

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By CHAIRMAN DARYL TOEWS, on January 23 1:05 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 140 & SB 172
Executive Action:

{Tape: 1; Side: A; Approx. Counter: 14 MIN.; Comments: TAPE RUNS QUIETLY FOR ABOUT 14 MINUTES BEFORE VOICES ARE HEARD.}

CHAIRMAN TOEWS RELINQUISHED THE CHAIR TO VICE CHAIRMAN HERTEL IN ORDER TO PRESENT SB 140

HEARING ON SB 140

Opening Statement by Sponsor:

SEN. DARYL TOEWS, SD 48, Lustre, opened by saying that SB 140 is brought at the request of the Board of Public Education in order to allow the Board to place a letter of reprimand in a teacher's, administrator's or specialist's permanent file only after

hearings have been held and procedures have been followed. Also, it would be placed only after the Board decided that neither suspension nor revocation was in order.

The second part of **SB 140**, found on page 2, lines 22, 23 & 24, deals with notifying the above-mentioned people that they are being considered for suspension or revocation by registered mail. The reason for this is that sometimes they are very hard to find because they have left the area.

No. 6 includes an added word, "administrator", and the reason for this is self-explanatory.

Proponents' Testimony:

Wayne Buchanan, Board of Public Education, commended **SEN. TOEWS** for his organized presentation, and further explained page 1, lines 22, 23 & 24. He stated that at the present time, notification by registered mail is required if there is to be a hearing to suspend or revoke their certificate. **Mr. Buchanan** went on to say that this section was included in **SB 140** at the advice of an attorney because of a situation where a counselor was convicted of molesting boys at a camp in Maine. He dismissed his lawyer and left the state of Maine. The Board of Public Education finally found him employed as a substitute teacher in a community in Montana. The hearing had to be suspended twice because they were unable to serve. **SB 140** will allow the Board to send the registered letter to the address on the certificate at OPI.

The second part of **SB 140** is to place a written reprimand in that person's file because: (1) The offense doesn't warrant suspension or revocation; rather, something on file to notify OPI that there had been a problem; (2) The written reprimand might be a substitute for a harsher penalty; (3) The offense doesn't warrant suspension or revocation but the Board wants to track this for a period of time (possibly 3 years).

Jack Copps, Deputy Superintendent of the Office of Public Instruction, attested OPI's support for **SB 140**, because there are instances where disciplinary action is warranted but suspension or revocation is too severe. **SB 140** would allow for this and **Mr. Copps** requested the committee's support.

Don Waldron, Montana Rural Education Association (MREA), gave support for **SB 140** for the reasons already heard.

Loran Frazier, School Administrators of Montana (SAM), said that **Mr. Buchanan** had answered their question of the length of time the letter would be in the file, therefore they supported **SB 140**.

Michael Keedy, Montana School Boards Association (MSBA), declared support for **SB 140**, though MSBA had concerns regarding No. 6 at the bottom of page 2, because there is no statement of the

grounds upon which the Board could opt to reprimand rather than suspend or revoke. It also leaves open the question of whether the Board will be limited to the grounds set forth in the act for a suspension or revocation. Is it possible, therefore, that the Board could choose to put a letter of reprimand in the file if grounds were not sufficient to suspend or revoke the certificate? Also, even though **Mr. Buchanan** said that the length of time would probably be three years, the act does not specify that. Elsewhere in the statutes there is a two-year limit on the time that a teacher's certification can be suspended; therefore, it is conceivable that a letter of reprimand could have a longer life than a suspension action, even though it is intended as a less severe action than suspension.

Eric Feaver, Montana Education Association (MEA), said that he favored a Do Pass for **SB 140** with very few amendments. He went on to say that the Board of Public Education has found itself stymied between suspension, which is for two years; failure to perform in some circumstances; revocation; doing nothing; or in some circumstances, making the license suspension retroactive which didn't accomplish anything. The Board of Public Education needs authority, which it feels it does not have, to provide a letter of reprimand. However, **Mr. Feaver** did have some suggestions: (1) Page 2, line 22 -- "A letter of reprimand" should be referenced before "the suspension"; (2) Lines 23, 24 -- Current statute says that the situation is with an existing employer or the last employer, and is not something with the Office of Public Instruction. The only record OPI might have of someone's address is when they last received their certificate or renewal of such and that could be two or three school districts later. Therefore, **Mr. Feaver** suggested that "school district or" be inserted before "superintendent of....."; (3) Line 28 -- It is fairly common in contracts or board policies that letters of reprimand are not of indefinite duration. Usually, the person improves or meets the need expressed in the letter of reprimand. He suggested that "for up to three years" be inserted after "....certification file". That would allow the Board of Public Education to determine how long the letter should be there.

He summed up his remarks by again saying that MEA supports **SB 140** and hopes for a Do Pass.

Terry Minow, Montana Federation of Teachers (MFT), also gave support of **SB 140**, adding that she hoped that the committee would consider the amendments suggested by **Mr. Feaver**, particularly the one that deals with the time limit of up to three years.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. STEVE DOHERTY asked for **SEN. TOEWS'** opinion on the amendments and was told that he didn't have a problem with them.

SEN. LOREN JENKINS wanted **Mr. Buchanan's** opinion on the amendments and **Mr. Buchanan** replied that he thought they were excellent, except for the "up to three years." He went on to say that there was some discussion that there might be a sufficiently troubling offense that was generating the letter of reprimand; therefore, the Board might wish for the letter to be in the file longer than three years. **Mr. Buchanan** also wanted to make a correction: If a person's certificate is suspended for one or two years or whatever, the record of that suspension remains on that person's certificate forever. The suspension goes away but the record does not.

SEN. JENKINS also wanted to know if a written reprimand would go into the file upon a person's suspension, or were they two separate issues. **Mr. Buchanan** said that if there were a suspension, there would be no need for a written reprimand. The suspension itself would serve as a letter of reprimand.

SEN. DOHERTY wondered why, if the reason for the letter were so abominable that it would be prudent to keep it in the file beyond three years, wouldn't the offense be enough in and of itself to warrant either a suspension or revocation of the certification entirely. **Mr. Buchanan** answered that elsewhere in the law, there are limited reasons to suspend or revoke. He gave an example of how a man removed a bolt from the ceiling so that he could look into the girls' locker room, something he had been doing for some time; however, that is not a stated lawful reason to revoke a certificate. This illustration may warrant keeping a letter of reprimand in the file longer than three years.

SEN. DELWYN GAGE's question was when trustees are considering hiring a person, are these certification files available to the trustees? **Mr. Buchanan** didn't believe they were. **Jack Copps** concurred by saying if the teacher's certificate were revoked or suspended, that information would be placed on a national network and would be available, but a letter of reprimand would not.

SEN. GAGE commented that he had a number of calls during the interim regarding page 1, lines 24 & 25. The callers wanted to indicate "any felony" because they didn't want felons teaching their children. **SEN. TOEWS** responded by saying that line 24 states "no contest" so there doesn't have to be a conviction in order to be suspended. **Mr. Buchanan** added that there is a lot of law which supports the fact that the revocation of a certificate must be related necessarily to that person's teaching responsibilities. He cited the Morrison case from California in 1964 which established if the crime is not related to the teaching or teaching profession, the revocation will not hold up.

SEN. MIGNON WATERMAN asked for clarification of her understanding that the school district would know about suspension or revocation but not a letter of reprimand. **Mr. Copps** answered by saying that he did not know whether legally the trustees would have right of access to the letter. **SEN. WATERMAN** wanted to know

the reason for the letter of reprimand if nobody would have access to it and **Mr. Copps** replied that upon hiring, the trustees could ask the person if a letter of reprimand had ever been placed in his/her file as a result of action by the Board of Public Education and if his/her certificate had ever been revoked or suspended in another state. Failure to respond truthfully could result in termination. However, if that would happen, the trustees would have to access that letter and **Jack Copps** again stated that he wasn't sure that could be done. **Eddye McClure** concurred with **Mr. Copps**, adding that the trustees could not see the letter that was written. **Eric Feaver** added comment by explaining that many years ago, a number of teachers in a certain school district signed contracts, and then broke them because they got better offers elsewhere. The first-mentioned school district was offended by that so it went to the Board of Public Education with its complaint; however, the teachers really hadn't been guilty of or charged with any felony but they did fail to perform. What should the Board of Public Education do? It was **Mr. Feaver's** opinion that a letter of reprimand was needed then and is needed now so the Board could memorialize the incident in the personnel file held by OPI. Should that event arise again with that particular teacher, the question of suspension of the certificate would be more appropriate. It is the intent to make the punishment fit the crime, and the letter of reprimand is intended to supplant the punishment for more grievous offenses.

SEN. GAGE wanted to know if the teacher received notice that the letter of reprimand would be placed in his/her file. **Eddye McClure** pointed out that was addressed on page 2, line 22, in one of **Mr. Feaver's** amendments.

SEN. DOHERTY contended that if the personnel file is not open to the school district and if the trustees do not ask the question up front, they will not know if the interviewee has done the same thing to another school district in the past. **Mr. Feaver** remarked that the Board of Public Education, should an event arise in the new employer's district which prompts a complaint to the Board, would have a record that a reprimand had been issued two years ago. He further pointed out that in his amendment, after three years the reprimand would go away and the Board would no longer have a record of it. **Mr. Buchanan** also responded that many things happen in a school district which do not affect an individual's certification record. The district has the responsibility to contact previous employers to see if there was a problem. The letter of reprimand is to inform the Board that within that period of time, the individual has been written up several times for the same problem and the next step would be suspension or revocation; however, this would all be subject to the rulemaking authority of the Board of Public Education who would first hold hearings, accept testimony, etc., before making a decision.

Closing by Sponsor:

SEN. TOEWS closed by saying it didn't appear that it would be too difficult to address most of the suggested amendments, and SB 140 would give the Board of Public Education a vehicle to use in dealing with the problems mentioned in the testimonies.

HEARING ON SB 172

Opening Statement by Sponsor:

SEN. TERRY KLAMPE, SD 31, did not appear to sponsor SB 172, so the hearing was postponed until further notice.

ADJOURNMENT

Adjournment: The meeting adjourned at 2:05 p.m.



SEN. DARYL TOEWS, Chairman



JANICE SOFT, Secretary

DT/jes

EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL

DATE _____

1/28/95

[illegible]

SEN:1995
wp.rollcall.man
CS-09

DATE 1-23-95SENATE COMMITTEE ON EducationBILLS BEING HEARD TODAY: SB 140 - SB 172

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Check One

Name	Representing	Bill No.	Support	Oppose
Don Waldron	MREA	SB-140	✓	
Don Waldron	MREA	SB-172	✓	
Mike Barrett <small>6-1/2 copies of my intelligence report, (info, secretary, etc. to 3 other committee members in while for past 1-95)</small>	<small>citizens artists / agents / students 443-2199</small>	pending	✓	
Eric Dever	NEA	SB140	✓	
		SB172		✓
Loran FRAZIE	SAM	140	✓	
" "	SAM	172		✓
John Maley	M.F.T	140	X	
"		172		X
Michael Keady	MSBA	140	X	
"	"	172	X	
Terry Minow	MFT	SB140	X	
" "	"	SB172		X
Wayne Bushman	BPE	SB140	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1/23/95

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: SB 140

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Check One

Name	Representing	Bill No.	Support	Oppose
JACK COPPS	OPI	SB 140	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY