

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 February 12, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Sonny Hanson, Chair (R)
Rep. Alvin Ellis, Vice Chair (R)
Rep. Ray Brandewie (R)
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: None

Members Absent: Reps. Daily, Harrington, and McCulloch

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 459, HB 494, HB 527, HB 566
Executive Action: None

HEARING ON HB 459

Opening Statement by Sponsor:

REP. BOHARSKI, House District 4, Kalispell, said HB 62, passed last session, reduced amounts deposited in the general fund operating reserves to ten percent of the budget. Under HB 62 delinquent and protested taxes and PL-874 money could be put into the excess reserves account. At the end of the year when a school

districts has money left over in its budget, there are a few options available. The legislature wanted districts to reappropriate the excess amount and spend it in the following year, thereby reducing the number of permissive mills levied. Whenever a permissive levy is reduced, the district can collect below the statewide average mill value for ANB and can receive a subsidy. That subsidy comes out of the general fund. Permissive levies can thus be used to reduce general fund savings. Protest and delinquent taxes and PL-874 money were exempt. House bill 62 contained a contingency clause. The clause made it contingent upon permission from the U.S. Department of Education. If a mistake is made in PL-874 policy the threat is that the state could lose twenty million federal dollars per year. New language was put in the bill to assure no school district in any way, shape, or form could use PL 81-874 money to reduce permissive levies if it will have the impact of reducing state aid. Thus Indian Impact Aid money cannot be used in any way, voluntarily or not, that has an effect on reducing state aid to the school. Use of money in this fashion could run the risk of losing state funding. The main intent of the bill is to take a three year average in the total of PL-874 money in case a district gets short-funded one year. The Department of Education agreed with the plan except if the current year's ratio of PL-874 money is higher than the three year ratio. **REP. BOHARSKI** offered an example. If a school has a budget of \$100,000, 90% of which comes from the state and local taxes and 10% comes from Indian Impact Aid money, \$10,000. This \$10,000 is PL-874 money. If only \$90,000 is spent over the course of the year, current law allows all of that \$10,000 to be put into excess reserves, and does nothing to change the state aid money. Under HB 459, the total amount left over cannot be used to match the amount of the initial PL-874 money since the amount of money spent probably went out as a ratio of the original amounts collected. In this example, of the \$90,000 spent, the district probably spent 90% or \$9,000 of the original \$10,000 of Impact Aid money. Under the bill a district can only put the unused ratio of the original amount and not the total of the original amount into the excess reserves account. The impact of the bill would require the "extra" money, formerly considered unused PL-874 money, would now need to be reappropriated or put into the general fund reserves. A letter from the U.S. Department of Education (USDE) written to Rep. Boharski on this subject was presented to the committee. Amendments to the bill were offered. **EXHIBITS 1 and 2**

Proponents' Testimony: None.

Opponents' Testimony:

George Ochenski, Confederated Salish-Kootenai Tribes and the Flathead Nation, read testimony from Michael T. Pablo, Chairman of the Confederated Salish and Kootenai Tribes. **EXHIBIT 3**

Lee Clark, Superintendent of Browning Public Schools and President of Indian Impact Schools Association of Montana, said HB 459 would severely affect educational services for children. He suggested the passage of the bill could be a violation of Public Law 81-874. One mistake in letting the PL-874 funds offset the permissive could cost the state a great deal of money. **Mr. Clark** stressed loss in Impact Aid money would end up increasing local tax dollars. He asked the committee to vote against HB 459.

Edward P. Whiteman, Chairman of the Board of Trustees, Pryor Public Schools, explained with HB 459 schools could jeopardize PL-874 recipients in the state of Montana. House bill 459 has the potential of requiring school districts to violate the provisions set forth under current law. He stressed HB 459 seems to specifically target school districts such as his own. **Mr. Whiteman** affirmed the money targeted in the bill is greatly needed to fulfill the educational needs of Native American children.

Douglas Sullivan, Superintendent of Poplar School District, said seventeen million dollars is received by the state of Montana for students residing on Indian lands. Of the seventeen million dollars approximately 1.3 million dollars is what is called the special education add-on, and approximately 3.9 million dollars is called the Indian add-on. This total of 5.2 million dollars is money the State of Montana cannot tap into or reappropriate against the permissive. The total for general purposes is reduced to 11.8 million dollars, not the 22 million dollars as previously stated. **Mr. Sullivan** commented on the choice for a three year average and asked what the condition would be if a five year average exceeded that of the three year one.

Dr. Gayle Crane, Superintendent of the Arlee Public School District, said it was difficult to understand why Indian Impact Aid reservation schools continue to be singled out in legislation. She noted statistics show Indian teenagers have significantly higher suicide and drop-out rates. In a time when the greatest predictor of school success depends upon the educational level of a student's mother, fewer Native American women than other cultures in the states graduate from high school, and even fewer graduate from college. **Dr. Crane** noted Indian Impact Aid money has helped to make up additional funding needs to address the questions and problems of teenage pregnancy, alcohol, and other drugs. She stressed she opposes any legislation, and specifically HB 459, which singles out reduction of Impact Aid or reductions resulting in a loss of GTB money for reservation schools.

Bill Sliffarm, Board of Trustees Vice-Chairman, Harlem Public Schools, stated the Native American population of students in Montana is ten percent. He suggested HB 459 targets this portion of the minority in the state. **Mr. Sliffarm** emphasized his tribe wishes to maintain its tribal sovereignty. He offered Public Law 81-874 has been amended many times. It was observed Indian

students are at risk and HB 459 would threaten the funds required to give these students the attention and educational programs they need. He urged the committee to vote against HB 459.

Bruce Moerer, Montana School Boards Association, stated MSBA opposes HB 459. He stressed somewhere someone could make a mistake and jeopardize 874 funding for the state. By saving the state money, excess reserves will be taken away from those districts with very significant needs. He commented reservation schools need the money much more than the state and urged the committee to defeat the bill.

Sandra Murie, Superintendent of Rocky Boy Public Schools, voiced her opinion against HB 459 because it clearly violates Public Law 81-874. She asked the committee to request the state attend to that criteria before any action is taken.

Nellie Sherman, Superintendent of Dodson Public Schools, remarked 50% of Dodson Elementary School students are Native American, most of whom live on Fort Belknap Reservation. Roughly ten percent of the Dodson School's total budget fund comes from PL-874 money. She said their reserve is already at five percent.

Ivan Small, Assistant Superintendent of Browning Public Schools, explained it was noted Impact Aid is Reservation money. He said this cannot be true when in fact one hundred four schools in Montana to receive PL-874 aid are not Indian schools. Fifty-six of the one hundred four schools that receive PL-874 funds have money in excess reserves. Thirty-five of the fifty-six have less than one hundred thousand dollars located in these reserves. Twenty-nine of the fifty-six have less than fifty thousand dollars. He stressed HB 459 will reduce state aid in the form of guaranteed tax base amounts.

Rod Svee, Superintendent of Hardin Public Schools, reported there are contractual agreements between the State of Montana and various tribes within the state. He noted the process to obtain PL-874 money is very complicated and said HB 459 has the potential of becoming a very confusing bill. He emphasized one violation on the part of any school who receives PL-874 money could result in a costly error to every school receiving such money.

Daniel Sybcant, Superintendent of Pryor Public Schools, cautioned the committee on the complexity of the PL-874 funding system. He said violations to the Impact Aid law could have farther reaching ramifications to school districts, not only for 874 recipient schools but all school districts and taxpayers across the state. He exclaimed although the superintendent of OPI and **REP. BOHARSKI** both received information from the Department of Education, the information they received was contradictory. Based upon the experience of his school district, he emphasized the state cannot afford to take the risk and threaten Impact Aid money. **Mr. Sybcant** mentioned PL-874 money most directly affects Native

American and military base children as well as those students who live in national parks. Taxpayers of the state would have to absorb the constitutional responsibility and cost of educating children residing on these lands when the system for funding the educational responsibility is already in place, through Public Law 874.

Lynda Brannon, Indian Impact Aid Schools, stood in opposition to HB 459. She commented on the obvious violation of public law 81-874 as disclosed by the fiscal note.

Loran Frazier, School Administrators of Montana, expressed SAM's opposition to the bill. He said he did not understand why the legislature insists on talking about PL-874 money without a school equalization plan in place.

Larry Fosbender, Great Falls Public Schools, asked to go on record in opposition to HB 459.

Phil Campbell, MEA, asked MEA be recorded against the bill.

Don Waldron, Montana Rural Education Association, asked to go on record in opposition to HB 459.

Don Wetzel, Superintendent of Harlem Public Schools, presented written testimony in opposition to HB 459. **EXHIBIT 4**

Donovan Archambault, Tribal Councilman for the Fort Belknap Reservation, advised the committee it is the Fort Belknap Tribal Council request that HB 459 be defeated.

Questions From Committee Members and Responses:

REP. GERVAIS asked the sponsor if it was his intention to terminate Public Law 81-874. **REP. BOHARSKI** replied it was not.

REP. GERVAIS asked if the sponsor was willing to gamble seven hundred fifty thousand dollars for forty-four million dollars the state will receive in the biennium. **REP. BOHARSKI** replied the issue the legislature faces with HB 459 is a question of honesty. He referenced the bill, pages 2 and 5, and said the language in the current law has caused all of the problems. He said it has nothing to do with the intent of HB 459. The problem language is contained in the line "any unreserved fund balance that is equal to or less than the prior year's excess reserves as provided in subsection (5) may be used to reduce the permissive levy provided by 20-9-145 or to:..." The part to be stricken is "...reduce the permissive levy provided by 20-9-145 or to:..." He said if those reserves were used by a district to reduce the permissive levy they would, voluntarily or involuntarily, reduce their state aid. This was not acceptable. The U.S. Department of Education stated the problem occurred the moment the language was changed.

REP. GERVAIS observed the fiscal note described a reduction of three hundred seventy-nine thousand dollars per year in state aid, a clear violation of Public Law 81-874.

REP. ELLIS asked Bruce Moerer if the subject under consideration is money left over at the end of a budgeted year. Mr. Moerer replied they were discussing excess reserves. REP. ELLIS asked how the excess reserves are obtained. Mr. Moerer replied they were created by money within the budget not spent during the current school year.

REP. ELLIS asked if the students are in such need of these funds, as was argued by most of the opponents, why money is in excess at the end of the year. Don Wetzel replied the Arlee District does not have that much excess. REP. ELLIS asked for clarification on the phrase "that much." Mr. Wetzel said the money in Arlee's excess reserves is very little. REP. ELLIS exclaimed the bill would then not severely affect his district. Mr. Wetzel said his approach comes from the whole issue of Impact Aid and stressed he was against any measure threatening the security of those funds. REP. ELLIS asked Mr. Wetzel how it helped his district to build a reserve above and beyond the reserve maintained by all schools. He then asked if the excess reserve exists as a separate account and therefore as a second reserve. Mr. Wetzel referred the question to Douglas Sullivan who replied the money in excess at the end of the year was put into the same reserve account. Mr. Sullivan stated his district's reserve account has thirteen to fourteen percent in their excess reserves, an amount above the mandatory ten percent. He noted since his district was so heavily impacted by federal dollars the extra three or four percent is needed as a buffer in case of a delay in federal funding.

REP. SIMPKINS asked Mr. Sullivan if the total base amount a school receives depends upon the percentage of Native American students in attendance at the school. Mr. Sullivan said schools in Great Falls get funded for military students on the basis their parents work and live on federal land. The law allows his district to receive 100% of the base amount because their Native American students live on Indian land. He declared the 100% received has nothing to do with race. REP. SIMPKINS said the schools receive 100% of the base amount which is part of the 11.8 million. They get an additional 25% because of students living on reservation lands. Mr. Sullivan said his district receives the additional 25% for students who live on Indian lands and emphasized it was not a race issue. The student could be a white individual living on Indian lands. REP. SIMPKINS asked if it was true Great Falls receives 25% of the base amount for its students while Mr. Sullivan's district receives 125% of the base amount. Mr. Sullivan responded by affirming his district receives the 125% amount because most of its students live on federal lands.

REP. SIMPKINS asked if it was correct that any time money is spent by the district part of it is state money and part is PL-874 money. Mr. Sullivan said he would not like to presume to

speak for **REP. BOHARSKI** what he is trying to achieve with the bill. He stressed Impact Aid dollars in the district's excess reserves provide the district with the protection it needs to guarantee the education of its children. **REP. SIMPKINS** emphasized the issue under consideration is the present laws. He declared any time PL-874 money and state funding (local tax dollars) are spent the percentages run through every account and the district cannot pick and chose the funding source for each expenditure of money. **Mr. Sullivan** said **REP. SIMPKINS** comment emphasizes the principle point of the discussion.

REP. ELLIS asked **Mr. Sullivan** to explain why the PL-874 money distribution would be irregular. **Mr. Sullivan** answered his district could receive money this year they were entitled to have in 1988. **REP. ELLIS** asked him to identify a heavily impacted PL-874 school. **Mr. Sullivan** replied "super-eight" schools under the Impact Aid law have budgets comprised of twenty percent or more of PL-874 money. **REP. ELLIS** asked if there were any schools in attendance with budgets constituting more than twenty-five percent of PL-874 funds. (No school spoke as having such a high percentage of PL-874 funds as part of their budget.)

Closing by Sponsor:

REP. BOHARSKI observed **REP. SIMPKINS** was correct in his approach to the bill. **REP. BOHARSKI** referencing the letter from the USDE, stated "the Department considers ending cash balances to be Impact Aid in the same proportion that Impact Aid revenues are to be total revenues." He emphasized, for example, a school with a total budget of one million dollars, fifty percent of which is Impact Aid. At the end of the year if they only spend fifty percent of their money they would have \$500,000 remaining. **REP. BOHARSKI** noted school superintendents might chose to put the excess amount into excess reserves. He noted any school with general fund reserves over ten percent is breaking the law. He exclaimed the money has to be deposited in the excess reserves account. He noted this would have an effect at the state level the next year because of the state's constitutional obligation to equalize schools. If schools put all of the money into excess reserves, they will ultimately come to the state to fulfill the next year's budget. **REP. BOHARSKI** asked if it seemed unreasonable that out of the \$500,000 spent, \$250,000 would come from state and local monies and \$250,000 would be derived from federal money. He reported after the passage of HB 62 every school with which he was familiar went back to their books, some as far as 1982, and put into excess reserves any money they could identify as Impact Aid money. It resulted in schools being able to save all or most of their PL-874 money while spending only money contributed by the state. He said the majority of the testimony presented today stressed these schools need special attention and extra money. **REP. BOHARSKI** stressed the state does treat them specially. The constitution requires the state to do so under the same section as the equalization statutes. He also noted these schools are not required to count their PL-874 money

against state revenues. Browning school is spending about four hundred percent of the foundation schedule amounts. Kalispell, on the other hand, spends about one hundred thirty-five percent of the foundation amount. **REP. BOHARSKI** stressed the state is trying to meet two conditions. The first of which is to equalize schools, under constitutional direction, and then to make sure it does not violate federal law. He adamantly declared state aid cannot be reduced under the bill with 874 money. The bill mandates schools will not use PL-874 money. In closing, **REP. BOHARSKI** stressed the bill does not touch any money already existing in any excess reserves account.

HEARING ON HB 527

Opening Statement by Sponsor:

REP. BROWN, House District 72, Butte-Silverbow, said HB 527 is being introduced for the university system, not on their behalf. Since the relationship between the Legislature, the Governor, and the Board of Regents has become so tenuous there is need for HB 527. The bill would put the university system back under the control of the legislature. It would change the Board of Regents from the present structure to one which includes the presidents of each unit (the governor would appoint an individual from the different colleges and Vo-Tech schools). Those individuals would pick a chancellor to run the system, and would in effect eliminate the commissioner's office. **REP. BROWN** declared the people of Montana demand that the legislature look at this issue. HB 527 is an attempt to correct the present situation by putting the university system under the direction of the governor and the legislature where it rightly belongs. He said the political balance will be maintained because it will be required of each member to depend upon the support of the others. He noted there is an increasing animosity between the managing structure of the university system and all the people involved in running the universities. House bill 527 will help to alleviate this problem. **REP. BROWN** affirmed if the bill is brought to the vote of the public it will be passed by an overwhelming majority.

Proponents' Testimony: None.

Opponents' Testimony:

Fred Freedman, Montana Associated Students, stood in opposition to the bill. He said the problem rests with communication not the present structure of the system. He suggested the presence of school presidents on the board will not help to reduce disagreement but may in fact result in greater in-fighting for money in times of fiscal austerity. **Mr. Freedman** commented if the committee believed the bill would correctly address the situation and chose to pass it, that an amendment to add a student regent to the board be considered. Written testimony was provided.

EXHIBIT 5

LeRoy Schram, Legal Council for the Board of Regents, discussed what he believed some of the ramifications of the bill could be. He said the bill could be the end of any kind of existing system. It would guarantee basically a continuation of the status quo, structurally and programmatically. He said it would basically shut the governor out of any significant role in the university system government. The governor would be unable to appoint the majority of the members to the Board of Regents. **Mr. Schram** commented HB 527 would move in a direction completely opposite from what he believes the system needs.

Questions From Committee Members and Responses:

REP. MCCARTHY asked the sponsor how putting the university presidents as regents would improve the present situation. She noted they would be able to set their own salaries, set their own working conditions, and effectively would have complete control over their own positions. **REP. BROWN** responded the legislature would set the salaries and would draft the statutes controlling how those appointments are made. It would be his expectation these decisions would be made by the governor and probably confirmed by the Senate. The legislature would set the basis for all of those items.

REP. MCCARTHY asked if the legislature would need to be called into session each time a university president decided to quit, even if it was in June. **REP. BROWN** replied it would be a normal process for an individual appointed by the governor to serve in the interim until such time as the next legislature meets. He believed the legislature would approve whomever the governor would appoint, based on past such appointment successes. **REP. MCCARTHY** stressed her question dealt with the appointment of a new president to a university if one chose to leave at a time the legislature was not in session. She asked if the legislature would have to approve and set the salary for the new president. **REP. BROWN** explained the salary issue could be addressed in statute. The governor could be given the authority to do so with the understanding she/he would consult the legislature upon the start of the new session.

REP. SPRING asked LeRoy Schram about his comment regarding the bill as taking the governor out of the process. **REP. SPRING** asked who would be the deciding vote in the event of a tie among members of the Board of Regents. **Mr. Schram** replied there are nine members so there should not be an event such as a tie, but the governor and the superintendent of the office of public instruction remain as ex officio non-voting members. He noted there is no provision for breaking a tie, but there is little need for one as there are an odd number of members on the board.

REP. ELLIS asked **Mr. Schram** if credits obtained during the junior and senior year at the university could be transferred as easily as credits at the freshman and sophomore levels. **Mr. Schram** said the existing transfer manual deals mainly with core curriculum

courses, those generally taken within the first two years of study. The transfer of upper division courses has not yet been dealt with in this fashion by the commissioners office. He replied he did not know but suspected there would be more discretion on the part of the universities to accept or reject those credits. **REP. ELLIS** asked if he was aware of any timetable to address this issue. **Mr. Schram** replied he was not. **REP. ELLIS** asked how long the present quorum with the Board of Regents been in existence. The answer was given as 1972. **REP. ELLIS** asked when the university course transfer manual was finally finished. **Mr. Schram** replied in 1992. **REP. ELLIS** said if the system was changed it could possibly take longer than twenty years to address a simple matter like getting the universities to work together and not expand student bodies by making it difficult for students to transfer. **Mr. Schram** noted this shows that even under the present system, with a relatively strong Board of Regents, the ability of the presidents to protect their own interests is enormous. He stressed the bill would just exacerbate the problem. **REP. ELLIS** asked if the governor had the ability to appoint the presidents didn't **Mr. Schram** believe the movement would be faster rather than slower. **Mr. Schram** replied he did not believe this would be the case. Right now the presidents are appointed by a central authority, the Board of Regents. He suggested once an individual is chosen it is inevitable their focus becomes campus based because of the constituencies they must serve. He suggested a central authority is needed to offset the eventuality of locally directed concerns.

REP. ROSE asked **Mr. Schram** how he accounts for the cost of administration in relation to the overall total costs of running the system. He stated only about 43% of the money in the university system actually reaches the classrooms and the students. **Mr. Schram** replied most of the public would like to believe the administrative costs are higher than at comparable institutions. He remarked none of the figures seem to indicate such. He said compared to similarly sized institutions in the area, the universities actually spend less. **REP. ROSE** asked if he would comment on the recent gag order. **Mr. Schram** responded by saying it was an unfortunate misunderstanding. Referring to the recent court case he stated the letter sent to the budget director could have contained more moderate terms. The Board of Regents has never said university presidents may not speak to legislators. The Board did request however that it be informed of conversations on matters of substantive university legislative policy. The Board of Regents is trying to prevent the universities from negotiating their own deals.

REP. SIMPKINS asked if it was true the legislature passed two or three resolutions in 1989 that directed the universities to coordinate on the transferability of credits, a common calendar, and to issue a AA or AS degree in the Vocational-Technical Centers. **Mr. Schram** replied all three of the requests of the Legislature are now completed or are being performed. **REP. SIMPKINS** emphasized the Regents have full power and governance

and could close down one of the campuses and move programs from one campus to another yet it took an act of the legislature to tell them just to get the system coordinated. **Mr. Schram** said although the Board has the authority to close a campus it announced it has no intention or interest in closing down such unit without the acquiescence of the Legislature.

REP. MCCARTHY reported during the time she was on the Board of Regents, it not only studied the closing of campuses but also the closing of programs. She announced the Board was stopped by the legislature.

REP. SIMPKINS commented he asked the legislative auditor to review why the Board of Regents does not function according to the constitution. The response was disturbing in that it indicated it was because the constitution requires a unified budget, a long-range plan, and a review of the education policies of the state. It indicated the laws the legislature has passed state each campus must prepare its own budget. **REP. SIMPKINS** suggested it was laws passed by the Legislature that hamper the effectiveness of the Board of Regents. He asked if it wouldn't be better to look at these laws instead of changing the constitution. **REP. BROWN** said the Legislature has probably passed a number of statutes which have given the Board contradictory authority and direction. He stressed the main problem is that the Board still operates as a separate entity beyond the Legislature's control of the budget.

REP. SPRING asked the sponsor for the number of staff and the total expense of running the office of the commissioner of higher education. **REP. BROWN** referred the question to **Mr. Schram**. **Mr. Schram** replied over half of the employees are employed by the guaranteed student loan program. The student loan program used to be contracted out but it now employs thirty eight individuals, all of whom are paid by fees and money from the federal government. In terms of general fund, about thirteen to fifteen general fund individuals are employed in this area. The number of general fund employees has not gone up since the early seventies.

Closing by Sponsor:

REP. BROWN commented it is about time the Legislature understands the university system is "state supported economic development." He noted the removal of any one of the university units in the state would decimate the community in which it was located, with perhaps the exception of Billings. If it is looked at on that basis, the bill does not force the state to give up any high-minded principles for academic quality. He stressed it was important to let the control of the system be brought back to the body responsible for allocating funds and is elected by the people to control the future of the state. **REP. BROWN** pronounce the Board of Regents as being very non-productive in getting the units of the system to act. The main concern is communication and **REP. BROWN** affirmed the major impediment in achieving better

communication needs to be removed. He identified this impediment as the Board of Regents and a non-elected commissioner of higher education, who prevents the kind of communication the legislature needs to run a decent university system. **REP. BROWN** urged the committee to strongly consider this proposal and have it pass to the floor so it may be addressed by the full House.

HEARING ON HB 566

Opening Statement by Sponsor:

REP. SWANSON, House District 79, Bozeman, said the bill addresses the bonding requirements of school districts. Currently if a school district goes out to bid beginning at \$7500 they have to get competitive bids, but they have to get bonded at \$5000. She noted the bill lists the requirements for bonding to \$7500 to match the level at which they have to get competitive bids. She noted it was basically a clean up bill.

Proponents' Testimony:

Bruce Moerer, Montana School Boards Association, noting the bill came through MSBA, asked the committee to support HB 566.

Gary Griffith, Employee of the Bozeman School District and Trustee of the Monforton School District, stressed HB 566 is simply a "house-keeping" bill. At the present time, for \$7500 and above, districts are required to produce specifications that are quite restrictive. He noted districts do follow these requirements but for amounts below the \$7500 they are not required to get bids. **Mr. Griffith** explained bonding is an exemptive process, and is really not necessary at such a low amount. Courts presently have the ability to waive the requirement for bonding below \$5000, but not between \$5000 and \$7500. He stated all HB 566 would do is raise the waiver from \$5000 up to \$7500. He urged the committee to pass the bill.

Don Waldron, Montana Rural Education Association, noting this type of bill will help smaller schools, asked for favorable consideration of HB 566.

Loran Frazier, School Administrators of Montana, stood in support of the bill.

REP. SPRING, House District 77, Belgrade, asked to go on record in support of HB 566.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. SIMPKINS, commenting on the new section added which takes care of all the communities and everyone else in addition to school districts, asked the sponsor why that was not done in HB 566. He suggested cities and other places would like to have this done instead of creating another exemption for school districts.

REP. SWANSON replied she had the same question. The response she received was that no-one else requested it and the school districts did not want to assume the other entities desired such a change. She noted it might be an appropriate amendment to remove the station between them and raise the monument bond of \$7500. REP. SIMPKINS asked if she had any objections in having the bill amended to cover cities and towns also. REP. SWANSON replied she had no reservations about such an amendment.

Closing by Sponsor:

REP. SWANSON noted on line 20, page 3 the word "may" would allow a school district to bond if they felt they had a need to do so.

HEARING ON 494Opening Statement by Sponsor:

REP. DOWELL, House District 5, Kalispell, suggested the bill could do a great deal if given the chance. He said he hoped the committee will chose to pass HB 494.

Proponents' Testimony:

Robert Runkel, Director of Special Education at the Office of Public Instruction, explained HB 494 updates Montana statutes to be consistent with the Individuals With Disabilities Education Act and with implementing regulations. It would allow state statutes with regards to special education standards and practices to meet federal law and regulations.

Don Waldron, Montana Rural Education Association, stated the Montana School Boards Association and the School Administrators of Montana asked him to notify the committee of their support for the bill. He also asked MREA to be recorded in favor of the bill.

Opponents' Testimony: None.Questions From Committee Members and Responses:

REP. MCCARTHY asked the sponsor or Mr. Runkel if a fiscal note has been requested or will be required for the bill. Mr. Runkel replied the requirements of the federal regulations are already being implemented.

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REP. ROSE asked if a district would need to put in an elevator to accommodate handicapped individuals. Mr. Runkel noted the requirements of special education apply more to the issues of providing national educational programs and not to buildings and matters of that nature.

REP. SIMPKINS asked Mr. Runkel if OPI was planning on adding any new programs which would have a fiscal impact on the educational system because of the bill. Mr. Runkel answered no but said the schools are already required to provide all of the programs called for in the bill, including all of the disability categories.

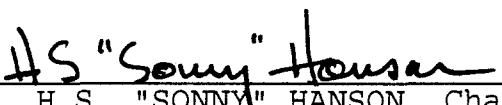
REP. HERRON asked the sponsor if the state was in danger of losing any funds if the bill is not passed. REP. DOWELL referred the question to Mr. Runkel who said the state receives between eight and nine million dollars annually from the government in support of special education programs. He explained this money could potentially be in jeopardy.

Closing by Sponsor:

REP. DOWELL closed the hearing on HB 494 and asked for the committee's favorable consideration.

ADJOURNMENT

Adjournment: 5:35 p.m.



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



SUSAN LENARD, Secretary

HSH/SL

HOUSE OF REPRESENTATIVES

Education and Cultural Resources COMMITTEE

ROLL CALL

DATE

2/12/93

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	✓		



DATE 2/12/93
HB 459

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

4 FEB 1993.

Representative William E. Boharsky
Montana Legislature
State Capitol
Helena, Montana 59620

Dear Representative Boharsky:

This responds to your request for comments on your draft legislation faxed to us on February 3, 1993 that would amend MCA 20-9-104. I understand that it is the intent of the legislation to modify the existing statute with respect to "excess reserves" to prevent circumstances arising that would violate section 5(d)(1) of the Impact Aid law (p.L. 81-874).

As amended by your bill, MCA 20-9-104 would direct the trustees of a local educational agency (LEA) at the end of each school fiscal year to designate a portion of the general fund end-of-year fund balance to be earmarked as an operating reserve to be used to pay certain warrants to be issued in the subsequent fiscal year. Those general fund end-of-year balances not placed in that reserve are known as "excess reserves".

MCA 20-9-104(3) as amended by your bill would govern what happens to excess reserves. It would provide that the excess reserves may be used to reduce the voted levy under MCA § 20-9-353 or the permissive levy under MCA § 20-9-145 "unless use of Public Law 874 money has the effect of reducing state aid."


As we understand the Montana funding formula, use of the excess reserves to reduce the voted levy or general fund net levy would not result in reduced State aid; and therefore those uses present no section 5(d)(1) problems. However, we understand that the permissive levy determines how much guaranteed tax base aid (GTB aid) is paid by the State under MCA § 20-9-367. GTB aid is paid to school districts whose district mill value per "average number belonging" (ANB) is less than the Statewide district mill value per ANB, in essence those with tax bases per student below the Statewide tax base per student. Eligible LEAs receive a certain amount of State per mill of the levy. We further understand that with each cycle the excess reserves are fully expended for tax relief of one or more of these levies.

Page 2 - Representative William E. Boharsky

As you know, the Department considers ending cash balances to be Impact Aid in the same proportion that Impact Aid revenues are to total revenues. Unless an amount at least equal to that proportion multiplied by total ending cash reserves is placed in the operating reserve, a potential section 5(d)(1) violation could occur if the excess reserves are used to reduce the permissive levy. However, the proviso in your draft legislation prohibiting the use of excess reserves to reduce the permissive levy if the "use of Public Law 874 money has the effect of reducing state aid" would seem to guard against this eventuality in the case where an LEA failed or chose not to take full advantage of the operating reserve. Presumably, as a result of that proviso, local educational agencies would be required to use any excess reserves considered Impact Aid to reduce the voted levy which does not affect State aid. Moreover, the proviso appears to outlaw any use of excess reserves considered Impact Aid that would result in a reduction of State aid. That means that even if excess reserves considered Impact Aid exceed the voted levy and were used in part for some other purpose, they could not be used in a manner resulting in a reduction of State aid. Accordingly, if your legislation were enacted, we cannot now envision circumstances arising in which a violation of section 5(d)(1) with respect to excess reserves would occur.

The answer provided above is based on the information and materials you have provided us and our understanding of Montana State law. If we can be of further assistance, please call me (202) 401-3637.

Sincerely,


Charles E. Hansen
Director, Impact Aid Program

Amendments to House Bill No. 459
First Reading Copy

Requested by Representative Boharski
For the House Committee on Education and Cultural Resources

Prepared by Eddy McClure
February 11, 1993

1. Title, line 7.
Following: "OF THE"
Strike: "3"
Insert: "CURRENT YEAR AND THE 2"
2. Title, line 9.
Following: "THE"
Strike: "PREVIOUS"
Insert: "CURRENT"
3. Page 2, line 11.
Strike: "through (7)"
Insert: "and (6)"
4. Page 3, lines 5 and 6.
Page 5, lines 16 and 17.
Following: "(5)" on lines 5 and 16
Strike: remainder of lines 5 and 16 through the first "the" on
lines 6 and 17
Insert: "The"
5. Page 3, line 23 through page 4, line 12.
Strike: subsection (7) in its entirety
6. Page 6, lines 11 through 13.
Following: "in" on line 11
Insert: "the current year or in"
Following: "year" on line 11
Strike: remainder of line 11 through "year" on line 13
7. Page 6, line 18.
Following: the second "the"
Strike: "3"
Insert: "current year and the 2"
8. Page 6, line 21.
Following: "the"
Strike: "previous"
Insert: "current"
9. Page 7, line 12.
Following: "year"
Strike: "beginning July 1, 1994"
Insert: "ending June 30, 1993"

Members of the House Education Committee:

The Confederated Salish and Kootenai Tribes offer the following testimony in opposition to House Bill 459:

1) This bill, as written, weakens the role and control of the districts, Tribes, and parents, insofar as any meaningful consultation is omitted.

2) To mandate property tax reduction, via this bill, is absolutely unacceptable. This violates the intent and spirit of PL 81-874.

This piece of legislation serves no useful purpose nor can its impacts be weighed in any positive manner for our children or the districts on this reservation.

We urge you to defeat HB 459.

Michael T. Pablo, Chairman
CONFEDERATED SALISH AND
KOOTENAI TRIBES

EXHIBIT 4
DATE 2/12/93
SB HB 459

HARLEM PUBLIC SCHOOLS

SCHOOL DISTRICT NO. 12

Junior-Senior High Elementary
P.O. Box 119 P.O. Box 309
Harlem, Montana 59526

Please note: Complete document includes newspaper articles. Complete exhibit may be located at the Historical Society.

February 16, 1993

Floyd "Bob" Gervais
House of Representatives
State Capitol
Helena, MT.

Dear Rep. Gervais,

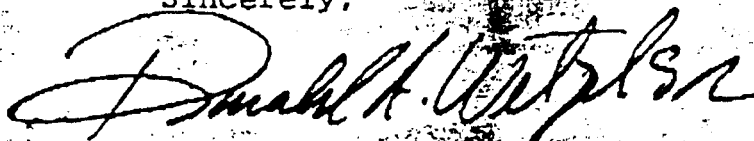
I was adamant about the conditions facing our Indian youth in this country. I have spent a good portion of my career being a positive role model for our youth.

I have traveled the state of Montana speaking to kids in all the schools on or near Reservations. I know the problems and concerns we have in Indian Country. We educate the entire individual in our Indian schools. Physically, mentally, nutritionally, and socially. We run a summer school in Harlem to fit the needs of our kids. Impact Aid dollars enable us to educate 150 students year around. The cost for that program is \$70,000, per summer. We continually teach self-esteem, self-worth, and survival skills.

I look at our Indian youth this way. Say a female and male wolf were captured and put in a zoo. For a short while their survival skills and instincts would remain intact. But soon they would leave. The young ones born in captivity would never know their true instincts, never know their survival skills. A new breed of wolf would be created, marking the beginning of a captive generation of wolves. A new breed of Indian emerged on our Indian Reservations. This was "The Captive Generation". Much like the wolves situation, his true characteristics are only skin deep and he is heavily dependent on his keeper. His natural survival instincts, which include his ingenuity, creativity and individuality were never allowed to flourish. Our Indian youth today are the "Captive Generation".

Our task, as educators, is to teach new survival skills. Technology, science, math, computers, but keep the culture intact with Indian Studies, bi-lingual programs, and awareness of culture and traditions. I am adamant about the dollar I can use to teach our students a new way to survive--EDUCATION!

Sincerely,



BOARD MEMBERS

W. RICHMAN
Chairman

BILL STIFFARM
Chairman

W. ADAMS
Board Member

ATT MCCANN
Board Member

FRANKLIN PEREZ
Board Member

DONALD A. WETZEL
Superintendent
353-2288

KATHLEEN PEREZ
Business Manager
353-2288

MARVIN ANDERSON
Federal Programs
353-2288

BILL TAYLOR
Jr./Sr. High Principal
353-2287

BILL ROBINSON
Elementary Principal
353-2288

Fax #
(406) 353-2874

COMMON GROUND

"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.

However, by far the most substantive and controversial of the Commission's recommendations concerned enrollment ceilings. The Commission said: "We recommend that enrollment limits be placed on the University of Montana, Montana State University, and on some programs at other institutions to reserve them for students who are well prepared to meet the requirements of those institutions and programs." As the picture from the 1991 Montana Legislature emerged, it became clear that many of the goals and timetables adopted by the Commission for the Nineties and Beyond would not be adopted by the Montana Legislature and Governor, particularly in the area of peer funding. No clear policy came out of the 1991 Legislative Session to bring Montana's institutions up to a level of peer funding in a reasonable time frame. After the January 1992 and July 1992 Special Sessions of the Montana Legislature cut back funding for Post-Secondary Education, it became clear that the Montana Legislature and Governor were not moving towards adoption of the Commission's recommendations. In response to the actions of the Legislature and Governor, the State Board of Regents plans to "cap" enrollment based upon a formula method of examining current appropriation levels and peer institutions' budgets.

The July 1992 Special Legislative Session discouraged many Montanans and Montana organizations. The Montana Associated Students are no exception. The genuine anger, frustration, and animosity levelled by many Legislators at the State Board of Regents during the session seemed to shift action from the very important public policy recommendations outlined by the Commission for the Nineties and Beyond towards personal attacks, short sighted budget decisions, and threats of future action. In short, it appeared as though trust, the common ground necessary for thoughtful decision-making, had completely eroded.

With this background in mind, the Montana Associated Students has produced this document with the expectation that elected and non-elected policy makers in the state will genuinely attempt to work together for the benefit of this state's post-secondary institutions and students. Without such cooperation, MAS believes, the need for structural reform of Montana's post-secondary education system may be necessary.

OUR RECOMMENDATIONS

The Montana Associated Students believes that any discussion of structural overhaul or even structural reform is pre-mature. Montana's system of vesting management authority in an appointed State Board of Regents conforms to national and regional tendencies. The only portion of Montana's current administrative structure which is unusual by national standards, is the power of the Legislature to line-item appropriate. This oddity in Montana's system may go a long way toward explaining the animosity between the State Board of Regents and elected officials in the State Legislative and Executive Branches.

The Montana Associated Students believes that the current management structure for post-secondary education will continue into the indefinite future despite pending legislation. An acceptance of that reality, MAS contends, will go a long way towards healthy dialogue on substantive policy questions, particularly those questions raised by the Commission for the Nineties and Beyond.

Our recommendations:

*MAS recommends that the Governor's nominees to the State Board of

Regents undergo a more considerable confirmation process than is currently employed. MAS believes it is the constitutional prerogative and duty of the Montana State Senate to thoroughly examine the qualifications, perspectives, and positions on key Higher Education policy issues before a nominee to the Board is accepted or rejected. Such an examination, MAS contends, appropriately reflects the portion of the state budget The Board of Regents manages and the impact the Board's policies have on citizens of the State of Montana. Concisely put, MAS believes the current confirmation process for nominees to the State Board of Regents lacks probing inquiry.

MAS urges the leadership of the Montana State Senate to institute a more thorough confirmation process by amending its Rules for confirmation. In particular, MAS believes that the Senate Education Committee, Senate Finance and Claims Committee, or an ad hoc committee would all be more appropriate bodies for a confirmation process than the Senate State Administration Committee.

MAS would also like to provide input in choosing the student member of the State Board of Regents. We are of the opinion that the position is tending towards tokenism. For its part, MAS intends to work pro-actively with Montana's next Governor to choose a student MAS can accept as a Student Regent. We ask the next Governor to seriously seek and respect our input on the matter. Additionally, MAS will provide input on future Student Regents through what we hope is an expanded confirmation process in the State Senate.

*MAS strongly urges Montana's next Governor and Superintendent of Public Instruction to regularly attend Board of Regents meetings in their ex-officio capacity. If the next Governor or Superintendent of Public Instruction absolutely cannot regularly attend meetings, MAS urges a high level representative of those offices to attend.

Concurrently, MAS strongly urges the Commissioner of Higher Education to regularly attend meetings of the State Board of Education. Once again, MAS urges regular attendance by Montana's next Governor or a high level representative of the office.

Finally, MAS asks for more formal communication between the Student Regent and MAS' Executive Officers. This communication should take the form of regular attendance by the Student Regent at monthly MAS meetings.

*MAS suggests that an in-house re-organization of the Regents' Committee structure be considered. Currently Administrative, Student Affairs, and Budget Committees form horizontal lines of responsibility. MAS believes that vertical lines of responsibility might better serve the Regents and the administration of the University System. Additionally, MAS believes such a structure might provide more incentive for outside input, particularly legislative input, and campus visits by the Regential committees.

We suggest committees on Vocational Technical Centers, Community Colleges, Four-Year Colleges, and University Units be established.

*MAS applauds and participates in what we perceive as continued attempts to better communication between the State Board of Regents, the Governor, Legislators, University System Administrators, Faculty, Alumni, and Students. The efforts on the part of administration, at

EXHIBIT 5
DATE 2/12/93
SS 163 527

the institutional and system-wide level, to include disparate groups in the discussion of policy questions appear genuine and sustained. The students in the Montana Higher Education System truly appreciate the efforts. More fundamentally, we believe, budget shortfalls have necessitated combining efforts and changing the administrative dialogue from institutional self-interest to system-wide health and cooperation.

*Finally, MAS urges members of the State Board of Regents to expand their interaction with campuses beyond monthly Board meetings. The Montana Associated Students would gladly host Regents on each campus. Visits which include residence life, food service, student government, student union buildings, and class attendance would begin building a level of understanding and trust between the Board and the campus communities it oversees. Such visits, should include numerous conversations with faculty members. In short, greater visibility and more personal contact with students, faculty, and staff is needed.

The public outside of the institutions, elected leaders in particular, seem to be asking for a greater level of interaction between themselves and the Board.

THE FUTURE

The recommendations proposed by the Montana Associated Students presume good faith efforts on the part of elected and non-elected policy leaders in Montana to restore trust between themselves and the public. However, we do not underestimate the level of frustration and animosity which exists in the area of post-secondary education funding. We have seen it too often.

If it is the opinion of a vast number of elected representatives in Montana that the current administrative structure for post-secondary education is beyond reform, the Montana Associated Students will consider and possibly support Constitutional Amendments which are generated by elected leaders. MAS strongly urges that any attempts in this regard follow models currently existing in other states.

CONCLUSION

The need for Montana's policy leaders to advance beyond frivolous accusations, personal attacks, and short-sighted budget decisions and toward sustained, healthy funding for the state's institutions of post-secondary education cannot wait any longer. The Montana Associated Students seeks an advanced dialogue on complicated issues for both our own self-interest and the interest of the State of Montana. Montana's post-secondary education institutions are the foundation for qualitative life and economic development in this state. The Montana Associated Students only desire intelligent, sustained programs to insure the future for these institutions.

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Education & Cultural Resources

COMMITTEE

BILL NO. HB 459

DATE 2/12/93

SPONSOR(S) REP. BOHARSKI

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bruce W. Noer	MSBA		X
Daniel B. Sybcaut	Payer Public Schools		X
Bill Sliffarm	Harlem Public Schools		X
GEORGE OCHENSKI	MICHAEL PABLO - CONFED. SALISH-KOOTENAI		X
Rodney Snee	Hardin Public Schools		X
Ivan Small Iron Horse	Browning Public Schools		X
Edward P. Whitman, Jr.	PAYOR PUBLIC SCHOOLS		
Don Wallron	MREA		X
DONOVAN ARCHAUBAULT	FT. BELLEAU TRIBES		X
Lynda Brannon	Impact Aid Schools		X
LEE CLARK	IFSH & Browning School		X
DONALD A. WETZEL	HARLEM SCHOOL DIST #12		X
Staci Riley	MFT		X
Nellie Sherman	Dodson Public School		X

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.**

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Education COMMITTEE BILL NO. 459
DATE 2/12/93 SPONSOR(S) Rep. BOHORSKI

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Loran Frasier	S Am		✓
Guyde Crane	Arlee SD 85		✓
Phil Campbell	MEA		X

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Education & Cultural Resources

COMMITTEE

BILL NO. HB 527

DATE 2/12/93 SPONSOR(S) _____ REP. BROWN

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
FRED FREEDMAN	MONTANA ASSOCIATED STUDENTS		X
DAVE BROWN	SPONSOR - H.D. #72	X	

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**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

EDUCATION & CULTURAL RESOURCES COMMITTEE

BILL NO. HB 566

DATE 2/12/93 SPONSOR(S) REP. SWANSON

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bruce W. Moeris	BSBA	X	<input checked="" type="checkbox"/>
GARY J GRIFFIN	Bozeman Sch. Dist.	X	
LORAN FRAZIER	SAM	✓	
Guyle Crane	Arlee SD 8J	✓	
Don Walden	MREA	✓	

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**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Education & Cultural Resources COMMITTEE

BILL NO. HB 494

DATE 2/12/93 SPONSOR(S) REP. DOWELL

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Robert Runkel	Office of Public Instruction	X	
Don Waldron	MREA?	X	
Guy W Crane	Arlee SD ST	X	

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