

MINUTES

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

COMMITTEE ON EDUCATION

Call to Order: By **CHAIRMAN DARYL TOEWS**, on January 9, 1995, at
1:04 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. Kenneth "Ken" Mesaros (R)
Sen. Steve Doherty (D)
Sen. Barry "Spook" Stang (D)
Sen. Mignon Waterman (D)

Members Excused: Sen. Gary Forrester (D)

Members Absent: N/A

Staff Present: Eddy 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 18
Executive Action:

HEARING ON SB 18

Opening Statement by Sponsor:

SEN. TERRY KLAMPE, SD 31, distributed proposed amendments and a copy of SB 18 with proposed amendments shown, stating that the intent of this bill is essentially the same as the one he introduced in the special session and which was defeated. He stressed the fact that this bill is neither pro- nor anti-consolidation, unification or annexation; neither is it an anti-tenure bill. It is, rather, a bill to give local districts the

flexibility to renegotiate salaries in the event of a school reorganization which includes annexation, consolidation and unification.

It will impact tenure **20-4-203** which says that a teacher shall be rehired at the same salary year after year. This bill gives the school boards the flexibility they need if they choose because it permits rather than requires renegotiation.

The reason for this bill is that not all Montanans favor consolidation because the process can end up being very costly instead of saving money for the taxpayers. One of the reasons is that when schools merge and the salary structures are unequal, the lower salaries inevitably rise to the level of the higher salaries and this can impair the quality of education because more money is spent on salaries and less is spent in the classroom. **SB 18** will allow for annexation, consolidation or unification without an increase in the cost or a decrease in the quality of education if the local districts choose to renegotiate the salaries. What is in effect now is really an unfunded mandate because when schools come together, the salaries rise.

Language changes in SB 18: EXHIBIT 3

Proponents' Testimony:

Arlyn "Butch" Plowman, Montana School Boards Association (MSBA), said that **SEN. KLAMPE** asked him to talk about what happened in Missoula and the best way to do that is to explain that as a result of the decision by the Board of Personnel Appeals in Jordan, MSEA went into the Missoula unification with some questions as to how teacher tenure is affected in the unification. This bill as amended addresses this issue: Does an elementary teacher in the Missoula elementary system have tenure in the high school, or vice versa? This bill says that teachers would have tenure in the new reorganized district. The law now infers that if a teacher is moved from a district elementary school to a district high school, the teacher would have to be terminated and then be rehired as a non-tenured teacher.

This bill also addresses the following: (1) Gives classified employees preferential hiring rights in a unified district; (2) Helps districts satisfy these unfunded mandates: (a) Teachers salaries cannot be reduced at any time; (b) Collective Bargaining must be engaged in. School districts are the only employers who cannot come to the table with a proposal to reduce salaries. This bill, if enacted into law, would allow school boards to go to the bargaining table, under annexation, unification and consolidation, to negotiate a deal that would be good for both parties.

Michael Keedy, MSBA, stated that his organization applauded and supported **SEN. KLAMPE'S** bill as amended both in language and concept. The bill does three things in reorganization

situations: (1) Extends to teachers the right of tenure when they are shifted from one education level to another within a common employer which resulted from reorganization; (2) Allows modest and short-term adjustments in teachers salaries through collective bargaining; (3) Relieves employer of the same salary restriction of the statutory definition of teacher tenure.

The rationale behind the bill is that it gives both parties of the collective bargaining agreement the flexibility to accommodate changes in staff and working conditions in every manner of school district reorganization. This can help employers avert an unexpectedly costly result of all the teachers salaries being raised to the level of the highest paid staff.

Don Waldron, Montana Rural Education Association (MREA), said that his organization has studied the bill and agrees with it. The amendments have answered the concerns they had. He asked for support of the bill and the amendments.

Opponents' Testimony:

Eric Feaver, Montana Education Association (MEA), stated that his testimony was addressed to the introduced bill, not the version with the amendments. He then read his written testimony.

EXHIBIT 1.

[TAPE 1, SIDE B]

Mr. Feaver then addressed issues brought up by the proponents: (1) In response to Michael Keedy -- "Current law says that all salaries be raised to the current level of the highest paid staff." **Mr. Feaver** contended that it was a fact that salaries will be equalized downward; however, he concurred that current law does not provide hiring preference for certified or non-certified persons in the event of unification. (2) **Mr. Feaver** also said that he did not concur that in all the school districts which were unified that there was tenure in the elementary district but not in the high school district, and vice versa. History shows that tenure within a school district, regardless whether it's elementary or high school, is honored when moving back and forth between the two taxing jurisdictions and budgeting authorities. He urged the non-passage of the bill but if the committee is determined to work on some of the issues raised by this bill, MEA would be delighted to work with the committee via a subcommittee.

Terry Minow, Montana Federation of Teachers (MFT), read her written testimony. **EXHIBIT 2**

Darrell Holzer, AFL-CIO, declared that he disagrees with the amendment that indicates that either the employer or bargaining agent could open the contract at any time. He feels that the contracts are entered into and agreed to by both parties so that part of the process should be a mutual agreement by both.

Questions From Committee Members and Responses:

SEN. MIGNON WATERMAN asked why the effective date should be July 1, 1995, instead of October 1, 1995. **Bob Anderson, MSBA**, said that the other districts who are considering annexation, consolidation or unification should have a chance this early in the process to look at negotiating the contracts. **SEN. KLAMPE** also commented that **SEN. BOB BROWN** has a bill coming up that will mandate a vote on reorganization from districts who have not yet annexed or unified and if SB 18 doesn't pass, district expenditures could be huge.

SEN. KEN MESAROS asked **SEN. KLAMPE** if he was proposing his bill with the amendments written in to say that either party of the bargaining unit could renegotiate upon request. **SEN. KLAMPE** responded in the affirmative.

SEN. WATERMAN inquired whether SB 18 would open all the contracts for non-certified employees. **Mike Dahlem, staff attorney for MSBA**, said that the contracts would not have to be reopened at all unless requested by either the exclusive agent or the school district. He again stated that the purpose of this bill was to be able to renegotiate and lower the tenured teachers salaries. That could also be done with non-certified employees as well. **SEN. WATERMAN** then asked if the authority was there to reopen these contracts without this bill. **Mr. Dahlem** responded in the negative.

SEN. JOHN HERTEL wondered when renegotiation would not be necessary and **Mike Dahlem** answered by saying that the reason the language was changed from "mandatory" to "permissive" is when the district and the union negotiated a two-year contract that did not expire for one year after reorganization, if both sides were satisfied with the contract, legislation should not mandate that it be reopened. **SEN. HERTEL** was also concerned about non-certified staff having a better chance in negotiations. **SEN. KLAMPE** answered by saying that the bill really doesn't address negotiations for non-certified. The amended proposal has no intent to remove any hiring preference for non-certified employees. The change is that hiring preference be given non-certified in the unification process as opposed to merely annexation and consolidation processes.

SEN. LOREN JENKINS requested verification that the version that **SEN. KLAMPE** wanted was the amended version. **SEN. KLAMPE** answered in the affirmative. **SEN. TOEWS** also said that the handwritten additions to the original bill would be amended through the amendment process. **SEN. JENKINS** said that he was concerned that the opponents had previously seen only the original bill and not the amended version. **Eric Feaver** responded by saying that he had seen the amended form about an hour before the meeting but he said that it was unprecedented that a bill would be considered with amendments which haven't been adopted. He also said that he

understood but didn't agree with all the amendments he had seen. **SEN. JENKINS** asked **Mike Dahlem** for a response. **Mr. Dahlem** said that the bill doesn't renegotiate the tenure but rather the salary of teachers. Also, if the contract is reopened, both sides have a duty to bargain.

SEN. STEVE DOHERTY asked **Mike Dahlem** what happens if either party
[TAPE 2, SIDE A]

requests renegotiating the contract -- is it then considered mandatory? **Mr. Dahlem** answered in the affirmative. **Mr. Feaver** added comment by saying that he felt that if the contract has expired, negotiation is automatic but if the contract is still ongoing, that is renegotiation; therefore, he disagreed with **Mr. Dahlem's** answer.

SEN. WATERMAN asked for clarification from **Eddy McClure** as to whether or not this bill compelled the contract to be reopened. **Ms. McClure** said that the amended version says that if someone asks to have the contract reopened, the request must be granted.

SEN. WATERMAN requested an explanation of the difference between "available" and "vacant". **Mr. Dahlem** explained that "available" is the vacant position that the district chooses to fill. "Vacant" means that the district is required to fill the position.

SEN. DOHERTY asked for affirmation of his understanding that if districts consolidate and the new district asks to open the agreement, the intent of the bill is to allow the districts to renegotiate the salaries down to the lowest level instead of up to the highest level. **SEN. KLAMPE** responded by saying that the intent is to allow renegotiation but the reality is: lower scale teachers will come up a bit and the higher scale teachers will come down.

SEN. WATERMAN asked for verification of her understanding that the two districts, after unification, can continue under two different salary schedules. **SEN. KLAMPE** responded by saying that if that was the way they bargained, it would be legal to do so.

SEN. DELWYN GAGE commented that if the real intent of the bill was to mandate the reopening of the bargaining contracts upon request of either party, he would suggest replacing "may" with "must." He wondered if this bill was broad enough to cover this scenario: Three districts seek to reorganize but the final result is two instead of one. **SEN. KLAMPE** responded by saying that the intent of this bill is not to create one district through annexation, consolidation or unification but rather to create one employer. **Bob Anderson** also commented that if there were three districts involved, it would have to be a step-by-step process which would deal with one district at a time.

SEN. WATERMAN requested verification of her understanding that "may" can also mean "may not"; therefore, the word should be "must." **Eddy McClure** responded by saying that "may" is an authorization. Under these amendments, if one party requests, the agreement may be renegotiated, but it does not have to be. "Must" would require it.

Closing by Sponsor:

SEN. KLAMPE said he was pleased with the debate and hoped that it would continue in the committee. He responded to **Eric Feaver's** testimony by saying that renegotiations are permissive, not mandatory, and again stressed the fact that the intent of the bill is to renegotiate salaries as well as benefits. He also said that **Eric Feaver's** comment that the MEA would be delighted to work together on the tenure issue was good, but as yet MEA has not introduced any bill to that effect. He stressed the fact that this bill does not seek to destroy tenure in any way.

ADJOURNMENT

Adjournment: The meeting adjourned at 2:15 p.m.



SEN. DARYL TOEWS, Chairman



JANICE SOFT, Secretary

DT/jes

MONTANA SENATE
 1995 LEGISLATURE
 EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL

DATE Jan. 9, 1995

NAME	PRESENT	ABSENT	EXCUSED
SEN. JOHN HERTEL, VICE CHAIRMAN	✓		
SEN. DELWYN GAGE	✓		
SEN. KEN MASAROS	✓		
SEN. STEVE DOHERTY	✓		
SEN. MIGNON WATERMAN	✓		
SEN. BARRY "SPOOK" STANG	✓		
SEN. LOREN JENKINS	✓		
SEN. GARY FORRESTER			✓
SEN. C.A. CASEY EMERSON	✓		
SEN. DARYL TOEWS, CHAIRMAN	✓		

SENATE EDUCATION

EXHIBIT NO. 1

DATE 01/09/95

BILL NO. SB 18

Written Testimony

Eric Feaver
Montana Education Association

Senate Bill 18
Senate Education Committee
January 9, 1995

SUMMARY

SB 18 declares that any school district reorganization results in a new school district, thus ending the distinction among school district annexation, unification and consolidation.

In the event of school district reorganization, SB 18 requires renegotiation of school employee contracts, renders teacher tenure in part and in whole negotiable and denies hiring preference for all school employees.

SB 18 discourages and penalizes school employee support for school district reorganization.

SB 18 is an anti-school reorganization bill.

RECOMMENDATION

Do Not Pass

MORE DETAILED COMMENTS

TITLE, page 1, A BILL FOR AN ACT ENTITLED: . . .

The title announces it is SB 18's intent to compel renegotiation of contracts with impacts on tenure whenever two or more school districts reorganize.

MEA believes SB 18 specifically addresses school district consolidation and annexation and implicitly involves school district unification. Consequently, SB 18 impacts every possible school district reorganization circumstance.

NEW SECTION, Section 1, page 1, Contract renegotiation

New Section, section 1, requires renegotiation of collective bargaining agreements whenever two or more school districts reorganize. In SB 18, "reorganize" means a new school district.

From MEA's point of view, if school districts consolidate as happened recently in Clyde Park and Wilsall a new school district is formed and renegotiation of contracts happens anyway. SB 18 compels the obvious, the inevitable.

When one school district is annexed into another, however, no renegotiation is necessary. If SB 18 were to pass, and Helena school district were to annex Kessler school district or even Canyon Creek school district, then every labor agreement in Helena, covering hundreds of school employees, would have to be renegotiated. A handful of school employees from a smaller school district who could easily be absorbed into existing agreements would compel bargaining and imperil tenure and/or hiring preference for all.

Unification of an elementary and a high school district raises interesting questions regarding renegotiation of contracts that to date have been handled locally through bargaining. Despite disagreements as to what happens when an elementary district unifies with a high school district, in the past five years, school communities in Eureka, Jordan and Missoula have successfully unified for governance and administrative purposes. In all three unifications, contracts were or are now being renegotiated, without SB 18.

Interestingly, only three school communities are not yet unified for governance and administrative purposes: Big Timber, Deer Lodge and Dillon. Glendive could be included in this list except Glendive Elementary and Dawson County High School are unified administratively and despite two separate governance boards enjoy one teacher collective bargaining agreement. SB 18 is not necessary for resolution of disputes that may arise in remaining unifications.

Curiously, SB 18 compels renegotiation of contracts for those elementary and high school districts that share the same boundaries that are just now consolidating for tax and budget purposes as ordered by the 1993 legislature. Where contracts exist in K-12 districts, they cover employees K-12. Renegotiation is absolutely unnecessary.

Section 2, page 1, amending 20-4-203. Teacher tenure

Section 2, subsection 1, impairs comparable salary for tenured teachers through mandated renegotiation of contracts.

MEA asserts if this legislature is determined to repeal comparable salary for tenured teachers, it should do so for tenured teachers all over Montana, not just those involved in school district reorganization.

Section 2, subsection 2, impairs teacher tenure period. SB 18 requires negotiation of tenure.

If the legislature is determined to repeal teacher tenure or make it a mandatory subject of bargaining, then it should do so for all teachers, not just those involved in school district reorganization.

EXHIBIT 1
DATE 1/9/95
SB 18

Section 3, page 2, amending 20-6-410. Tenure protected --
hiring preference for employees

Section 3, subsections 1 and 2, requires renegotiation of hiring preference for both certified and noncertified school employees. In effect, SB 18 repeals 20-6-410 passed by the 1991 legislature.

We do not know how the adjective "available" found in section 3, lines 6 and 13 more completely modifies the noun "position" than the existing adjective "vacant."

Further, we do not know why section 3, subsection 2, which deals entirely with noncertified school employees, refers back to section 2, which deals with teacher tenure. Noncertified school employees do not earn teacher tenure.

Section 4, page 2, amending 20-6-711. Tenure protected --
hiring preference for noncertified employees

Section 4, subsection 1, redefines tenure in K-12 school districts. Heretofore, tenure has been earned and retained in district, never in "any available position."

Interestingly, current law, section 4, subsection 1, line 21, bestows a right of tenure on superintendents. This is contrary to law elsewhere.

Section 4, subsection 2, as it pertains to noncertified employees refers nonetheless to the exception found in section 2 that deals with teacher tenure. Same problem as outlined above in section 3.

NEW SECTION, Section 6, page 3, Effective date

As written, SB 18 is effective on passage and approval. If SB 18 is what this legislature intends to do, then the legislature should change the effective date beyond July 1, 1995 so as not to confuse ongoing K-12 reorganization.

CONCLUSION

Again, the Montana Education Association urges the Senate Education Committee to reject SB 18.

Thank you.

Senate Bill 18--Senator Terry Klampe--Senate Education--1/10/95--tjm

Mr. Chairman, members of the committee. My name is Terry Minow. I represent the Montana Federation of Teachers. I appear today in opposition to SB 18.

Eric has done an excellent job explaining the details of the bill, so in the interest of time I will just amplify two points. First, the bill would require renegotiation of contracts in cases where such renegotiation might very well be unnecessary. For example, in my area, if Basin School decided to annex their eleven students into the Boulder School District, under this bill the contract negotiated by Boulder teachers would be renegotiated because the one teacher in Basin might, or might not, be joining the staff. Senate Bill 18 could create a real disincentive for school employees to support school restructuring.

Secondly, Senate Bill 18 would seem to remove tenure salary protection from the teachers of the new district, although the wording of the bill is unclear. I'm not an attorney, but when I had an attorney look at the bill he found the wording to be confusing and ambiguous. The bill seems to remove tenure and salary protection from teachers, and to remove job preference from classified employees, in any newly structured school district, including cases of annexation. If that is the impact of the bill, the result could be a chilling effect on any attempt by school districts to consider ways to increase their efficiency through restructuring.

In summary, this bill raises a lot of questions about unintended effects on school restructuring, it is difficult to understand exactly what the intent of the bill is, and the need for such legislation doesn't seem to be pressing. On behalf of the Montana Federation of Teachers, I would ask you to give SB 18 a "Do Not Pass" recommendation.

Thank you, Mr. Chairman, and members of the committee.

Amendments to Senate Bill No. 18
First Reading Copy

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

Prepared by Eddy McClure
January 6, 1995

1. Title, line 4.

Strike: "REQUIRING"

Insert: "AUTHORIZING"

2. Page 1, line 12.

Following: "renegotiation"

Strike: "required"

Insert: "authorized"

3. Page 1, lines 14 and 15.

Following: first "and" on line 14

Strike: remainder of line 14 through "renegotiated" on line 15

Insert: "any existing collective bargaining agreement may be renegotiated upon the request of the employer or the exclusive bargaining agent. The same salary requirement of 20-4-203 does not apply if a collective bargaining agreement is renegotiated within 2 years following reorganization"

4. Page 1, line 18.

Following: "20-4-208,"

Insert: "20-6-410, and 20-6-711,"

5. Page 2, line 3.

Following: "consolidate"

Insert: ", unify,"

6. Page 2, lines 7 and 13.

Strike: "and vacant"

7. Page 2, lines 11 and 25.

Following: "A"

Strike: "Except as provided in 20-4-203 and [section 1], a"

Insert: "A"

8. Page 2, lines 20 and 21.

Following: "20-6-701, a" on line 20.

Strike: "district superintendent,"

DATE 01/09/95

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: SB 18

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Check One

Name	Representing	Bill No.	Support	Oppose
Eric Feaver	MEA	SB 18		X
Jim Foster	MREA	SB 18	X	
Don Wedrow	MREA	SB 18	X	
Arthur Plank	MSEA	SB 18	X	
Mig Dahlem	MSBA	SB 18	X	
Michael Keedy	MSBA	SB 18	X	
Warren Holm	AFL-CIO	SB 18		X
John P. Moran	MFT	SB 18		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY