

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - SPECIAL SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By CHAIRMAN H.S. "SONNY" HANSON, on December 10, 1993, at 1:00 P.M.

ROLL CALL

Members Present:

Rep. Sonny Hanson, Chairman (R)
Rep. Alvin Ellis, Vice Chairman (R)
Rep. Ray Brandewie (R)
Rep. Fritz Daily (D)
Rep. Ervin Davis (D)
Rep. Ed Dolezal (D)
Rep. Dan Harrington (D)
Rep. Jack Herron (R)
Rep. Bob Gervais (D)
Rep. Bea McCarthy (D)
Rep. Scott McCulloch (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 (D)

Members Excused: None.

Members Absent: None.

Staff Present: Andrea Merrill, Legislative Council
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 69, HB 72, HB 81 & HJR 6

HEARING ON HB 81

Opening Statement by Sponsor:

REP. WILLIAM BOHARSKI, HD 4, Kalispell, said HB 81 is an act that will revise school budgeting and financing laws; providing an individual income tax credit for qualifying elementary and

secondary education expenses paid by an individual for a dependent minor; requiring a declaration of intent to claim a tax credit; requiring school districts to take declarations into account in budgeting; requiring a vote to increase a school district's previous year General Fund budget or per-ANB amount.

Proponents' Testimony:

Robert G. Natelson, Chairman for Montanans of Better Government, and Professor of Law, Montana State University, has written testimony, but highlighted some of the important areas. He said that HB 81 by itself will not save the public education system, and will not destroy the public education system. HB 81 creates a refund for certain qualified education expenses. Currently, there are charitable deductions in the tax codes in order to increase the amount of charities, educational and other activities within the society to keep the cost of the state down, and to keep the involved individuals up. In his written testimony, he said that the United States is the only developed western country that does not already have a publicly funded school choice system. He said the difficulty of the children competing with other countries may have something to do with the access of choice in this country. There is a trend toward choice in the United States. He said that choice will not take out of the public system for there to be a court of change as a result of competition and a result of new ideas that **REP. BOHARSKI** referred to. He addressed some of the equity and financial issues that this committee must consider. He said the main issue at the heart is "what is best for the children"? It has been known for some time that the private schools are doing a better job on the education of the students based on the academic achievement of the students in the public schools. He spoke to the members of the committee that are involved in education strongly advising them to read a book called "Politic Markets in American Schools". The scholars that wrote the book did a survey on why the private schools do a better job, and why reform in the public schools have not had the beneficial effects that everyone in the country hoped that it would. He said the study determined that next to the student aptitude the most important determinate of the quality of the schools is how that school is organized. There are certain organizational characteristics that seem to make good schools. He said there are further organizational characteristics naturally developed in an atmosphere of markets and choice, but are naturally squelched in an atmosphere of politics and bureaucracy. HB 81 is for ultimate choice; about the private schools, the home schools, and most of all, about the public schools, because the alternate choice is better education for children. **EXHIBIT 1**

David DeWolf, Associate Professor of Law, Gonzaga University School of Law, Spokane, WA, said his views are his own and do not reflect those of the law school nor the university. He addressed his written testimony on the constitutionality of a plan that encourages parental school choice in education. He said there

are two major areas concern: if the first amendment to the United States Constitution because of its establishment and exercise of law prevents this body (legislature) from adopting past policy; and if the Blaine Amendment that is in the provision of the Montana Constitution would have a similar effect? He said the answer is no. He addressed several leading cases that are in his written testimony: Mueller v. Allen, and the "Blaine Amendment", used only once in Montana in a case Chambers v. School Dist. No. 10, Deer Lodge, 155 Mont. in regard to tax policy. He said that HB 81 is consistent with the United States Constitution. **EXHIBIT**

2

Joe Balyeat, Certified Public Accountant, Bozeman, said he believes in Montana education, and he is a product of the Montana education system-both public and private. This bill is a rare opportunity to enhance choices for Montana families and save millions of dollars for the taxpayers. It is virtually risk free. By facing this proposal as a credit for increasing education costs with the potential of up front payoffs to the present private school population has been eliminated. The upside potential for long term savings for state and local governments is enormous. While providing specific income tax relief to parents who transfer their children to non-public schools this bill also provides general property tax relief to all because of the connection to the local school mill levies and public school ANB calculations. With the influx of school age children in Montana the public schools are bursting at the seams. Private schools are ready and waiting to handle higher enrollment. It would be a fiscal travesty for the state to ignore this obvious solution to the school budgeting crunch. The Montana education system is to serve our children not serve the education bureaucracy. **EXHIBIT 3**

Roger Koopman, Bozeman businessman, stated the education choice movement is pre-destined to succeed throughout the region because it is rooted in the kind of principals Montana believes in. The best scholarship currently available in the K-12 education as established is that there is no correlation between good education and increased funding of education whether those funds go toward more modern facilities, smaller class sizes or higher teacher salaries. The most important factors in the improvement of education are local autoimmune, parental involvement, open competition, and direct accountability by schools to the consumers of education if those consumers are empowered to exercise choice. **EXHIBIT 4**

Earle Reimer, Superintendent, Missoula Valley Christian School, said if this bill is passed there will be approximately 10%-15% growth in private schools which can be handled. It would take the pressure off of the public school programs and facilities, teacher student ratios, high improvement level, pressure to build new and expensive additions, and facilities will be reduced which would bring about obvious benefits in the learning process and relief to the taxpayers.

The following are proponents who were allowed to state their names only:

Walt Dupea, Team Montana, Montana for Better Government, Big Fork, EXHIBIT 5

Terry Wofford, Christian Coalition in Montana EXHIBIT 6

Mike Kitske, former teacher, Helena

Rick Johr, Ronan, EXHIBIT 7

Dave Thomas, Montanans For Better Government, Lewistown, EXHIBIT 8

REP. DUANE GRIMES, HD 39, Clancy

Lori Koetnik, Executive Director, Christian Coalition of Montana

Jan Fernby, Great Falls

REP. JOE BARNETT, HD 76, Belgrade

John Rice, Montanans For Better Government, Missoula

Tom McKennett, Concerned citizen, Montanans for Better Government

Jim Balzer, Lolo

Jesse Cleary

REP. NORM WALLIN, HD 78, Bozeman

Joe Seipel, State Director, Montana Citizens for Excellence in Education, EXHIBIT 16

Judy Territo, Columbia Falls, EXHIBIT 17

Judy Bolton, EXHIBIT 18

Opponents' Testimony:

Nancy Keenan, State Superintendent of Public Schools, said she respects private schooling, but this is not what is good or bad. This is about a tax break and tax given to people to send their children to private schools predominantly religious schools, home schools or cults. This bill does nothing to improve the quality of education. It includes no benefits to the public schools of Montana, and it will cost the taxpayers money. If you assume that 1.5%-2% might go to a private school, and you assume there are already 10,000 children in private schools in this state, simple mathematics will tell you that 10,000 students will cost this state a tax increase of \$23.2 million in the first three years of this bill. This will be an additional \$8.8 million plus

the \$23.2 million. This is not about property tax relief, or income tax relief. This is about paying private citizens public money to educate their children in private school. There is no evidence that exists that there is any improvement that incurs in school choice. In fact, what little evidence there is, it appears to show the opposite because of the financial damage. The legislature is cutting \$26 million this session, and adding \$23 million or so under this bill over the next three years. This cost will be taking from the public schools to give a tax break to those people who choose to send their children to private schools. A democratic society demands a public education to people. Non-public schools can deny admission for whatever reason they choose. Give this tax credit if they meet the academic standards that the public schools need to meet. If they have handicap access for the children with disabilities, if they take the alcohol syndrome child, if they take the mentally retarded child, if they take the child with learning disabilities, if they take the child who is deaf and blind and in a wheel chair, if they take the child from the minority who does not speak English, the Asian children, and the Russian children. If they take them and have certified teachers, standards, and testing then choice is an option. Let's make this an even playing field where they cannot deny access to these children. There are choices in Montana, but let us not subsidize it with \$23 million of these fine people's tax money.

Mary Sheehy Moe, Helena, stated her opposition to HB 81. Proponents of this bill will have you believe that here is a bright spot.

Don Waldron, Montana Rural Education Association, provided a newspaper article regarding school choice plans. **EXHIBIT 9**

Eric Feaver, President, Montana Education Association, stated the arguments against the freedom of school choice act. **EXHIBIT 10**

Loren Frazier, Montana School Administrators Association, said he resented the false arguments coming here. The idea of giving public money to private schools is not what people want. They do not like to see the neighborhood schools absorb more cuts.

Scott Crichton, Executive Director, American Civil Liberties Union, opposes this bill. **EXHIBIT 11**

Pam Egan, Montana State AFL-CIO and Montana Family Union, said school choice is only a recent phenomenon in education. The idea that school choice can lead to better education is only a theory that remains unproven. **EXHIBIT 12**

Diane Sands, Executive Director, Montana Women's Lobby, said her organization supports the availability of public education for all Montanans. She opposes any diversion of public funds from public schools to private education either through tax credits or vouchers. **EXHIBIT 13**

Stan Frazier, Helena, said this bill wants free enterprise with a subsidy. People who have children pay less taxes than people that do not have children because of the structure of the income tax.

Terry Minow, Montana Federation of Teachers, strongly opposes this bill. This bill is bad for schools, bad for teachers, bad for kids, but especially bad for our society.

Christine Hoff, Executive Director, Montana Human Rights Network said her organization receives calls every week from school administrators, teachers and parents who feel they are sieged from people belonging to the christian right or religious right organizations.

Dolores Colberg, Former Superintendent of Public Instruction, said this bill is not only bad for children, but it is bad public policy totally.

Rich Ripley, Superintendent of Schools, Choteau, stated his opposition to HB 81. EXHIBIT 14

REP. TED SCHYE, HD 18, Glasgow, opposes HB 81. He stated this bill must have a fiscal note.

REP. JIM ELLIOTT, HD 51, Trout Creek, EXHIBIT 15

Questions From Committee Members and Responses:

REP. REHBEIN questioned the discrepancy in the cost savings.

REP. BOHARSKI said with the amendment requested from the researcher there is absolutely zero risk of a negative fiscal impact in the first year of this program. The tuition tax spread from this bill applies to increased educational expenses over the previous year and with the amendment it must apply to the first \$750 of tuition paid. The \$8 million would have been more in the neighborhood of \$9-\$12 million. **Ms. Keenan** has agreed that his numbers are perhaps a bit conservative. Not knowing how she could possibly calculate that number, he would hope that the press would not print that number without some documentation. Increased educational expenses are only applicable to the first \$750 in tuition and there is absolutely no way that the state could possibly lose money in the first year of this program. It takes more money than it costs to pick up the tuition costs of the 10,000 children that are currently out there.

REP. WYATT asked **Superintendent Keenan** to reanalyze what **REP. BOHARSKI** just stated. On page 3, line 17, 18 and 19 on the amount of credit that will be allowed under this section that is in excess of an individual's tax liability, and must be refunded to the individual. Is the interpretation "if you don't pay any taxes you still get a rebate"?

Ms. Keenan said it would be best if this bill had a fiscal note. It is pretty hard to have someone give one set of numbers and she having another set of numbers. Montanans must keep paying for the children that are in school at \$4,000 per child per year because at 2% there will not be a decrease in teachers. She said there are 10,000 children now, and if \$375 is paid to every one of those parents for those 10,000 children over three years is a total of \$23 million. She stated that a rebate is still allowed even if the people don't pay any taxes.

REP. DOLEZAL said he had difficulty trying to decide how this fits into the call. There seems to be a conflict as to what the fiscal impact is going to be. There has been some question on the constitutionality of this bill and there seems to be some disagreement between the sponsor and the drafter of the bill as to whether or not this bill is actually constitutional. Is it possible that this bill could result in a person receiving an income tax refund that normally he would not otherwise receive. Where will the money come from to pay that individual the refund. He said if an individual receives an income tax refund no reference has been made to the money following the student. They receive an income tax refund from the state that normally they would not have received without this particular income tax credit. This kind of bill is what drives the public to get a refund, and it has nothing to do with public schools other than the bill has allowed a \$1,000 credit which in turn would provide an income tax refund. Where is the money for the income tax refund?

REP. BOHARSKI stated that **Mr. Natelson** did not bring his people with him. **REP. BOHARSKI** said he was extremely conservative with and the introduction of this legislation. He will personally kill this bill if it has any negative impact on the state. He believes it will have a positive fiscal impact on the state. He said that **Ms. Keenan** is correct on one point she made regarding a fiscal note is needed for this bill. It cannot be reported out of the committee without one. He said how about the \$18 million that the legislature and the public didn't know about regarding the mis-projection from the Office of Public Instruction. The question now is whose number to believe. The income tax refund will be a refundable tax cut. The education system in Montana is based upon the ANB. If a student leaves a public education system for whatever reason the money will not follow that student any further. If there is increasing enrollment there is increasing revenue. The entire formula for educational funding is people driven. If the enrollment declines the funding declines, because there is no more need to serve that student. The same general fund that would provide the tuition tax credit is going to save revenue for every student that is not enrolled in the public school system. For example, if a child decided to leave a high school in the state of Montana the general fund will have a net savings of \$2,650. If that child, under this piece of legislation, chose to attend a private school the cost to the general fund will be \$1,000. The difference between \$2,650 and

\$1,000 is a net savings of \$1,650 to the general fund which is multiplied by whatever number of students taking advantage of the tax credit.

Ms. Keenan said the issue here is the rate. There may be 2,000 children that exit the public schools, and it will cost the state of Montana. There are 10,000 children already out there. If 2,000 children drop out a little bit will be saved, but the taxpayers are already paying for 10,000 plus the 2,000. The rate this rebate works is not accurate. She said there are 10,000 children that are not being paid for by the taxpayers at this time. Then you are going to pay for 2,000 more. What you save on the 2,000 is not at the same rate the taxpayers are paying out for the first 10,000.

REP. BRANDEWIE wanted the constitutionality addressed and questioned the attendance centers. There are Hutterite Colonies that the state expends public funds on now and they do not meet any of the criteria that **Ms. Keenan** put forth including the fact that they don't want to be associated with any students who came in to support or kill this bill. If this bill is not constitutional what is the status on attendance centers.

Scott Crichton, ACLU, said he was not prepared to discuss the attendance centers and the arrangements which are worked out with the school districts to accommodate those.

Mr. DeWolf said the U.S. Supreme Court has made it clear that the constitutionality of the provision depends upon the character of the expenditure. If the expenditure is a true tax bill or if it is truly directed for education purposes the courts are going to find that constitutional. It is only where it is directed for unconstitutional purposes that has been struck down. The courts recognize it is a very subtle question and it is not always easy to find the right line.

REP. ELLIS questioned universal access.

REP. BOHARSKI said this was the most troubling part of the testimony. He then cited code. Discrimination of education - "it is unlawful, and discriminatory practice for an educational institution to exclude or otherwise discriminate against the division seeking admission as a student or an individual enrolled as a student in the terms, conditions, and privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical disability or national origin, or because of mental disability unless faced upon reasonable grounds". Educational institution means a public or private institution which includes county, college, elementary, secondary school, extension course, kindergartners through school system, etc.

REP. DAILY asked if **REP. BOHARSKI** was correct in stating that he would not want this bill to come out of committee unless it did

not have a fiscal note. He said this bill is the most unrealistic and most unworkable proposal that he has seen so far before the legislature.

Closing by Sponsor:

REP. BOHARSKI closed.

HEARING ON HJR 6

Opening Statement by Sponsor:

REP. BRUCE SIMON, HD 91, Billings, said this resolution of the Senate and the House or Representatives of the state of Montana requests an interim study on the potential for cost savings through the restructuring of various school district functions or through the reorganization of the state's public school districts; and to report the findings of the study to the 54th Legislature.

Proponents' Testimony:

Don Waldron, Montana Rural Education Association, said the association endorses HJR 6.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. SPRING wanted to know what can the committee do that has not been done yet regarding this resolution.

REP. SIMON said there is a broad base for the future.

REP. ELLIS questioned the result of the study and analysis of the cultural and economic impacts of consolidation. If the legislature consolidates schools the school costs would be cut. The perception is wrong and this issue has been studied too much. He is not in favor of spending more money.

Closing by Sponsor:

REP. SIMON closed.

HEARING ON HB 69

Opening Statement by Sponsor:

REP. ROBERT RANEY, HD 82, Livingston, said HB 69 is an act eliminating the accounting and other financial management duties of the county treasurer with regard to school district funds,

except for the duty to collect and disburse revenue belonging to the districts; transferring to the trustees of a district those accounting and financial management duties; clarifying a county treasurer's duties with regard to a community college district.

Proponents' Testimony:

SEN. LORENTS GROSFIELD, SD 41, Big Timber, said HB 69 will save money at the local government level.

Opponents' Testimony:

Linda Brannon, Montana School Business Officials, said an ad hoc committee is being formed. This committee will have representatives to study this issue from the county superintendents, county treasurers, Office of Public Instruction, and other state agencies along with the school district personnel.

Don Waldron, Montana Education Association, said the association opposes this bill.

Kathy Fabiano, Office of Public Instruction, said that OPI opposes this bill. There needs to be more work on pledged securities in this bill and the radical distribution. She said it doesn't have a transition plan.

Janet McCabe, McCone Co., EXHIBIT 19

Tom Cotton, Deer Lodge, EXHIBIT 20

Questions From Committee Members and Responses:

REP. ROSE asked if this bill is workable.

REP. RANEY replied that it is.

REP. DAVIS asked if the county treasurers would be required to repeat their work if the responsibilities of some of their duties were in fact given to the schools themselves.

REP. RANEY said they would not.

REP. WALLIN questioned about auditors still finding mistakes and if this work might be done electronically.

Ms. Fabiano said that is a possibility.

Closing by Sponsor:

REP. RANEY closed.

HEARING ON HB 76

Opening Statement by Sponsor:

REP. RAY BRANDEWIE, HD 49, Bigfork, said this bill is an act that will require voter approval for the over-BASE budget of a school district if the budget exceeds the previous year's general fund budget or the previous year's general fund budget per-ANB; limiting the over-BASE budget of a district to 104% of the previous year's general fund budget or 104% of the previous year's general fund budget per-ANB; clarifying the voter approval requirements for a school district general fund budget that exceeds the base amount in part; limiting the referral of the requests for voter approval to twice a year.

Proponents' Testimony:

None

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

REP. BRANDEWIE closed.

HEARING ON HB 72

Opening Statement by Sponsor:

REP. RAY BRANDEWIE, HD 49, Bigfork, said HB 72 is an act that will require the Board of Land Commissioners and the Department of State Lands to optimize revenue derived from forested state trust lands; requiring security for legal challenges to timber sales from forested state trust lands; requiring the Department of State Lands to act to minimize loss of value from salvage timber; requiring the Department of State Lands to adopt rules; and providing effective dates. He presented a management direction for Montana trust lands.

Proponents' Testimony:

Cary Hegreberg, Executive Vice-President, Montana Wood Products Association, said this bill would supply additional funding for schools of approximately \$8-\$12 million per year and the sustainable, responsible management of forest trust funds. Unfortunately, Montana's forested trust funds are in a barrage of constricting from special interests like that of the U.S. Forest

Service leading to a point where these lands are not fulfilling their constitutional mission of providing the revenue for the intended beneficiaries. There is more timber dying every year on state forests than they have been able to sell. We are not preserving the capital investment that sits on these forested trust lands in the form of healthy forests. These trust lands were granted to Montana by Congress for the clear and specific purpose of generating income for schools and other institutions. These lands are public lands only to the extent that they are held in trust for the intended beneficiaries who are the public schools of Montana, the Montana State College of Agriculture, the University of Montana, Western Montana College, The Montana School for the Deaf and Blind, Pinehills Schools, Montana Tech. They have a legal constitutional right to increase the rate of return on their assets. The current rate of return on forested trust lands is 1%.

Bob Anderson, Montana School Boards Association, said he is testifying as a proponent to HB 72, but he does not agree with all of the aspects of this bill. Times have changed and this bill will assist the situation if some of the harvest were to come out.

Don Waldron, Montana Rural Education Association, said that regulations have been cut down, and more regulations will be cut as a result of this bill. He said the roads are a problem for the unsold timber.

Al Kington, Helena, said he was a private consultant who worked for the Department of State Lands as a supervisor in the Helena area. He said many things have changed drastically since 1974 regarding the management of these lands.

Peggy Wagner, Montanans For Multiple Use, said she has been concerned regarding funding for the education system. HB 72 is the logical way for the state to fund the educational system and to provide good schools for the children. She said that many of the opponents here today are notorious for appealing timber sales on a regular basis. These special interest groups should be held accountable for their actions as they have cost the state money that we can no longer afford to lose. This bill will require a security deposit from the person bringing the action in an amount equal to 10% of either the appraised value of the timber or the purchase price of the sale, whichever is greater. **EXHIBIT 21**

Peggy Trenk, Western Environmental Trade Association, supports this bill. She asked the committee to give particular attention to the issues of sustainable ability.

REP. BILL TASH, HD 73, Dillon, said he supports HB 72. The basis for this program is about sustained yield, and without it, Montana will be out of business. It is absolutely essential that the citizens of Montana manage these lands whether they be public

or private. He said this bill is mostly dependent on responsible management.

David Owen, Montana Chamber of Commerce, said he supports the bill.

Don Allen, Montana Wood Products Association, presented written testimony from **Mark Ahner, Area Manager, Central Land Office, Department of State Lands,** and written testimony from **Michael Atwood, Resource Manager for Brand S Lumber Company, Livingston** EXHIBITS 22 and 23

REP. DOUG WAGNER, HD 8, Columbia Falls, said he supports this bill. During the course of the special session the legislators have debated, sometimes repeatedly, on the House floor about the number of cuts to take these necessary privileges away from the residents of Montana. He said this is an opportunity to encourage the state to manage their school trust lands. To generate funds for the state should also be considered. Here is an opportunity to do what is right and do it without injuring the people of Montana. To manage the forests will support education. He presented several letters for review from various schools in support of this bill but they were not submitted as a part of the permanent record.

Opponents' Testimony:

Steve Kelly, Friends of the Wild Swan, said this bill is only a timber supply bill which overrides long term cutting of timber. He said it is not relevant to the issues at hand.

Stan Frazier, East Helena Prickley Pear Sportsman Association, said this bill is an exemption of the Environmental Policy Act. It will limit the citizen participation and it is also a security problem. This is the wrong thing to be doing.

Michael Scott, The Wilderness Society, said this legislation isn't needed because it will not contribute appreciably to monies distributed to the schools. It only proposes to fix a problem that does not exist. HB 72 will significantly effect the environmental quality of our school trust lands and is contrary to other state laws. This bill is being touted as legislation designed to provide revenue to the state school trust and to help support timber jobs, but this legislation does neither. Rather, it contravenes current state law and will skew the decision making of the State Land Board toward short term at the expense of long term investing. It also ties the hands of the state as it tries to seek creative and innovative solutions to the environmental issues which protect our resources and assure sustainable revenue sources for Montana schools. **EXHIBIT 24**

Jim McDermand, Medicine River Canoe Club, said this bill requires a security deposit for the challenges of the Department of State Land's timber sales. This resolution is merely a smoke screen to

eliminate the average citizen from participating in public the process that involved this public resource.

William Snider, Alliance for the Wild Rockies, Bozeman, said his organization has a long standing alliance with state lands. He opposes this bill because it has nothing to do with being a remedy of the fiscal problems of the state.

Tarn Reem, read a letter by Laurie Mendoza Rolsky, Whitefish, MT, in opposition to HB 72. Ms. Reem distributed a topographic map. EXHIBITS 25 and 26

Tim Wilson, Attorney, Helena, discussed the bonding requirement and the constitutional rights of the bill.

Denise Boggs, Program Director, American Wildlands, said there are severe environmental impacts in this bill and it limits citizens rights.

Tony Schoorn, Coalition for State Lands, opposes HB 72.

Janet Ellis, Montana Audobon Council, said the Audobon opposes HB 72. She addressed section 3 of the bill.

Jim Jensen, Executive Director, Montana Information Center, stated his opposition to the bill.

Jeanne-Marie Souvigney, Assc. Program Director, Greater Yellowstone Coalition, EXHIBIT 27

Ben Long, Management Direction for Montana Trust Lands, EXHIBIT 28

Questions From Committee Members and Responses:

REP. MCCULLOCH said he does not understand what the problem is. What will be solved with this bill.

Mr. Clinch said they are trying to solve the perception of reduced timber sales that occur historically off of state lands and its associated revenue.

Closing by Sponsor:

REP. BRANDEWIE closed.

HOUSE EDUCATION & CULTURAL RESOURCES COMMITTEE


December 10, 1993

Page 15 of 15

ADJOURNMENT

Adjournment: 6:30 P.M.


H.S. "SONNY" HANSON, Chairman


CLAUDIA JOHNSON, Secretary

HSH/cj

HOUSE OF REPRESENTATIVES
EDUCATION AND CULTURAL RESOURCE COMMITTEE

ROLL CALL

DATE 12-10-93

NAME	AYE	NO
REP. H.S. "SONNY" HANSON, CHAIRMAN	✓	
REP. ALVIN ELLIS, VICE CHAIRMAN	✓	
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	✓	

HR:1993

wp:rlclvote.man

CS-11

Testimony In Support of House Bill 81

by

ROBERT G. NATELSON¹

ESSENCE OF THE BILL

House Bill 81 would amend Montana tax law to permit a taxpayer spending money on K-12 tuition and materials on behalf of a minor dependant to take a refundable income tax credit for this expenditure. The credit would be available to parents of children in public, private, or home schools.² To avoid significant liability in this biennium to parents whose children already are educated privately, the credit would be phased in. The credit would be finally capped at \$1000 for each minor.

PURPOSES OF THE BILL

The bill has three purposes:

- (1) To improve the quality of K-12 education,
- (2) to increase the amount of public money available for tax relief and/or for per-pupil expenditures in the public school system, and
- (3) to increase engagement between students' family and students' education.

These purposes are closely akin to the purposes of the charitable deduction, i.e., to encourage the broadest possible range of public and private providers, reward private involvement, and reduce direct state expenditures.

The bill features a capped refundable credit instead of an uncapped deduction because a capped refundable credit is more fair to moderate and low income families.

THE BILL IN PERSPECTIVE

In form, H.B. 81 is only one more tax credit bill, like many others. In making claims for or against the measure, one must be careful not to claim too little or too much. H.B. 81 will neither "save" nor "destroy" public education. It will neither balance nor break the budget. The \$1000 limit is neither insignificant nor overly generous.

¹Professor of Law, University of Montana and Chairman, Montanans for Better Government. The opinions expressed are those of the author and not necessarily those of any other person or institution.

² But only as to payments made to other parties; homeschoolers could not pay tuition to themselves.

However, H.B. 81 does represent an important first step in the right direction. This paper shows why.

CHOICE IN OTHER COUNTRIES AND STATES

Countries other than the U.S. The United Nations' Universal Declaration on Human Rights states that "parents have a prior right to choose the kind of education that shall be given to their children."³ This right is backed up by public support in virtually all other advanced nations. Indeed, as Peter Drucker has observed:

America is the only major developed country in which there is no competition within the school system . . . The American public school, by contrast, has a near-monopoly -- no performance standards and little competition either within the system or from the outside."⁴

Professor Clifford F. Thies makes a similar point:

In Germany, Japan, England, and France, in Belgium, Holland, Canada, and Australia, in the emerging democracies of the Hispanic world, the Pacific rim, and the former Soviet empire, governments respect the responsibility of parents for their children, and do not demand that parents pay twice, once in taxes and again in tuition, to exercise this responsibility.

Thies then proceeds to cite relevant laws from Ireland, Holland, Alberta, and Spain.⁵

The implications of this state of affairs for U.S. education is discussed below.

Choice in other states. Prior to the 20th century, there was a strong private and home schooling sector in American education. In 1860, the literacy rate in states without *any public schools at all* was nearly as high as in states with public schools.⁶ It was common for government to pay tuition at private schools,⁷ a pattern that continues in Vermont today.

In the 20th century, government schools obtained a near-monopoly over K-12 education in most of the country. But the findings of educational research, coupled with

³ Thies, *Parental Choice in Education: Forecasting the Impact* (The Heritage Lectures, No. 432 (Oct. 29, 1992).

⁴ P. Drucker, *The New Realities*, p.235 (1989).

⁵ Thies, *supra* note 3.

⁶ Lott, *Why is Education Publicly Provided? A Critical Survey*, 7 *Cato J.* 475, 478 (1987)

⁷ Lott, *supra* note 6, at 491.

growing problems in government schooling, are encouraging the states to move back to a more balanced approach. Following are some examples:

Vermont. Ninety-five of the 246 towns in Vermont pay high school tuition to the public or private schools of their students' choice. This program has been in continuous existence since about 1870. Some sectarian schools are barred from the program, but other religious schools are included.⁸

Minnesota. In addition to full choice within the public system (including entrepreneurial, or "charter" schools), Minnesota operates a voucher plan for high school juniors and seniors and a tuition tax deduction plan for K-12.⁹ The voucher plan, called the Post-Secondary Options program, permits high school students to use public money to attend courses in the public or private college of their choice. As of 1990, about 5700 students participated. The tax deduction plan permits an income tax deduction of up to \$650 for K-6 students and \$1000 for Grades 7-12 for tuition, materials, and transportation expenses at any public or private school. Both the voucher and tax-deduction plans are available at religious as well as non-religious schools. The tax-deduction plan was upheld by the U.S. Supreme Court in Mueller v. Allen, 463 U.S. 388 (1983); the voucher plan is constitutional under the rule in Witters v. Washington Dept. of Services for the Blind, 474 U.S. 481 (1986).

Both programs have been successful. With respect to the voucher plan, it has been noted that:

One of the unanticipated benefits of this program is that local school districts, faced with the potential loss of students seeking broader curriculum choices, began to enrich their course offerings. More language courses were adopted in many school districts; statewide, the number of Advanced Placement (AP) courses were quadrupled since the Post-Secondary Options program was launched; and the University of Minnesota last year offered college-level courses at 24 high schools, up from one in 1985. So a program that, on its face, helped only the small minority of students who enrolled in courses outside their home schools turned out to be the stimulus for a general improvement in the public high schools.¹⁰

Iowa. In addition to full public school choice, Iowa has a tax deduction program

⁸ J. McClaughry, *Educational Choice in Vermont* (Institute for Liberty and Community 1987).

⁹ The tax deduction is authorized by 19 Minn. Stat., §19b.

¹⁰ Myers & Schwartz, *State of Choice: Minnesota Leads the Nation in Public School Options*, 54 Policy Review 67 (1990). See also Nathan, *School Choice Works in Minnesota*, Wall Street Journal, April 22, 1993, p. A-14, col. 4.

modeled after that of Minnesota.¹¹

Wisconsin. Wisconsin operates a voucher program for lower-income children in the City of Milwaukee. Unlike the Minnesota, Vermont, and Iowa programs, Wisconsin's plan is limited to non-religious schools.

WHY THERE IS A TREND BACK TO CHOICE

Amid a general recognition that there are problems in the public schools, researchers have tried to identify those factors that do or do not correlate with improved education. Among factors that do *not* improve the public schools are amount of money spent, class size, physical plant, and teacher's graduate work in education.¹² On the other hand, there is a strong correlation between student performance and whether the student attends a public or private school. After adjusting for such factors as student ability, peer group, and socio-economic background, researchers have found that private schools do a better job educating most children.¹³ This fact may explain why children from other developed nations (generally products of educational choice and competition) outperform U.S. children academically, even though most such nations spend a smaller percent of GNP on education.¹⁴

Two leading educational researchers, John Chubb of the Brookings Institute and Terry Moe of Stanford University recently re-examined the factors connected to good education. They also explain why private schools do a better job. Essentially, their findings were:

1. Next to student aptitude, the most important determinant of how well students learn is *how their schools are organized*.
2. Well-organized schools are characterized by freedom from politics and bureaucracy,

¹¹ 23 Iowa Code §422.9(2)(f).

¹² Hanushek, *Impact of Differential Expenditures on School Performance*, Educational Researcher 18 (1989). See also Hood, *Education: Is America Spending Too Much?*, Cato Policy Analysis No. 126, pp. 6-10 (1990). See generally J. Chubb & T. Moe, *Politics, Markets, and American Schools* (Brookings 1990).

¹³ J. Coleman, et al., *High School Achievement: Public, Catholic, and Private Schools Compared* (1982); J. Chubb & T. Moe; Hill, Foster & Gendler, *High Schools with Character* (RAND Corp. 1991).

¹⁴ Hood, *Education: Is America Spending Too Much?*, Cato Policy Analysis No. 126 (1990) (citing examples of Ireland, Germany, Japan, U.K., Spain and other countries, all of which spend a lower share of GNP on education than U.S., but all of whose students outperform U.S. students).

parental selection, and well-led instructional teams.

3. Because politics and bureaucracy have become so pervasive in the government school system, most well-organized schools are private.¹⁵

4. Replacing politics and bureaucracy with parental choice is the *only* feasible way of reforming public schools so they do a better job.

PUBLIC ATTITUDES TOWARD CHOICE

While we do not have polling data unique to Montana, support for choice in our state can be inferred from strong support in other states, including other states like Montana.

The recent polls are discussed by Professor Thies:

In the last year, popular support for parental choice in education has increased dramatically. During the 1980s, the Gallup Organization found that from 43 to 51 percent of Americans supported vouchers that could be used at "any public, parochial or private school." While not always an outright majority, support always exceeded opposition.

But, this year, the Gallup Organization found that 70 percent favored vouchers, only 27 percent opposed. This finding is verified by a Business Week/Harris Poll that showed that 69 percent favored vouchers, and by a survey of African Americans conducted for the Joint Center for Political and Economic Studies that found 88 percent support.

A survey conducted by Florida State University found that 63 percent supported parental choice, and a survey conducted for the Wisconsin Policy Research Institute found that 70 percent of Wisconsonians supported parental choice.¹⁶

EQUITY vs. STRATIFICATION

¹⁵ This was not always so. See Thiess, *supra* note 3, at 10:

A generation ago, public schools were administered on a very decentralized basis. But school district consolidation, cross-town busing, state mandates and control of teachers, textbooks, and curriculum, and a variety of schemes to equalize funding, have effectively turned public schools into instruments of state, as opposed to local, government. This has made local public schools less able to reflect community preferences.

¹⁶ Thies, *supra* note 3.

Opponents of choice sometimes argue that invidious discrimination and other forms of unfairness would permeate private education if choice were adopted. This charge feeds on stereotypes of the "elite" private school, of which there are relatively few nationwide and none at all in Montana. The relevant research actually has found that (1) students educated in religious schools are as tolerant of other religions as are those in public schools¹⁷ and (2) students at private schools are roughly as diverse as in public schools.¹⁸ -- with this exception only: That those of moderate and low income find it difficult to afford private education.

Of course, choice programs are designed to overcome the income problem, so their effect is to make private education more affordable and *more equitable* rather than less.

As Osborne and Gaebler write in Reinventing Government:

If we drop our ideological blinders and look squarely at reality, it becomes clear that choice, properly designed, will not threaten equity but *increase* it.¹⁹

Professor Thies makes the point in another way:

Americans believe that public money should benefit all children; not the few (those who attend private school) nor even the many (those who attend public schools), but all. And, in particular, that every child should have at least a decent education, including children in central cities where public schools not only fail their education function, but aren't even safe; and including children of parents whose deeply held religious views make secularized public schools an unacceptable choice.²⁰

HOW WOULD MONEY BE SAVED?

Because everyone agrees that private schools educate children for less money than public schools, the key to saving money is that some children would transfer from public to private education. Most implemented plans entail "fronting" money to those already in private schools, but because of its phase-in provisions H.B. 81 limits the state's liability in that regard. In any event, since the \$1000 tax credit is only 18% of total per child public school expenditures, only about 1% of children would have to transfer over to render the

¹⁷ Doyle, *The Politics of Choice: A View from the Bridge*, in Parents, Teachers, & Children: Prospects for Choice in American Education 227, 236 (1977).

¹⁸ Lott, *supra* note 6, at 482-83.

¹⁹ D. Osborne & T. Gaebler, *Reinventing Government*, p. 104 (1991).

²⁰ Thies, *supra* note 3.

program revenue-neutral. Most studies of the subject project large savings from comprehensive school choice plans.²¹

Last May, I publicly urged Montana policymakers to commission a study to project the number of likely transfers in response to a \$1000 tax credit. Although I repeated the call on several occasions, policymakers still have not responded. In the special session, therefore, we are left with the task of analyzing the issue based on information from other locales.

Professor Thies reports as follows:

At one extreme, there is The Netherlands where over 70 percent of the children attend independent schools, most of them being either Protestant or Catholic. The reasons why the private sector is so large in this country are: 1) that public schools are secularized; and 2) full funding is provided schools in the private sector.

Most comparable to the Colorado and California [or Montana - ed.] parental choice plans are Australia, France, and the United Kingdom. In these countries, the public schools are more or less secular, and only partial support is given to private and religious schools. The sizes of the private sectors of these countries are given in the table on the following page as 22 percent, 15 percent, and 26 percent, for an average of 21 percent.

This average suggests that, with their proposed parental plans, the private sector would more than double in Colorado and California. Therefore, the cost of extending financial aid to children in private and religious schools, and being home-schooled, would be more than offset by the savings that would accrue from the transfer of children from the public sector to the private sector.

Next, let's look at survey data. Parents of public school children indicate that, if they are given vouchers, transfers to the private sector may be much higher. A 1982 survey conducted for the U.S. Department of Education found that from 23.5 percent to 44.6 percent of parents of public school children would be "very likely" or "somewhat likely" to transfer them to private and religious schools, depending on the size of the voucher.

A 1986 Gallup Organization survey found that a modest voucher would

²¹ E.g. Thies (Colorado, California); Genetski & Tully, *Public and Private Education: A Fiscal Impact Study for Chicago* (Robert Genetski & Assocs, 1992); Beales, *Survey of Education Vouchers and Their Budgetary Impact on California*, Reason Foundation, Policy Insight No. 144 (1992); Bionomics Institute, *California Parental Choice Scholarship Amendment: Financial Impact Analysis* (1993).

induce 27 percent of parents of public school children to transfer their children to private and religious schools. A recent poll conducted by the Reason Foundation of parents of public school students in the Los Angeles school districts found that 52 percent would take advantage of that state's proposed voucher.

In Wisconsin, up to 53.4 percent would send their children to private or religious schools if it didn't cost them anything extra. Even the Carnegie Foundation survey, which must be considered suspect, found that 19 percent of parents of public school children would transfer them to private schools.

These surveys indicate that the private sector would at least double, and more probably triple in size with the implementation of a Colorado or California-type voucher plan. Instead of increasing the taxes required for primary and secondary education, these proposals would more probably reduce the taxes required, and certainly would not increase the taxes required.

If Professor Thies is correct, a reasonable estimate would be that the private schooling sector in Montana would rise from about six percent to 20 percent or more. At that rate, the net savings to the taxpayers would exceed *\$100 million per year*.

But as Thies points out,

The shift to private and religious schools will basically occur slowly over time, and in the absorption of growth by the private sector.

This, in fact, has been the experience in other countries. In Holland, initial, partial support of parental choice in education was obtained in 1889; and full support was obtained in 1920. These changes coincided with long-term, year-by-year growth of the private sector.

* * * *

For a more recent example, in British Columbia, Canada, partial support of parental choice was begun in 1978. This support consists of per capita grants to qualifying private and religious schools amounting to 30 percent of the per-pupil cost of public school instruction. . . .

In British Columbia, it took about four years for the cost of extending aid to students already in private and religious schools to be offset by savings due to the increase in the private sector. Since the private sector has continued to grow, implementation of parental support nowadays saves the taxpayers money.

CONCLUSION

School choice is an idea whose time has come. It offers and opportunity to improve education, empower parents, and save money in the process. H.B. 81, while not a complete response, is an important step in that direction.

-- Robert G. Natelson

Parental Choice in Education in Selected Countries

	Status of Religion in <u>Public Schools</u>	Support for Private <u>Schools</u>	Students Attending Private <u>Schools</u> *
Australia	Secular	Partial	22%
Belgium	Christian	Full	51%
Canada	Varies	Varies	5%**
France	Secular	Partial	15%
Germany	Christian	Varies	1%, 4%
Ireland	Christian	Full	20%, 50%
Japan	Secular	***	1%, 28%
Netherlands	Secular	Full	71%
United Kingdom	Secular	Partial	20%****
United States	Secular	None	9%

* If two numbers, students in primary then secondary schools.

** Plus additional students in "separate" public schools.

*** Partial support for senior high schools only.

**** Plus 6 percent in non-supported private schools.

Source: 1988 World Education Encyclopedia.

(Reprinted from Thies, supra note 3).

TESTIMONY of DAVID K. DeWOLF¹
House Education and Cultural Resources Committee
December 10, 1993

Mr. Chairman, members of the Committee, I appreciate the opportunity to speak in favor of H.B. 81. My purpose today is to shed some light on the constitutionality of state measures to enhance school choice by providing tax benefits to parents who enroll their children in schools not directly funded by the state. It is your decision as to whether H.B. 81 serves the needs of the citizens of Montana; but there should be no impediment based upon a fear that its constitutionality is questionable. Even those who oppose school choice plans as a matter of educational policy recognize that they are constitutional.²

The leading case in this area, and the most recent statement by the United States Supreme Court, is *Mueller v. Allen*.³ I will explain in greater detail below why I think the balance of factors favors the constitutionality of the proposed plan, but it must be recognized that the standards applied to any legislative plan cannot be defined with mechanical exactness. State action is unconstitutional only when the Court determines that, on balance, the plan falls so far outside the scope of permissible legislative action that it must be struck down as unconstitutional. I do not believe such a judgment could be made in this case.

I. Tax Deductions and Tax Credits for School Choice Do not Violate the Federal Constitution

Although it has been subjected to some criticism by members of the United States Supreme Court, the ruling test applied to cases raising the Establishment clause issue is *Lemon v. Kurtzman*.⁴ In that case the United States Supreme Court stated that state action is constitutional so long as it passes a three-pronged test: first, the state action must have a secular purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; and finally, it must not foster excessive entanglement between the state and religion. In all of the cases involving the application of the Establishment Clause to state programs designed to encourage education, there has been universal agreement that the secular purpose prong has been met. As to the second test, regarding the effect of the statute, the analysis must turn to the statute's *primary* effect. Does the statute *primarily* benefit religion, or does it only benefit religion incidentally as a by-product of a program whose primary effect is to encourage education generally, to reduce state expenditures by alleviating pressure on the public schools,

1. Associate Professor of Law, Gonzaga University School of Law, P.O. Box 3528, Spokane, WA 99220 (509-328-4220, ext. 3767). The views expressed here are personal to the author and should not be attributed to Gonzaga University.

2. For a recent example, see Note, *School Choice and the Religion Clauses: The Law and Politics of Public Aid to Private Parochial Schools*, 81 GEO. L.J. 711 (1993) ("[T]he current Supreme Court will likely find tuition vouchers constitutionally permissible").

3. 463 U.S. 388 (1982).

4. 403 U.S. 602 (1971).

and to enhance parental choice?

In *Mueller v. Allen* the Supreme Court placed special emphasis upon the form of the state action; if the benefit is directly to the school, as it was in *Lemon v. Kurtzman*, then the primary effect may be to benefit religion. However, if the form of state action is to benefit parents on a non-discriminatory basis, then it is more difficult to argue that the "primary effect" is to advance religion. The court in *Mueller* also emphasized the substantial deference that it would give to legislative classifications in its tax statutes.⁵ So long as the state has enacted a tax code genuinely aimed at apportioning tax liability fairly, then there can be no objection as to the effect upon religion, any more than a tax deduction for donations to churches can be attacked as a violation of the Establishment Clause.

II. Tax Deductions and Tax Credits for School Choice Do not Violate the Montana Constitution

Unlike the Establishment Clause of the United States Constitution, which has been tested on a number of occasions, the so-called "Blaine Amendment"--Montana Constitution, Art. XI, § 8⁶--has only been interpreted in one case, *Chambers v. School Dist. No. 10, Deer Lodge*, 155 Mont. 422, 472 P.2d 1013 (1970). In that case the Montana Supreme Court struck down a school district levy that would have provided for the employment of teachers at taxpayer expense in the Anaconda High School, a Catholic school. The grant of funds in that case was direct and specific. The court in *Chambers* made a special effort to distinguish direct grants of aid, which it held to violate the Blaine Amendment from providing tax benefits (even directly) that benefit sectarian organizations.⁷ The contemplated legislation in this case bears a closer resemblance to the form of aid approved in *Chambers* than to the form of aid that was struck down.

III. Even if a Conflict with the Blaine Amendment were Identified, Federally Protected Constitutionally Rights Must Prevail

It might be thought that, if the state constitution is subject to varying interpretations, the legislature should err on the side of avoiding even the possibility of violating the Constitution. However, this ignores the binding power of federally guaranteed rights. As a very recent

5. The one case that might be thought a danger signal for constitutionality, *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973), concerned state legislation that provided a tax credit to New York residents who sent their children to private schools. The Supreme Court struck down that plan as having a primary effect that advanced religion, because the grants were not truly tax credits, but instead were indistinguishable from tuition grants. *Id.*, at 790-91.

6. "Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever." Art. XI, § 8, Const. of Montana.

7. *Chambers*, 155 Mont. at 432-434.

example of the importance of this principle, a Seattle area school district was recently educated by the United States Court of Appeals for the Ninth Circuit on the supremacy of federally secured rights. The Renton School District refused to permit a Bible club to meet in school facilities because of its fear of violating the state constitution, which (like the Montana Constitution) forbids the expenditure of public money for sectarian purposes. The students, however, appealed on the basis of newly enacted Congressional legislation designed to protect the first amendment rights of students. The Ninth Circuit agreed with the school district that the state constitution prohibited the students' activities, but went on to uphold the students' rights, observing:

State constitutions can be more protective of individual rights than the federal Constitution. . . . However, states cannot abridge rights granted by federal law. . . . The [Equal Access Act] provides religious student groups a federal right. State law must therefore yield.⁸

If state constitutional prohibitions must yield to a validly enacted federal statute protecting certain constitutional rights, then even without specific enabling legislation the rights themselves are superior to any state constitutional prohibition which would limit the exercise of those rights. Two rights are threatened by an overly broad interpretation of the Montana Constitution: first, the right of parents to control the rearing and education of their children;⁹ and second, the freedom of religion guaranteed by the first amendment.

The Importance of Parental Control over the Education of Children. The legislative plan currently under consideration, like the Equal Access Act passed by Congress and interpreted in *Garnett v. Renton*, is designed to enhance the ability of parents to exercise a constitutionally guaranteed right. By providing a tax deduction or tax credit to parents who have paid for private education for their children, parents are exercising one of their most important rights.

The Unconstitutionality of Discriminating Against Schools Based upon Religious Belief. There would be no question as to the constitutionality of this legislation if it were limited to schools that had no religious affiliation whatsoever. In fact, because the Blaine Amendment only prohibits aid to schools which are controlled by a "church, sect, or denomination," even religious schools that were nondenominational would qualify for aid. Yet if the state were to attempt to exclude from the provisions of its aid package only those schools that were "sectarian," or "denominational," as opposed to nondenominational, the most difficult theological questions would be presented for resolution. One of the bedrock principles of First Amendment law is the requirement that states remain scrupulously neutral with respect to religious controversies. When invited to intervene in intra-church disputes, the courts have been commanded to respect the autonomy of church bodies. Thus, it would be a significant violation of rights guaranteed by the federal constitution for the state to engage in discrimination on the basis of religious affiliation.

8. *Garnett v. Renton School Dist. No. 403*, 987 F.2d 641, 646, cert. denied 114 S.Ct. 72 (1993).

9. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), recently reaffirmed in *Planned Parenthood v. Casey*, 112 S.Ct. 2791, 2797 (1992).

Conclusion

Neither the federal nor the state constitutions, fairly construed, prohibit the State of Montana from extending tax benefits to parents who choose to send their children to the school of their choice. Indeed, by protecting the constitutionally protected right to direct the education of their children, the State of Montana would be doing something similar to that which the United States Congress did in enacting the Equal Access Act. As with that legislation, even a State constitutional prohibition must yield to the rights of children and their parents to religious liberty.

Thank you for the opportunity to make this appearance. I would be happy to answer any questions you may have.

Representatives, thank you for the privilege to speak before this committee today. For those who don't know me, my name is Joe Balyeat. I'm an author and certified public accountant from Bozeman. I believe in Montana education. Like all 12 Balyeat children, I am entirely a product of the Montana education system - both public and private schools. I graduated from the University of Montana in 2½ years; maintaining a straight-A 4.0 grade average in all courses taken. I was a National Merit Scholar for all three years. I currently serve on the Montanans for Better Government task force for school choice.

As legislators, you know that most often your position requires you to make a choice between spending more taxpayers' money on the one hand; or, on the other hand, turning a deaf ear to proposals which would improve the quality of life in Montana. The bill you have before you today is one of those rare, rare opportunities for you as a legislator to both enhance choices for Montana families and save millions of dollars for taxpayers as well. And it is virtually risk-free. By phasing in the proposal as a credit for increasing education costs, the potential for large up front payouts to the present private school population has been eliminated. On the other hand, Rep. Boharski's projected savings of \$8 million dollars are obviously based upon very conservative numbers of school transferees. The upside potential for longterm savings to State and local governments is enormous. Please take note that while providing specific income tax relief to parents who transfer their children to non-public schools; this bill also provides general property tax relief to all Montanans because of the connection between local school mill levies and public school ANB.

With the influx of school age children to Montana, public schools are bursting at the seams. Bozeman taxpayers were recently forced to swallow a \$10 million bond issue to build a new school; and communities across Montana are facing similar frightening costs to accomodate increased enrollment. Meanwhile, private schools are ready and waiting to handle higher enrollment. I recently polled a number of private school administrators in southwest Montana and found, unanimously, that they could easily handle the 20-25% increase in enrollment next year projected by Rep. Boharski. It would be a fiscal travesty for us to ignore this obvious solution to the school budgeting crunch.

The present system, wherein public schools have an educational monopoly, is a breeding ground for inefficiency and waste. Without the forces of free market competition keeping costs in check, Montana K-12 total education costs have ballooned to over \$5700 per student. Moreover, monopolies have no incentive to improve their product or service. Therefore, according to a national study by Stanford University and Brookings Institute experts, "Private schools perform better - by one grade level on average - yet private school tuition averages 50% to 60% of public school cost."

But the school choice proposal before you today would not only improve education opportunities for those who transfer to private schools; it would improve education for those who choose to remain in public schools as well. A lone parent today has no motivation to get involved in a public education monopoly which has no competition and therefore no reason to listen to that parent's concerns. Author David J. Harmer has argued effectively, "Parental choice in education says, 'Look, parents, if you're not satisfied, you've got the right to remove your child altogether.' Parents need consumer power instead of needing some bureaucrat to review their complaint and decide if its meritorious or not." A study commissioned last year by your counterparts in the New York State Senate supports this argument comprehensively - competition will improve public schools.

But the present monopoly system provides no choice whatsoever for average parents to choose the best education for their children. Today,

only the rich and privileged have educational choice. In the last U.S. Congress, out of 535 members, only 1 congressman had his children enrolled in D.C. public schools. President Clinton has made the choice to enroll his own daughter in a private school. In fact, Pres. Clinton himself is the product of a private school education. His mother has stated publicly, "I wanted Bill in a good school. Everyone told me what a fine school the nuns ran - so I decided I'd put Bill in there right away." Her statement contains four crucial words that are the essence of the school choice movement. "I wanted... I decided". The Ohio Governor's Commission on Educational Choice stated in 1992 that "The choice issue is grounded on the basic premise that the child's parents are best suited to choose the school which will develop the highest potential of the individual child."

National news reporter Sam Donaldson commented recently that it is unfortunate that President Clinton reaped the benefits of educational choice for himself and for his daughter, yet he is inconsistent in opposing full school choice for average Americans. The rich and privileged have a right to choose, but the average Montanan has no such opportunity to choose unless you give it to them. The tremendous thing about HB 81, the Freedom of Choice in Education Bill, is that it would provide such increased choice opportunities for Montanans while saving the state millions of dollars as well.

Your colleagues in the New York State Senate commissioned a study on school choice last year. The conclusions of that study were as follows:

"*Conventional educational reforms have generally been unsuccessful in halting the decline in [school] performance and have little potential for doing so... *The key to better schools is more effective school organization; the key to more effective school organization is greater school autonomy; the key to greater school autonomy is competition and parental choice...

*Although the goal of educational choice is to give our children a better education, it would also eliminate stultifying and expensive educational bureaucracies and may yield significant savings... Superior education is achieved in private schools where the per-pupil cost is less than half the cost in public schools."

Your counterparts in New York and elsewhere in this nation are moving forward on school choice. I encourage you to not be left behind. In late 1991, the Pennsylvania State Senate passed a school choice program granting \$900 to parents of each student. Wisconsin has a successful pilot program in Milwaukee granting \$2,500 of state funding to parents to send their children to the public or private school of their choice. "More than a dozen states [already] offer some degree of public school choice." Moreover, advanced societies around the world recognize the basic right of parents to choose the best education for their children. Germany, Japan, Australia, Western Canada, England, France, Ireland, and many other advanced countries provide some form of school choice to parents. The study commissioned by your colleagues in New York concluded that "...Schools in the United States appear to be doing a worse job than... schools in other countries are doing." Perhaps its because we have not followed the lead of these other countries in adopting school choice and the benefits of competition which accompany it. People around the world are abandoning state-controlled economies and realizing the benefits of free market competition. Countries around the world have likewise rejected state-run educational monopolies and their children are reaping the benefits of school competition.

But the education lobby, wishing to maintain its lucrative monopoly, says such a system won't work in Montana, or anywhere in America for that matter. Nonsense. We already have successful nationwide working models of educational choice with us today. Many of you in this room reaped the tremendous benefits of the G.I. Bill; which grants funding to veterans to attend the public, private, or church-run college of their choice. Instead of building gigantic new schools and gigantic new bureaucracies to educate veterans, the government simply and efficiently provided funds for them to go to presently existing schools. Within four years, private college

enrollment doubled. Yet today we ignore the lessons of the G.I. Bill and instead continue to bankrupt the taxpayers of Montana by pumping ever more money into a public education bureaucratic monopoly which never seems to have enough; though it is spending more now to educate a first grader than most veterans spent on their entire college education. Why don't our children deserve a G.I. Bill for kids?

Moreover, in 1990 the U.S. enacted the Child Care and Development Block Grant. This program provides \$520 million in vouchers for parents to choose the program of their choice to provide social-educational services for children up to age 13. This includes programs for pre-school children, summer programs for school-aged kids, and before-and-after school programs as well. These vouchers may be used at sectarian or religious institutions because they are "aid directly to the parent, not to the provider." Thus, like HB 81, they are in full compliance with the 1983 U.S. Supreme Court decision (Mueller vs. Allen), which stated that public aid could constitutionally be provided to parents who in turn use it at the secular or religious school of their choice. And HB 81 complies with that court ruling as well. Now the \$64,000 dollar question is this - if parental choice for pre-schoolers is a good idea, why isn't it a good idea for K-12 kids? If parental choice is a good idea in the summertime, why isn't it a good idea in the fall and winter? If parental choice is a good idea in the afternoon from 3:00 to 5:00, why isn't it a good idea in the morning?

Let me tell you why bluntly. Because summertime programs and preschool programs and after school programs do not have a powerful public school bureaucracy and education lobby fighting against them to maintain their lucrative monopoly over the status quo. That's the only difference.

It is no secret that the teachers' union and public school power structure will attempt to intimidate you to vote against any proposal which weakens their monopoly. And they will put forth all kinds of convoluted arguments to discredit school choice. It is only natural that those who gain financially under the present system would oppose any attempt to change it. But please keep in mind their bias as you listen to their arguments. One need only look at the facts to determine the sincerity of their position: **Nearly one in four NEA teachers put their children in private schools (this is twice the national average).** On their government salaries they can apparently afford to make that choice. Yet they would deny educational choice to those less privileged in our society.

The fact that this special interest group has been able to maintain its monopoly control despite the obvious inefficiency, waste, and ineffectiveness of the present system, is a tribute to their political clout. But let us not forget that political might does not make right. I encourage you to do the right thing, not the politically expedient thing. I encourage you to remember that the Montana education system is supposed to serve our children, not serve the teachers. Its supposed to serve Montana families, not serve OPI bureaucrats. As Nobel Prize winning economist Milton Friedman has so clearly stated: "The real obstacle to getting [school choice] adopted is the educational establishment out of pure self-interest, not out of any ideological or egalitarian motivation." Please, for the sake of our children, ignore the whining of those who have a vested interest in the status quo, and take a good hard look at the numbers. Do not miss this rare opportunity to both enhance choices for Montana families, while at the same time saving millions of dollars for Montana taxpayers.

Once again, thank you members of the committee for granting me this hearing. I request that a written transcript of my testimony be added to the record of this hearing and distributed to all the members of the committee.

Joseph R. Balyeat, CPA
6909 Rising Eagle Road 586-1838
Bozeman, Montana 59715

EXHIBIT 3
2-10-93

TESTIMONY OF ROGER KOOPMAN
House Education Committee, December 10, 1993

House Bill 81
"Freedom of Choice in Education"

"Freedom is the right to choose, the right to create for oneself the alternatives of choice. Without the possibility of choice and the exercise of choice, a man is not a man but a member, an instrument, a thing."

-- Thomas Jefferson

MR. CHAIRMAN. Change is an inevitable thing, a natural response to the human desire to do things better. So it is in the field of education, for indeed, the things we value most are the things we most desire to improve. The question is not whether the winds of change will blow, but whether those forces will be harnessed to build or to destroy.

Parental choice in education is a movement that is sweeping this state and this nation. Like other great movements that preceded it, educational freedom of choice, over the long run, will not be denied. It is predestined to succeed precisely because it is rooted in the kinds of principles that set us apart as Americans and as a free society. The question before this committee and this legislature is whether we will be an important part of that great movement -- and so benefit current as well as future generations of Montanans -- or whether our state will trail the rest of the nation, standing timidly of the sidelines while our public policy continues to be crippled by pressure groups that have a vested interest in resisting change.

Among those fundamental principles that are uniquely American, are:

(1) a belief in individuals over institutions, and a faith in individual choice over bureaucratic or political choice. In the area of education, Americans and Montanans strongly believe that parents have the right and the duty to exercise individual choice over the education their children will receive. Ultimately, both the authority and the responsibility rest not with hired professionals, but with the parents themselves.

(2) a belief in maximizing the opportunity for choice (as Jefferson puts it) in the marketplace. Both in products and in services, we believe that the consumer is an extremely complex and individualized creature, who can only be properly served by a wide variety of offerings that address his individual needs and characteristics. So it is with a student's education -- especially with a student's education. We do not believe that students are stamped out with cookie cutters. Their needs are extremely individualistic, and what works for one student will not necessarily work for the next.

(3) a belief that, where institutions do exist, there should be the greatest degree possible of local autonomy and local control. In the area of education, there is an almost universal conviction that local schools should reflect community norms and standards, and that the providers of education -- the teachers and administrators -- should be empowered to do their jobs with flair and creativity. We believe that for education to work, there must be real accountability, and that accountability must be directly tied to the parents who are making those educational choices. Americans believe in an education system that is inspired from the bottom up, not the top down.

(4) a belief that whenever you wish to pursue excellence, the most effective mechanism is open competition. This is the classic American way of thinking, and the fruits of our freely competitive market economy are everywhere apparent. Competition brings out the best in all of us and, over time, guarantees the highest quality goods and services at the lowest possible economic cost. We know instinctively that this is true in every area of human endeavor, most certainly to include the education of our children. We also know that the surest way to bring down the quality and drive up the cost of anything -- including education -- is to promote monopoly by restricting competition through regulation or through exclusive governmental funding or licensing.

It is well worth noting that the best scholarship that currently exists on K through 12 education has established that there is almost no correlation between good education and increased funding of education -- whether those funds go toward more modern facilities, smaller class sizes or higher teacher salaries. What researchers are discovering is that the most important factors in the improving of education are local autonomy, parental involvement, open competition and direct accountability by schools to the consumers of education, if those consumers are empowered to exercise choice. As expert witnesses have already testified, this is exactly what House Bill 81 -- the Freedom of Choice in Education Act -- is all about.

I urge the members present to move swiftly in passing this bill out of committee, and to reject the false arguments of vested interests that, through fear of competition, campaign against free choice. This is not a measure that is against public education; it is a bill that is for a better education for all students at a dramatically lower price tag to the taxpayers of this state. It is not a voucher, it is not "government funds subsidizing private education".** It is a simple tax credit and truly functions as a "GI Bill for kids." At this critical time in our state's history, it is certainly an idea whose time has come.

** -- When did we accept the notion that the tax dollars we give to government are no longer our money but are now "government's money?" In fact, it is the peoples' money **entrusted** to government, to be used wisely and well to "promote the common welfare."

TEAM/MONTANA

TEAM - Tax Equity Action Movement, Inc.
P.O. Box 2472 Kallispell, MT 59903
Paul Newby, Chairman Phone 586-2804

December 10, 1993

Education and Cultural Resources Committee
Representative, Sonny Hanson, Chair
Members of the Committee
Helena, MT

Committee members:

Public Education is a monopoly and monopolies don't work. Parents should be able to choose where they send their children to school. In order to fund their choices, parents should be given tax credit which they could spend at the school of their choice.

In Milwaukee, one half of the teachers send their children to private schools; in Chicago it is 40%. Public school teachers all over our country send a higher percentage of their children to private schools than the rest of us. What do they know that is not being told to us?

Why would anyone wish to have a school choice in Montana?

1. We are seeing lower achievement scores in Montana. The private school scores are consistently higher.
2. The method of teaching is one of the major factors in degeneration of education. One example of the problem is expressed in the letter from Judy Territo (copy attached).
3. People who started this educational system are admitting failure. Doctor William Colson is an example of this failure. We have a taped interview with Doctor Colson (one of the originators of OBE) as he talks about his work and its strong adverse effect on the minds of many young people. Anyone wishing further information please ask for this tape.

School choice is an idea whose time has come. What better way to solve the "equal opportunity for education" problem? If tax credits were given for each student to go where he or she (or their parents) wished, it would be equal educational opportunity. Even our President Clinton has choice as to Chelsea's schooling, how about the rest of us? What do they know that the rest of us don't know?

Please support HB 81 school choice for Montana. Thanks!!

Sincerely,



Walt Dupea, Vice Chairman TEAM
P.O. Box 608
Bigfork, MT 39911 Phone 837-5751

Room 325

EXHIBIT 6
DATE 12-10-93
HB 81

My name is Terri Wofford. I am a mother of two young children and I want to be given the option to choose in which schools I wish to enroll my children.

I am ^{here in} ~~asking you~~ to support House Bill 81 entered in by ~~Senator~~ Representative Boharski.

There are several reasons why I support the bill.

1. School choice offers property and income tax relief, and

2. Where choice has been implemented in other states it has cut down educational cost.

and ~~to~~ lastly, it costs tax-payers \$5700/child annually to educate them in the public school system while private educators and home-schoolers operate at ~~less than half that cost~~ ~~\$1600 and \$200 respectively.~~

^{your support} ~~Please~~ ~~etc~~ ~~yes~~ on HB 81 which ~~will~~ ^{make} good
I am urging ~~you~~

fiscal sense, ^{as well as} ~~Common Sense~~

Thank You

House Education Committee
Representative

I appeal to your sense of principle - Why should parents not have choice and control of how and where their children are educated?

Article X of the Montana Constitution simply guarantees "equal educational opportunity". It does not state nor imply that the state should gain a financial and philosophical monopoly of education.

Consider these significant examples of respect and reverence for parental authority from our history:

"It is better to tolerate the rare instance of a parent refusing to let his child be educated, than to shock the common feelings and ideas by the forcible aspiration and education of the infant against the will of the father."
-Thomas Jefferson.

"The child is not the mere creature of the State: those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." -Pierce v. Society of Sister. U.S. Supreme Court 1925

"It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligation the state can neither supply nor hinder." -U.S. Supreme Court 1943.

Opposition to HB 81 leaves no room for parental authority and endorses the concept that children are "mere creatures of the state". Please show your support for the rights of parents by voting in favor of HB 81.

Thank you

Rick Jore

Rick Jore

5200 Cheff Ln

Ronan, MT 59864

644-2542

DAVE THOMAS 538-2659
RT 2 Box 2231 LEWISTOWN, MT

- THANK YOU FOR THIS OPPORTUNITY TO SPEAK
- IN OUR CENTRAL MONTANA PUBLIC SCHOOL SYSTEM WE ARE SEEING CONSISTANT INCREASES IN PER CLASSROOM ENROLLMENT
 - IT WILL LIKELY BE SOONER RATHER THAN LATER THAT THE NEED WILL ARISE FOR MORE CLASSROOM SPACE
 - THIS PROBLEM WILL CAUSE A TREMENDOUS BURDEN ON CENTRAL MONTANA TAXPAYERS
 - THIS PROBLEM WOULD LIKELY BE AVOIDED WITH PASSAGE OF HB 81
 - THERE ARE ALTERNATIVES TO PUBLIC SCHOOL EDUCATION IN OUR AREA. THESE ALTERNATIVES WILL BECOME MORE FULLY UTILIZED ONCE HB 81 IS PASSED
 - MANY LOWER AND MIDDLE INCOME FAMILIES IN FERGUS COUNTY WOULD LIKE TO UTILIZE PRIVATE EDUCATION BUT CAN NOT AFFORD TO AND ALSO PAY THEIR FULL TAX BURDEN.
 - HB 81 WOULD PROVIDE THE TAX RELIEF NEEDED SO THAT THESE FAMILIES COULD MAKE THE CHOICE WHICH BEST FILLS THE NEEDS OF THEIR FAMILY
 - HB 81 WILL SAVE CENTRAL MONTANA TAXPAYERS MUCH NEEDED REVENUE AND PROVIDE LONG TERM REFORM THROUGHOUT THE STATE SERVING TO BENEFIT ALL OUR CITIZENS. WITHOUT ANY DETRIMENTAL EFFECT ON OUR PUBLIC SCHOOL SYSTEM.

12-10-93

HB 81

- IN FACT AFTER PASSAGE OF HB 81 I BELIEVE
AS DO MANY OTHERS WHO SUPPORT THIS BILL THAT
OVERALL OUR PUBLIC SCHOOLS WILL IMPROVE THROUGH

- 1) GREATER COMPETITIVENESS
- 2) DECREASED PUPIL PER CLASS BURDENS
- 3) MORE STREAMLINED ADMINISTRATION

Do school choice plans ignore rural school needs?

by Dori Nielson

In 1989, President Bush called the nation's governors to Charlottesville to discuss education and change. One of the major topics was open enrollment or school choice. Three years later, 34 states were involved in legislative activity relating to this issue.

Several rural states have been involved in those discussions, including one of the most distinctly rural states, Montana. Montana is the fourth largest state geographically, but is only 44th in population. That combination results in only 1.09 students per square mile and 5.6 residents per square mile. More than 85% of Montana's schools are located in rural or small towns, and more than 50% of the school districts have fewer than 100 students enrolled.

Although open enrollment/choice proposals differ in detail from state to state, they have a common base. They generally allow a student to enroll in a school of choice with minimal or no cost. The plans either eliminate tuition, grant a voucher for parents to redeem at any school or provide a tax credit to parents who have school tuition

costs. Most choice plans involve only public schools, but in a few instances private/nonpublic schools are included. In some cases, transportation costs are incorporated into the plans.

Effects on rural schools

Do open enrollment and other choice proposals address the concerns of the nation's rural states? How do the claims commonly made by proponents for open enrollment/choice affect rural students?

CLAIM: School choice allows parents to make choices about education.

- The typical choices available to many rural school districts, especially in a state such as Montana, are a one-room school 20 miles away, maybe on a gravel road, or a school of approximately 50 students in a small town that's 45 miles away (and the first 25 are not paved). During much of the winter, the roads may be impassable.

CLAIM: School choice offers equal opportunity for poor children.

- The poorer the parent, the less likely the parent can make a choice that will cost money. The



Critics of school choice plans question whether such plans discriminate against rural students, whose only "choice" may be a school 20 miles away that offers the same courses as his or her current school. (Photo by Ruth Harris)

distances between families and schools in rural areas mean that few rural school choices could be exercised without increasing

transportation costs, either to the school district or the parents.

Continued on page 5

Distance learning provides link for rural schools

Continued from page 2

DATE 10-16-93
HB 81

of the Blue Earth Area Public Schools and acting superintendent of the Blue Earth Area High School District. "We want to eliminate both the duplication of service as well as the inefficiency in service."

Consolidated schools

The high school district was created when the schools were consolidated.

Many see this grant program as an effort by the state to consolidate small schools, but that's not its intent," Helmstetter says. Rather, the grants offer an incentive to bring small rural high schools together to share resources.

Under the program, the new high school will make office space available for support services, including school counseling, transportation,

protection, physical education, mental health and the county attorney's office. Although the school is still under construction, the collaboration itself is under way.

Helmstetter notes there have been no turf battles among agencies, a result he attributes to the fact that agencies are charged no rent for the space and that both human services

and parents have the opportunity to learn of services that could benefit them, such as adult education or parenting classes. "We hope to bring disenfranchised parents back into the school system by giving them a comfortable place to be."

Continued on page 11

School choice plans ignore rural school needs?

Continued from page 3

Limiting choice will increase transportation costs, especially in rural areas. If the district is required to provide transportation for students, the students who remain in district schools probably will have fewer funds available for instructional purposes.

CLAIM: School choice will improve student achievement because of competition among schools.

When the majority of schools are located in rural areas or small towns, schools are likely to provide similar programs. Choices to attend other schools generally are based on convenience, location where a parent works or athletic or academic activities. Therefore, school choice programs are not likely to be affected by school choice.

If nonpublic schools are involved in the "competition," the rural schools have become non-players because very few private schools are located in rural areas.

Private schools are not obligated to adhere to state rules and regulations that apply to public schools, such as those governing certified teachers, reporting and accountability and educating special education students. Private schools

rules for public and nonpublic are not the same, it can hardly be considered competition.

- States that are very rural — Montana, North Dakota, South Dakota, Iowa, Nebraska — already rank at the top in several standardized testing comparisons, high school completion statistics and postsecondary enrollment.

CLAIM: School choice will promote involvement of more parents in their children's education.

- The further from home the children go to school, and the more the chosen school is unlike the home community, the less likely that parents will be able or willing to be involved.

CLAIM: School choice will promote voluntary desegregation.

- Rural minority students in Montana and several other western and central states are likely to be American Indian students who live on remote reservations. The next nearest school is probably another reservation school.

CLAIM: School choice will force schools to streamline bureaucracies.

Unless local school boards are consolidated, rural schools will continue to have

schools often have almost no bureaucracy. In Montana districts, no on-site administrator is required in schools with fewer than nine professional staff.

It would appear that proponents of traditional school choice do not recognize that "choice" has many faces, and one of them is rural. Perhaps policy makers with rural constituencies should consider the choices that rural parents have advocated for generations. Those parents have supported the "choice" to keep their small rural schools open. Ask any legislator or policy maker who has advocated consolidation of small schools. Rural parents want their children to attend schools that reflect their rural culture and values and are close to home. And they want those small and often isolated schools to provide their children with educational opportunities to prepare them for the future.

Different choices

We can take people to the moon, film the surface of the moon, make phone calls from airplanes, watch two TV programs while filming a third, put the entire Encyclopedia Britannica on a small piece of plastic and watch what they have

opened up half way around the world. Surely we can bring art history to a remote Indian reservation, Japanese language courses to a one-room school, advanced math or science courses to a high school of 50 students or the most up-to-date agricultural research to a small farming community.

We have an available choice that provided infinite possibilities for learning without moving students great distances. It's called distance-learning technology and is already providing choices in some areas.

How about a choice plan that provides a voucher for electronic equipment or distance-learning courses if parents exercise the option to keep their students in small, rural schools with minimal bureaucracy and reduced transportation costs? It's a choice! The time has come to include rural America in the "choice" debates.

Nielson is a senior education analyst for the Montana Office of Public Instruction. This article is a personal view and is not intended to represent the position of the Office of Public Instruction.

EXHIBIT
12-10-93
HB 81




EXHIBIT 10
DATE 12-10-93
HB 81

Montana Education Association

1232 East Sixth Avenue • Helena, Montana 59601 • 406-442-4250
1-800-398-0826 (Toll-free) • Fax: 406-443-5081

December 10, 1993

To: Members, House Education Committee
From:  Eric Feaver, President, MEA
Re: MEA Opposition to HB 81 (Boharski) - Freedom of School Choice Act

Members of the committee, the 9,500 members of the Montana Education Association working everyday in our public schools, oppose HB 81, the Freedom of School Choice Act. We have outlined below some of our reasons for opposition. We urge that you do not pass the Freedom of School Choice Act.

Thank you.

MEA ARGUMENTS AGAINST THE FREEDOM OF SCHOOL CHOICE ACT

1. The Freedom of School Choice Act, hereafter referred to as HB 81, is unconstitutional.

Article 5, Section 11, Montana State Constitution reads:

"No appropriation shall be made for religious, charitable, industrial, educational or benevolent purposes to any private individual, private association, or private corporation not under control of the state."

Article 10, Section 6, Montana State Constitution reads:

"(1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination."

Folks, may argue the meaning of these constitutional provisions as they apply to HB 81. In fact, if passed, lawyers will for sure argue. The state can plan on spending a lot of money and time in litigation defending HB 81.

2. If not unconstitutional, HB 81 should be. It certainly is bad public policy to divert public revenue into private and sectarian, including home school, education, much of which is unaccredited, unregulated and unaccountable to any state or local agency. Wherever public dollars go, government regulations and oversight must follow.

3. HB 81 is expensive and creates yet another immediate deficit in our state's budget. Presuming there are 10,000 school age children currently participating in nonpublic education, including an unknown but estimated population of 2,000 home school students, HB 81 would create a state liability of \$3,750,000 in tax year 1994, \$8,750,000 in tax year 1995 and \$10,000,000 in tax year 1996. \$22,500,000 in unbelievable start up costs necessary to reward parents and guardians who already have their children in nonpublic schools. This is clearly not a savings. Ironically, \$22.5 million almost equals the cuts in public school funding and budgets this very legislature has in mind.
4. The start up costs of HB 81 are only the beginning. Once implemented, the demand for tax credits will grow. Instead of the targeted \$1,000 per child, HB 81 now contemplates, what might the target be in 1997 or 1999? We can anticipate requests for ever larger credits in perpetuity. Once implemented, nonpublic school tax credits will compete head to head with basic public school funding, Medicaid, highways, and all other state government expenses. And they must, because at the targeted \$1,000 per child, the tax credit is simply not enough to move a substantial population of students from the public sector into the private sector.
5. HB 81 will never save the state or local school districts money. Only the most grandiose projections of public school student flight would lead anyone to conclude that public classrooms will be closed or schools shut down because public school students have rushed over to the private sector. It will be interesting to hear how proponents of HB 81 intend to address the unavoidable fixed costs of our public school system.
6. No compelling state interest exists to adopt HB 81. Montana's public schools are in profound funding trouble, not profound academic trouble. We have faults and failures, none of which will be resolved by private school choice. Let HB 81 proponents outline their objections to our quality public schools. We suspect that when they do, their biased, parochial self-interests will be self-evident.
7. Indeed there is compelling state interest in not funding tax credits or any other form of nonpublic school aid. Nonpublic schools are by definition exclusive. They simply do not exist for all God's children. They atomize, balkanize our society. They are a frontal assault on our sense of community. They are the antithesis of public education.
8. Do we need freedom of choice in schools? Yes, we do. Freedom of choice in **PUBLIC** schools. Let competition and other market place factors work within and among public schools. Given the freedom and the funding, public schools will take care of business for a healthy Montana future.
9. Even the bible of reinvention, Reinventing Government, David Osborne and Ted Gaebler, ultimately rejects publicly assisted, unrestricted private school choice. Whereas Osborne and Gaebler are very critical of public school bureaucracy and teachers' unions, like MEA, and advocate for school competition, they nonetheless conclude, "A pure competitive marketplace--an unrestricted voucher system, for instance--would be certain to produce inequitable outcomes." (p. 101) And again, they state, "But given the risks that the political process would create a voucher system without . . . controls, equity will be easier to maintain in a public school system." (p. 102) HB 81 does not qualify as appropriate reinvention.

Thank you for your consideration of MEA's point of view.

December 10, 1993

Testimony Re: HB 81

Mr. Chair, Members of the House Education Committee:

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana. I have come to Helena today to rise in opposition to HB81.

I have spoken with Representative Boharski and heard his reasoning on this bill. And I have read the September 1992 legal memorandum prepared for Representative Boharski by Greg Petesch of the Montana Legislative Council. After having discussed the proposed concept with members of my Board of Directors and members of our Litigation Committee, it seems clear that ACLU comes to some very different conclusions about the Constitutional issues this bill raises.

And so, I offer these ideas today for your consideration.

First, I remind you that the Montana Constitution is more specific and stronger than the U.S. Constitution in prohibiting aid to sectarian schools. Not only does our State Constitution reiterate the Bill of Rights protections with language that lawmakers "shall make no law respecting an establishment of religion...", but it also has a specific prohibition against "aid to sectarian schools", either direct or indirect. Historically, this is a strongly held value in Montana. This pluralistic vision of the First Amendment is best served by government neutrality -- disengagement from religion and religious education, rather than participation in it.

Second, despite assertions to the contrary, we believe there are strong and compelling arguments that a tax deduction or credit would constitute indirect aid. While state law is lacking specific cases on this point, federal decisions have clearly and consistently denied a tax deduction for charitable contributions to discriminatory organizations or schools. Those decisions provide that tax deductions from the federal government are equated to aid to the discriminatory endeavor as is impermissible.

Third, the argument that the benefit would flow to parochial schools through a private choice of parents and not of government is quoted out of context. In Mueller v. Allen, the statute allowed all parents to deduct costs of education private and public, which was important to the decision.

This is a significant distinction, underscored in a more recent case not cited in Mr. Petesch's brief (Zobrest v. Catalina

Foothills School District 509 US, 125 LEd 2d 1, 113 S Ct, June 18, 1993) This case allowed state support for a deaf signer to both public and private school children. The case cited "... an interpreter's presence there (in the Catholic School) cannot be attributed to state decisionmaking". It was also clear that a service was provided in Zobrest so "no funds traceable to the government ever find their way into sectarian schools' coffers". That assurance is not the case with the proposed tax credit. Zobrest was decided by a sharply divided Court in a 5-4 decision, which should be a warning that the line was finely drawn.

Fourth, should this bill become law, the relationship between the state and religious institutions that will result, or that would necessarily have to exist, for the state to avoid advancing religion, will be of such nature and duration as to constitute excessive entanglement. Do the schools want the government more involved in monitoring their policies and procedures, curriculum and personnel decisions? Does the state want to get into the business of examining the details of every private school's business in order to insure that tax credits are used only as intended?

Finally, I would argue, and I believe courts would uphold, that the cardinal principle of religious liberty is violated when tax credits are used to support parochial schools where secular education is inseparable from the institution's pervasively religious purpose. Careful analysis will demonstrate that it is not in the best interests of private schools, nor is it in the best interest of public schools, not is it in the best interests of the state to give this bill further consideration.

I urge you to vote against HB81. Thank you.

110 W. 13th Street, P.O. Box 1176, Helena, MT 59624, (406) 442-1727



Montana Family Union, AFL-CIO

Don Judge, President
Pam Egan, Executive Director

TESTIMONY OF THE MONTANA FAMILY UNION ON HB 81,
BEFORE THE HOUSE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES,
DECEMBER 10, 1993

Mr. Chairman, members of the Committee, for the record, I am Pam Egan. On behalf of the Montana State AFL-CIO and the Montana Family Union, I am here to testify in opposition to HB 81.

Page 1 of HB 81 states that "the Legislature finds that educational opportunity is promoted by increasing available educational options and choices." But HB 81 does nothing to increase the educational opportunities and choices available to Montana families. It simply offers a tax break to those families who choose, under current law, to educate their children outside the public school system.

Under current Montana law, there are 149 non-public schools in Montana, the vast majority of which are religious-based. Of those 149 schools, only 11, that is about 7%, are accredited. That means that in only 11 of those schools do we know that students are being taught at the level of at least the minimum standards set by the people of this State. And those 11 schools are concentrated in 7 counties. Within the public school system, only the larger urban areas have more than one school at each level. And we are likely to see a reduction in those available schools with consolidation proposals in this special session. That's a pretty limited "choice" and this bill does nothing to improve it.

Those 149 private schools, not regulated by the state outside of minimum building safety rules, teach 8,067 students. The Office of Public Instruction estimates that another 1,957 students are taught in home schools in our state.

Using those figures, if no other families chose to send their children to private schools, this bill would cost Montana taxpayers more than \$22.5 million in foregone revenues in its first three years of implementation and more than \$10 million every year thereafter.

The experience of this special session shows that much of that foregone revenue is likely to be taken out of existing education programs in the form of budget cuts.

HB 81 further states that "the legislature finds that competition among schools can promote the quality of public education."

However, there is no empirical evidence available to justify such a finding. School choice is only a recent phenomenon in education. The idea that school choice can lead to better education is only a *theory* that remains unproven. In fact, the only extensive study of the limited school choice models in existence in the U.S., done by the Carnegie Foundation for the Advancement of Teaching, finds "an unimpressive report card on the relationship between school choice and school improvement." According to the study, none of the thirteen states with some type of school choice program has demonstrated significant gains that can be attributed to the new option.

December 10, 1993
Testimony of Montana Family Union
House Bill 81

HB 81 further states that "the Legislature finds that parental choice in education can reduce the property and income tax burdens and increase the amount of money available to educate each child in the public schools." We strongly disagree with that finding. Aside from the loss of revenue mentioned above, HB 81 would cost \$1,000 in foregone revenue and an average of \$4,706 in school funding for each new student withdrawing from the public system.

Additionally, the Carnegie Foundation study mentioned above shows that cost per pupil in true school "choice" systems goes up, not down. The study states that "Cambridge, Massachusetts...is one of the nation's most celebrated "choice" districts. It also happens to be near the top in the state in per-student expenditures, at \$9,200 in 1992-1993...The point is clear: choice costs."

HB 81 is based on erroneous assumptions, does not really promote increased educational opportunities and choices, and further bankrupts the state in a time of fiscal crisis. Most, important, however, is that HB 81 misses the point of the Constitutional requirement to provide a free public education system by giving a tax break to a select few Montanans who choose not to use the system.

HB 81's tax break is no different than offering a \$1,000 tax credit to Montanans who don't own a car because they don't directly use public roads or offering a \$1,000 tax break to Montanans who don't have children because they don't directly use the public school system.

All Montanans benefit from a strong, well-funded public school system. Our Constitution requires that we provide such a system. It is the responsibility of all of us to pay for it.

For the above reasons, the Montana Family Union and the Montana State AFL-CIO urge your strenuous opposition to HB 81.

MONTANA WOMEN'S LOBBY

101 E. Broadway #601
P.O. Box 1099

Missoula, MT 59802
Helena, MT 59624

406/549-4466
406/449-7917

EXHIBIT 13
DATE 12-10-9
HB 81

HB 81, "Freedom of Choice in Education"
House Education Committee
Testimony by Diane Sands, Executive Director
12/10/93

The Montana Women's Lobby Board of Directors, representing 52 organizations, opposes HB 81. We support the availability of public education for all Montanans and oppose any diversion of public funds from public schools to private education, either through tax credits or vouchers.

Public education represents one of the greatest strengths of a democratic society. We believe that HB 81 would weaken our educational system by siphoning away critical funding required to provide a quality education for all our children.


Please support our children and vote no on HB 81.

Boharski - (freedom of choice - tuition - tax credit)

House Education Committee. 1:00 p.m. Friday, Dec. 10, 1993

I have several issues that I would like to bring before you today. I'll be brief and to the point but I feel these are very serious issues that you folks need to answer, if not to me, at least in your own minds:

- #1 the issue of separation of Church and State
- #2 the issue of discrimination
- #3 if you are here to make state spending cuts,
how can this system of tuition tax credit freedom
of choice handle paying X# of dollars for students
currently enrolled in private schools
- #4 this new scheme will cause already underfunded
public schools more financial problems
- #5 the issue of school competition would be good for
schools in green for debate.
 - a) would the competition be fair?
 - b) is competition in every area good? (for
every winner there are many more losers)
- #6 the last and I believe the most serious issue is--
after the voucher or choice system fails and
destroys our present system, how will we bail
out the educational system left in shambles.


466-2490

OPINION/LETTERS

SCHOOL SUBSIDIES

Why should public pay for private educations?

By JIM ELLIOTT

An article appeared in the paper recently claiming that if we gave taxpayer's money to parents who send their kids to private schools our public schools would get better.

I'm confused.

First of all, I'm not certain that there's anything wrong with Montana's public schools that a little parental and public involvement wouldn't fix.

Second, I don't like the idea of my tax dollars going to support somebody else's idea of education. I vote to elect my local school board. I vote on my local mill levy. I and other taxpayers have a right and a role in setting local curricula and standards.

Would we have a similar right to set standards and curricula at private schools? And yet our tax dollars would go to support something over which we have no say?

Isn't that taxation without representation?

I know that there are parents who, for one reason or another, don't want their kids to go to public school.

If they think they can give their kids a better education at home or in a private school, or just don't want their kids to come into contact with an increasingly complex and scary world, that's just fine with me.

But I don't want to donate money to them so they can provide their children with a privilege I couldn't afford to give mine.

The article says that Rob Natelson, the Missoula law professor who is promoting this scheme, claims that the idea is not to subsidize the private school parents, "but, rather, to reduce their tax subsidy of public schools that aren't educating their children."

Let's look at that. My daughter left the Montana public school system in the 1980s, but I still pay a significant amount of property tax to support public education.

Does this mean I should get a rebate because I don't have a kid in school? If it does, I don't want it. I'm cheap, but I'm not that cheap.

Besides, I'm proud of the job our schools do in educating your children.

For years, Montana has led the nation in educational achievement, not to mention our having the best educated work force in the nation.

The value of a highly educated work force in boosting economic development is not disputed.

The idea of offering free public education to all of America's children is not a new one. I like to think that is based on the idea of all Americans being equal, and deserving of equal opportunities to improve their lot.

But there's another, more practical reason, too. A rising tide lifts all boats. If all our children are allowed the same educational opportunities, we as a nation and as a state will prosper.

Natelson offers two more arguments in support of his plan: it will save taxpayer dollars and promote better schools through "free market" competition.

He claims that there would be \$100 million in tax savings over a two-year period if 10 percent of school kids switched to private schools. Well, if this is true, why have no other states budgeted savings when they went to a school choice program?



Adapted from the Washington Times by Alexander Harris. Copyright 1993 Alexander Harris. Distributed by Los Angeles Times Syndicate.

In fact, at a public meeting in Noxon, Natelson claimed that the state of Massachusetts had counted on savings in education when they went to a school choice program. A call to the Massachusetts Department of Education made it apparent that this legislation wasn't put in place as a budget balancing measure, and that no tax savings were counted on.

And what about the free-market-competition idea? What's Natelson really saying here?

It sounds to me like he's talking about subsidizing private enterprise with taxpayer dollars in order to make public schools more competitive.

At the same time, he'd give the public schools less money with which to compete.

Am I the only one who's confused?

Look, I believe that there is money to be saved in our public education system. That's why I've supported such things as efforts to lower public school administrative costs.

But I don't believe you make the system run better by gutting it. If Rob Natelson thinks our public schools are the bunk, I urge him to do what other concerned Montana parents do. Send his kids to public school and go to school board meetings.

If he thinks school taxes are too high, he can work with others, including me, to get them down.

But this proposal to subsidize private schools goes too far.

No offense, Rob, but I don't want any of my tax dollars going to subsidize the private education of a child whose father makes \$50,000 a year as a university law professor.

Jim Elliott is a Democratic state representative from Trout Creek.

EXHIBIT 16
DATE 12-10-93
HB 81

MONTANA CITIZENS FOR EXCELLENCE IN EDUCATION

Joe Seipel, State Director

December 10, 1993

Members of the Committee:

School Choice is the most cost efficient and effective means of reforming our educational system. The current state budget crisis forces us to focus on other more cost effective methods of providing educational services to our children. "Choice" would create a free market in the educational system. Competition would cause quality to rise and schools would be more sensitive to parental concerns. Research indicates that it costs far less to educate a child in a private or home school compared to the public school.

Parents should have the basic freedom to choose how their child is educated! Why should taxpayers be forced to pay more money for public school reforms that do not work? And why should parents who choose to educate their child at a private or home school have to pay taxes for the public school?

Give Montanans the right to school choice. We recommend the committee support the School Choice bill.

Respectfully,


Joe Seipel

Does the plan call for an accountability mechanism? Ideally, accountability should come from below, from the parents and students (customers) the school serves. There is merit in saying that results should be provided to those customers to enable them to properly evaluate the school.

However, schools should not be required to participate in state or nationally designed and scored assessment tests which may include intrusive value and belief questions which violate family privacy. If testing is required, the school should be free to choose and administer its own test and retain individual results, releasing only aggregate academic scores to the public.

Private and religious schools should be able to set their own policies on teacher certification requirements. The plan should not require such teachers to be state certified or trained. Teacher certification should not be required of home-schoolers.

Specific provisions should be included to insure that all private and home schools are completely free from government regulation of curriculum, teaching methods, content, philosophy, etc. For example, California's proposed initiative contains a "grandfather clause" which freezes private school regulation as of a prior

date and requires a three-fourths vote of the state legislature to make any changes.

- Evaluate what stage the choice plan is at: Does it include private schools, even religious schools? Does it include home schools? Any step in the right direction is good, but if not all are included, you'll want to keep working at choice until *all* parents have their full freedom to choose.
- The wording should give vouchers (or whatever mechanism is used) as grant-in-aid to **parents**, not aid to schools (to safeguard against constitutional problems).
- All private, religious and home schools which may be covered by the choice plan should clearly and specifically be given the right not to participate in the choice plan. They should have the freedom of choice also, as to whether they participate and whether they accept vouchers.

In deciding your position on educational choice, there are many arguments which must be examined on both sides of the issue. CEE has prepared a report addressing these concerns, to help you decide for yourself and support your position. Please write to CEE, Box 3200, Costa Mesa, CA 92628, and request the report on "**CHOICE IN EDUCATION**." A donation of any size would help cover CEE's costs.

	CHILDREN'S PUBLIC SCHOOL
	Awareness Bulletin
Citizens for Excellence in Education	
EXHIBIT 16 12-10-93 HB 81	

Should Parents Have the Freedom to Choose How Their Child is Educated?

Whether or not parents should be given the right to choose where their child is educated and given the means to make that choice regardless of their economic condition is a hotly debated issue in America today. Choice is a key (and the most positive) component of President Bush's America 2000 strategy, and many see it as the only hope for true restructuring and reform of the public education system.

Choice plans are varied, from magnet schools to state open enrollment, from choice of public schools within a district to choice of any school, public or private, religious or secular. The methods also vary, including such options as tuition tax credits and vouchers.

Educational choice would give parents and students the freedom to direct their learning (and its religious basis), an early American concept and a Biblical one (the Lord puts full responsibility on parents for the

also make public schools accountable to free market forces in competing against the more efficient and effective private schools. It would force a decentralization of the bureaucracy, resulting in more local control and accountability to parents.

Choice plans are less expensive and have been shown to result in higher student achievement, higher attendance rates, lower dropout rates, and greater enthusiasm from parents, teachers and students. A door of opportunity is opened to low income and minority students who now lack options and incentives.

Like any new idea, some will seek to accomplish their own agenda through corrupting or re-defining the term. To truly benefit parents and students and protect private schools, any choice plan must contain certain safeguards. Here are some important elements to watch for in any choice legislation:

November 19, 1993

RE: Outcome-based Education

FROM: Judy Territo

Approximately one year ago I sat in a school board meeting and it basically changed my life. That was where, for the very first time, I heard the term "Outcome Based Education" (OBE). That's where I was told it was not a curriculum, but a philosophy. So what type of philosophy was this new thing coming into the Columbia Falls School District?

Let me begin by telling you I have two children, a son 15 years old and a daughter 12. Neither one has ever been in public school, but last year my son was in 8th grade and my husband and I considered putting him in the public high school. That is what got me started going to the school board meetings.

As I researched out this new philosophy, I was stunned by what I was finding out. The philosophy itself which was given out at the OBE seminars was total socialism. The words "individual" or "individual achievement" was **never** mentioned. I will site a few examples below and these are quotes.

-- Every behavior in the district must be alined with and be totally consistent with this purpose (they do not go into detail of what the "purpose" is).

-- Control theory is the centerpiece for all interpersonal transactions.

-- The best and most vital knowledge serves to **drive** and **reshape** practices, structures, processes, relationships and beliefs.

-- Course and unit outcomes - specific cognitive, **affective** and **behavioral** outcomes have been identified for each course and for each unit within a course.

****Special note:** "Cognitive" learning is the 3 R's and "affective" deals with the values, beliefs, opinions and relationships of students.

-- The demand for a searching, in-depth introspective of our fundamental belief and value system. Clarification of values and beliefs have critical impact on a wide range of activities.

-- Every member of the district staff accepts the need to **align personal behaviors** toward published outcomes.

At the same time I was questioning the administration on what OBE was, terms like "religious fanatic" and "far right extremist" starting filtering down through the teachers about me. To say the least, I was surprised. The administration never changed their tactics. Our superintendent, Ryan Taylor, went as far as mailing out to all the businesses in Colombia Falls an article entitled "Targets of the Right" which told how we were trying to take over school boards, change textbooks, etc. He used taxpayers' money to mail them out and when we confronted him, he never apologized or withdrew his stand.

We later found out that this is the tactic the National Education Association (NEA) uses against parents who oppose the restructuring of our schools. The NEA has put out pamphlets telling school districts how to deal with us and our administration followed it to the "T".

To summarize in easy terms what OBE is and its goal for our children we see the federal government passing down huge sums of money to our school districts through the states. The federal government with support from numerous UN agencies is saying we don't care how you go about "educating" the children, but when they graduate 12th grade, we want a "politically correct" robot. Politically correct in terms of population control (abortion), euthanasia, one world global thinking, radical environmentalism, homosexuality, etc.

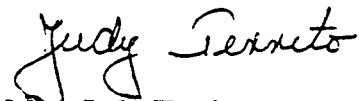
OBE has parents up in arms across the nation, but yet it still is creeping into numerous school districts without parents even being aware. Private schools and homeschoolers are at risk also, because if Montana mandates OBE, then we will be under the same accreditation standards. Also Nancy Keenan is a strong OBE proponent and already is adding OBE tentacles into state accreditation standards.

If you think OBE might be coming into your school, a few buzz words to watch for are: Mastery Learning (ML), values clarification (i.e. value-free), whole language, multi-culturalism, thinking skills (critical thinking, higher order thinking), DUSO & Pumsy, DARE, self-esteem, global education.

Columbia Falls school district has many of the above things in our program and after a year things have died down. I feel we have accomplished very little in getting it out. Our goal is to change our school board. All but one are strongly in favor of OBE and are allowing the above things to enter our school unopposed.

If you have any questions or would like information sent to you please feel free to call me at 1 (406) 892-4024.

Sincerely,

A handwritten signature in cursive script that reads "Judy Territo". The signature is written in dark ink and is positioned above the printed name.

Mrs. Judy Territo

To Whom It Does Concern:

We had our three sons out of the public "Government schools for nearly 10 years. Seven of those years we home-schooled. Three of those years we paid tuition in a private school.

When our sons were first removed from Government school they had completed grades 7,6, and 5. They were tested in the private school (with the JAT achievement test) and were found to be at only 4, 3, and K. grade levels - and so that's where they were put.

Today we are so thankful to have made that choice, and paid that price because they can all read, spell and reason very well as mature educated adults - all things that are so lacking in most of those coming out of Government schools today.

What's more all the time our children were being educated at our expense, our tax dollars were continuing to support an educational system that had failed to teach not just one, not even two, but all three of our children.

We are totally opposed to the present system of education that taxpayers are forced to support with their tax dollars. We feel that parents should be allowed to use their tax dollars to educate their children in the manner or institution of their choice.

What better way to shape up public Government education than to run the risk of losing their position if they fail to educate. Along those same lines, we strongly support yearly testing of teachers and oppose just as strongly tenure of teachers after any length of time.

We don't feel that any sports or extra cirricular activities should be funded at the state level. If the people in a given district want those things they should be allowed to vote on them.

Thank you very much.

John Bolton

DATE 12-10-93

HB 69

McCone County

Circle, Montana 59215
Fax (406) 485-2689

COMMISSIONERS

Aron King
Connie Eissinger
Wenton E. Larson
Box 199
485-3500

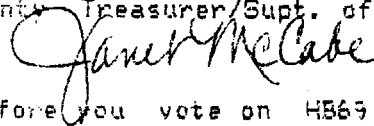
DATE: December 10, 1993

TO: House Education Committee Members

ASSESSOR

Laura E. Wittenberg
Box 179
485-3565

FROM: Janet L. McCabe, McCone County Treasurer/Supt. of Schools



Please consider these suggestions before you vote on HB69 today in Hearing.

CLERK & RECORDER

Jeannette K. Switzer
Box 199
485-3505

CLERK OF THE COURT

Patty L. Robinette
Box 199
485-3410

Our local government was created with a check and balance system. In McCone County we have eliminated the check of school fund management by making the County Treasurer and County Superintendent one elected official. School dollars collection in McCone County averages 60% of the tax bill collected. If we also eliminate the County Treasurer in the management of over half of the monies collected, who is to help the schools stay within the boundaries of the law.

COUNTY ATTORNEY

Arnie A. Hove
Box 184
485-2852

COUNTY HEALTH DEPT.

Patricia Wittkopp
Sue Good-Brown
Box 47
485-2444

The changes that possibly will occur in the special session with school funding (ie: Direct State Aid cuts, transportation cuts, reserve cuts, administrative cuts) will create an accounting nightmare if all financial responsibilities are turned over to the district.

COUNTY PLANNER

Mary Garfield
Box 199
485-3505

November tax collections in this county were \$1,332,008. Of this we will transfer \$538,101 directly to the state who will return to this office \$348,291 (eventually) to the schools in Direct State Aid. Under this proposal another \$354,769 would be immediately dispersed to the schools locally. You can see that 67% of the tax collections would be released to the schools.

JUSTICE OF THE PEACE

Wright Burton
Box 192
485-3548

SHERIFF

Robert A. Jensen
Box 207
485-3405

The only check and balances done on the school would be the year-end Trustees Financial Summary. The Office of Public has just completed the editing the FY93. The other check would be the required private audit, which locally is 2 years behind.

TREASURER / Supt. of Schools

Janet L. McCabe
Box 160
485-3590

Please vote against HB69. You would relinquishing too much responsibility to the school district with no means to monitor the handling of huge sums of money.

EXHIBIT 20
DATE 12-10-93
HB 69ANALYSIS OF REDUCTIONS
DEER LODGE ELEMENTARY

I have applied reductions to the Basic Entitlement and the Per Pupil Entitlement to determine the affect. I have also applied it to taxes in our District.

4 Percent

This will reduce total direct state aide by \$43,055.

Guaranteed tax base by \$26,061.

Total state savings \$69,116.

If the budget is frozen at its current level, taxes would increase by 16.34 mills unless we cash reappropriate \$110,439.11.

5 Percent

This will reduce direct state aide by \$53,818.

Guaranteed tax base by \$32,951

Total state savings \$86,769.

If budget is frozen at its current level, taxes would increase by 18.91 mills unless we cash reappropriate \$127,809.

6.1 Percent

This will reduce direct state aide by \$65,658.99.

Guaranteed tax base by \$40,179.

Total state savings \$105,838.

If budget is frozen at its current level, taxes would increase by 21.73 mills unless we cash reappropriate \$146,869.

Post-It™ brand fax transmittal memo 7671 # of pages 1

To Rep. Liz Smith	From Tom Cotton
Co.	Co.
Dept.	Phone #
Fax #	Fax #

HB 72
TESTIMONY

MONTANANS FOR MULTIPLE USE
PEGGY WAGNER, COMMUNICATIONS DIRECTOR

My name is Peggy Wagner and I am here today testifying as a proponent to HB 72. I am a mother with two children who attend our public schools and also the Communications Director of Montanans For Multiple Use.

First as a mother, I am concerned with the funding for our educational system. HB 72 is a logical way for helping the State of Montana to fund this educational system to provide good schools for my children and others.

Second as the Communications Director of Montanans For Multiple Use a non-profit organization who has a membership of well over 1500 in the State, we are concerned with the declining timber sales that the State of Montana has been offering. With the State's decline timber sale offers and the Forest Service's inability to provide timber for our local mills we have seen many families lose their jobs in this industry. This of course has set many things in motion; job losses, unhealthy management of our forests which will be detrimental to our wildlife populations, revenue losses to our local, state economy and revenue losses to our public schools.

Montanans For Multiple Use firmly believes that with sound forest management practices the State of Montana can offer the needed timber sales to our local mills, generate revenues for our public schools, which of course is what the State trust lands have been set aside for but most of all to ensure Montana forests will remain healthy for generations to come. The Christmas tree that now stands in the Rundda is an excellent example of the saying "Trees Are America's Renewable Resource". Even though many of the opponents here today would like to keep this knowledge a secret, we all know better. Trees do grow back!

Many of the opponents before you to day, are notorious for appealing timber sales on a regular basis. These special interest groups should be held accountable for these actions as they have cost the State money that we can no longer afford to lose. HB 72 would require a security from the person bringing the action in an amount equal to 10% of either the appraised value of the timber or the purchase price of the sale, whichever is greater.

Please support HB 72, as this bill will benefit Montana families, Montana's public schools and Montana's forests.

THANK YOU.

DEPARTMENT OF STATE LANDS
FIELD OPERATIONS DIVISION

EXHIBIT 22
DATE 12-10-93
HB 72



MARC RACICOT, GOVERNOR

STATE OF MONTANA

Central Land Office: Helena, MT (406) 444-3633
Eastern Land Office: Miles City, MT (406) 232-2034
Northeastern Land Office: Lewistown, MT (406) 538-5989

Northwestern Land Office: Kalispell, MT (406) 752-7994
Southern Land Office: Billings, MT (406) 259-3264
Southwestern Land Office: Missoula, MT (406) 542-4200

TO: Representative Ray Brandewie, House Education and
Cultural Resources Committee

FROM: ^{hdc} Mark Ahner, Area Manager, Central Land Office,
Montana Department of State Lands

DATE: December 9, 1993

SUBJECT: Tom Miner Timber Sale Information

Representative Brandewie:

I apologize for the volume of data provided, but in actuality the enclosed documents constitute less than 1/4 of the total amount of biological data, correspondence, etc. that this small sale has generated during the past four years.

Enclosed are the following documents:

- 1) Environmental Assessment, dtd. June 25, 1993
- 2) Decision Statement, dtd. June 30, 1993
- 3) Response to letters received on the Proposed Tom Miner Timber Sale EA, dtd. September 8, 1993
- 4) Addendum to Environmental Assessment, dtd. October 1, 1993
- 5) Minutes, State Board of Land Commissioners, dtd. October 18, 1993 (excerpted only portion related to Tom Miner Timber Sale).
- 6) Lawsuit, dtd. November 16, 1993
- 7) Summary of Timber Sale Bids, dtd. November 23, 1993
- 8) Contract Award Letter to Brand S Corporation, dtd. November 24, 1993

If you need any further specific information about this timber sale, don't hesitate to call Garry Williams at this office (444-3633). He has been intimately involved with this sale from its inception. The DSL attorney handling the litigation is Tom Butler (444-2074).

cc: Garry Williams\Tom Butler

Mr. Chairman, members of the Committee, my name is Michael Atwood, Resource Manager for Brand S Lumber Company in Livingston, Mt. I traveled to Helena to testify as a proponent to House Bill 72 however the School choice bill rescheduling did not allow me to do so in person.

We are a family owned company that employs 180 people in our mill and another 100 people in the woods. Our company has purchased several small State Timber Sales in Eastern Montana. One sale you might recall was the Mt. Ellis Timber sale out of Bozeman. This sale was targeted and threatened by Environmental groups, an adjacent land developer, and several college students. Governor Steven's decisive land board vote enabled the sale to go forward and become what is known today by industry and environmental groups as a landmark for "Model" forestry.

This sale was a success due the professional efforts of the State Forestry Department and contract loggers to insure that the forest resource was managed without degrading the viewshed of Bozeman. Governor Racicot often talks about the Mt. Ellis example of community benefits derived from State timber lands and conflict resolution.

Our company just purchased another State timber sale in the Tom Minor basin between Gardner and Livingston for a very high price. After the award of this bid, I was notified that the Mott family (multi-million dollar Mott's applesauce family) had filed a law suit against the State asking that they do further environmental analysis. The Mott's have a dude ranch adjacent to the Tom Miner sale which is planned to remove approximately 100 loads of logs from a section of land (a small sale). The Mott's were evolved as were many other public's in the initial review's of the sale which is removing less than 50% of the commercial timber on the section.

12-10-93

HB 72

The same forester that designed the Mt. Ellis sale has spent a couple of years on this sale and has done an excellent job of forest management while mitigating visual impacts. Brand S will have to pay the State \$32,000 to be awarded a sale that is tied up in litigation. We will receive no interest on our money during the litigation period however the State will. The Mott's have zero risk in filing this suit for the cost of approximately \$100.00 from their attorney. House Bill 72 would require the Mott's to post a bond equivalent to 10% of the value the State would receive if the sale were logged (\$17,000 in this case) which would require them to legitimize their concerns.

The irony in this whole process is that the Mott's clearcut their land several years ago and removed over 2,000,000 board feet or 500 loads of logs from the same viewshed. The clearcut has regenerated very nicely and has obviously not damaged the aesthetics of the area.

HB 72 requires that State Timber lands be managed on a sustained yield basis as determined by the State Forester and his inventory of the Forest. I serve on many committees with reasonable environmentalist who insist that forest be harvested on sustainable growth. This bill does just that. I personally visit with Foresters employed with the State who are very disappointed with the management of State lands and the recent harvest levels that are less than 50% of the growth rate. We simply cannot let politics jeopardize sound management of our state forests and the goal to adequately fund our schools.

Thank You



EXHIBIT 24
DATE 12-10-93
HB 72

THE WILDERNESS SOCIETY

TESTIMONY OF MICHAEL D. SCOTT
REPRESENTING THE WILDERNESS SOCIETY
ON H.B. 72 BEFORE THE HOUSE COMMITTEE ON EDUCATION
AND CULTURAL RESOURCES, DECEMBER 10, 1993

Mr. Chairman, members of the Committee, my name is Michael Scott. I am the Northern Rockies Regional Director of The Wilderness Society, a 58-year old national conservation organization with some 300,000 members across the country and about 2,000 in Montana. The Northern Rockies office is in Bozeman.

I am here today to oppose H.B. 72 and to ask this committee to reject the bill. This legislation is not needed because it will not contribute appreciably to monies distributed to Montana's schools and it proposes to fix a problem that does not exist. But, it will significantly effect the environmental quality of our school trust lands and is contrary to other state law.

H.B. 72 IS NOT NEEDED

1. H.B. 72 will not add significantly to distributed funds

Last year the state school trust distributed approximately \$47 million in trust revenues to our schools. My discussions with the Department of State Lands staff indicate that they estimate this bill will result in a small increase in the amount of timber harvested from state lands, mainly due to the salvage exemption in Section 3.

According to DSL staff, some \$4-6 million worth of timber was sold from state lands last year. If we assume that DSL staff is correct, which we doubt, and that we would see something like a 10% increase in timber harvest, that means something on the order of \$400,000 in increased revenue to the trust.

Some of that revenue will be disbursed to schools and some left in the trust to generate interest. Assume a 50-50 split. This means that the trust would disburse about \$200,000 in additional school revenues, just 4/10 of 1% of last years' disbursements.

But, even this small increase could well be offset by the increased cost to state taxpayers associated with the provisions

NORTHERN ROCKIES REGIONAL OFFICE
105 W. MAIN STREET, SUITE E, BOZEMAN, MT 59715

(406) 586-1600

recycled paper

of Section 1(2) which, as discussed below, requires the state to pay to maintain uses on state land other than timber harvest.

2. H.B. 72 proposes to fix a problem that does not exist.

Section 2 requires a bond equivalent to 10% of the appraised price of any sale, or the purchase price, to be deposited with the state before any sale can be challenged in court.

This section is clearly designed to discourage challenges to state timber sales. Is such discouragement needed? Hardly. The Department of State Lands prepares approximately 15 timber sales annually. According to Department statistics, on average, about 1 sale annually is challenged in court.

One sale out of fifteen is hardly evidence that the state's timber program is being frustrated. However, the message that this section sends to Montana residents is significant. That message is that state government intends to make it as difficult as possible for citizens to participate in state government. People are already cynical enough about the workings of our government. Let's not make it worse with legislation like that contemplated in Section 2.

H.B. 72 WILL SIGNIFICANTLY EFFECT THE ENVIRONMENTAL QUALITY OF STATE SCHOOL LANDS

The current practice by the Department of State lands is to mitigate the effects of timber harvest on other values, such as fish and wildlife.

The Department does this in order to assure that the mix of values found on school trust lands is maintained. This isn't done just to protect environmental values. If the state ignored other values, it would effect the long-term ability of the trust to maximize revenues from trust lands.

An excellent example of this is the current attempt by the Department of Fish, Wildlife and Parks to seek a solution to the bull trout problem through its Bull Trout Roundtable.

The bull trout has been proposed for listing as an endangered species because of a precipitous decline in its numbers. A significant amount of the bull trout's habitat in northwest Montana is found on state land. FWP has asked the U.S. Fish and Wildlife Service for the opportunity to put together a plan that would keep the bull trout from being listed.

If H.B. 72 were law, it would effectively prohibit the State from working on a bull trout solution because:

"a decision by the board or department to prevent or reduce lawful income-producing activity on forested state trust lands to meet other societal goals or comply with other management techniques must be made to provide compensation to trust beneficiaries at full market value..." (Sec. 1(2)).

It is unlikely that the state would have the money available to invest in the school trust as required by Sec. 1(2).

In the long term, however, this will hurt the ability of the state to cut timber on trust lands. If the bull trout is listed, the state might well have to prohibit harvest on trust lands that are important bull trout habitat or face a "taking" under Sec. 9 of the Endangered Species Act.

H.B. 72 prohibits the kind of balancing between short and long-term interests current law allows by requiring that the board or department maximize short-term revenues. This approach is akin to consuming next year's seed corn. We steal from the future for dubious short-term gain.

H.B. 72 IS CONTRARY TO CURRENT STATE LAW

Montana law requires that revenues be maximized from school trust lands but also requires that the state take into account other multiple uses. The Montana law is similar to the federal Multiple Use and Sustained Yield Act.

H.B. 72 would effectively supersede the Montana multiple use statute because it requires that timber be viewed as the dominant use of forested school trust lands. Any other "use" has to pay to be recognized. This approach flies in the face of current law and good land management principles.

H.B. 72 also effectively overrides the Montana Environmental Policy Act, and possibly other state law, by exempting salvage sales less than 500,000 board feet from its provisions (Sec. 3).

Arguably Sec. 3 overrides all other state laws as well. MEPA is designed to disclose the effects of a state action on the environment and determine whether those effects are in compliance with state law. If there is no MEPA review, it is very difficult to determine the effects of an action on other state law.

This problem is compounded since Sec. 3 does not contain the same proviso found in Sec. 1 (2). Sec. 1(2) states that if necessary to comply with state and federal law, the provisions of the section will not apply.

Since no analogous language is found in Sec. 3, it seems clear that the intent of the Section is to exempt salvage sales less than 500,000 board feet not only from MEPA but from all state law.

H.B. 72 IS NOT A JOBS BILL

The proponents of H.B. 72 have argued that it will benefit the school trust and that it is a jobs bill. I have demonstrated earlier in my testimony that H.B. 72 will have no appreciable effect on funds available to schools in Montana. The bill also will not measurably effect timber jobs.

Using the same assumptions about increased harvest I set forth above, I calculate that we might, being as optimistic as possible, see a 3-4 million board feet increase in timber harvest on state lands annually. The U.S. Forest Service assumes that 1 million board feet of timber will support 4-6 timber jobs.

Thus, this legislation might support 12-20 timber jobs, assuming the timber is available in the appropriate working circles. This is an important point, since most state timber is cut in northwest Montana, where the mills, and woods operations, are generally very mechanized. If the increase in timber occurs in the northwest part of Montana, we could well see no increase in jobs.

But, to give you some perspective on the 12-20 job figure it is important to note that this represents just 1/10 of 1% of the timber jobs in this state.

CONCLUSION

H.B. 72 is being touted as legislation designed to provide revenue to the state school trust and to help support timber jobs. The legislation does neither.

Rather, it contravenes current state law and will skew the decision-making of the State Land Board toward short-term income at the expense of long-term investing. It also ties the hands of the state as it tries to seek creative and innovative solutions to Montana's environmental issues which protect our resources and assure sustainable revenue sources for our schools.

This is legislation that should be defeated. The Wilderness Society urges the committee to reject H.B. 72.

TEL:

Dec 09 93

15:34 No. 012 P.02

FAX # 586-8242

- ATTN WILL

EXHIBIT 25

DATE 12-10-93

HB 72

REGARDING HOUSE BILL 72

TO BE READ BY TARN REEM

Dariusz Bajer

WRITTEN BY LAURIE MENDOZA ROLSKY, WHITE FISH, MT.

DECEMBER 10TH 1993

HOW DARE YOU. WHAT RIGHT DO YOU HAVE TO TAKE AWAY MY CONSTITUTIONAL RIGHTS? THIS PIECE OF LEGISLATION REEKS OF CORPORATE SPECCIAL INTEREST. THIS BILL IS NOT ABOUT BALANCING THE BUDGET IT IS ABOUT LOGGING. YOU ARE ATTEMPTING TO EXEMPT THE PUBLIC OUT OF THE REVIEW PROCESS. THE 10% SECURITY BOND SEC 2 OF THIS BILL IS A DIRECT PLOY TO LOCK UP THE COURT ROOM DOORS TO THE PUBLIC. WHAT IS SALVAGE. DEFINE THE WORD. DOES IT MEAN ONE ROTTEN LODGEPOLE? A PESTY BEETLE IN A PINE TREE? OLD GROWTH PERHAPS? DO YOU EVEN CARE? WELL I DO AND SO DO MY CHILDREN. SHAME ON ALL OF YOU WHO HAVE WRITTEN SUCH AN OBVIOUS ATTEMPT TO BAR THE PUBLIC FROM THE REVIEW PROCESS. THIS IS NOT ACCEPTABLE AND WILL NOT BE TOLERATED. WE WILL NOT LET YOU RAM ROD OUR TREASURE STATE INTO THE GROUND. THE MAXIMUM BENEFIT TO ME, MY CHILDREN OUR COMMUNITY AND TO OUR FUTURE IS NOT TO ALLOW THE TIMBER INDUSTRY TO TAKE CONTROL OF OUR STATE LANDS. OUR JOB IS TO STOP THEM BY STOPPING YOU. PREPARE FOR A BATTLE. FOR MONTANA'S STATE LANDS ARE OUR LANDS. WE WILL NOT BE LOCKED OUT.

~~The entire state is a public trust and the state has a duty to protect it. The state cannot give away the state's land.~~

586-8242

EXHIBIT 26
DATE 12-10-93
SB 72



EXHIBIT

1



Greater Yellowstone Coalition

EXHIBIT 27
DATE 12-10-93
HB 72

December 10, 1993

House Education and Cultural
Resources Committee
Capitol Station
Helena, MT 59620

Dear Members of the House Education Committee:

The Greater Yellowstone Coalition opposes HB 72, and asks that you defeat this measure. We disagree with this attempt to maximize immediate financial return, while shutting the public out of these decisions, and removing their right to challenge bad decisions.

This bill establishes timber harvests as the best use of the land, assumes that government decisions on state timber sales are always right, and could prohibit preliminary analysis or public comment even on salvage sales with significant impacts. It's bad for the resource, it's bad for the public, and it's bad for the long-term income-producing potential of our state lands.

I would like to comment on three provisions in the bill which we oppose:

1) Section 1 effectively establishes timber harvest as the highest, overriding use on forested state lands. It could preclude even reasonable management actions that might reduce the value of a timber sale. It ends good stewardship by placing blinders on land managers so that they are narrowly focused on timber volumes. If private landowners, or federal agencies, followed this same directive, there would be a tremendous hue and cry over violations of sustainable forestry, wildlife and fisheries protections, visuals and just plain common sense.

In addition, it establishes a double standard by requiring state timber harvests to produce the maximum return, even in conflict with other societal goals and good stewardship practices. Other activities on state lands, however, do not face the same requirement. One example is the process which allows grazing lessees to petition for a reduction in the fees paid to the state, even when higher returns could be obtained by other lessees.

2) Section 2, which requires a security deposit, would essentially stifle any legitimate challenges to DSL timber sales. It removes the checks and balances so important in our society for ensuring that government decisions comply with applicable laws, and do not run roughshod over the general public or private citizens.

28-
Going into court is expensive and time-consuming, and eats up a lot of resources that could otherwise be put to different uses. It's nonsense to think that lawsuits are entered into frivolously. Every one of us deserves an opportunity as citizens to legally challenge a bad government decision - whether it involves water, property, health, or timber. By requiring this kind of security deposit, you are preventing legitimate challenges because people simply will not have the resources to make the deposit. The provision is unnecessary; it suggests, at least in this case, that government knows best, it will never make a mistake or violate the law, and therefore should not be challenged.

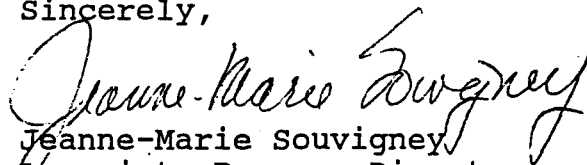
3) Finally, we are opposed to exempting salvage sales from MEPA (Section 3). There is no magic wand that somehow transforms salvage sales into non-significant activities. Salvage sales can involve activities which have significant effects on fisheries, wildlife, human safety, private property, other public lands uses or economic activities, and other resources.

MEPA is intended to provide sufficient agency analysis of a proposed activity, with public involvement, to ensure valid decisions. If you determine that salvage sales do not have to meet the requirements of MEPA, you are allowing agency decisions that avoid even the most preliminary environmental analysis, or opportunity for public comment, including sales where there is a high level of controversy, or potentially significant impacts. Sometimes, these issues are revealed only through the involvement of the public.

By not doing even a preliminary analysis, the state is again establishing a double standard for activities on state lands, and could be allowing activities that violate other laws, regulation, or policies.

We urge you to defeat this measure.

Sincerely,


Jeanne-Marie Souvigney
Associate Program Director

FAX 752 6114 Attn Ben Long

Management Direction For Montana Trust Lands

EXHIBIT 28

DATE 12-10-93

HB 72

Montana statute states:

"...the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state (emphasis added)

Montana Attorney General said:

"...the requirement of compensation for school trust lands used for any purposes other than the support of common schools is unavoidable absent the express consent of Congress. That uses such as highways, parks or natural areas might generally benefit the public is immaterial because they simply go beyond the narrow condition of the grant in the Enabling Act." (emphasis added)
Volume 36, opinion #92

Montana statute states:

"If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple use values."

The courts said:

"trust beneficiaries do not include the general public, other than government institutions, nor the general welfare of this state."
(South Dakota Supreme Court; Kanaly v. State 1985)

The Oklahoma Supreme Court in 1982 reaffirmed two key points concerning endowment lands: 1) school trust lands must be managed for the exclusive benefit of the public schools; 2) school trust lands must be managed to obtain full value (Oklahoma Education Association v. Nigh)

Two historic U.S. Supreme Court cases, *Ervien v. United States*, and *Lassen v. Arizona ex rel. Arizona Highway Dept.*, have been interpreted as follows by various legal scholars:

"...any derived benefit from the school trust lands must be used in support of schools and may not be used to support or subsidize other public purposes. Any arrangement not ensuring full fair market value for the use and/or sale of the school trust lands violates the trust obligation mandated by Congress...The U.S. Supreme Court has held that the interests of trust beneficiaries are exclusive--they are not to be balanced against other interests." (K.A. Bassett, "Utah's School Trust Lands," 9J. Energy Law & Policy 195 (1989))

We are not suggesting that any public agency over-harvest its timberland. In the case of Montana's school trust lands, we ask only that the Board of Land Commissioners manage those lands for the long-term financial interests of the trust beneficiaries. The Enabling Act which granted federal land to the State of Montana, as well as an extensive body of case law, firmly establishes a mandate for maximizing revenues from those lands. The sole purpose of school trust lands is to financially support schools.

In 1976, Montana Attorney General Robert Woodahl issued an opinion (Volume 36, number 92) concerning the use of school trust lands for the creation of state "Natural Areas." Following are excerpts of his decision:

"...it is elementary that this trust be administered so as to secure the largest measure of legitimate advantage to the beneficiary. As a practical matter, this means the state must do something to generate and sustain income from school trust lands whenever possible. The state's discretion is not whether, but how to seek gain from school lands for best advantage to the trust."

"...the requirement of compensation for school trust lands used for any purposes other than the support of common schools is unavoidable absent the express consent of Congress. That uses such as highways, parks, or natural areas might generally benefit the public is immaterial because they simply go beyond the narrow condition of the grant in the Enabling Act."

Two U.S. Supreme Court cases, Ervien v. United States, and Lassen v. Arizona ex rel. Arizona Highway Dept., held that benefits from trust lands must accrue only to designated beneficiaries, and that such benefits must be at full, fair market value. These two cases have been interpreted with the following comments:

"Given the language and attitude found in the relevant case law, including rulings of the U.S. Supreme Court, any derived benefit from the school trust lands must be used in support of schools and may not be used to support or subsidize other public purposes. Any arrangement not ensuring full fair market value for the use and/or sale of the school trust lands violates the trust obligation mandated by Congress...the interests of school trust beneficiaries are exclusive--they are not to be balanced against other interests." (K.A. Bassett, "Utah's School Trust Lands," 9J. Energy Law & Policy 195, 1989, p. 202)

As recently as 1985, the South Dakota Supreme Court stated that beneficiaries of school trust lands, "do not include the general public, other than government institutions, nor the general welfare of this state." It is important to note that South Dakota was granted trust lands under the same Enabling Act as Montana.

"Neither the Congress nor the states may devalue the monetary trust assets to benefit others. Similarly, the trust lands and their management proceeds may not be devalued to serve other public purposes." (N. Handy, "Legal limitations on federal or state efforts to impose log export restrictions on the federal land grant trusts," mimeo., Washington State Department of Natural Resources, Olympia, WA (1989)

Given the body of case law surrounding the use of state trust lands, it is the contention of Montana Wood Products Association that the multiple use statute governing state lands could be shown unconstitutional in a court of law.

We further contend that DSL management of timber lands which grants "substantive effect" to MEPA, mitigating for perceived impacts such as elk hiding cover, aesthetic concerns, deer winter range, old growth, cumulative effects, and others, is a constitutional violation of the trust mandate.

Financial return to the school trust from forested lands is currently about 40 percent of its sustainable annual potential, resulting in gross negligence of the trust mandate.

otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

Cross-References

Management of school lands, Art. X, sec. 4, Mont. Const.

Disposition of income from lease of school lands, Art. X, sec. 5, Mont. Const.

School districts -- property, Title 20, ch. 6, part 6.

Case Notes

Operation and Effect: This is a general granting clause and shows clearly the interest of the Congress in the common schools of the newly admitted state. *Texas Pacific Coal & Oil Co. v. St.*, 125 M 258, 234 P2d 452 (1951).

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising--tillable lands capable of producing agricultural crops for not less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars (\$5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, non-mineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be

DEPARTMENT OF STATE LANDS

EXHIBIT

28

DATE

12-10-93

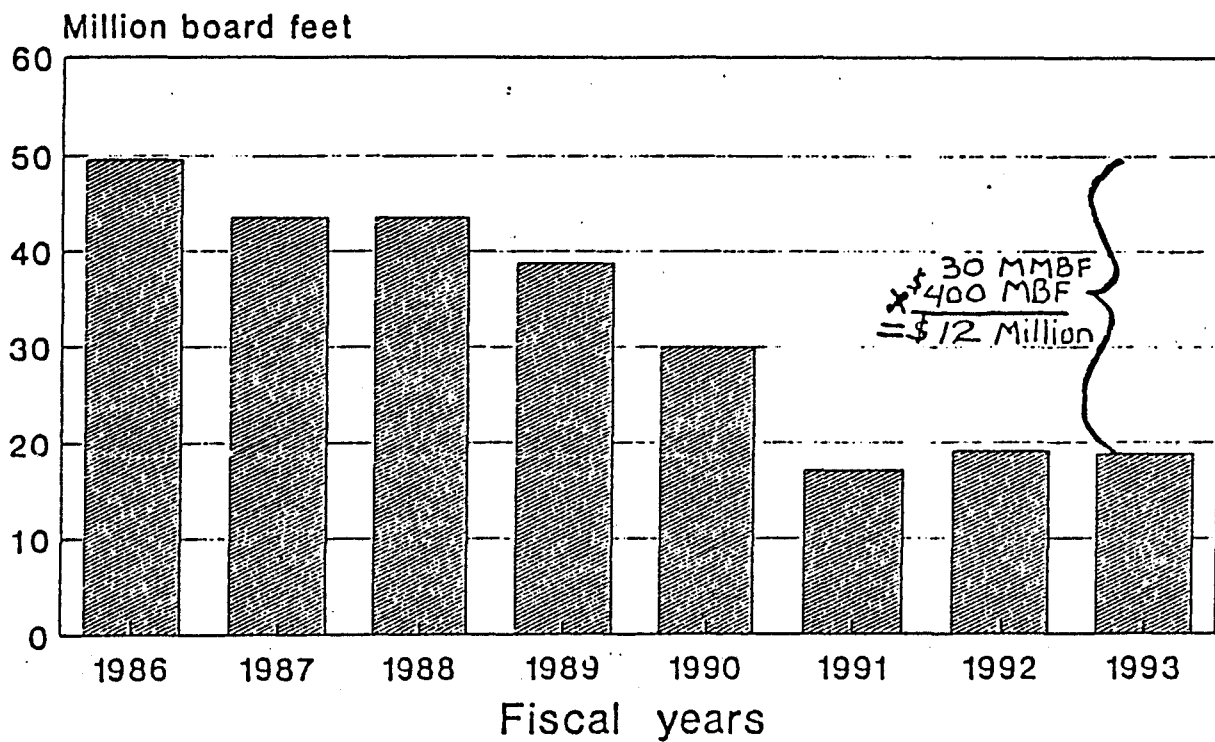
HB

72

	MONTANA	IDAHO	WASHINGTON
ACRES	507,900	785,000	2,100,000
VOLUME MBF	3,353,404	9,167,000	21,220,000
GROWTH MBF	86,907	188,000	840,000
MORTALITY MBF	24,346	60,000	87,000
SUSTAINED YLD	50,000	193,000	575,000
FTE'S	36	85	320
\$REVENUES	4,200,000	34,614,567	164,824,000
HARVEST (MBF)	(20,612)	(195,000)	(504,000)
\$ COST	2,500,000	19% 6,500,000	14% 23,300,000
NET CASH FLOW	1,700,000	28,114,567	141,524,000
\$ SOLD	5,400,000	84,561,333	?
	(18,128)	(220,000)	

Source of data: information was obtained from the Department of State Lands for each state.

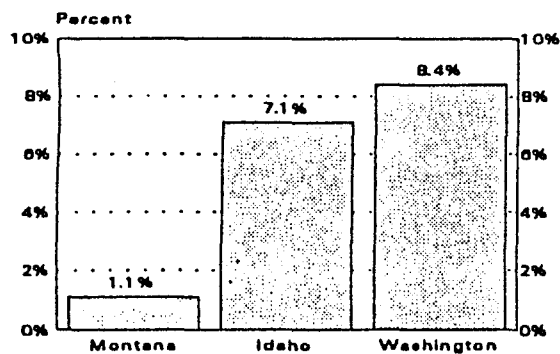
Montana Trust Land Timber Sales



Series 1

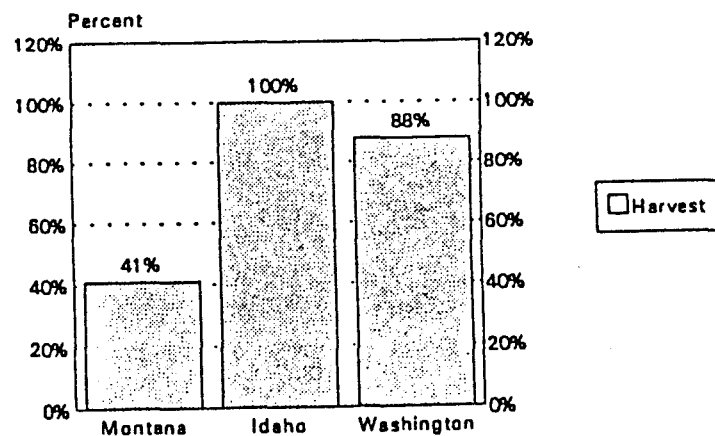
State Owned Lands

Comparative Returns



Lands Valued @ \$300/ac ID @ \$600/ac WA @ \$800/ac
Estimated Return on Asset Value

Percent Harvested of Sustained Yield



FACT SHEET

Legislation to Optimize Revenue from Forested Trust Lands

- * In Montana's Enabling Act, the U.S. Congress granted two sections of land in each township to be "held in trust" and managed for the benefit of public schools and specified institutions.
- * In FY '93 Montana's forested Trust land produced a net return on asset value of only about 1%. In contrast, Idaho's forested Trust lands returned 7.1%, and Washington State returned 8.4%.
- * 50 million board feet (MMBF) per year can be sustainably cut on Montana's Trust land, while actual timber sales from Trust lands have fallen to 17 - 20 MMBF;
- * At current high values, this represents foregone revenue of approximately \$12 million, of which \$8 million would go directly to public schools;
- * While neighboring states are harvesting 80 - 100 percent of the sustainable yield from Trust timberlands, Montana is harvesting only about 40%;
- * In FY '93, tree mortality on Trust lands totalled about 24 MMBF. That is 5 MMBF more than was actually sold for harvest;
- * Case law applicable to Trust lands clearly states that schools and specified institutions are the sole beneficiaries of Trust lands and that their financial interests are not to be balanced against other public objectives.
- * Idaho law requires that anybody seeking a court injunction to halt a timber sale must post a bond equal to 10% of the Trust's financial interest in the sale.
- * A timber purchaser compensates the Trust with a 20% down payment immediately upon bid approval. Even if a lawsuit is frivolous and unwarranted, both the Trust and the purchaser incur financial harm, while the plaintiff has no financial interest at stake.
- * Despite its otherwise cumbersome, bureaucratic process, even the U.S. Forest Service is authorized to categorically exclude salvage sales from review under NEPA to expedite harvest of dead/dying timber.
- * Other state agencies own and manage "public lands" for single use purposes such as parks, campgrounds, wildlife refuges, etc. As long as DSL complies with all applicable laws, why shouldn't Trust lands be managed for the primary purpose of generating desperately needed revenue for schools?

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Education

COMMITTEE

BILL NO.

HB 69DATE 12-10-93

SPONSOR(S)

BobRaney

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Kathy Fabian	OPI		X	
Jesse Cleary				
Dorothy Reichart	Ind. for Bitter Gar		X	X
Tom Schaeffer	Se/S			
Lynda BRANNON	MT Assoc of Sch. ^{Officials} Business	69	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Education

COMMITTEE

BILL NO. HB 72DATE 12-10-93 SPONSOR(S) Ray Brandewie

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
David Owen	MT Chamber	HB72		✓
Cary Hegreberg	MT Wood Products Assoc	HB72		✓
Geo Schunk	Atty Gen			
Steve Kelly	Friends of the Wild Swan	HB72	X	
Al Kington	Self			✓
Tarn Ream POB 9166 MSA 59807	Gold Creek Resource Protection Assoc.	HB72	X	
Kim Wilson	Self	72	✓	
Michael Scott	Wilderness Society	72	✓	
Jim Erickson	MT Wildlife Fed	72	✓	
Denise Boaggs	American Wildlands	HB72	✓	
Janet Ellis	MT Audubon	HB72	✓	
Chris Hunter	Fish, Wildlife, Parks	HB72		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Education

COMMITTEE

BILL NO.

HB 72DATE 12-10-93

SPONSOR(S)

~~Ray Brandewie~~

Ray Brandewie

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Peggy Trenk	WETA	72		X
Tony Schorn	State Lands Coal	72	X	
L. F. THOMAS	ANACONDA SPORTSMEN	72	X	
Sam Babich	BUTTE SPORTSMEN	72	X	
Polly Bailey	self	72	X	
James Henderson	self	72	X	
Lorna Frank	MT FARM Bureau	72		X
Lisa Fairman	self	72	X	
Noc / Rosetta		72	X	
Jim McDermid	Medicine River Canoe Club	72	X	
Stan Frasier	Prickly Pear Sportsmen		X	
Will SNIDER	Alliance for the Wild Rockies		X	
Anne Hedges	MEIC	72	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Education COMMITTEE BILL NO. HB 72
 DATE 12-10-93 SPONSOR(S) Ray Brandewie

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Peggy Wagner	Montanans For Multiple Use	72		X
Karen Powell	MEIC	72	X	
Stephen R. McIn	self		X	
Sandra Beggs	self	72	X	
Dan Kasten	Self	72	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Education COMMITTEE BILL NO. HB81
DATE 12-10-93 SPONSOR(S) Wm E Bohars

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DAVID K DEWOLF		✓	
Box 3528 SPOKANE WA 99220			
JOE BALLYEAT 6909 RISING EAGLE RD. BOZEMAN MT 59705		✓	
Rich Riley			✓
Dolores Colberg	myself		X
Jim Bolton	self	✓	
Judy Bolton	self	✓	
Leon E. Carpenter	self	✓	
Marlos Bates	self	✓	
Ken Bates	self	✓	
DICK DENNISON	SELF	✓	
CARLA DENNISON	SELF	✓	
Polly Bailey	self		✓
Wm E Bohars	SELF		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Education COMMITTEE BILL NO. HB 81
 DATE 12-10-93 SPONSOR(S) Wm E. Boharski

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
MARY SHEENY MOE 410 GEDDIS, HELINA			X	
Barbara Hollandsworth 10,000 Valley Grove Dr. Lolo, MT				X
Jim Hollandsworth 10,000 Valley Grove Dr Lolo MT				X
Walt Dupes 5300 Cheff Ln Ronan, MT 59864	Self TEAM	HB 81		X
Rick Jore	Self	HB 81		X
HARRY D. ERICKSON	SAM	HB 81	X	✓
Jim Donaldson 71 SAWMILL RD CLANCY	Self	HB 81		X
Tiffany Donaldson 71 Sawmill Rd Clancy	Self	HB 81		X
Rich Bloom 422 ALBERT, Helina	Self	HB 81		X
Earle Reimer 149 New Meadows Mola, MT	Valley Christian School	HB 81		✓
Sandra Reimer 149 New Meadows Mola, MT	Self	HB 81		✓
Joe Barnett	Rep. HD 76	HB 81		✓
Jerri Donaldson Eckelken	Self	HB 81		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTEREducation

COMMITTEE

BILL NO.

HB 81DATE 12-10-93 SPONSOR(S)Wm. E. Bakowski

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Amy Pfeifer 637 N Ewing Helena	myself		✓
Bethie Jean Antis Morong #20	" "	✓	
David McCauley	Montanans for Better Gov't	✓	
Charlene Howard	Montanans for school choice	✓	
Tim Tackett	parents	✓	
Stacy Frosier	Self		X
Karen Webb	myself	✓	
Larry Zastender	LFP S		✓
John Cochran	Mt. For Better Govt.	X	
Orin Jan	MEA		✓
SCO + St. Arnold	AFSCME		X
LARK A DAYS	M B G	X	
Brad Martin	MT Democratic Party		X
Liz Maly	Unfunded Schools		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

School
Voucher

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Educator COMMITTEE BILL NO. HB 81
 DATE 12-10-9 SPONSOR(S) Wm Bobbush

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Deane Jacobs	Mt. Women's Coll.	HB 81	X	
Travis Johnson	Self	HB 81	X	
Jesse Patton	Self	HB 81	X	
TOM COFFMAN	SELF	HB 81	X	
Bob Anderson	MSBA	8	X	
DAVE THOMAS	MFBG			
TOM MCKENNETT	MFBG	81		✓
Loren Trapp	SAM		X	
Arlette Randash	Self		X	⊗
Brett Hardy	MFBG			✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Education COMMITTEE BILL NO. MB 81
 DATE 12-10-93 SPONSOR(S) Wm J. Boharski
 PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John W. Wofford 1601 Knight	Mont. Better Gov't	✓	
Natalie Reichert	" " "	✓	
Jesse & Hazel Cleary	" " "	✓	
Leonard & Janis Lundby	Self	✓	
Laurie Kastnik	Christian Coalition of MT	✓	
Tom Lockyer	Augusta P.S.		X
Tom Reichert	Mont Better Gov't - WUSA	✓	
John Rice	MT for Better Government	✓	
Susan Thomas	MT. For Better Government	✓	
Lee Carpenter	MT for Better Gov't	✓	
Stan Palmer	" " " "	✓	
Josh Vanden ⁱⁿ			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Education COMMITTEE BILL NO. HB - 81
DATE 12-10-93 SPONSOR(S) Wm E Bohanski

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jamie Fraser Lewistown	Mt For better Gov	✓	
Chad Fraser Lewistown	Fergus High School	✓	
Yvonne Butler	Fergus High School	✓	
DAVE THOMAS	MT. FOR BETTER GOV'T	✓	
Melanie Stadler			
TOM MCKENNETT	CONCERNED CITIZEN (MT. FOR BETTER GOVERNMENT)	✓	
Art Kussman	myself	✓	
ROGER SAYLOR	MONTANANS FOR BETTER GOV'T.	✓	
Wm B. D'Alton	CONCERNED CIT Mont. for Better Gov't	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

DATE 12/10/98~~SENATE~~ ^{HOUSE} COMMITTEE ON EDUCATION + CULTURAL RESOURCESBILLS BEING HEARD TODAY: ^{HB} 81

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Nadia Zello	NORTH WINDY ESCH	HB 81		✓
James Wilkins	(STUDENTS)		X	
Margie Wilkins	"		X	
Don Waldron	MREA			✓
Debi Haessly	Montanans For Better Govt	HB 81	X	
Nor-ma Robertson	Montanans For Better Govt	HB 81	X	
David R. Robertson	MONT. FOR BETTER GOVT.	HB 81	X	
Pam Egan	Montana Family Union AFL-CIO	HB 81		X
Christine Kaufmann	MT HUMAN RIGHTS NETWORK	HB 81		X
Roger Porfoma	private businessman	HB 81	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY