

**MINUTES**

**MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON EDUCATION**

**Call to Order:** By CHAIRMAN DARYL TOEWS, on February 1, 1995, at  
1:03 p.m.

**ROLL CALL**

**Members Present:**

Sen. Daryl Toews, Chairman (R)  
Sen. John R. Hertel, Vice Chairman (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Delwyn Gage (R)  
Sen. Loren Jenkins (R)  
Sen. Steve Doherty (D)  
Sen. Gary Forrester (D)  
Sen. Barry "Spook" Stang (D)

**Members Excused:** Sen. Kenneth "Ken" Mesaros (R)  
Sen. Mignon Waterman (D)

**Members Absent:** N/A

**Staff Present:** Eddye McClure, Legislative Council  
Janice Soft, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 250, SJR 8, SB 232  
Executive Action:

**HEARING ON SB 250**

**Opening Statement by Sponsor:**

SEN. LINDA NELSON, SD 49, Sheridan, said that SB 250 is an act to authorize the establishment of a litigation reserve fund by the board of trustees only when a litigation is pending. The funding would come from a portion of the district's excess general fund money at the end of the fiscal year. At the time of the completion of the litigation, any remaining monies would revert back to the general fund. School districts currently carry errors and omissions insurance which does not cover back wages. The litigation fund would cover any civil penalties which might drag on for an extended period of time and which could have a

high price tag. This fund would be accessible only when the district was in litigation and it appears to be a good answer to litigation problems which school districts are facing.

**Proponents' Testimony:**

**Chip Erdmann, Montana Rural Education Association (MREA)**, said SB 250 would create a litigation reserve fund to be used when insurance doesn't cover litigation costs. He distributed copies of insurance exclusions to illustrate that fact and read the information to the committee. **(EXHIBIT 1)** If districts know that coverage is not extensive, good business sense dictates planning for a contingency to protect them in the event of unfavorable awards. SB 250 would allow school districts to build reserves for these potential awards; if the award is against the districts, they have time to build up these reserves and if it is for them, the litigation fund money can revert back to the general fund. If the reversion back to the general fund would cause excess reserves, they can be used to reduce taxes.

**Mr. Erdmann** then presented a letter from David Kloker, Superintendent, Nashua Schools, **(EXHIBIT 2)**. The Nashua Schools are presently involved in litigation and if the award is against the district, they could stand to lose about \$100,000, which accounts for about 10 percent of their entire budget. He said other funding options for unfavorable awards include bond issues or amending the budget and holding a special levy election, neither of which is very taxpayer friendly. He urged the committee's favorable consideration of SB 250.

**Don Waldron, Montana Rural Education Association (MREA)**, stated the setting up a litigation reserve fund would cost the state a very small amount of GTB money. He urged a DO PASS from the committee.

**Loren Frazier, School Administrators of Montana (SAM)**, said a litigation reserve fund makes sense, especially when schools are going through litigation. At the present time, school district reserves cannot exceed 10 percent, making it impossible to use those reserves for unfavorable awards. He also stressed the fact that if the monies in the litigation fund are not needed, they would revert back to the general fund to reduce taxes. He urged a DO PASS for SB 250.

**Michael Keedy, Montana School Boards Association (MSBA)**, gave support for SB 250, explaining that the numbers of school districts involved in litigation are increasing. School districts, from time to time, turn to the county attorney's office in their home districts for legal advice and assistance; however, the county attorney's office is often unschooled in education law; sometimes the county attorney's office faces conflict of interest situations and cannot advise the school district; and sometimes that office is too busy to help. SB 250 is fiscally conservative and, therefore, responsible. **Mr. Keedy**

said MSBA endorses SB 250 and asked for the committee's support.

Opponents' Testimony:

Elena Ingraham, Missoula, said she was bothered by the words, "small amount", which she heard in Don Waldron's testimony. She contended that school spending was difficult to track and asked for an exact, rather than small, amount. She urged a DO NOT PASS for SB 250.

Questions From Committee Members and Responses:

SEN. JOHN HERTEL asked if SB 250 had a cap on how much money could go into the litigation reserve fund. Chip Erdmann said there were no caps because it should be left to the discretion of the trustees. SEN. HERTEL asked for clarification that the excesses in the litigation reserve fund could only revert to the general fund to reduce taxes. Mr. Erdmann validated his assumption. SEN. HERTEL also wondered if the monies in this fund could be used for investment and Mr. Erdmann answered in the affirmative.

SEN. BARRY "SPOOK" STANG asked if there is a school district in the state which presently needs SB 250 and Mr. Erdmann said the Nashua Schools are going through litigation. Other districts are also involved in lawsuits which insurance will not cover, and still more school districts could have used the litigation reserve fund because, in order to pay the unfavorable awards, they were forced to use their reserves.

SEN. STANG wondered if the Nashua Schools could use one of the paying options listed in the fiscal note, should the award be unfavorable. Mr. Erdmann said they could, but the process would be expensive, complicated and impractical. SB 250 allows school districts to plan ahead and deposit the money.

SEN. STANG wondered what would happen if the remaining money, after the litigation ended, was put back into the general fund causing the reserves to exceed 10 percent. He wondered if the whole general fund balance would have to be used to reduce taxes or only the portion above the 10 percent reserves. Mr. Erdmann said the schools couldn't spend more than their budget without a budget amendment.

SEN. STANG also wondered if there would be an objection to an amendment to say that all of the litigation monies must be used to reduce taxes and none for funding the budget. Mr. Erdmann said he didn't think that would cause a problem; however, that may have to be phased out after a few years.

SEN. CASEY EMERSON asked for affirmation of his understanding that the fund would be empty after the litigation is over and Mr. Erdmann did so.

**SEN. STEVE DOHERTY** asked for clarification regarding his understanding of the definition of pending litigation, which he interpreted to mean a lawsuit in a district court and a claim of discrimination to be handled by the Montana Human Rights Commission. Would it be the intent of the legislation that administrative claims be considered pending litigation as well as lawsuits. **Chip Erdmann** agreed that it would and people who practice in this area incorporate in litigation any type of contested hearing that would result in a judgment against it. **SEN. DOHERTY** commented that insurance companies often find exclusions which say a lawsuit actually has to be filed that says administrative claim.

**SEN. DELWYN GAGE** understood that the law precludes the transferring of ending fund balance to a miscellaneous fund. **Kathy Fabiano, OPI**, said that presently the law allows for only two transfers to a miscellaneous fund, i.e. compensated absences fund and self insurance fund.

**SEN. GAGE** asked for a definition of "portion" on page 1, line 13. **SEN. NELSON** said trustees would determine what portion they wanted to transfer.

Closing by Sponsor:

**SEN. NELSON** commented that the questions had been very good. She said that **SB 250** was a good bill and she sympathized with **Ms. Ingraham's** concern about more taxes and worry that this money may be used for something other than for what it was intended. **SEN. NELSON** said that in one way or another the litigation costs would have to be paid. She addressed the proposed amendment by **SEN. STANG** requiring the money to reduce funding after reversion to the general fund is fine with her. **SEN. NELSON** asked for a DO PASS from the committee.

HEARING ON SJR 8

Opening Statement by Sponsor:

**SEN. CASEY EMERSON, SD 14, Bozeman**, said that **SJR 8** addresses the fact that native American women have played an important part in Indian society but were never recognized as doing so. Much information is available regarding native American men, i.e. Geronimo, Sitting Bull, Chief Joseph, etc., but very little on the women, except Sacajawea. A statute of Sacajawea will be unveiled in Bozeman to honor and to show importance of native American women. **SEN. EMERSON** declared that the unveiling of a statute is only a temporary public reminder and the setting aside of a certain day would make the recognition permanent. He pointed out that "Saturday" in line 5 of **SJR 8** should be "Sunday" and suggested that it be changed.

Proponents' Testimony:

REP. GEORGE HEAVY RUNNER, HD 85, Browning, commended SEN. EMERSON for his sponsorship of SJR 8 and acknowledged support. REP. HEAVY RUNNER remarked that it was important to remember to not romanticize the native American people with flowery language. Setting aside a day to honor the native American women would allow the state educational opportunity regarding the progress of the Indian women in the past, present and future. He stressed the fact that the native Americans have become very active and participative in both in- and off-reservation activities.

Ardis Six Killea Clarke, said that today native American women continue in Sacajawea's legacy by being teachers, leaders, role models and guardians of the culture. Ms. Clarke asked careful consideration for the contributions of native American women through support of SJR 8.

Alvina Custer Welliver, expressed support for SJR 8 by giving tribute to her mother, Dolly Custer Akers, who spent her lifetime serving the people of Montana.

In 1922 & 1923, Ms. Akers made her first trip to Washington, D.C., as an interpreter (this was prior to Indians receiving the vote in 1924). Ms. Welliver said that before her mother died in 1986, she had traveled to Washington, D.C., 57 times, mostly to represent the Fort Peck tribes. In 1983, Ms. Akers was in a wheelchair but made her last trip to the nation's capitol to appear before a Senate committee to represent the Assiniboine claim.

Ms. Akers was elected as State Representative from Roosevelt County in 1932 and served in the 1933 regular session and 1934 special session, giving her the distinction of being the first Indian woman to be elected to the state legislature.

Ms. Akers spent her entire life working for the good of her Indian people. Many things taken for granted today on the reservations were brought about by her far-sightedness, including the ability of the Indian people to hire their own attorneys independent of the Bureau of Indian Affairs. During the governorship of Frank Cooney, Ms. Akers was appointed as coordinator of the seven Montana Indian reservations and sent to Washington, D.C., to work toward the inclusion of Indians in the welfare system.

Ms. Akers served as a member of the Farm & Home Administration, chairman of Fort Peck housing and was the first woman chairman of the Fort Peck tribes (and there has not been another woman chairman since that time). Ms. Welliver expressed pride in her mother by saying that Ms. Akers' life was long and her accomplishments were many. Ms. Welliver voiced support for SJR 8.

**Maria Crow, Kainai Tribe, Canada,** said that she supported **SJR 8** because Indian women watched their men go off to war, causing them worry. **Ms. Crow** expressed support for **SJR 8**.

**Kate Cholewa, Montana Womens Lobby,** said that the contributions by the native American role models have benefited all Americans. Designation of a day to honor these people shines a light on the characteristics which have benefited society and encourages emulation of these characteristics.

**Pat Mathiason, sculptor of the Sacajawea statute, Bozeman,** said that in her 25 years as a sculptor, her favorite subject has been the native American woman, and creating this statute of Sacajawea has been a high point. **Ms. Mathiason** related that she stands in awe of the women's strength, their quiet dignity and relentless pursuit of betterment of their situations. **Ms. Mathiason** recommended support for **SJR 8**, saying that these ladies deserve recognition.

**David Hemion, Montana Association of Churches,** expressed support for **SJR 8**, saying that so often churches are called upon to defend people because their rights are being taken or they are being attacked. A move such as **SJR 8** is a positive statement which asks for a yearly reflection on the contributions by native American women. Since Sunday would be the designated day, all Montana churches would be asked to use that day to honor the native American women.

**Helen Johnson, Bozeman,** said her business was close to where the statute of Sacajawea would be placed. **Ms. Johnson** said that 40 small statutes (she showed one as a sample) were created and all except two had been sold. She said she spoke for the businesses in Bozeman when she asked for support for **SJR 8**.

**Lori McGowan, Bureau of Indian Affairs,** handed her testimony to the secretary. **EXHIBIT 3**

**Opponents' Testimony:** None.

**Questions From Committee Members and Responses:**

**SEN. DOHERTY** asked if current native American women would be named as honorees in **SJR 8**. **Gloria Wells-Norlin** replied that had been considered but they preferred that the women not be named because of the possibility of someone being inadvertently omitted.

**SEN. DOHERTY** commented that lines 29 & 30 in **SJR 8** say, ".....Tribal Chairperson of each of the seven Montana reservations....." and are incorrect. The correct wording should be, "....each of the seven tribes of Montana.....", because the chairpersons are of the tribes and not the reservations. **SEN. EMERSON** suggested that the committee change that wording.

**SEN. JENKINS** asked what would be done where there were two tribes on a reservation. **SEN. DOHERTY** said that in Executive Action the wording could be changed to "federally recognized tribes."

Closing by Sponsor:

**SEN. EMERSON** said there was no cost for the adoption of **SJR 8**. He informed the committee that **Helen Johnson** was the sales person for the two remaining Sacajawea statutes. If anyone is interested, see her. **SEN. EMERSON** urged the adoption of **SJR 8**.

HEARING ON SB 232

CHAIRMAN DARYL TOEWS RELINQUISHED THE CHAIR TO VICE CHAIRMAN JOHN HERTEL IN ORDER TO PRESENT SB 232

Opening Statement by Sponsor:

**SEN. DARYL TOEWS, SD 48, Lustre**, said that **SB 232** was a local control bill which looks back to Article X, Section 8, of the constitution which says school boards were given specific duties and responsibilities to supervise and control the schools. The purpose of **SB 232** is not to bash the Board of Public Education or the Office of Public Instruction; however, over the years, control of the schools has slowly drifted from the school boards to the state. The result of that drift is that school boards hide behind the Board of Public Education instead of taking charge, and that makes them little more than advisory boards. **HB 667** tried to equalize schools but ultimately put a financial fence around the school boards.

The design of **SB 232** is to put the control back into the local schools by making the Board of Public Education and OPI facilitators rather than regulators. The dialogue between OPI and the superintendents and clerks would move to the school boards and teachers. **SEN. TOEWS** listed the changes proposed in **SB 232** as follows:

Section 1: The policy should be set clearly enough by the Board of Public Education so that the schools boards know whether they can or cannot hold school. The superintendent of public instruction should not be involved.

Section 2: This section should be clear enough for schools without the involvement of the superintendent of public instruction.

Section 3: Special ed is underfunded so the standard has been set to the minimum federal standards which is what the standard would revert to. The job of the Board of Public Education would be to advise the board of trustees.

Section 4: The school districts should decide whether to levy a tax for adult education and the policy in lines 24-25 should be set by the Board of Public Education.

Section 5: The superintendent of public instruction cannot withhold funds for failure to comply with state accreditation standards.

Section 7: This section refers to **20-7-402** (state special education program) and increases of the federal government requirements. If this is left in code, each time the federal government changes its requirements, the statute must be changed.

Section 9: Subsection 3 deletes the section where the superintendent of public instruction approves the adult education.

Section 10: This is the heart of **SB 232** and refers to the Board of Public Education administering and distributing BASE monies. BASE monies can be withheld for certain reasons which are listed on lines 26-27. **SEN. TOEWS** stated that whoever controls the money controls the school, and the principle of that statement reaches into all areas of life.

{Tape: 1; Side: B; Approx. Counter: ; Comments: .}

Section 11: Subsection 4 adds that the Superintendent of Public Instruction may not withhold money for failure to comply with state accreditation standards.

**SEN. TOEWS** asked what would keep a school trying to maintain its accreditation standards and he concluded that (1) most schools want to be accredited; (2) communities want their schools to be accredited; (3) colleges want the schools to be accredited; (4) mothers want their schools to be accredited. **SEN. TOEWS** said that citizens need to believe that if there is a rule or a law, it means something and needs to be upheld. **SB 232** has reversed these present laws to authorize the school boards to assume more local control. He suggested that if the school boards could begin educating the students in a more economic way, the teachers and PTA's would come up with creative and sensible ideas because the school boards would not be boxed in by the state.

**Proponents' Testimony:**

**Pat Haffey, Senior Policy Advisor for Education, Governor's Office,** supported **SB 232** because of its effort to provide local control, authority and responsibility while at the same ensuring continuing quality education. She encouraged support for **SB 232**.

**George Bailey, President, Montana Association of School Superintendents,** said he has believed in local control for a long time and commended school board members for devoting endless amounts of time to try to educate their students better. **Mr.**

**Bailey** agreed with **SEN. TOEWS** that schools are boxed in. There are golden opportunities for school boards to take the standards and apply them to the students. The role of OPI and the Board of Public Education should be supportive and not regulatory. **Mr. Bailey** urged DO PASS for **SB 232**.

**Michael Keedy, Montana School Boards Association (MSBA)**, said that **SB 232** is a good first step: (1) To inform the legislature of potential vapor lock between OPI/Board of Public Education and local school boards with suggested ways to attempt to overcome it. MSBA strongly believes in the idea of local control and is opposed to unfunded mandates; (2) To bring to the attention of the legislature concerns about unfunded mandates and a reasonable effort to return to school districts some of their rightful and constitutional authority to supervise and control public education.

**Loran Frazier, School Administrators of Montana (SAM)**, said that SAM supports **SB 232** because it pushes local control; however, SAM does have some questions. He said that Saturday as a PIR day in adult education was not a problem but wondered if striking the language in the vocational education and special education sections would affect the task force's recommendations of how to spend the monies of vocational and special ed. **Mr. Frazier** said that if **SB 232** would pass in its entirety, charter schools could be a reality. In addition to OPI and the Board of Public Education, the Board of Regents is involved in **SB 232**, dictating high school curricula because of college entrance requirements.

**REP. ALVIN ELLIS, JR., HD 23, Red Lodge**, voiced strong support for **SB 232**, saying that local control is not a new issue. Over 200 years ago our constitution clearly stated that the power to govern comes from the people and it should only be given to their government in definitely and clearly defined increments. Almost everyone is willing to pay lip service to local control of schools, but there are many ideas as to its definition. **REP. ELLIS** defined local control as giving local school boards the power to decide which avenues they, in concert with people of the district, will travel to reach certain goals. Thomas Jefferson once wrote, "Men by their constitution are naturally divided into two parties: (1) Those who fear and distrust the people and wish to draw all the powers from them into the hands of the higher classes; (2) Those who identify themselves with the people, have confidence in them, cherish and consider them as the most honest and safe, though not the most wise, depository of public interest. **REP. ELLIS** said that Thomas Jefferson's whole life was a testimony to his belief in the second choice. He also said that schools need more autonomy because consumers of the schools' delivery system have become very skeptical, believing that too much effort goes into non-teaching staff and non-education issues. While these concerns may or may not be valid, he strongly believed that the only way school boards will garner the support needed to carry public education into the next millenium, will be through authority needed to address the above concerns.

**REP. ELLIS** used the Luther school as an example of non-local control. There are 20 students with two teachers and OPI is requiring that they must have a part-time administrator and librarian. The Luther schools have never had the above-required support but the education received by the students has been exemplary; in fact, he cited two examples of Luther students who graduated from Red Lodge High School as valedictorians.

**REP. ELLIS** said that if the committee would talk to people and educators in their districts, they would find strong support for **SB 232** and local control. **REP. ELLIS** strongly urged DO PASS for **SB 232**.

**Opponents' Testimony:**

**Jack Copps, Deputy Superintendent, Office of Public Instruction,** said he was tempted to support **SB 232** because it maximized local control and minimized state intrusion, which is constitutional. However, the framers of the constitution intended the state to be involved because of the phrases, "equal educational opportunity" and "basic system of free quality education." State government has the responsibility of enforcing the constitutional intent that both state and public schools provide a free basic quality education. The Supreme Court said that a basic system in Montana is defined by accreditation standards. The state's responsibility to the local schools is to define the basic system and to enforce it.

**Mr. Copps** referred to the first part of **SB 232** which talks about Saturday school and he maintained that it is an intrusion into local control. The intent of **SB 232** is right but there should not be laws without accountability, i.e. the law regarding Saturday school should be eliminated from the books. **Mr. Copps** asked that the committee identify the sections in **SB 232** which intrude on local control and delete them. He also suggested that the wording of the PIR Day law be more general. **20-9-311** says that non-accredited schools should not be eligible for state ANB funding, from which an argument could ensue.

**Robert Runkel, Director of Special Education, Office of Public Instruction (OPI),** expanded upon **Mr. Copps'** comments, especially in the area of special ed. There are three problems with **SB 232**: (1) Repeal of **20-7-402** (Section 12 of **SB 232**); (2) Substitution of language of minimum federal standards in **20-7-421** (Section 3 of **SB 232**); (3) Addition of language to **20-9-603** (Section 11 of **SB 232**) denying OPI the ability to withhold funds. He said almost all special ed regulations are derived from federal requirements, i.e. there is very little difference between them. Differences do occur in two areas: (1) Parent Involvement. Montana requires parental involvement in the special ed process from the very beginning (evaluation of the child for special ed eligibility) to an annual approval of program and placement in an IEP process where individualized programs are developed for children. Federal regulations say that after the initial

evaluation, the only requirement is notice. Montana, because of its value system of parent involvement, has exceeded those requirements. This is an example of the reflection of the state's values, i.e. involving parents in the decisions of their children; (2) Evaluation Procedures. Montana is very directive, much more than the federal government requires, in what must be tested to determine whether or not a child is a child of disabilities. If the criteria for special ed eligibility is not specifically prescribed, the result may be inconsistent criteria among school districts. State law defines such, but the districts need a standard to which to adhere.

**Mr. Runkel** reminded the committee that primary special ed rules which deviate from federal requirements fall within the above two areas. He said that **SB 232** will allow local districts to establish the same standards as state standards, but if they are not uniform, the districts will not be able to communicate with each other. This lack of uniformity could be a concern to parents who relocate to another district.

**Mr. Runkel** suggested that the state special ed regulations mirror the federal requirements. **SB 232** could cause a loss of the best of the regulations, i.e. Montana values and how the regulations should be administered consistently around the state.

**Robert Runkel** drew the committee's attention to Section 11 which deals with the denying of funds. Federal requirements for the receipt of \$8 million federal funds state that every school district be in compliance with all federal regulations. Therefore, controls need to be in place to ensure that one school's actions do not adversely affect all school districts. He shared with the committee his perception that local people are trusted and cherished because when the special ed regulations were revised in 1992, citizens from all areas were asked to be involved, beginning with the preliminary stages. He remarked that rules which exceed federal guidelines have been developed because they reflect the values of Montanans. Very few state statutes change because of federal changes. **20-7-401** mirrors the federal language and must be altered every time the federal regulations change; therefore, it would be better if the statute would simply say that the definitions used by Montana for the provision of special ed shall be consistent with the individuals of disabilities education act.

**Wayne Buchanan, Board of Publication Education**, said that **SB 232** goes to the very heart of what the Board of Public Education does. It removes the ultimate sanction the Board has, i.e. withholding state funding for failure to maintain an accredited status. This sanction has been rarely used; in fact, he could think of only one example. **Mr. Buchanan** suggested that **SEN. TOEWS**, through **SB 232**, was responding to the variance between the perception of what the Board of Education and accreditation standards do and what both actually accomplish. Local control and accountability have been mentioned often during this

testimony and **Mr. Buchanan** suggested that accountability is something people have a right to expect from their government. People want to know that in all schools in Montana, certain standards are being maintained. Accreditation standards also enforce laws, i.e. teacher certification laws require that teachers be appropriately certified and the enforcement is done through accreditation standards.

**Mr. Buchanan** stated that the Board of Public Education has the same values which **REP. ELLIS** mentioned. Up until about four months ago, the Board represented appointees of four separate governors, and is balanced as to demographics and political parties. Because of reduced funding, schools are in difficult times. **Mr. Copps** conducted a survey to identify the seven standards which were most expensive and the Board decided that those seven standards could be deferred. It is encouraging to see that the number of deferrals is getting less each year.

He said the Board of Education is in the process of developing some performance-based criteria which allows the local boards to get out from under the accreditation standards entirely, excepting those required by laws, and design their own for their own school district.

**Mr. Buchanan** maintained that one reason legislators misunderstand the use of the accreditation standards is because they have been used for two things that the Board never intended: (1) To explain to legislators the rising cost of education; (2) To lever more money from the legislature for those rising costs. A further look at the standards reveals that they are minimal prescriptions of what schools should do.

He summarized by saying he hoped the committee would look at the accreditation standards and consider what is expected from the Board of Public Education. If any state accountability is desired, it should be decided how to be enforced.

**Mary Sheehy-Moe, former Montana Teacher of the Year**, said she was very concerned about the concept behind **SB 232**. She challenged the idea that teachers do not support the accreditation standards, saying that it was her experience that many of those standards did not cost anything, but they did involve more people, including parents, in decision-making. The standards also meant that more attention was paid to measuring how teachers teach and how students learn. **Ms. Sheehy-Moe** challenged the legislators to represent Montana as well as their constituents and to insure that the basic system of free quality education is provided everywhere. Project Excellence was created by people who believed that something could happen. It was an idealistic vision that was encoded in law through a very public process. She said that the taxpayers control the money and they have boxed in the educational process as much as the accreditation standards have. **Ms. Sheehy-Moe** suggested that both sides of this question will have to decide what is reasonable. She encouraged the

preserving of the dynamic tension which will work toward a system which is accountable.

Jean Curtiss, Legislative Chair for the Montana PTSA, sent her written testimony. EXHIBIT 4

Questions From Committee Members and Responses:

SEN. GAGE said that he had a conversation with someone regarding concentration of power. SEN. GAGE felt that the current Governor did not pose a problem in this area because he felt that the Governor wanted to get education down to the local level. He asked Pat Haffey if his understanding was correct, and she answered in the affirmative, explaining that though the current Governor more than likely would not be in office when SB 232 took place, it was their hope that whoever would be governing would agree with that concept.

SEN. DOHERTY said that as he understood SB 232, it was encouraging the adoption of minimum federal standards and wondered why minimum standards should be adopted. Pat Haffey replied that until local constituents make themselves heard, it will not be known what those standards are and how they should be funded. SEN. DOHERTY asked about the problem of special ed students moving from one district to another and dealing with different standards in different districts. Ms. Haffey said that the Governor trusted the people of Montana who would be capable of measuring one district's preference over another.

SEN. STANG was concerned about equality across the state in the case of a student moving to a district whose standards have been higher than the one from which he came. SEN. TOEWS said that if the Board of Public Education and OPI would communicate with school board members and teachers instead of just superintendents and clerks, the result would be people striving to meet the accreditation standard set by the Board of Public Education.

SEN. JENKINS commented that he understood that it was state monies that would be withheld but he noticed that this was in the federal section and federal monies could not be withheld. SEN. TOEWS said that federal monies could be withheld and the section to which SEN. JENKINS was referring said that accreditation standards could not be the criteria for which to withhold.

SEN. JENKINS asked for clarification from Mary Sheehy-Moe regarding her remark about teaching under non-accreditation standards. Ms. Sheehy-Moe said she taught prior to Project Excellence which is when accreditation standards were stressed.

SEN. DOHERTY related that rural schools had complaints about the accreditation standards imposed upon them, saying that schools their size really didn't need them. Jack Copps said that once accreditation standards were in place, it was discovered that the funding was not available to fund the standards. He suggested

that if the funding would have been there, the criticism would not be heard.

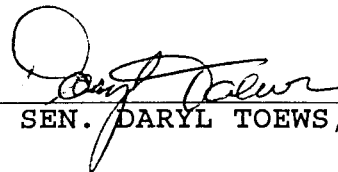
SEN. GAGE said he understood that legislative statute could not overrule Board of Education rule and wondered if there was anything in SB 232 that would pertain to that. Wayne Buchanan said that he didn't see that as a problem, should SB 232 pass, but if that ultimate hammer was taken away from the Board, could it really exercise general supervision?

Closing by Sponsor:

SEN. TOEWS asked the committee to keep in mind that education money was sent to districts who elected their school boards every three years. If they can't be trusted, neither can the electors. SB 232 is designed to encourage cooperation between institutions.

ADJOURNMENT

Adjournment: The meeting adjourned at 3:02 p.m.



SEN. DARYL TOEWS, Chairman



JANICE SOFT, Secretary

DT/jes

ROLL CALL

2/1/95

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Declarations.

SENATE EDUCATION

EXHIBIT NO. 1

DATE 2/1/95

BILL NO. SB 250

EXCLUSIONS

This policy does not apply:

- a) to any claim involving allegations of fraud, dishonesty or criminal acts or omissions; however, the Insured shall be reimbursed for all amounts which would have been collectible under this policy if such allegations are not subsequently proven;
- b) to any claims arising out of (1) false arrest, detention or imprisonment; (2) libel, slander or defamation of character; (3) assault or battery; (4) wrongful entry or eviction, or invasion of any right of privacy;
- c) to any claim arising out of bodily injury to, or sickness, disease or death of any person, or damage to or destruction of any property, including the loss of use thereof;
- d) to any claim seeking non-pecuniary relief; however, the Company shall defend such claims in accordance with Insuring Agreement 2 subject to an aggregate limit of \$100,000. This limit shall be part of the Limit of Liability stated in Item 3 of the Declarations.
- e) to any claim arising out of failure to effect or maintain any insurance or bond;
- f) to any claim arising out of the gaining in fact of any personal profit or advantage to which the Insured is not legally entitled; or to any awards of back salary;
- g) to any fines or penalties imposed by law or other matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
- h) to any claim arising out of breach of fiduciary duty, responsibility or obligation in connection with any employee benefit or pension plan;
- i) to any claim brought by one Insured under this policy against another Insured; however, the Company shall defend such claims, other than counterclaims or cross-claims, in accordance with Insuring Agreement 2 subject to an aggregate limit of \$50,000. This limit shall be part of the Limit of Liability stated in Item 3 of the Declarations;
- j) to any claim arising out of discrimination because of race or national origin, or failure to integrate or desegregate the student enrollment or participation in any school district; however, the Company shall defend such claims, other than claims brought by a governmental entity, in accordance with Insuring Agreement 2 subject to an aggregate limit of \$50,000. This limit shall be part of the Limit of Liability stated in Item 3 of the Declarations.

### SPECIAL PROVISIONS

#### 1. Limit of Liability.

The total liability of the Company for all damages, defense costs, charges and expenses arising from all claims made against the Insured during the Policy Period and during the discovery period, if applicable, shall not exceed the Limit of Liability stated in Item 3 of the Declarations. The inclusion herein of more than one Insured shall not increase the Company's Limit of Liability.

#### 2. Deductible.

Subject to the Limit of Liability, exclusions and other terms of this policy, the Company shall only be liable for those damages, defense costs, charges and expenses which are in excess of the deductible stated in Item 4 of the Declarations. This deductible shall apply to each Wrongful Act and shall be borne by the Insured and remain uninsured.



# Nashua Public Schools

"Home of the Porcupines"

VALLEY COUNTY SCHOOL DISTRICT 13

Phone: (406) 746-3411 • Fax (406) 746-3458

Box 170 - 222 Mabel

Nashua, Montana 59248

*Our Students and Staff Believe in Quality Education*



## Testimony in favor SB 250

As a Small school superintendent I am very much in favor of Senate Bill 250. This Bill would allow an establishment of a nonbudgeted litigation reserve fund. Such a fund would allow a school to prepare itself for potential loss in litigation. It takes a lot of time to go through the appeals process. At times it may take several years to finish with the litigation. If at the end of that time the district should loose it could mean reimbursement of back pay of over \$100,000 plus benefits. That would account for over 10% of our entire budget.

If we set aside this money in the General fund it must be reappropriate each year and we would then lose GTB money. We now have a maximum limit and we could not hold such a large sum in our general fund and still operate.

If we would use a budget amendment and use our reserves to pay it off it would wipe out our reserves because it is all we are allowed to keep. That would be devastating to us.

If we barrow the money it would cost a great deal in interest at a lending institution of any kind.

Normally, Errors and Omissions insurance will cover settlements but will not cover Back Pay and Benefits.

If we had a reserve fund we could prepare the district and soften the blow. We could set a little money aside each year that the litigation continues.

Working with relatively small, limited budgets it is very difficult to prepare for such a disastrous lose of a case. This law would be a great asset to us.

The money once litigation is ended would be channeled back into the General fund. This would help prepare the district for a loss and if not needed would help the General fund at some future date if the district prevails in the case.

I can only see positive things happening with SB 250. I would ask for your help and support in passing this piece of legislation.

David C. Kloker

*David C. Kloker*  
Superintendent  
Nashua Schools

SENATE EDUCATION

EXHIBIT NO. 3

DATE 2/1/95

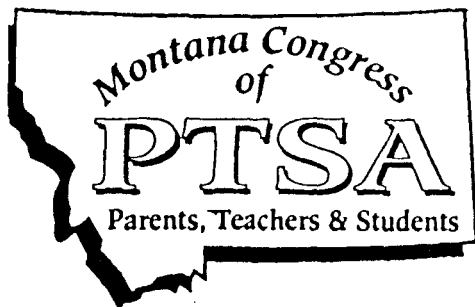
BILL NO. SJR 8

## TESTIMONY SJ 8 IN SUPPORT OF DESIGNATING DAY TO RECOGNIZE AND HONOR AMERICAN INDIAN WOMEN

The Office of Indian Affairs supports SJ 8, honoring Native American women, and urges the committee to give favorable consideration to this bill.

Our office would be honored to serve and assist any organization recognizing this most appropriate tribute to Native American women.

We commend the sponsor and the committee for this public recognition of Indian women leaders and historical figures who contributed to their culture and tribes.



SENATE EDUCATION

EXHIBIT NO. 4  
DATE 2/1/95  
BILL NO. SB 232

February 1, 1995

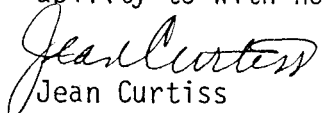
Members of the Senate Education Committee,

My name is Jean Curtiss. I'm the Legislative Chair for the Montana PTSA. I represent the 11,000 members of PTA in Montana. I am writing in opposition to a portion of SB 232.

SB 232 in the last line of the bill, states that the Superintendent of Schools would not be able to withhold funds to school districts that do not meet accreditation standards. This is the only enforcement tool available to make sure school districts work to attain the accreditation standards. The accreditation standards were developed to make sure schools state-wide met minimum criteria for providing a good education. It still allows school districts local control but guarantees that children in Saco and Billings will have these same minimum standards.

State law allows school districts to appeal for waivers of certain accreditation standards for a period of time for justifiable reasons. To remove this enforcement tool from the Superintendent of Schools would be like removing the fines assessed for speeding. No fine - no reason to obey the law.

The Montana PTSA encourages you to delete the line removing the Superintendent's ability to withhold funds from SB 232.

  
Jean Curtiss  
1419 Howell ST  
Missoula, MT 59802

406-721-1705

DATE 2/1/95

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: SJR 8, SB 232, SB 250

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Georg Bailey	Target Range	232	X	
Larry McKean	Office of Indian Affairs	SJR 8	X	
Andree Larose	Mayana Advocacy Prog.	232		X
Pat Haffey	Governor's Office	232	✓	
Andy Sixkiller Clark	MSU	SJR 8		
Maria Crow	HSU	SJR 8	X	
Darrell Rud	Self			
Dow Waldron	MREA	SB 250	X	
Eric Flaver	MEA	SB 232		XXX
Jerry Mindow	MFT	SB 232		X
<del>Wayne Buchanan</del>				
WAYNE BUCHANAN	BPE	S232		X

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-1-95

SENATE COMMITTEE ON \_\_\_\_\_

BILLS BEING HEARD TODAY: Education

SJR 8 - S.B. 232 - S.B. 250

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Check One

Name	Representing	Bill No.	Support	Oppose
Alvin C. Welliver	self	SJRS	X	
Chip Erdmann	MREA	SB250	X	
Lynda Brannon	MASBO	SB250	X	
David Hemmen	MT Assoc. of Churches	SJR8	✓	
Jack Capps	OPI	232		✓
Michael Keck	MSBA	232	X	
Gloria Wells-Norlin	"	250	X	
Gloria Wells-Norlin	self	ST#8	X	
Pat				
Kate Cholewa	MT Womens Lobby	ST 8	✓	
Robert Runkel	OPI	SB232		X
Doran Fagin	SPAm	SB 232 S/B 250	✓	
Curt Nichols	ORPP			
Rep Alois Ellis Jr	NO 23	232	X	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY