

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By Senator Blaylock, on March 17, 1993, at 3:05 p.m.

ROLL CALL

Members Present:

Sen. Chet Blaylock, Chair (D)
Sen. Harry Fritz, Vice Chair (D)
Sen. John Brenden (R)
Sen. Bob Brown (R)
Sen. John Hertel (R)
Sen. Spook Stang (D)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)
Sen. Bill Wilson (D)

Members Excused: Senator Yellowtail

Members Absent: None

Staff Present: Eddye McClure, Legislative Council
Sylvia Kinsey, Committee Secretary

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

Committee Business Summary:

Hearing: HB 202
HB 527

Executive Action: None

HEARING ON HOUSE BILL 202

Opening Statement by Sponsor:

Representative Kadas said House Bill 202 was a clean up bill and Representative Peck's bill goes in a different direction than this. He suggested the committee work their will on HB 210, pass this bill and make 210 consistent with 202. He said he did not want a fight over attendance centers on this bill.

Proponents' Testimony:

Jack Copps, Deputy Superintendent, OPI, said the Superintendent of Public Instruction rises in support of House Bill 202 which was drafted and introduced at the request of the office. At that point it was a simple and noncontroversial request to clean up some language relating to general accounting practices (GAP) and procedures to clarify some language. On the way to the Senate it was decided this noncontroversial bill needed to be amended to incorporate some language that had nothing to do with GAP. Language was added that would give House Bill 210 a double chance to survive and was taken out of 210 and placed it in 202. It has absolutely nothing to do with HB 202. He asked that this language be amended back out of the bill and HB 202 be allowed to stand on it's own merits. He said HB 210 is a bad bill, HB 202 is a good bill and asked that the two not be mixed.

Kathy Fabiano, OPI, said this bill was introduced at the request of OPI and referred to as a clean up bill because it generally does three things:

1. Amends statutory references that deal with school accounting and budgeting to be consistent with general accepted accounting principles. School districts were required to adopt GAP in '91.
2. Amends some sections of law that were overlooked when House Bill 62 was passed during the second special session. She said that was the bill that changed the way we distribute monies to the schools to address some of the cash flow problems.
3. It clarifies legislative intent and corrects inconsistencies in laws that govern certain payments we make to school districts.

Ms. Fabiano said there are two sections in the bill that define attendance centers and the purpose of those amendments was to clarify how a center's ANB were counted for purposes of calculating the foundation program amount. She reviewed the sections of the bill explaining to the committee what they did and why they did it.

Don Waldron, Montana Rural Education Association spoke in favor of HB 202 and handed out information. (exhibit 1) which was a recommendation to strike language in the bill, (exhibit 2) his written testimony and written testimony from Eli Hofer (exhibit 3) who was unable to be present at the meeting. Mr. Hofer's testimony was in opposition to HB 202 because of the language which had been amended into the bill.

Chair Blaylock said he would depart from normal procedure on this hearing. Testimony on HB 210 was given at the hearing on the bill. Language from HB 210 has been amended into HB 202 and to save possibly an hour or more of testimony, he would like to get the feeling of the committee on striking the language on the

attendance centers which was in 210 and amended into 202. He said the assurance of this committee that they would support an amendment to strike that language would assure many here that this language would be stricken and save them repeating testimony given in opposition to 210.

Senator Waterman said she has had an amendment prepared for HB 202 that would return the attendance center language to the original language as the bill was introduced. She read the language that would be stricken from HB 202 so those attending the hearing would know what it did.

Chair Blaylock said the language on page 4 that has been added would be stricken by Senator Waterman's amendment. No one in the committee objected and Chair Blaylock assured those present that the committee would do this.

Chair Blaylock said Mr. Waldron has spoken and told us he supports the bill but is opposed to the language which we have agreed we will remove.

Ms. McClure, Legislative Staff, handed out proposed amendments which Senator Waterman had requested and referred to. (exhibit 4)

Opponents' Testimony:

Lowell Knowlen Jr., representing himself and the Hutterites, handed in written testimony. (exhibit 5)

David Hofer said his opposition to HB 202 will be taken care of with the language to be stricken in the proposed amendment. He handed in written testimony. (exhibit 6)

Informational Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

None.

Chair Blaylock said the sponsor had left and he would close the hearing on HB 202.

HEARING ON HOUSE BILL 527

Opening Statement by Sponsor:

Dave Brown, House District 72, Butte Silverbow, said this bill is

a constitutional amendment that says the University System will be seven members appointed by the Senate and it's operation will be provided by law. He said this bill received 74 votes in the House. He believed the University System's operation is out of "whack" and is out of "whack" with the Legislature and with the people of the state. He said he had no doubt that if this bill goes on the ballot it will pass 60-40, at least because he believed the public was very concerned about limited access to their University System, the way they have handled programmatic responsibilities and he did not know anyone who could get their degree in four years any more. This costs parents of the students money and he believed we need to review the merits of what the constitutional convention did in this area. He said he is a strong proponent of education and the University System and will continue to be one. He put the bill in to have a good healthy discussion of where we are, and believed it is getting harder for strong proponents of the system to continue as supportive as we have been when we do not believe the Board of Regents pays attention to the kinds of messages we send to them.

Proponents' Testimony:

None.

Opponents' Testimony:

LeRoy Schramm, Legal Counsel to the Board of Regents, gave a copy of his testimony. (exhibit 7)

George Dennison, President, University of Montana, spoke in opposition to HB 527 in it's current form because of his concern for the independence and autonomy of the Montana University System. He pointed out the results of this bill could be potential external interference with the essential freedom for teaching and learning. He was concerned about academic freedom under this bill and urged the committee move with caution in this area. He believed the prudent course would be to charge the reconstituted joint committee of 8 Legislators, 2 Regents and 2 other members to conduct an interim study of higher education funding and organization. He would urge the committee and Representative Brown to table the bill and support an interim study.

Terry Minnow, American Federation of Teachers, which represents the faculty of the U of M, EMC, NMC and WMC as well as the faculty and staff of the 5 Vo Techs, the faculty of Dawson Community College and part time instructors at Flathead Community College. They oppose the bill and their major concern and their major concern is the potential impact on negotiations. They also fear that this bill and this concept will result in faculty unions negotiating directly with the Legislature for wages and benefits.

Bruce Carpenter, President Eastern Montana College, said while

every public university in the country is dependent on their respective state Legislature for funding, there is no state he is aware of with a system such as envisioned by HB 527 which provides for the direct control of the Commissioner by the Legislature by stipulating the term and duties of the Commissioner in statute. While he could understand some of the frustration that gave rise to the bill, he believed there were better avenues to address this other than the passage of this constitutional amendment. He believed if HB 527 were to become law each campus, tech center and community college would become more involved in a concentrated legislative effort, but the Legislative representatives will be pressed by their local constituencies to provide more funds for the local institutions and be less concerned by the impact on the system as a whole. He said he believed HB 527 was an extreme measure to attempt to solve a potentially simple problem. He believed this bill, if adopted, would politicize the governance of the University System to the detriment of the students, the employees and ultimately to the citizens of the state.

Pat Abelin, Bozeman Chamber of Commerce spoke in opposition to HB 527. Bozeman, like all college communities, depends on the stable management of our University System. They believe the Legislature should provide oversight of the system, but are concerned that this bill will allow management to become a political football. The University System is essential to the economic future of our state and needs to be managed with consistency and predictability.

Jean Hagan, Vice Chairman of the Montana Education Commission for the Nineties and Beyond gave written testimony. (exhibit 8)

D'Anna Smith, Associated Students, MSU, said the words "as provided by law" are very broad. She agreed there was a lack of communications between students and Regents, Regents and Legislature, etc. She felt communication should be worked on, and did not feel it was a responsible action to change the constitution in this manner.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Fritz asked the sponsor how he would respond to the opinion that the management of the University will vary with political trends and you might have an ultra liberal left wing Legislature telling the University what to teach and how to teach it and conversely, two years later you could have all conservative right wing Legislature telling the University what to teach and how to teach it. He asked how this type of thing could be prevented from happening if this constitutional amendment passes. Representative Brown said he believed that

this happens at the present time in the process we do here in the Legislature when we sit down and write the statutes that govern the relationship of the University System to the Legislature and to Montana and to how it runs. He could see no inclination among his colleagues in the House to want to be vindictive toward single individuals to try to "pick on" individuals as some of the horror stories have alluded to. He believed this could all be avoided as we write the statute.

Senator Fritz asked if without this amendment, the Legislature doesn't still have the final bottom line control over the University by virtue of it's budgetary authority and Representative Brown said it did not appear so to the House Appropriations Committee.

Senator Hertel asked if he really felt politics would not be a factor if this bill should pass and Representative Brown said he had spent a lot of time thinking about that question before he put the bill in, especially since he lives in a town where there have been repeated attempts over the past three decades to eliminate their unit of the University System and believed that is something that should always be kept in mind. He also believed that if the bill were to pass, the balance and effect that is still out there now would be enhanced in the political realm between all the units of the system, the junior colleges and the vo-techs. He pointed out if in one session a member had the support to "load up the goodie bag" for one unit to the detriment of everybody else, the future will bring the balancing back the other way. He believed it was too touchy an area for anybody to step too far out of line in that discussion. He said he could not imagine a more political situation than we have at the present time and it goes on in the press, the Board of Regents, the Commissioner's office and what happens here in the Legislature.

Senator Hertel asked if this meant he did not feel there would be any more regionalism so far as politics is concerned. He thought it possible we might see more of an attack on Representative and Senators that are in a University area. Representative Brown said he believed that would continue as it is now, any issuance from the Board of Regents to the contrary. He said we have a right to know what is going on in those systems and will find it out whether there is a constitutional separation or not, but believed politics would levelize more in this system than they do now. At the present time even those of us who are supporters of the system spend a lot of time working against how the process is working. He said we were lucky the 6 mill levy passed recently because if we don't take this well in hand the public will show us how they feel when they go to the voting box.

Senator Hertel asked Representative Brown if he then believed the decisions from the Legislature would be easier, wiser and better so far as tuition and some of the other things mentioned, because of the political pressures. He asked if the sponsor thought it

would be possible to still make wise decisions that are so vitally needed and Representative Brown said he did and did not see the process differing. After that change is made, somebody will make a decision. In the Legislature at the present time, if we make a funding decision and the Board doesn't like it, we are constantly at cross purposes and what we want may or may not get done. He said we have a responsibility to our constituents, as elected state officials, to see that we maintain a strong and viable University System. He could not see any flagging support for education in Montana by passing this bill, and hoped it would beef it up. He was concerned if we did not do something like this, that level of support might not exist in the future.

Senator Hertel asked what would be the purpose of the Board of Regents in the future if this bill passes and Rep. Brown said that would be up to 150 sitting members of the House and Senate to determine after the amendment passes. It would be his "thoughtful reflection" that they would continue much in the same role they have now as would the Commissioner in terms of giving this Legislature their best advice on the operation of the University System and that the judgements they make now would not be lacking in the future. The end point would be (for example) that when tuition was not going up or that access should not be denied to certain groups of Montanans or other issues, that we would decide that issue once and for all here. There would not be the constant conflict that has denigrated the system in the public eye now.

Senator Stang said in his opening Representative Brown had stated that constituents and people out there were upset with the University System and he wondered where those people are today that are so upset. He asked if it is really those people, or is it us as Legislators, who are mad at the Board of Regents and the people really don't care. Representative Brown said there are a number of Legislators who are upset with the system and the way it works. When he went home during the break this was the single most topic he heard most about in Butte and in Billings when he was there for 2 days of check-ups and in a couple of communities like Columbus and Big Timber on the way back. He admitted it was possible that being sponsor of this bill might have triggered some of the discussion, but the problems with the University System took precedence over all other issues, even the sales tax.

Senator Stang said he had been on the Education committee for four terms and had seen the system as a whole come to the aid of WMC, the aid of Montana Tech when they wanted to move the administration to MSU. His fear is if we get rid of the Board of Regents the result will be to divide and conquer. Soon the rest will gang up on Western and when it is gone maybe go to Northern, etc. He asked Representative Brown if he did not share that fear and was told it was not that he did not share the fear, he did not see it at a higher level under this approach than exists now. He believed it was time we started treating the University System as a state supported economic development which he believed it

was. If you take out the system units in each of those communities in which they exist, with the possible exception of Billings, those towns would dry up and blow away since there is not much else going on there. He said he believed we all have a responsibility to keep those units operating the way they are and provide the kind of access to education our young people need.

Senator Stang referred to Senator Swysgood's bill which continues the committee set up last session to try to iron out the differences between the Board of Regents and the Legislature and asked if HB 527 might be a couple years premature and it might be better to wait and see what developed there in the next couple years before we take this big step. Representative Brown said he was not unmindful of the big step and did worry about it himself. In discussion with members in the House it was the collective opinion of the supporters of this bill that we ought to have a committee between now and then that works on setting up the statutory framework for this new system and not spend more time studying something we know is not working right. He said he put the bill in because now, working on 7 terms in Legislature, that after constant battle over that time and listening to the public outcry and watching the political process inside the Board of Regents, he felt something should change. For the first time, during these past four years, we have seen a political Board of Regents we have never seen before and it runs an agenda that may or may not be consistent with furtherance of higher education. With all those facts in mind, he put the bill in, believes it is an important bill and deserves discussion on the Senate floor.

Senator Toews addressing his remarks to President Dennison, said from his perspective we have a choice between two things that probably won't work. One is the Board of Regents and the other is not. The biggest criticism he gets from the University System comes from the alumni and former faculty that is a part of the system. He said President Dennison had proposed an interim study and from past experience and knowing the Board can do whatever they want anyway, asked if these studies had actually accomplished anything or do we just have them to make us feel good. President Dennison said he did not propose on his own that there be a study. The Swysgood bill has been modified and will give a charge to the reconstituted interim or joint committee to look carefully at funding education and review once again the approach to funding and look at organizational issues. He believed studies had done some good in the past, those focused on funding have resulted in an approach that has been used over an extended period of time. They have updated those studies, and where we are talking about changing the basic instrument of Government of the state and what is, from his personal perspective, the most important institution within the state. He felt we should proceed with great care and did not believe this particular issue has had the careful thought and discussion it needs today. He did believe such a study would lead to recommendations that this Legislature could consider next session.

Senator Toews said we have known for a good number of years that we have problems with the University such as the transfer of credits. That has been addressed, but it took five years to get "up to speed" to do two months work. We know we have too much administration in there, are we again going to wait until the pressure is that intense before we address this problem. Mr. Dennison said he had only been in the state three years, and perhaps the transfer of credits should have been addressed sooner, but during the three years he has been here it has received very intensive consideration, and for the most part he believed the transfer of credits had been resolved. There would still be individual problems to solve and they need to continue working on it. In regard to other issues that have come up, he believed there has been a response on the part of the Regents. The significant thing the Regents have been doing in the past three or four years is reviewing the scenario of how to ensure to citizens of the state of Montana an education of the quality they want to have, with access to it. They have taken that issue, and from the study done by the interim committee last time, they have tried to implement it in a way that would be responsive to concerns. He believed the interim committee could be a very useful instrument by which some of these issues may be resolved.

Senator Fritz, in addressing Representative Brown, asked if under the system he envisioned the Legislature playing a role in the hiring and firing of the presidents and Representative Brown said he would hope not.

Senator Fritz said the Legislature would have the ultimate authority and Representative Brown said with the kind of statutory authority we would set out, it would give personnel policy and that sort of thing back to the Board of Regents and the Commissioner.

Chair Blaylock asked if Representative Brown had read K. Ross Tool's book "Montana An Uncommon Land". He said there was a Professor at U of M who had made a study of the taxation of the Anaconda Copper Mining Company. The study showed we were getting ripped off. He published the study and the political pressure went on. The Governor of the State of Montana "chickened" out and wouldn't back him and the Professor lost his job. He said, from personal knowledge, the reason for the present Constitution of the State of Montana setting up the present Board of Regents and the Commissioner, grew out of an incident in a previous Legislative session, wherein a Professor at Bozemen had gone back to St. Paul and Minneapolis and made a speech favorable to cooperatives and the House of Representatives blew up. He did not recall that the Professor had lost his job, but it was a terrible fight to keep it. He asked Representative Brown if he did not think we would go right back to that situation. Representative Brown said we should always be concerned that we not go back to it. He believed what was put into statute could handle that and did not believe that kind of activity merits support in any form, no matter what is done here.

Senator Blaylock said he agreed there is a lot of frustration in Montana; bitterness, unhappiness of the student body over the continued fee increase etc. exists today. He agreed also that most of our students in the University System cannot graduate in four years, it takes five, but most of those things flow directly out of this state Legislature. We have not been willing to tax ourselves enough to get the money to run the University System properly. Kids cannot get through in four years, and that is our fault. He asked if perhaps we were putting on the Board of Regents something we ourselves are doing. Representative Brown said there is no question that we do a part of that by our appropriating actions. He said it seemed to him that the University System, perhaps for survival sake, perhaps in spite of us, have set up a system that has guaranteed a "longer run on a dollar" than is otherwise necessary and he was not sure that was the fault of the Legislature.

Senator Blaylock told D'Anna Smith she was somewhat critical of the way the University System is run now. He asked if, at MSU, when a freshman and sophomore, how many classes she was able to get where a full professor was teaching rather than a graduate assistant. Ms. Smith said as a freshman and sophomore she would say a lot more than juniors and seniors. Most of her classes were taught by professors at the lectures. Many classes included labs and you would never see a professor, only a graduate student. She said three days a week she had professors teaching about an hour a day. Chair Blaylock asked for an estimate of her 100 courses and she said she had professors teaching classes nearly all the time but knew many seniors and juniors that wish they could say the same. Chair Blaylock asked if they did not get the full professor at the junior and senior level and Ms. Smith answered no. She said during transmittal she was on campus and set up a P.A. system in the student union building and tried to address some students to see how they felt. Many students came to her saying they were seniors, were paying for 400 level classes and could buy notes off teacher's aides from about three years ago, never saw a professor and still passed tests with A's. She said that was scary to her.

Chair Blaylock asked President Dennison if he felt there were problems getting professors into the classroom. President Dennison said they have had problems getting the number of people in question, but he believed most freshmen could depend on having access to professors. They do use teaching assistants under supervision in the english area and in mathematics but they have full professors teaching in that area as well. He was not aware of having a similar problem as described by Ms. Smith. At the upper areas, we may have a visiting professor teaching, we have had problems but they have shown up primarily in increased class size and in the number of sections they can open. He said the five years to graduate is a national average, and because it is a national average there would be a different record in the more exclusive schools where there is still a four year graduate rate in Harvard etc.

Senator Waterman referred to page 2 at the bottom of the page, it refers lines 20 through 23 where it says the Board shall appoint, etc. and says the Commissioner's term and duties shall be provided by law. Her concern was that a Board might hire someone and the Legislature come in and terminate that person through statute. With the one hiring and the other terminating, what is to keep the Commissioner from telling the Board he does not have to answer to them. She asked if it shouldn't be the same body doing both the hiring and firing. Representative Brown said the language in lines 20-23 is the existing Constitutional language with the exception of that on line 23 which says "shall be provided by law". As he understands the bill the Governor would appoint the seven member Board of Regents who would be confirmed by the Senate. The Board of Regents then appoints a Commissioner of Higher Education and his terms and duties are prescribed by the same statute that sets up what the Board of Regents does. He said if this is done as it needs to be done, that personnel is not a matter for the Legislature with the exception of total FTE (full time equivalent employees) and the kinds of things normal budgeting process deals with. He could not see the problem arising since he believed you have to let the Board of Regents manage the personnel.

Senator Waterman said if you want the Board to run the personnel, and delete the words "the Commissioners term and duties shall be provided by law" it would allow them to run the personnel. She believed that line invited the Legislature to get involved in that process. She said the Commissioner has always been the point person for criticism by this body, by the public; just the person we love to hate. If we don't want the Legislature controlling that person then that language should be removed. Representative Brown said he did not really have any problem with that. It accomplishes the same kind of effort he set out with in putting this in, that the Board of Regents should maintain control over the personnel policies and that includes the commissioner. The Legislature just fits into a closer role of telling the Board of Regents what their policy guidelines should be.

Senator Waterman said she shared the frustration with the Board of Regents and would like to see them act at times, with a bit more deliberation. There have been some excellent studies including the one Jean Hagan referred to and she would like to see them move a little more deliberately to implement those things. She was concerned, however, about how much better the Legislature would do. She referred to Worker's Comp where the Legislature has politicized that process and we are now trying to get out of it. Her concern was that we had not set any example for trust in running the University System. She pointed out in the last session the language was added in boiler plate in the Appropriation bill that said "we recognize the University System would have to down size because of reduced appropriations". In special session after the Board had talked about limiting enrollments we put in specific language in the boiler plate in

the Appropriation bill saying "the Board of Regents shall not limit enrollment". She said the irony she found was that the other language was still in and there was boiler plate language in the same bill that told the University System to do two opposite things. She asked what assurance there was that the Legislature, given total control, would not do the same thing. Representative Brown said he could not, but it seemed to him that this is the best testimony pointing out the need for this constitutional change. Part of the reason we get those kinds of conflicting things going in is because everybody is trying to send a different message from their own perspective to the Board of Regents and sometimes they don't get worked out ahead of time.

Closing by Sponsor:

Representative Brown said Mr. Schramm's comments came from a very scholarly academic point of view and are nice historical references. They show the kinds of willingness to change and the necessity to look at change that is acquired in the course of history and the course of events that affect any institution. We are now at the point where that institution, it's governance and relationships, especially to the Legislature and the people of this state, need to come up for review and that is what this bill does. He said he did not think the AFT should fear negotiations in the future and could not see it affecting them any more than it does now. He said he worried about the academic freedom and potential political ramifications of this approach are they are the two areas he probably spent the most time worrying about after he put the bill in. He put this bill in for the chance to discuss the issue and for a chance to move along faster on discussion of the issue. Not only are our finances curtailing the system well below where he would like to see it, but our continuing inability to get along and go different directions as well as treat, from an academic and practical point of view, the students of this state with less regard than he would like to see. He urged the committee to put this on the Senate floor and see some good debate. He felt if a two year study was made we would see legislation next session that goes well beyond what he is proposing in this bill and he was concerned about it.

EXECUTIVE ACTION ON HOUSE BILL 202

Motion/Vote: Senator Waterman moved to amend House Bill 202 relating to the definition of attendance centers. (exhibit 4) Motion to amend CARRIED unanimously. Senators Yellowtail and Brenden were absent.

Chair Blaylock said there would be a meeting Friday, March 29 and the committee would take action on all remaining bills.

ADJOURNMENT

Adjournment: 5:20 p.m.


CHET BLAYLOCK, Chair


SYLVIA KINSEY, Secretary

CB/sk

ROLL CALL

SENATE COMMITTEE EDUCATION

DATE 3-17-93

[illegible]

F08

Attach to each day's minutes

HB 210 AND NOW HB 202
Lines 7-9

STATE EDUCATION

TRIBIT NO.

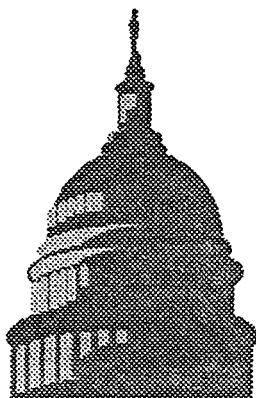
DATE 3-12-93

1/BILL NO. 802

~~A SCHOOL ATTENDANCE CENTER MUST BE LOCATED
WITHIN THE BOUNDARIES OF THE SCHOOL DISTRICT THAT
ESTABLISHES THE CENTER.~~

NO !

North Harlem School
Feb. 22, 1993



*Attached
to HB202
as part of
testimony
by Deborah
for Eli Hofer*

HOUSE BILL 210

REBUTTAL

ELI HOFER

HISTORY OF OUT OF DISTRICT ATTENDANCE CENTERS.

1. Because of the Interlocal Agreement Act 7-11-105 which reads: That the purpose of the INTERLOCAL AGREEMENT ACT is as follows: It is the purpose of this part to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

2. Whereas the law allows local governmental entities to create such attendance centers. Several Elementary School Districts took it upon themselves to provide educational opportunities for the children in 5 Hutterite Colonies in Montana.

These centers were established following all legal guidelines as required by Montana law. Enclosed are written opinions by the Attorney General, local County Attorneys, County Superintendents, and Legal Counsel for the Office of Public Instruction, all attesting to the legality of such interlocal agreements.

These attendance centers were created with built in protections, such as yearly renewable contracts. Or for home district to simple voice a negative decision.

Enclosed find copies of all such agreements.

ARGUMENTS AGAINST HOUSE BILL 210

1. This Bill targets one segment of our society.

Even though the word Hutterite is not mentioned in the wording of the bill. The sponsor made no bones about mentioning Hutterites in his proposal argument before the House Education Committee. Any bill aimed at only a certain segment of society is definite discrimination.

2. This bill implies that local school boards, county superintendents and county attorneys are not capable of making proper decisions.

In the creation of all the targeted centers, these local entities were all involved in the decision making procession. Their involvement shows a definite need for the attendance centers.

3. This bill takes away local control by school boards, other elected officials, and local community members. Who are in the best position to make decisions for the welfare and benefit of the children involved.

4. This bill undermines the INTERLOCAL AGREEMENT ACT.

By restricting these centers, which follow the very prescribed wording and purpose of the interlocal agreement act, this bill would indirectly undermine such interlocal agreements as local public libraries have with rural schools to provide library services, as mandated by Montana curriculum standards. It would also undermine the Special Education Cooperatives that were created under the INTERLOCAL AGREEMENT ACT.

5. This bill has no merit except to stop public education funds from going to these attendance centers.

Montana Constitution mandates every Montana child the right to a free education. The sponsor of this bill voiced his opinion that unless this bill is passed, there will be 27 other such centers. This is simple not true. There are at present 40 Hutterite Colonies in Montana. 32 of these communities have their children involved in the public educational system. House Bill 210 would not effect 27 of these. Only 5 schools would be effected. H.B. 210 would deny the basic right to a public education to the children in 5 of these 32 communities.

6. This bill is opposed by The Office of Public Instruction and The Montana Rural Education Association.

OPI and MREA both encourage more cooperation between school districts. These local agreements are just such cooperative endeavors.

REBUTTAL TO MR. PECK'S CLOSING ARGUMENTS BEFORE THE HOUSE
EDUCATION COMMITTEE

Mr. Peck would have us all believe that these centers are illegal. I believe that I've established that such is not the case. Not only under the INTERLOCAL AGREEMENT ACT, but also with the attached Attorney General's opinion and county attorney's opinions in the affected counties. Allow me to read Attorney General Robert Woodahl's opinion #5. An elementary school district composed entirely of property belonging to the North Harlem Colony would be eligible to receive public moneys for school purposes without violating any provision of the 1972 Montana Constitution.

In his letter to Mr. Solem: Blaine County Attorney of April 28, 1975, Mr. Woodahl stated and I quote " The school you have described is a public school. As a matter of circumstance, its entire student body may be pupils of the Hutterite faith, but this factor alone does not alter its public character. What is critical is that the school itself remains under the authority, control, and operation of the public school system by public school personnel and open to all persons eligible to attend this public school.

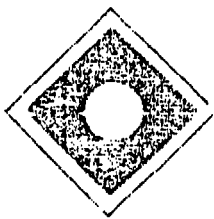
Mr. Peck wishes to establish, that Hutterite public schools are nothing less than religious schools in disguise. Any well informed educator knows that all Montana public schools are under the jurisdiction of the county superintendent. Enclosed find a letter by the Liberty County Supt. of Schools describing her job and experience with the Hutterite Schools in her district. If Hutterites wanted to operate religious schools in disguise, they certainly would not hire nonhutterite teachers to teach their children. It might interest you that North Harlem School had a nonhutterite student at their school in the spring of 1992.

All schools have a tendency to reflect the culture of its children. We find schools in Montana that are made up of mostly Native Americans. I don't believe that we need to bus in other children to make them better schools. There are schools in Montana where most of the children are of Norwegian or of German background. Does that make them inferior? Of course not. Mr. Peck needs to differentiate between culture and religion.

Mr. Peck's failure to read to the committee the agreements that were done in the past to create these attendance centers shows a definite bias. Knowing that to do so would reveal that those agreements were done with legality.

Allow me to read the closing part of one such agreement: This agreement shall be in full force and effect from August 15, 1992 to June 30, 1993. This agreement will be reviewed annually and must be approved by both parties prior to March 1 of any succeeding year, if the agreement is to continue for the next school year.

Not only did Mr. Peck refrain from reading legal agreements concerning attendance centers. He lifted sentences from the Attorney General's opinions to give the House Education Committee an untrue impression of what those opinions really stated. He did not read the final conclusions.



North Harlem Elementary School

Harlem, Montana 59526 • 406 - 353-2800

March 15, 1993

Senate Education Committee
Att: Senator Chet Blaylock
Capitol Building
Helena, Mt. 59601

SENATE EDUCATION
EXHIBIT NO. 3
DATE 3-17-93
BILL NO. 202

Dear Senator Blaylock and honorable members of this committee:

I would like to thank you for this opportunity to once again present testimony before this committee.

I was impressed with the way you conducted the senate hearing on IIB 210 a few weeks ago. I am truly sorry that I cannot stand before you today. Nevertheless, I urge you to once again to carefully consider HB 202.

I stand opposed to HB 202 because the same language from IIB 210 was attached to IIB 202. All the testimony presented against IIB 210 now applies directly to IIB 202. I would only add at this time the following extra information.

1. Rep. Ray Peck feels that IIB 210 (and now conversely HB 202) will define an attendance center. I fail to see how limiting such a center gives it a definition.
2. Mr. Windell from the Havre Public Schools testified that the foundation dollar just keeps being sliced smaller and smaller. I find it ludicrous to talk about slicing the foundation pie, and drawing a salary that could operate at least 3 such centers on an annual basis from that same pie.
3. Rep. Peck testified that there are only 2 instances where Hutterite Children attend the local public school system. I know of 5 such cases in Montana. So I would not be so sure that these parents would not send their children to the local school.
4. Once again I'd like to stress: If other agreements are allowed by law between local government entities, why outlaw only attendance centers? I find it strange indeed that the proponent for this legislation is so concerned about the cost of these centers, but had no qualms about spending 12 million dollars to study land holdings of religious groups in Mt. a few years ago.
5. I hold no personal animosity towards Rep. Peck. But feel that the bottom line is prejudice.

I thank you for your time.

Eli Hofer

recommend the entire deletion of this new section.

Page 27, lines 15 through 19 is a nonessential part of the bill since ANB is now aggregated at attendance centers. It also will be that way if House Bill 667 becomes law.

The other 48 pages of the bill are needed and well done. We urge you to give a do pass on the bill after you strike the language we have recommended.

We will provide you with copies of our recommended amendments.

Our opposition to the two noted parts of this bill is the same as the testimony we gave on House Bill 210. I hope you consider that testimony along with our testimony today.

Thank you.

CONCLUSION

Due to the indisputable material found in this presentation, along with the enclosures.

It is my humble suggestion that this honorable committee recommend axing this bill. Not only for it's lack of merit. But also, not to be part of a personal vendetta against a small segment of our society. I feel that it should be beneath the dignity and character of this body to allow themselves to become mere pawns in Mr. Pecks personal agenda. We have established that he has a history of following hearings that pertain to these schools, voicing his personal opinions. Let it be beneath any of us to use tax payer's moneys, the valuable time of this committee, or even the full Legislature, to push worthless legislation.

Thank you.

Eli Hofer

Amendments to House Bill No. 202
Third Reading Copy

Requested by Senator Waterman
For the Senate Committee on Education and Cultural Resources

Prepared by Eddye McClure
March 17, 1993

1. Title, line 8.

Following: "PROVISIONS;"

Insert: "DEFINING ATTENDANCE CENTER;"

2. Page 2, line 2.

Following: "~~district~~."

Insert: "(2) "Attendance center" means a location, identified by
a school district, where students are provided an
instructional program under the administration of a school
or school district."

Renumber: subsequent subsections

3. Page 4, lines 4 through 9.

Strike: subsection (13) in its entirety

Renumber: subsequent subsections

4. Page 27, line 18.

Strike: "SCHOOL"

To: Members of Senate Education and Cultural Resources Committee

Regarding: Testimony on HB202

From: Lowell R. Knowlen Jr.

Mr. Chairman and Members of the Committee

SENATE EDUCATION

HBIT NO. 5

3-17-93

HB 202

I am in support of HB202 with the exception of the language involving attendance centers. I was in support of the original language; however I can not support it as an amended form of HB210 which as you know from previous testimony I strongly oppose.

An Attendance Center out of District can only be established when an Interlocal Agreement is signed by both the residence district and the host district. These Interlocal Agreements are used for Special Education Cooperatives, For Transportation Agreements, for Curriculum Cooperatives, not to mention many other inter-governmental agency agreements. Interlocal agreements promote the type of cooperation sometimes necessary to accommodate the people these various government agencies serve. You heard and received written testimony during the hearing on HB210 where all of the government agencies and school districts involved supported the current system of allowing out of district attendance centers through the use of an Interlocal Agreement.

It has been purported that the cost of these attendance centers is prohibitive and a great drain on the States economy. I would remind you that.

There are 121 school districts in Montana with an ANB of 30 Or less

The general fund budget per student is \$4861

The average foundation payment per student is \$2612

The total cost per student in these centers is \$2094

The total budget is made up of foundation payments but the amount of payment is considerably less than the state average and the total general budget is less than 1/2 the state average for schools this size.

It has been alluded to that the host district does this to abuse the system and receive a windfall of State Aid. The only money used has to be foundation payments. The host district cannot expect it's tax-payers to support a school for students from another district. Is that not why that when a student attends out of District that if necessary the resident district must pay tuition to the district the child attends. A district also can only receive the full authorized budget if it spends the full amount.

The way these attendance centers came to be is that you have approximately 20-22 children living several miles from town yet within a block of each other. They are learning two languages attend both an English public school and they also attend besides 2 1/2 hours of German private school. By providing the attendance centers the district has no transportation costs, no building costs, no maintenance costs, no equipment cost. The colony at the request of its members have picked up these costs by making the facility available to accommodate it's members wishes. The local school board by allowing a district to provide the attendance centers also fulfills its obligation to make public education available to all the students of the district. It has worked very well even though it has been more work for the local school boards, the superintendents and others. It has answered the needs of the situation with the best possible solution for everyone involved.

House Bill 202 is a necessary bill as it was originally written I implore this committee to either restore the original language of HB202, or to amend out of it the prohibition of attendance centers out of District. You could also amend in language to only allow attendance centers out of district when a current Interlocal Agreement is in force.

Thank You,

Lowell R. Knowlen Jr.

Mr. Chairman member Senators of the Committee.

I'm David Hofew, Board Chairman of Elem. Dist. #10
Liberty County.

I do not wish to burden and/or use the valuable time
of this Committee, by presenting lengthy testimony.

But, I would like to voice my concerns and
opposition to Sections of H.B. 202 addressing Attendance
Centers. I kindly ask this Committee that previous
testimony in opposition to H.B. 210 be considered as
testimony against the Sections of H.B. 202 addressing
Attendance Centers.

I believe Chairman Blaylock received a letter
from Eli Hofew North Harlem Colony that his Rebuttal
to H.B. 210 be considered a Rebuttal to the Sections of
H.B. 202 addressing Attendance Centers. He also asked
me to mention it today.

It's apparent from testimony that H.B. 202 is
for the most part a needed and good Bill.

Why then, should H.B. 202 be used as a vehicle to
further possibly discriminatory objectives?

I believe that documents included in written testimony
presented previously proves that every effort was made to
follow, not circumvent law, wherever an Attendance

a paper trail exists again showing there were no insidious intentions.

I ask this committee to not deny some Hawthorne Children a beneficial and positive educational opportunity.

I humbly suggest that one course of action would be to Delete from H.B. 202 the language addressing Attendance Centers. Or else, add language that would permit establishing Attendance Centers by Inter-Local Agreement.

The language in its present form would make a lawful procedure unlawful. Local School Boards who do not wish to enter into Inter-Local Agreements need not do so. But, on the other hand why not encourage cooperation between Districts? ^{if they want to do so?} instead of outlawing cooperation.

I sincerely believe decisions concerning local educational needs, are best left with local Trustees, who are in the best position to render proper judgement.

Thank you.

SENATE EDUCATION
EXHIBIT NO. 7
~~#~~ DATE 3-12-93
A BILL NO. 521

HISTORICAL DOCUMENTS RELATING TO
MONTANA UNIVERSITY SYSTEM GOVERNANCE
(EXCERPTS)

(If you want to know where you're going
it helps to know where you've been.)

LeRoy H. Schramm
Senate Education Committee
March 17, 1993

1889 CONSTITUTION

Article 11, Section 11

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. . . .

24 March 11
3-17-93
HB-527

"The board of education is a part of the executive department, and is but an agency of the state government. The legislature may prescribe the extent of the powers and duties to be exercised by the board in the general control and supervision of the University of Montana. The legislature may broaden the functions of the University, or any of its units. It may require research and experimental work to a greater extent than is now being carried on, and for the public benefit may require the discharge of functions in new fields."

State v. Brannon, 86 Mont. 200, 214 (Mt. Sup. Ct., 1929)

"There'd be five of us . . . three from the House and two from the Senate. . . . And here'd come Roland Renne [MSU president] and Pantzer [UM president]. And they'd each have about six guys with them. And then . . . there'd be . . . Dillon, and . . . Havre, and the School of Mines and Eastern. And they'd all have their staff there so that the total would be about 30 of them and about five of us. And Renne would be kind of a spokesman And I really think all he was trying to do was to confuse us on what the needs were, and where the money came from . . . so that toward the end of the session we'd say to them, "Well, just how much can you get by with." . . . And I never thought it was very intelligent, that way of doing that."

Montana Oral History Project Interview with Wm. Mackey, 1950's & 60's era legislator from Roscoe, MT. quoted in In the People's Interest, Rydell, Safford, and Mullen (1992), p.84.

REPORT OF THE EDUCATION AND PUBLIC LANDS COMMITTEE, PROCEEDINGS OF THE 1972
MONTANA CONSTITUTIONAL CONVENTION, Vol.II, pp.737-740.

Rarely does a direct attack come upon the concept of free inquiry. However, a more subtle kind of coercion has made its appearance, and it is of the sort which is likely to become an even greater threat to the integrity of higher education in the future. This is the growing power of the centralized, bureaucratic state. . . . Among the sources of growing controls which increasingly impinge on universities are state budget offices, state auditors, comptrollers, purchasing departments, personnel offices, central building agencies, and a variety of older forms of control, such as legislative riders, which are being used in new ways to affect colleges and universities. The informal controls associated with these direct means often exert an even stronger influence on the educational process. . . . [T]he maintenance of the system of higher education free from unnecessary bureaucratic and political interference is important not only to a healthy academic atmosphere but also to the administrative efficiency of the system of higher education.

The power to coordinate and operate the system of higher education is one which belongs properly to an informed board of regents who have the knowledge and ability to determine rationally the course of higher education. . . .

With these considerations in mind, the committee has developed the proposal for a board of regents of higher education embodied in Section 11. The proposed board would fulfill the requirements for specialization, freedom, and efficiency described above. . . .

Under the existing section 11, the Montana Supreme Court has declared that, "the board of education is a part of the executive department, and is but an agency of the state government" (State v. Brannon, 86 Mont. 200, 208 [1929]). . . . It is the committee's view that this is not an adequate description of a state board of regents nor of the character or function of a university. The proposed section would establish the board and the university system in roles appropriate to a modern, free system of higher education.

amendment /
3-17-93
48-527

PROCEEDINGS OF 1972 MONTANA CONSTITUTIONAL CONVENTION, Vol. VI, pp.2126-30.

Proposed Amendment

CHAIRMAN GRAYBILL: Will the clerk read Mr. Barnard's amendment

CLERK: Mr. Chairman. I move, . . . to amend Section 11, . . . of the Education and Public Lands Committee Majority Proposal by . . . inserting. . . "The Regents shall have the power and it shall be their duty to govern the University System as a public trust in a manner consistent with the general laws of Montana" (emphasis added).

Floor Debate

DELEGATE HELIKER: Mr. Chairman. It seems to me that essentially what Mr. Mahoney and Mr. Barnard both are saying is they want to make the Legislature the Board of Regents. And that is what the majority proposal is aimed at preventing-of giving the Board of Regents the authority to be the Board of Regents, giving the Legislature to control the Board of Regents via the appropriations and via the Legislative Audit. . . . Now, the basic question before us is still the same one that always has been, and that is, are we going to give to the Board of Regents the ability to manage the University System? Are we going to make them a real Board of Regents, with the power and the independence of the Legislature and of the Executive so that they don't have-so that the management of the University units do not have to run to some bureaucrat in Helena or have the Legislature specifying by line items and by particular instructions exactly how the university shall be operated, but shall have the authority to do that themselves. . . . They are financially accountable. The Legislature will obtain the audit after the fact and can call them on the carpet when they next come before the Legislature.

Vote

CHAIRMAN GRAYBILL: The issue arises on Mr. Barnard's amendment, . . . Have all the delegates voted?

CLERK: Mr. Chairman, 3 delegates voting Aye, 90 voting No.

Senate Education Committee

Testimony - Jean Hagan

March 17, 1993

RE: HB 527

SENATE EDUCATION
EXHIBIT NO. 8
DATE 3-17-93
BILL NO. 527

Senators, good afternoon.

I am Jean Hagan. I was Vice Chairman of the "Montana Education Commission for the Nineties and Beyond". Jack Mudd was the Chairman of the Commission, and is unable to be here today. The Commission was comprised of a cross-section of citizens from across the State, appointed by former Governor Stephens. We were asked by the Governor to study and recommend goals and directions for higher education for the 90's and beyond.

In our year long deliberations, the role of the Board of Regents was given full consideration. Our group looked seriously at, and rejected, any concept that would dilute the powers of the Board of Regents.

If we agree that academic freedom is a basic premise, then we must be vigilant in being certain that we do nothing to compromise it. The structure for governing higher education must minimize the influence of politics and regional parochialism. To approve HB 527 would open the door to even greater politics than there currently are.

The Board of Regents is designed to provide decision makers and policy makers who can concentrate on higher education alone. Directions taken and policies made need to be conducted by an informed body which has the knowledge and the ability to make rationale decisions. It is recognized that a responsible Board will remain cognizant of attitudes and opinions expressed throughout the State in making decisions regarding higher education in the context of the system as a whole.

The structure now provided in the separation of powers between the Legislature and the Board of Regents is in place for sound reasons. Discontent with the Board of Regents' decisions can and should be addressed within the structure now allowed by law. Politics, an inherent factor of legislative sessions, draws out emotions of the moment and political compromises - these ought not be what determine the course of higher education in Montana. If HB 527 were to become in reality a constitutional change, we could indeed see a very inefficient and unpredictable course for higher education. Also, there would be more opportunity to jeopardize the valued academic freedom.

HB 527 is not in the best interests of higher education nor the citizens of Montana. Please vote against House Bill 527.

DATE 3-17-93

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: HB 202 - HB 527

Name	Representing	Bill No.	Check One Support Oppose	
Jacob J. Wipf	Byrum Miller Dist 12			✓
Jack Capps	OTI	202	✓	
Elias P. Wipf	Distr. 45 New Rockport Ed. Chateau			✓
John J. Klemm	Anchor Creek			✓
Wm W. Klemm	Anchor Creek School	210		✓
Gary Mow	MT FJ Teachers	HB 527		✓
Pat Abelin	Bozeman Chamber of Commerce	HB 527		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-17-93

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: HB 202 HB 527

Name	Representing	Bill No.	Check One	
			Support	Oppose
Dawn Andreasen	Liberty Co. Dist #10	HB202		✓
Anita Waldner	Liberty Dist #10	HB202		✓
Lena Waldner	Liberty Dist #10	HB202		✓
Elizabeth J. Hofer	Liberty Dist #10	HB202		✓
Paul P. Wipf Jr	Liberty Dist #10	HB202		✓
Barbra Kleinser	M41	HB202		✓
Mark Kleinser	M41	HB202		✓
William Hofer	M41	HB202		✓
H. Scott Haynes	School Dis #45 Edon Co	HB202		✓
John McCune	Tate Co Supt	HB202		✓
Kathy Jablons	OPI	HB202	✓	
Susana m. Wipf	M41	HB202	✓	✓
Elsie W. Hofer	M41	HB202		✓
Brenda P. Hofer	M41	HB202		✓
Isaac P. Wipf	District 12	HB202		✓
Edward J. Wipf	Dist 15 Turodot	HB202		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-17-93

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: H.B. 202 H.B. 587

Name	Representing	Bill No.	Check One	
			Support	Oppose
Don Waldron	MREA	HB202	✓	
Lowell Krasen	Self / Authorizer	HB202		✓
Paul P Wipf	Liberty Dist 10	HB202		✓
John D Wurtz	" " " "	HB202		✓
Paul P Waldner	Liberty Dist 10	H B202		✓
David P Hofer	Sage Creek Liberty Dis	H.B. 202		✓
David Hofer	Elem. Dist. # 10	H.B. 202		✓
Bill J Hofer	m 41	HB202		✓
Mary W. Hofer	m 41	HB202		✓
Elizabeth m Wipf	m 41	HB202		✓
Susanna Wipf	m 41	HB202		✓
John Hofer	m 41	HB202		✓
John Wurtz	Liberty Dist 10	H B202		✓
Peter Hofer	Liberty Dist 10	H B202		✓
Steve Hofer	Liberty Dist 10	HB202		✓
Matilda Waldner	Liberty Dist 10	HB202		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY