one of the members selected by the governor would still be a student regent. REP. DAILY proceeded to give guidelines for selecting members and the rules surrounding their appointments. He said the Legislature needs to have more impact on the university system and needs to be more directly involved in the decision making process.

Proponents' Testimony: None.

Opponents' Testimony:

LeRoy Schram, Legal Council for the Montana Board of Regents, insisted the higher education system in nearly every state in the country is composed of lay individuals, either selected by the governor or by the legislature. Mr. Schram said no other state has a system similar to one proposed by HB 35. He commented on the Montana Education Commission for the 90's and Beyond, appointed by Governor Stephens. He suggested this appointed body could satisfy the requirement that the Legislature be more directly involved in the university system decision making process. Mr. Schram said SB 77, which continues the commission for another two years, would be a more appropriate bill to support.

Jodie Farmer, Montana Associated Students, provided written testimony. EXHIBIT 4

Todd Mitchell, Associated Students at Eastern Montana College, Northern Montana College, Western Montana College, and Montana Tech, thanked Rep. Daily for offering the bill, but noted more favorable support for the extension of the temporary commission, as stipulated in SB 77.

Questions From Committee Members and Responses:

REP. GERVAIS commended REP. DAILY for introducing the bill and asked if he believed this increase could be upheld by the vote of the people. REP. DAILY responded he believed it could and that it offered Native Americans the opportunity to get a member of their community on the board. REP. DAILY said a down-sizing in the commissioner's office could allow for the cost of the two extra members on the board.

Closing by Sponsor:

REP. DAILY insisted the university system is one of the most serious concerns facing the Legislature. He described HB 25 as an attempt to address the issue.

EXECUTIVE ACTION ON HB 53

Motion: REP. SIMPKINS MOVED HB 53 DO PASS.

Motion: REP. ELLIS moved to amend HB 53.

Discussion:

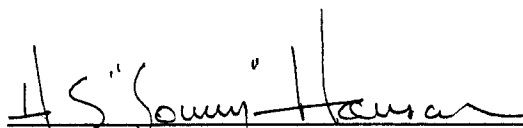
Andrea Merrill, Legislative Council, explained the content of the amendment. She said it changes some language for the sake of clarity without altering the intent of the bill. (See standing committee report.)

Vote: HB 53 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. BRANDEWIE MOVED HB 53 DO PASS AS AMENDED. Motion carried 12 to 6, with Reps. Daily, Dolezal, Harrington, Gervais, McCarthy, and Wyatt voting no. EXHIBIT 5

ADJOURNMENT

Adjournment: 4:58 P.M.

  
\_\_\_\_\_  
REP. H.S. "SONNY" HANSON, Chair

  
\_\_\_\_\_  
SUSAN LENARD, Secretary

HSH/SL



# HOUSE OF REPRESENTATIVES

## Education and Cultural Resources COMMITTEE

ROLL CALL

DATE

1/8/93


NAME	PRESENT	ABSENT	EXCUSED
REP. SONNY HANSON , CHAIR	✓		
REP. ALVIN ELLIS , VICE-CHAIR	✓		
REP. DIANA WYATT , VICE-CHAIR	✓		
REP. RAY BRANDEWIE	✓		
REP. FRITZ DAILY	✓		
REP. ERVIN DAVIS	✓		
REP. ED DOLEZAL	✓		
REP. DAN HARRINGTON			✓
REP. JACK HERRON	✓		
REP. BOB GERVAIS	✓		
REP. BEA MCCARTHY	✓		
REP. SCOTT MCCULLOCH			✓
REP. NORM MILLS	✓		
REP. BILL REHBEIN	✓		
REP. SAM ROSE	✓		
REP. DICK SIMPKINS	✓		
REP. WILBUR SPRING	✓		
REP. NORM WALLIN	✓		

HOUSE STANDING COMMITTEE REPORT

January 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Education and Cultural Resources report that House Bill 53 (first reading copy -- white) do pass as amended.

Signed:   
Sonny Hanson, Chair

And, that such amendments read:

1. Page 1, line 20.

Following: "(2)"

Strike: "A"

Insert: "Upon verification by the county clerk and recorder, a"

Following: "qualified to"

Insert: "file for and"

2. Page 1, line 23.

Strike: "teacher"

Insert: ", current class 1 professional certificate, class 2  
standard certificate, or class 3 administrative and  
supervisory"

EXHIBIT

DATE

1/8/93

HB 40

Amendment - HB-40

The following amendment to HB-40 is submitted by Rep. John Johnson.

SECTION I

Line 13 - Restore the word "---incompetence---".

Line <sup>13</sup>~~12~~ and <sup>14</sup>~~13~~ - Strike---"instructional ineffectiveness---"  
add---"unsatisfactory performance---"



# CUSTER COUNTY DISTRICT HIGH SCHOOL

20 South Center, Miles City, MT 59301  
(406) 232-4920

Fred Anderson, PhD, Principal  
Jack Regan, Assistant Principal  
Ted Schreiber, Activities Director

January 7, 1993

EXHIBIT 2  
DATE 1/8/93  
#B 40

The Honorable Sonny Hanson  
House of Representatives  
State Capitol  
Helena, MT 59601

Dear Representative Hanson:

I am writing to support H.B. 40, the dismissal criteria for a teacher.

Over the years it seems that the biggest cry from the public is the tenure law. People seem to think that teachers can hide behind the tenure law whether they are doing a good job or not. It appears to me that this bill would be another way of giving administrators and school boards the leverage needed to dismiss teachers not satisfactorily performing their duties.

I certainly hope you will give this bill every consideration and note that as a high school administrator it would make my job much easier and more credible in the eyes of the public.

Thank you for your consideration in this matter.

Sincerely,

Jack T. Regan  
Assistant Principal

JTR:dlp

HB-72

+

77

EXHIBIT 3  
DATE 1/8/93  
HB 40

January 7, 1993

Representative Sonny Hanson:

In writing this letter I am asking for your support of HB 40. I believe this bill will better suit the needs of education in Montana than HB 42 and HB 43.

Housebills 42 and 43 appear to be personal vendetta bills which will benefit no one and only create further problems. Again, I ask that you please support HB 40.

Sincerely,

*Jack A. Nesbit*

Jack A. Nesbit  
Miles City, MT  
232-2081

# **COMMON GROUND**

EXHIBIT 4  
DATE 1/8/93  
\$B 25

## **"The Future Relationship Between The State Board of Regents and Its Public."**

**A Report Prepared by The Montana Associated Students(MAS)**

**October 23, 1992**

### **INTRODUCTION**

On September 26, 1990 Governor Stan Stephens' Education Commission for the Nineties and Beyond published a report entitled Crossroads: Montana Higher Education in the Nineties. The commission's report, a bi-partisan effort which emerged from the 1989 Montana Legislature, outlined its recommendations to the Montana public and Montana policy makers. The Commission recommended a series of proposals be implemented over a five year period:

- \*the Board of Regents should target funding for innovative programs within the post-secondary education system, with some funding coming from private donors;
- \*the state should create a "more fully integrated educational system, from kindergarten through graduate school";
- \*transferability of credits throughout the Montana Post-Secondary system should be sought and the Commissioner of Higher Education's office should develop expanded telecommunications programs;
- \*expanded research in the Montana University System is necessary for economic development;
- \*a long-range planning council should be created, appointed by the Governor, which includes the Commissioner of Higher Education;
- \*a uniform budget should be submitted by the Board of Regents(i.e. lump sum appropriation);
- \*the Board of Regents and the Legislature should establish a "Higher Education Planning and Budget Committee";
- \*the Legislature should adopt a policy of funding Montana institutions "at no less than the average of peer institutions"; and
- \*the state should restore its former practice of funding 65% of student instructional costs at the state's community colleges.

EXHIBIT 5  
DATE 1/8/93  
HB 53

HOUSE OF REPRESENTATIVES

Education and Cultural Resources COMMITTEE

ROLL CALL VOTE

DATE 1/8/92 BILL NO. HB 53 NUMBER \_\_\_\_\_

MOTION: DO PASS AS AMENDED

NAME	AYE	NO
Rep. Sonny Hanson - Chair	✓	
Rep. Alvin Ellis - Vice Chair	✓	
Rep. Diana Wyatt - Vice Chair		✓
Rep. Ray Brandewie	✓	
Rep. Fritz Daily		✓
Rep. Ervin Davis	✓	
Rep. Ed Dolezal		✓
Rep. Dan Harrington 0		✓
Rep. Jack Herron	✓	
Rep. Bob Gervais		✓
Rep. Bea McCarthy 0		✓
Rep. Scott McCulloch 0	✓	
Rep. Norm Mills	✓	
Rep. Bill Rehbein	✓	
Rep. Sam Rose	✓	
Rep. Dick Simpkins	✓	
Rep. Wilbur Spring	✓	
Rep. Norm Wallin	✓	

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HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Education & Cultural Resources COMMITTEE

BILL NO. HB 40

DATE 1/8/92 SPONSOR(S) Rep. J. Johnson

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Fred Anderson	SAM	X	
Robert Richards	Miles City / Lincoln School District	X	
Alan Fugle	SAM	X	
Don Waldron	MREA	X	
John Charles	M.F.T		X
Jim Anderson	Colstrip School	X	
Bruce W. Moers	BSBA	✓	
Phil Campbell	MEA		X
RONALD F. STEGMANN	E. HELENA School Dist	X	

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**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

## Education : Cultural Resources COMMITTEE

BILL NO. HB 83

DATE 1/8/93 SPONSOR(S) Rep. F. Daily

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HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Education & Cultural Resources COMMITTEE

BILL NO. HB 25

DATE 1/8/93 SPONSOR(S) Rep. F. Daily

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Jerry H. Schuman</i>	<i>Bd of Regents</i>		<input checked="" type="checkbox"/>
<i>Tim Michael</i>	<i>ASERNA</i>		<input checked="" type="checkbox"/>
<i>John Males</i>	<i>M. F. t.</i>	<input checked="" type="checkbox"/>	
<i>Patrick McCleary</i>	<i>ASUM</i>		<input checked="" type="checkbox"/>
<i>Paula Rosenthal</i>	<i>ASUM - Missula, MT</i>		<input checked="" type="checkbox"/>
<i>John McInstry</i>	<i>ASUM - Lobbyist</i>		<input checked="" type="checkbox"/>
<i>Danna Smith</i>	<i>ASMSU - Lobbyist 442 3758</i>		
<i>Jodie Farmer</i>	<i>NAS President</i>		

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