

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON TAXATION**

**Call to Order:** By CHAIRMAN CHASE HIBBARD, on March 9, 1995, at  
8:00 a.m.

#### **ROLL CALL**

##### **Members Present:**

Rep. Chase Hibbard, Chairman (R)  
Rep. Marian W. Hanson, Vice Chairman (Majority) (R)  
Rep. Robert R. "Bob" Ream, Vice Chairman (Minority) (D)  
Rep. Peggy Arnott (R)  
Rep. John C. Bohlinger (R)  
Rep. Jim Elliott (D)  
Rep. Daniel C. Fuchs (R)  
Rep. Hal Harper (D)  
Rep. Rick Jore (R)  
Rep. Judy Murdock (R)  
Rep. Thomas E. Nelson (R)  
Rep. Scott J. Orr (R)  
Rep. Bob Raney (D)  
Rep. John "Sam" Rose (R)  
Rep. William M. "Bill" Ryan (D)  
Rep. Roger Somerville (R)  
Rep. Robert R. Story, Jr. (R)  
Rep. Emily Swanson (D)  
Rep. Jack Wells (R)  
Rep. Kenneth Wennemar (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Lee Heiman, Legislative Council  
Donna Grace, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: HB 582

Executive Action: HB 506 - Tabled  
HB 265/497 - Discussion Only

EXECUTIVE ACTION ON HB 506Motion:

REP. NELSON MOVED THAT HB 506 DO PASS.

Discussion:

REP. NELSON said HB 506 was a complicated issue and had been well-discussed during the hearing.

REP. ELLIOTT said he was opposed to the motion because the arguments brought forward by the rental car companies cloud the real issue. They spoke about the competition with other states and he thought they could compete with other states. They talked about the price of their rental cars being higher because Montana's motor vehicle fees are higher but the price of the rental car could very well offset the price of an airline ticket in and out of Montana. They also said they could get a wider range of cars because they could pass the tax through to the consumer. REP. ELLIOTT said that if a customer wishes to rent a Lincoln Town Car, the customer can afford the added cost of the car. He said he had been approached by a lobbyist on the bill who indicated the main reason for supporting the bill was to be in compliance with the International Registration Program (IRP). REP. ELLIOTT said that if that was the main reason, it should have been brought up before the Committee. He said he thought this was a way to pass the cost of doing business on to the customer in a sneaky way and, on that basis, he would oppose the bill.

REP. WELLS said he liked the aspect of putting companies in a more competitive position but he also suspected there was profit motive buried in the rhetoric. He said he recognized that the profit would result in added tax money for the state but he didn't feel the arguments were totally valid and, therefore, he would not support the bill.

REP. ORR said he had talked with Steve Galt of the Department of Transportation (DOT) who had advised him that the bill would not solve the problem they have. He said the problem is that the rental agencies have to license a certain amount of cars in Montana so they license the cheap cars in Montana and the expensive ones in other states. The DOT is working on a formula so more of the expensive cars will be licensed in Montana. REP. ORR said he would oppose the bill.

REP. SOMERVILLE spoke in opposition to the bill because he did not like the idea of adding fees that the customers are not informed of at the time a reservation is made. He said the practice was deceptive.

REP. RYAN spoke in favor of the bill. He said the cars are rented by tourists and would help the industry in Montana. It would also add some tax money for infrastructure.

REP. REAM said he had prepared an amendment to the bill because he was concerned about the distribution of the revenue. The amendment would put 100% of the revenues into the county road fund. If the county road fund levies could be lowered, property tax could be reduced. EXHIBIT 1.

Motion/Vote:

REP. REAM MOVED THE AMENDMENT BE ADOPTED.

Discussion:

REP. REAM said the only way he could support the bill would be with the amendment.

REP. NELSON agreed that the amendment would make the bill better.

REP. RYAN spoke in favor of the amendment.

REP. BOHLINGER said he was concerned about the distribution because the revenue would be insignificant. He would support the amendment.

REP. ROSE said he would rather see the funds placed in the state secondary road fund instead of being returned to the county of registration.

REP. ELLIOTT said only counties having rental car agencies would receive funds. He said he would vote against the amendment.

Vote:

On a roll call vote, the amendment failed, 12 - 6.

Motion/Vote

REP. STORY MOVED TO TABLE HB 506. The motion passed 11 - 7.

EXECUTIVE ACTION ON HB 265/497

Motion:

REP. BOHLINGER AND REP. SWANSON MOVED THAT HB 265/497 DO PASS.

Discussion:

REP. BOHLINGER said that he and Rep. Swanson had both sensed a need to address property tax concerns of low income and elderly people and had, independently, put together similar bills. He

said that in an effort to simplify the effort, they had decided to bring the two bills together.

**REP. SWANSON** said they would like to discuss the conceptual framework of the two bills and have Mr. Heiman prepare one bill for the Committee's consideration.

**REP. BOHLINGER** said the section of HB 497 which would delay any tax increases to the second installment because it would cause problems for county officials would be omitted. He said he had asked Mary Whittinghill of the Department of Revenue (DOR) to redesign the assessment notice to make it more understandable and let the taxpayer know far enough in advance to plan for how to pay the increase.

**REP. SWANSON** distributed a document which compared the two bills and discussed the differences. EXHIBIT 2. She said the bills give a broader range in each category so that more people can apply for slightly greater tax reductions.

*{Tape: 1; Side: 2.}*

**REP. BOHLINGER** said it is estimated that with the expansion of the program, 69,982 people would be eligible to apply. Presently 62,621 are eligible. The fiscal impact would be \$1.3 million.

**REP. SWANSON** said that through the assessment notice an effort will be made to educate people about the low income tax program. She said the bill would provide that a notice must appear on the assessment notice advising the taxpayer that they may be eligible for one of the programs and provides information on how to apply. Currently 23% of eligible taxpayers take advantage of the present program and she would like to see the percentage increased.

A discussion ensued on how the schedules in the bill could be developed, taking into consideration income levels and whether the taxpayer is single, married or head-of-household. Several alternatives were suggested.

**REP. SWANSON** said she appreciated all input from Committee Members.

**REP. REAM** said he would like to see some data on the fiscal impact of the new bill.

**CHAIRMAN HIBBARD** said a single bill combining HB 265 and HB 497 would be prepared and will be presented to the Committee for executive action early in the next week. The Chairman appointed Rep. Wells to work with Rep. Bohlinger and Rep. Swanson.

HEARING ON HB 582Opening Statement by Sponsor:

**REP. BILL BOHARSKI**, House District 79, Kalispell, said he was bringing HB 582 before the Committee for numerous reasons. The most important reason is that the Legislature, during this session, is facing a \$25 million increase in spending in the public education system due to increased enrollment. Because of the passage of HB 667 in the last session, education has become a formula-driven expenditure. This bill has the potential, without cutting any services, of saving \$8.5 million that could be used to reduce property taxes or for any one of many other services.

**REP. BOHARSKI** explained how the equalization formula works. There are approximately 8,500 parents in Montana who send their children to private schools. The bill provides that parents would receive a \$1,000 tax credit against income tax, refundable if the tax liability is not that much, to help offset the cost of tuition to a private school or a public school other than the school in the district of residency. He reminded the Committee that a child sent to a public school outside the district must pay tuition and this is a very important point in insuring that the bill is constitutional. **REP. BOHARSKI** added that not only would the state save money, but the need for additional space in the public schools would be reduced, saving construction costs for local school districts. He explained that, under the equalization formula, \$1,912 from the general fund is paid to local school districts for each student attending school in that district. If the parent receives \$1,000, there would still be a net savings of \$912.

{Tape: 2; Side: A.}

In addition to the fiscal reasons for the bill, **REP. BOHARSKI** said he had a philosophical belief that parents, poor as well as the rich, should have the opportunity to send their children to the academic institution of choice. He noted that the last three presidents have supported the concept of school choice. A change is happening in the United States relative to education and it will come to Montana as we move into the next century. The school system must move to keep up with what is happening in society. He asked the Committee to listen to the proponents with an open mind. He distributed information relative to private school tuition tax credit fiscal impacts. EXHIBIT 3.

Proponents' Testimony:

**Sister Katherine Franchett**, Montana Catholic Schools, spoke in support of the bill on behalf of the 4,000 students in Catholic schools. She said that the parents of these students pay twice for their children's education because they value the education their children receive in a private school. She said 85% of their graduates go on to higher education and have strong work ethics. They become productive citizens of the state. These

schools perform a public service and are adding to the general well-being of the State of Montana. The communities in which they exist support private schools. Because of this support and good management, Catholic schools are able to educate a child for less and still deliver a very high quality graduate. She said it is a myth that all families that participate in private education are rich. One-third of all the students attending Catholic schools in Billings receive financial assistance. Others struggle and do without in order to pay tuition. HB 582 would provide assistance to those families who wish to attend Catholic schools but cannot because of finances. The assistance would allow growth in private schools and relieve the impact on the local community. She said she did have some concerns about the bill. It would be simpler if the parent could provide a valid receipt from a school that qualifies with the tax form. Catholic schools would prefer wording such as "accredited by either the state or nationally accepted accrediting organization" to qualify eligible schools. She said this was important in order to maintain quality in education.

**Fred Happel, Montanans for Better Government**, rose in support of the bill.

**Joseph R. Balyeat, C.P.A., Montana Citizen, and Chairman of the Montanans for Better Government Education Task Force**, said he was a product of the Montana education system - both public and private. He spoke in favor of the bill. The text of his testimony is attached as EXHIBIT 4.

**Garry DenBesten, Administrator, Manhattan Christian Schools, and President of the Association of Non-Public Schools of Montana**, offered support of HB 582. He said the private schools are not out to "ruin anything that public education has done." He said the taxpayers in his area support both public and private schools. He asked the Committee to support HB 582.

**Verdell Jackson, Administrator, Flathead Christian Schools**, submitted written testimony in support of the bill for the Committee's consideration. EXHIBIT 5.

**Ford Johnson, Former Teacher**, spoke in support of choice in education. EXHIBIT 6.

**Betty Natelson** presented testimony in behalf of her husband, **Robert Natelson, Professor of Law, University of Montana and Chairman of Montanans for Better Government**. A copy of Professor Natelson's statement is attached. EXHIBIT 7.

*{Tape: 2; Side: B.}*

**Roger Koopman** stated that HB 582 was a bill that was all upside with no downside -- where the potential benefit is enormous and the risk zero. A copy of his testimony is attached. EXHIBIT 8.

**Tom Schneider, new resident of Montana residing in Bozeman,** said he was a staunch supporter of the public schools who supports options to public schools. He said he was the founder and director of an alternative public school program in Washington State that met the needs of students who did not function well in a traditional classroom environment. This type of program could be offered in Montana by the private sector. HB 582 provides equity of opportunity for all Montana students because parents with less financial means could send their children to an alternative program. He strongly urged the Committee to vote yes on the issue.

**Bob Balyeat, Regional Representative, Montanans for Better Government,** read a letter from a trustee of the Bozeman School District in support of the bill. He said he was in favor of the bill because schools in Montana have suffered tremendous growth pressure and school choice would have the effect of lessening the burden of public education with no effect on the present public school programs. Choice would soften the load on local bonding requests which have risen 99% in the past six years. EXHIBIT 9.

**Laurie Koutnik, Executive Director of Christian Coalition of Montana,** representing 26,000 Montana households, said she believes that parents are the key to education. **Ms. Koutnik's** written comments are attached as EXHIBIT 10.

**Sharon Hoff, Executive Director of the Montana Catholic Conference,** submitted written testimony. EXHIBIT 11.

**Ed Wipf, Martinsdale Colony,** said he was a proponent of HB 582 and presented written testimony to the Committee. EXHIBIT 12.

**Sam Hofer, Springdale Colony,** rose in support of HB 582.

**Jim Hollingsworth, Valley Christian School, Lolo,** urged the Committee to support HB 582.

**Arlette Randash, Eagle Forum,** said the Forum had been in the forefront of support for sound educational policies and they stand solidly behind HB 582.

**Davis Beatty, Bozeman,** said he was political director for Proposition 174 in California, a school choice initiative. He asked for the Committee's positive support of HB 582.

**Opponents' Testimony:**

**Nancy Keenan, State Superintendent of Schools,** emphatically rose in opposition to HB 582. She said the bill was not about choice, it was about tax credits. Proponents of the bill claim the proposal would save money, poor families would have the same options as wealthy families and public schools would be improved. She said, in fact, the bill would increase costs to Montana taxpayers and has serious flaws. **Superintendent Keenan** advised

that the system has not worked in other states because less than 2% of the students in a state take advantage of the program. This would have little effect on the cost of schools in Montana. There is not a lot of choice in the rural areas of Montana and the private schools exist only in seven of the largest counties. In states that have had a choice, there is no evidence that parents choose private schools because of the tax incentive. She said there is no evidence that private schools improve education because they are not required to have and meet accreditation standards and they are not required to hire certified teachers. They do not have to report expenditures or student information to a governing body and, most importantly, they do not have to comply with education of handicapped and minority students. Public schools will be left with students who are difficult and more costly to educate. The schools that claim they can "do it better" will have the talented and cooperative students and reject the demanding. **Superintendent Keenan** said the bill would leave Montana with two school systems, both supported by state funds, one with accountability and one without. She objected to the fact that the bill provides a tax credit, pointed out faulty language in the bill, and noted that the bill would penalize schools that have already provided services because school equalization funding is based on the prior year. She objected to the responsibility assigned to the Superintendent's Office without any provision noted in the fiscal note for the performance of those responsibilities. In conclusion, she stated the bill was not good tax policy and was not good policy for the children of the State of Montana. She asked the Committee to defeat the bill.

**Eric Feaver, Montana Education Association**, rose in opposition to HB 582 because he questions the constitutionality of the bill, both federal and state. EXHIBIT 13. **Mr. Feaver** stated that it might be a long time before the constitutionality of HB 582 could be determined because, if the bill is passed, the state would be in court and it would be up to the Montana Supreme Court to make the decision. There is no case law that pertains to this point. In addition, the bill is very expensive, as illustrated in the handout. He estimated that the cost would be approximately \$14 million dollars. If the bill is passed, and it is found to be constitutional, there would be pressure to raise the \$1,000 credit. The direct revenue loss to public schools would be significant. If the bill is eventually put into effect, he predicted constant confrontation between private and public education sectors in the Legislature. The bill would require every taxpayer in the state to contribute to the private interests of certain parents who place their children in school in the non-public sector. The bill completely ignores accreditation and accountability.

{Tape: 3; Side: A.}

In closing, **Mr. Feaver** commented, "If we want to destroy democracy, and take a whack at the public schools, HB 582 is the



blunt instrument to do it." He urged the Committee to vote against the bill.

**Scott Crichton, Executive Director, American Civil Liberties Union,** spoke in opposition to HB 582. He reminded the Committee that the Montana Constitution is stronger and more specific than the U.S. Constitution in prohibiting aid to sectarian schools. A copy of Mr. Crichton's remarks is attached. EXHIBIT 14.

**Mary Sheehy Moe, teacher in both private and public schools,** spoke in opposition to the bill.

**Everett Lynn, Helena,** opposed the bill. He said public schools are subject, in school bond issues, to the vote of the public. There is a matter of public control. With HB 582, private schools would be using public money for private purposes but their boards would not be elected publicly. The more people that subscribe to the private school mechanism, the more likely it is that a school bond issue will fail. State and federal governments have no business subsidizing religion. HB 582 is a thinly disguised attempt to subsidize religion.

**Loren Frazer, School Administrators Association,** spoke in opposition to the bill. He said that if public money is to be used in the private sector, accountability must go with it.

**Don Waldron, Montana Rural Education Association,** expressed the Association's opposition to HB 583.

**Michael Keating, Montana School Board Association,** said he was concerned about the public policy statement contained in HB 582 and the constitutional implications. He agreed with the sponsor and proponents that under the federal constitution and the first amendment, HB 582 is probably legally permissible. He was equally convinced that under Article 10, Section 6, of the Montana Constitution, if HB 582 as drafted were to be enacted by this Legislature, it would be held to be unconstitutional.

**John Malee, Montana Federation of Teachers,** went on record in opposition to the bill.

**Helen Christensen, Montana State AFL-CIO,** submitted written comments in opposition to HB 582. EXHIBIT 15.

#### Questions From Committee Members and Responses:

**REP. ELLIOTT** asked if the position of Montanans for Better Government was that the private marketplace works well and should be the determinate of economic behavior in the United States.

**Mr. Joe Balyeat** said that, generally, he would agree. **REP.**

**ELLIOTT** said that if the private marketplace works so well, why was the organization asking for a government subsidy. **Mr.**

**Balyeat** replied that they were not asking for a subsidy. He said that presently there is no true free marketplace because of the

public education monopoly. This is because public education is subsidized with government dollars. **REP. ELLIOTT** said public education is not subsidized by public dollars, it is paid for with public dollars and the point remains that the private sector is asking for public dollars to subsidize parents for sending their children to private schools.

*{Comments: Noise in meeting room made transcription difficult.}*

**REP. ELLIOTT** said the free market competition exists because the choice is there. **Mr. Balyeat** replied that the rich have educational choices, but the poor and average taxpayer in Montana does not have a true educational choice because the cost to put a child in another system other than the public system is out of reach for the average taxpayer. **REP. ELLIOTT** asked if that was the reason they were requesting a government subsidy. **Mr. Balyeat** said they were asking the government to provide a tax credit and he would not view that as a subsidy.

**REP. JORE** asked the sponsor to discuss the fiscal impacts of the bill. **REP. BOHARSKI** said it had been projected during the special session that 1% of the students in public education would be interested in moving into the private sector. Therefore, he expanded the figure to 1.5%. In addition, he said it was interesting that the Superintendent's Office had suggested there would be an artificial cap with no more than 10% of the students in the state ever going to the private sector. He said he had no idea how they developed that figure. In countries around the world where there is a choice, the percentage usually runs 80/20.

**REP. JORE** remarked that school districts will suffer a loss of state aid. He asked if this was where the savings for the state would be. **REP. BOHARSKI** explained how the state school funding program works and advised that the Legislature had been asked for a \$25 million increase because there are more students. If there are less students, the schools would get less money. Also included in the law is a provision that if the enrollment in a school declines, for whatever reason, the district can go to the taxpayers and ask for more money. If the voters want to do that, they can.

*{Tape: 3; Side: B, Comments: Noise in room throughout this question and answer period made transcription difficult.}*

**REP. JORE** asked if the public schools were able to handle the pluralistic society, differences of opinions and cultural diversity. **Mr. Feaver** said that is what the public schools are designed to do, and it is difficult, but it is their mission to bring the pluralistic points of view together and culture and nurture them. Those who wish to separate themselves from the public school system may do so now. He said Montana has the most liberal, permissive, home school law in the nation. Parents in Montana are moving toward choosing their own school circumstances which is their right. This bill attacks public schools because

it would take money from the public schools to promote that choice. If incentives are offered for people to make choices to separate themselves from the community at large, the community is being attack. Public schools are the manifestation of the community. It is where society best thrives in its corporate sense. This bill would deny that.

**REP. HARPER** said a common theme of opponents to the bill was that it is prohibited by the Montana Constitution. On the assumption that this might be a way to make the bill constitutional, he asked if home schoolers would be willing to accept any increased degree of reporting, teacher qualification, recordkeeping, curricula or materials in order to obtain this benefit. **Joe Balyeat** said a recommendation had been suggested to strike "and fees" from Section 1, sub-section 2(a). As Superintendent Keenan pointed out, there is some ambiguity. The bill would have very little, if any, application to home schools in the State of Montana. He said there is great diversity among the home school population as to whether they would want to participate in such a tax credit program. **REP. HARPER** then asked if the proponents of the bill would be willing to subject themselves to any increased control. **Mr. Balyeat** said the reason private education is more efficient, effective and parent-responsive is because it is free of government control and he would not be interested in accepting a tax credit if it meant additional control.

**REP. HARPER** asked Mr. Keating if it would be possible to avoid the constitutional prohibition by increased government regulation and control and, if so, to what degree. **Mr. Keating** emphasized that it would be a presumption of him to speak on behalf of homeschoolers or other components of private schools. Speaking on behalf of the Montana School Boards Association, he said he is reasonably confident that Article 1, section 5, of the Montana Constitution, would not be disrupted by the enactment of HB 582. He said he did not see any excessive entanglement by the state in matters of religion in the bill as drafted. If there is a move toward a greater degree of entanglement by involving the state more directly in administrative considerations that might have an effect upon religion, he would have some concern about the constitutionality of the bill. He said he remained convinced that under Article 10, section 6, of the Montana Constitution, the bill would not pass a constitutionality test.

**REP. WELLS** said the State Superintendent indicated the bill would cost taxpayers more than it would save and pointed out examples of why there would be no savings. He asked for comments in relation to previous comments from the sponsor indicating that there would be a \$25 million increase in funding because of the increase of 5,000 students in Montana each year. He asked why, if the same number of students were leaving the system, there would be no savings. **Superintendent Keenan** said Rep. Boharski had not counted the 11,000 students who are already in private schools and he assumed there would be an exodus of an additional 1.5% of students to be added to those already in the private

schools. These students won't all be leaving the same school and one child, or five children, leaving a school would not accomplish anything when the school must still pay for teachers, materials, utilities and maintenance. All overhead costs will remain. In addition, based on the ANB system of school funding, for every child that leaves, the district loses money even though they provided service in the preceding year. The school then has two choices -- they can raise local property taxes or diminish the programming in the school to cover the cost. **REP. WELLS** asked the Superintendent if she was aware of the study done in Georgia where students were tested and it was found that the quality of education in both public and private went up and they attributed it to competition. **Superintendent Keenan** said she was not aware of the study. **REP. WELLS** asked if she believed that competition in business, sports, or any part of society improves performance. **Superintendent Keenan** replied that she believed competition would do that in some cases. There is competition in Montana schools because there is nothing to prohibit any child from going to another private or public school. **REP. WELLS** asked if she would agree that the cost of sending a student to a private school could prevent a student from going there. **Superintendent Keenan** said there is choice in Montana schools and she did not think cost prevented any child from attending a private school. The government must provide public education. The private sector has not stepped forward and said "we will do it and it won't cost the government or the public anything." She stated, "The day Lee Iacocca walks into this Committee and says I will educate your children and it won't cost you tax dollars because the private sector can do it, I will believe that the competition you are talking about exists but, until then, this is a tax subsidy, a government handout to the private sector for education and it is not in the common good of the state or nation."

**REP. WELLS** said Mr. Feaver had commented that the proponents of the bill want taxpayers' money in their pockets, yet all the opponents of the bill represented the public school system. He asked if Mr. Feaver would agree that the public schools were taking taxpayers' money and putting it in their pockets and the taxpayer is not given any choice in the matter. **Mr. Feaver** said it is money for the common good and the taxpayers have a choice in who will govern the local school districts, serve as the state superintendent, and will be representatives on the Taxation Committee. The people have a choice through their elected officials to determine how the public schools will be run. In the private sector the public does not have that choice. **REP. WELLS** said that was a reasonably good answer but he does not have a choice in paying into the system. **Mr. Feaver** said he would disagree because that is what the House Taxation Committee is for -- it makes choices as to what will go into the system. He noted that the Taxation Committee recently heard a bill that would have allowed an optional levy to educate emotionally disturbed children and the Committee chose not to adopt that bill. This illustrates that the Committee does have that choice.

REP. SWANSON asked if there would be another fiscal note. REP. BOHARSKI said that, according to the Rules of the House and Senate, a fiscal note was being prepared but was not available prior to the hearing. REP. SWANSON asked if she was correct that homeschool students were not covered. REP. BOHARSKI said they were not because the bill provides a tax credit for tuition. The original bill in the last session included tuition and textbooks. Homeschoolers do not pay tuition. REP. SWANSON asked if tuition was clearly defined in the bill. REP. BOHARSKI said that was an area of concern and amendments would be submitted to clarify the issue. She then asked how the \$1,912 figure was arrived at and REP. BOHARSKI provided an explanation.

{Tape: 4; Side: A.}

He explained how he had determined that there would be approximately \$7 - \$8 million savings to the state. He also clarified that students already in the private school sector would not qualify for the tax credit because the program would be phased in.


REP. ELLIOTT asked if it was true that private schools can educate children at a lower cost per student than the public schools. Sister Catherine replied that they could. REP. ELLIOTT asked if that was because they were free of government control. Sister Catherine said they abide by certain regulations in the code that apply to private schools; for instance, they follow the general course of study prescribed by the state. REP. ELLIOTT asked if the admission standards were governed by the federal government. She replied that they were not. REP. ELLIOTT asked if that meant they could refuse students who are developmentally disabled or have an attention deficit disorder that might disrupt the classroom and make it difficult to conduct the business of education. Sister Catherine said they do make decisions about who could benefit from their program because they do not have sufficient funds to provide the kind of services that public schools can. REP. ELLIOTT said the public schools are mandated to provide services to those children. He asked if private schools were mandated to provide the same services, whether the cost for education would still be lower. Sister Catherine said that if they were mandated to provide services to these children there would also be mandated funds. She said the way the Catholic schools operate, a great deal of bureaucracy is not required because they do not have the responsibilities the public system has and they do not have layers and layers of administration. They are able to make decisions that are pertinent to each school. REP. ELLIOTT asked again if they had to educate the same kinds of kids that public schools are mandated to educate, regardless of where the money came from, whether the costs per student would rise. Sister Catherine agreed that they would.

REP. ELLIOTT asked Mr. Hofer if Springdale was a Hutterite Colony and he replied that it was. REP. ELLIOTT asked if they finance

far as the bill was concerned. He said it was not his responsibility as a Legislator to debate that issue. It was important to remember -- there was nothing in the bill that would give money to private schools. What the bill would do is assist parents in educating their children. He said the quality of the private schools is there because if it were not, parents would not be sending their children. **REP. BOHARSKI** said he did not think the Legislature wanted to get into the business of regulating private schools. There is a question of whether it could be done under the Constitution. He said there is no question that the bill would qualify under the federal Constitution. He said the problem would be under the Blaine amendment and the purpose of that amendment. The question is whether the tax credit could be considered an indirect appropriation. **REP. BOHARSKI** said he believed the purpose of the Blaine amendment was to insure state neutrality for religion and to prevent entanglement. **REP. BOHARSKI** called attention to the severability clause in the bill which provides that if any portion of the bill were to be declared unconstitutional, the balance of the bill would remain intact. The focus of the bill is on parents who should have the right to choose to the greatest extent possible where their children should be educated. The opponents maintain that the choice is there now, and there shouldn't be a choice without regulation. The choice is there now -- for those who can afford it. He said there should be support for those parents who choose to send their child to another educational institution, public or private, other than the public school in the resident district, especially when it is fiscally beneficial to the taxpayers of the State of Montana. Competition in the system is good and will do nothing to harm the public school system. The money will not go to subsidize private schools, it will be going to assist parents. **REP. BOHARSKI** said the bill would need some technical amendments to clarify language. He thanked the Committee for the long hearing.

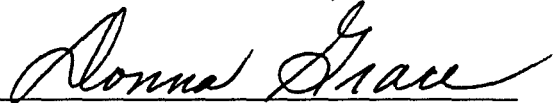
ADJOURNMENT

Adjournment: 11:55 a.m.



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CHASE HIBBARD, Chairman



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DONNA GRACE, Secretary

CH/dg

# HOUSE OF REPRESENTATIVES

## Taxation

ROLL CALL

DATE March 9, 1995

| NAME  | PRESENT | ABSENT | EXCUSED |
|---|---------|--------|---------|
| Rep. Chase Hibbard, Chairman                | ✓       |        |         |
| Rep. Marian Hanson, Vice Chairman, Majority | ✓       |        |         |
| Rep. Bob Ream, Vice Chairman, Minority      | ✓       |        |         |
| Rep. Peggy Arnott                           | ✓       |        |         |
| Rep. John Bohlinger                         | ✓       |        |         |
| Rep. Jim Elliott                            | ✓       |        |         |
| Rep. Daniel Fuchs                           | ✓       |        |         |
| Rep. Hal Harper                             | ✓       |        |         |
| Rep. Rick Jore                              | ✓       |        |         |
| Rep. Judy Rice Murdock                      | ✓       |        |         |
| Rep. Tom Nelson                             | ✓       |        |         |
| Rep. Scott Orr                              | ✓       |        |         |
| Rep. Bob Raney                              | ✓       |        |         |
| Rep. Sam Rose                               | ✓       |        |         |
| Rep. Bill Ryan                              | ✓       |        |         |
| Rep. Roger Somerville                       | ✓       |        |         |
| Rep. Robert Story                           | ✓       |        |         |
| Rep. Emily Swanson                          | ✓       |        |         |
| Rep. Jack Wells                             | ✓       |        |         |
| Rep. Ken Wennemar                           | ✓       |        |         |



# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

DATE 3/9/95 BILL NO. 506 NUMBER       

MOTION: Amend to change distribution

| NAME                        | YES                | NO |
|-----------------------------|--------------------|----|
| Vice Chairman Marian Hanson |                    | —  |
| Vice Chairman Bob Ream      | ✓                  |    |
| Rep. Peggy Arnott           |                    | ✓  |
| Rep. John Bohlinger         | ✓                  |    |
| Rep. Jim Elliott            |                    | ✓  |
| Rep. Daniel Fuchs           | ✓                  |    |
| Rep. Hal Harper             | ✓                  |    |
| Rep. Rick Jore              |                    | ✓  |
| Rep. Judy Rice Murdock      | <del>✓</del> att ✓ |    |
| Rep. Tom Nelson             | ✓                  |    |
| Rep. Scott Orr              |                    | ✓  |
| Rep. Bob Raney              |                    | —  |
| Rep. Sam Rose               |                    | ✓  |
| Rep. Bill Ryan              | ✓                  |    |
| Rep. Roger Somerville       |                    | ✓  |
| Rep. Robert Story           |                    | ✓  |
| Rep. Emily Swanson          |                    | ✓  |
| Rep. Jack Wells             |                    | ✓  |
| Rep. Ken Wennemar           |                    | ✓  |
| Chairman Chase Hibbard      |                    | ✓  |

6

12

EXHIBIT 1  
DATE 3/9/95  
HB 506

*failed*

Amendments to House Bill No. 506  
First Reading Copy

Requested by Rep. Ream  
For the Committee on Taxation

Prepared by Lee Heiman  
March 8, 1995

1. Title, line 5.

Strike: "PROVIDING A STATUTORY APPROPRIATION;"

Strike: "SECTIONS 19-6-709 AND"

Insert: "SECTION"

2. Page 1, lines 26 through 28.

Strike: "deposit" on line 26 through "7%" on line 28

Insert: "distribution on a prorata basis"

Strike: "fund;" on line 28

Insert: "funds of the counties where the fees were collected,  
based upon the amount collected in each county."

3. Page 1, lines 29 and 30.

Strike: subsections (iii) and (iv) in their entirety

4. Page 2, line 1 through page 3, line 8.

Strike: section 2 in its entirety

Renumber: subsequent sections

# Property Tax Reform

## Proposals:

I. Phase in increases in value of Class IV property.

HB265, Emily Swanson

-Same home, '97 appraised value \$130,000  
-Increase phased in:  
'97 \$110,000  
'98 \$120,000  
'99 \$130,000

HB497, John Bohlinger

-None

II. Expand Low-Income Abatement Program.

-Same home, market value \$50,000 owner's income \$6,580  
-Calculated, \$50,000 x (3.86% x 25% = .965%) = \$482.50 taxable

-Same home, market value \$50,000, owners income \$6,580  
-Calculated, \$50,000 (3.86% x 30% = 1.158%) = \$763 taxable  
-Amended calculation, \$50,000 x (3.86% x 20% = .772%) = \$386 taxable

III. Elderly Homeowner Renter (2EC) Program.

-Will retain all of current law except increase the maximum credit to \$1,000.

-Will retain all of current law except increase maximum credit to \$1,000.

IV. Deferment.

-None

-Defer the collection of increased appraisals until May. No change in revenue collection.

EXHIBIT

2

DATE

3/9/95

HB

265/497

# Impact of HB497 - Introduced v. Amended Version

|                              | Introduced<br>Version | Amended<br>Version | Impact of<br>Amendments |
|------------------------------|-----------------------|--------------------|-------------------------|
| Total Eligible Households    | 62,621                | 69,982             | 7,361                   |
| Participation Rate           | 25%                   | 25%                | 0%                      |
| Participating Households     | 15,655                | 17,495             | 1,840                   |
| Average Benefit              | \$250                 | \$300              | \$50                    |
| Total Program Cost           | \$3,913,750           | \$5,248,500        | \$1,334,750             |
| Current Program Cost         | \$2,152,290           | \$2,152,290        | \$0                     |
| Increase in Current Law Cost | <b>\$1,761,460</b>    | <b>\$3,096,210</b> | <b>\$1,334,750</b>      |

## Distribution of Cost to Taxing Jurisdictions:

|                         |       |                    |                    |                    |
|-------------------------|-------|--------------------|--------------------|--------------------|
| Universities            | 1.5%  | \$26,422           | \$46,443           | \$20,021           |
| School Equalization Aid | 23.6% | \$415,705          | \$730,706          | \$315,001          |
| County Governments      | 20.1% | \$354,053          | \$622,338          | \$268,285          |
| Local schools           | 41.6% | \$732,767          | \$1,288,023        | \$555,256          |
| Cities and Towns        | 13.2% | \$232,513          | \$408,700          | \$176,187          |
| Total Cost              |       | <b>\$1,761,460</b> | <b>\$3,096,210</b> | <b>\$1,334,750</b> |

g:\123\sess95\hb497

ORI/MDOR  
02-Mar-95

Amendment changes low income program tables

to say:

Income

% Mult.

0-8,000

20%

8-14,000

50%

14-20,000

70%

PRIVATE SCHOOL TUITION TAX CREDIT FISCAL IMPACTS  
ASSUMPTIONS

| YEAR                            | 1996    | 1997    | 1998    | 1999    |
|---------------------------------|---------|---------|---------|---------|
| PUBLIC SCHOOL ENROLLMENT        | 166,196 | 167,789 | 168,923 | 169,508 |
| PRIVATE SCHOOL ENROL W/O INCEN  | 8,587   | 8,669   | 8,728   | 8,758   |
| HOME SCHOOL ENROL W/O INCENTIV  | 2,913   | 2,941   | 2,961   | 2,971   |
| TAX DEDUCTION                   | \$375   | \$875   | \$1,000 | \$1,000 |
| MAXIMUM % NONPUBLIC             | 20%     | 20%     | 20%     | 20%     |
| NUMBER MOVED @1.5%/YR TO MAX A  | 2,493   | 5,034   | 7,602   | 10,170  |
| CREDIT RESTRICTED               | YES     | YES     | NO      | NO      |
| PUBLIC SCHOOL AVG COST PER ANB  |         |         |         |         |
| TOTAL @ 3%/YR                   | \$3,938 | \$4,056 | \$4,178 | \$4,303 |
| STATE SHARE                     | \$2,367 | \$2,367 | \$2,367 | \$2,367 |
| ESTIMATED SAVINGS PER STUDENT(2 | \$1,912 | \$1,912 | \$1,912 | \$1,912 |
| HOME SCHOOLS INCLUDED           | NO      | NO      | NO      | NO      |

FISCAL CALCULATIONS

|                                  |             |             |               |              |
|----------------------------------|-------------|-------------|---------------|--------------|
| PUBLIC SCHOOL SAVINGS - STATE GF | \$4,766,501 | \$9,624,377 | \$14,534,135  | \$19,445,958 |
| TAX CREDITS - STATE GF           | \$934,853   | \$4,404,461 | \$16,329,433  | \$18,928,604 |
| NET SAVINGS(COST) - STATE GF     | \$3,831,649 | \$5,219,916 | (\$1,795,298) | \$517,354    |
| POTENTIAL LOCAL SAVINGS (1)      | \$3,916,409 | \$8,502,573 | \$13,765,044  | \$19,691,666 |

- (1) LOCAL SAVINGS ASSUMES THAT DISTRICT REDUCES BUDGET PROPORTIONATLY TO TH  
DISTRICT COSTS WILL INCREASE IF LOSS OF STATE FUNDS IS NOT FULLY OFFSET BY RE  
(2) BASED ON CHANGES OCCURING IN THE SIX DISTRICTS WITH THE LARGEST CURRENT PR  
THE SAVINGS WOULD BE \$1,767 IF ALL DISTRICTS WERE USED.

EXHIBIT 3  
DATE 3/9/95  
HB 582

Rep Bohavski  
Sent 5/

# HB 265 Property Tax Reform

Emily Swanson

## I. Phase-in increases in value of Class IV property

| Current law  | Proposed law                             |
|--|--|
| '94 home, market value \$100,000                     | Same home, '97 appraised value \$130,000 |
| '97 appraised value \$130,000                        | Increase phased-in                       |
|  | '97 \$110,000                            |
| Full increase effective at beginning of cycle in '97 | '98 120,000                              |
|  | '99 130,000                              |

## II. Expand low income program

| Current law(see p. PT-33)                                   | Proposed law  |
|---|---|
| Market value \$50,000                                       | Market value \$50,000   |
| Owner's total income, \$6,580                               | Owner's total income \$6,580                                  |
| Calculation:  | Calculation:  |
| \$50,000 x (3.86% x 40%see table<br>=.544%) = \$772 taxable | \$50,000 x (3.86% x 25%see<br>table = .965)= \$482.50 taxable |

## III. Expand elderly homeowner/renter credit(62+ years to qualify)

| Current law                      | Proposed law                    |
|----------------------------------|---------------------------------|
| Market value \$80,000            | same as current law example     |
| Tax rate 3.86%                   | same                            |
| Taxable value \$3088             | same                            |
| Mills .365                       | same                            |
| Tax \$1,127.12                   | same                            |
| -----                            |                                 |
| Applied as credit on income tax: |                                 |
| Income \$15,500                  | same                            |
| Exclusion (\$4,000)              | same                            |
| Net \$11,500                     | same                            |
| Deduction factor .048 see table  | same                            |
| Deduction \$ 552                 | same                            |
| Credit = tax - deduction         | same                            |
| = \$1,127.12 - \$552 = \$575.12  |                                 |
| Max under current law = \$400    | Max under proposed law = \$1000 |
| Credit received = \$400          | Credit received = \$575.12      |

Mr. Chairman, Representatives, my name is Joe Balyeat. I'm an author, certified public accountant, lifelong Montana citizen and taxpayer. I am entirely a product of Montana's education system - both public and parochial schools; graduating from U of M in 2½ years with straight-A high honors. I was a National Merit Scholar all three years. I currently serve as chairman of Montanans for Better Government education task force. I believe in quality education; and urge you to support this bill.

HB 582 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, large up front payouts to the present private school population have been eliminated. On the other hand, Rep. Boharski's projected savings are obviously based upon very conservative numbers of private school transferees. The upside potential for longterm savings to State and local governments is enormous. Please note that in addition to specific income tax relief for school parents; **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. In just the last six years in my city of Bozeman, school bonding levies have risen 99.98%. Communities across Montana are facing similar frightening new construction costs to accomodate projected enrollment increases. Meanwhile, private schools are ready and waiting to handle higher enrollment. An official at Butte's Catholic junior high school told us this week that they recently lost 30 students due to financial considerations and that they would welcome passage of this measure. Just yesterday we completed a statewide poll of 40 private schools with present enrollment totalling 5,269 students. These schools claim that in their present facilities they could easily absorb 1,961 new students. This averages almost a 40% potential enrollment increase in the private school sector. This is almost double the 20-25% enrollment increase potential required by Rep. Boharski's fiscal projections. Moreover, many of these schools already have expansion plans in process. It would be a fiscal travesty for Montana legislators to ignore this obvious solution to the school budgeting crunch and student population explosion.

Moreover, the freedom of school choice offered by this bill would improve the efficiency and effectiveness of our public education system tremendously. **Without the forces of free market competition keeping costs in check, Montana K-12 total education costs have ballooned to well over \$6000 per student per year.** It doesn't take a National Merit Scholar to see that spending \$1000 to help send that child elsewhere would result in enormous savings for MT taxpayers. In addition to these immediate savings, once the present education monopoly is converted into a competitive free-marketplace, it is a certainty that public education costs per student would drop dramatically and schools would become even more responsive to parent's concerns. Parents need consumer power. A 1992 study commissioned 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 educational environment for their children. Today, only the rich and privileged have educational choice. **In the 1990 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."

The rich and privileged have a right to choose, but lower income Montanans have no such opportunity to choose unless you give it to them. The tremendous thing about HB 582 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; and these countries rank consistently high in test scores. 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.

It is only natural that some within the education establishment would wish to maintain their lucrative monopoly. Despite positive results from around the world, they will argue that such a competitive system of educational choice won't work in Montana, or anywhere in America for that matter. That's 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 bureaucratic monopoly which never seems to have enough; though it is spending more now to educate a first grader than most of you veterans spent on your 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 provided \$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. Constitutionally, these vouchers may be used at sectarian or religious institutions because they are "aid directly to the parent, not to the provider." 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 bureaucracy fighting against them to maintain their lucrative monopoly over the status quo. That's the only difference. It is only natural that those who gain financially under the present system would oppose any attempt to change it. They will attempt to convince you that this proposal is a radical, dangerous, unconstitutional undertaking. To the contrary, this proposal is not radical, it is mainstream. This school choice proposal is fully endorsed by the 1994 Montana Republican Party platform. Similar school choice concepts have been recently endorsed by President Clinton as well as by all of his Republican presidential opponents.

Neither is this proposal unconstitutional. HB 582 was in fact modelled after the well-known federal Child Care Tax Credit (Form 2441 for those of you who have not yet filed your returns). It is common knowledge that this child care credit permits parents to place their children in the religious or secular childcare or pre-school setting of their choice with no restrictions whatsoever. The fact that federal tax dollars are then credited back to the parents to help offset child care expenses is in no way a violation of the constitution. HB 582 is no more radical, and no less constitutional than the common Child Care Tax Credit.

I hold in my hand a seven page synopsis prepared by the general counsel of the United States Catholic Conference just 7 days ago. This memorandum, which reviews all the major court cases on this issue during the last 50 years, concludes that aid given directly to parents, rather than directly to religious institutions, will in no way be deemed a violation of the Constitution's Establishment Clause. Moreover, the opinion concludes that tax relief proposals such as HB 582, are the best and safest mechanism for accomplishing this parental aid. The chief co-author of this memorandum, Associate General Counsel John Liekweg of the U.S. Catholic Conference, has reviewed HB 582 extensively. In a direct phone conversation with him yesterday afternoon, Mr. Liekweg assured me that (with a couple of minor wording clarifications) this bill is a sound, constitutionally defensible document. Mr. Liekweg's memorandum will be entered into the record for your review.

So I encourage you to not be intimidated by the emotional, unfounded attacks of special interest education power-brokers. The taxpaying public is overwhelming in favor of school choice. During the last special session, dozens of legislators supported the school choice tax credit bill. Despite being openly targeted for defeat by education power-brokers last election, not a single one of those legislators was defeated last election. Most won by substantial margins. Voting Montana parents overwhelmingly want freedom of educational choice, and voting Montana taxpayers overwhelmingly want tax relief and fiscally wise, innovative reform of government bureaucracies. HB582 gives the Montana public what we want from this legislature.

Thank you, Mr. Chairman and 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.

EXHIBIT 5  
DATE 3/9/95  
HB 582

Parents should be able to choose the school their children attend. Competition has helped our airline and telephone companies as well as the consumer. School choice will do the same for schools. Parents will get more variety and better quality for a cheaper price. This bill will ultimately save the State of Montana millions of dollars because the average cost per student is \$6,200 per year for each student enrolled in the public school system. Parents need freedom of choice and America needs competition to provide the best education possible for our young people. Private business has a lot to offer education and this bill will make it financially feasible.

Parents are in the best position to determine the quality of a school program. Academic rigor is just one small facet of the program. Character development, school environment, discipline, job skills and their child's enjoyment of school are other factors very important to parents.

Every individual is unique and needs diversity and accomodation to develop his or her potential. Small specialized schools are needed to provide flexibility to meet the needs of those individuals who have dropped out of school or have chosen home schooling because there are not affordable alternatives.

*Verdell Jackson*

October 7, 1994

EXHIBIT 6  
DATE 3/9/95  
HB 582

Governors Task Force  
to Renew Montana Government

Dear Sirs:

I am writing this letter in regard to the public school choice section of the Task Force proposal. The opinions of a number of Montana school superintendents and financial officers have been obtained.

The Task Force proposes that the state bear the cost of out-of-district tuition rather than having the student's family bear this cost. The Task Force proposal also makes an attempt to streamline the funding process involving school-to-school tuition and out-of-state tuition.

This aspect of the proposal may well have merits. It does not, however, address the subject of choice in any truly meaningful way. The concept of incentives is an important and inherent element in any workable choice program. The existing Task Force proposal does not address the issue of providing incentives for the receiving school district.

Numerous disincentives now exist which may well prevent school districts from accepting out-of-district students. According to discussions with a school finance officer, one disincentive is the concern about transfer requests from special need and handicapped students. Meeting the needs of these students can be very expensive. This issue needs to be clarified in the proposal. Other concerns were expressed about the delay of state funding and the amount of state funding. The changes that the Task Force proposes could result in the creation of additional disincentives and the actual reduction of public school choice as it now exists in Montana. It must also be noted that the concept of a school charter program was not addressed in the Task Force proposal.

Thinking about the issue from the viewpoint of a larger perspective reveals that this particular choice proposal attempts to streamline the existing system. It does not make any meaningful attempt to utilize public school choice to change the system. There is a fundamental question here: Can public school choice by its very nature have a positive effect on the quality of education?

Educational choice is a philosophy that has evolved over the last 25 years. Many articles and books have been written about it. Numerous organizations have been established to promote and study this subject. "Educational Choice" has in effect become a movement with its own literature, philosophy and organizations.

The centerpiece of educational choice philosophy is free market dynamics. Great perspective can be gained by viewing the pre-Gorbachev economy of the Soviet Union in the light of the thriving U.S. economy. This perspective reveals the positive force that the free market has on society. These free market forces include the free choice of speech and ideas, as well as the free choice of goods and services. The close relationship between free market dynamics and the quality of goods and services is also revealed.

Public school choice is then considered by many who have studied the issue carefully to be the "lame stepchild" of the school choice movement. Public school choice is considered by these thinkers to be far removed from free market dynamics and, therefore, ineffective in its ability to improve the quality of education.

There is one more issue that I wish to raise here. This issue is the impact that the combination of free market dynamics, choice and the forces of communications - information technology will have on the future of education. During the last week of September, 1994, a discussion was aired on C-SPAN in which Bill Gates of Microsoft demonstrated a well-constructed example of computer-assisted interactive TV education. This sort of technology is but in its infancy and has enormous implications for the educational establishment including higher education.

A key factor in the evolutionary process that is occurring lies in the word "choice". Vast new avenues of choices will be charted by the advent of the information superhighway. The concept of choice ties it all together and includes the following aspects: (1) the "choice" found in a well-functioning democracy; (2) the "choice" found in a healthy free market economy; and (3) the "choice" enhanced by the ever-expanding world of communication technology.

The invigorating waters that flow from the well spring of the free market economy are at this time percolating into our calcified educational institutions and are dissolving its layers of inertia and obstruction. Those that are entrenched in rigid bureaucratic systems will simply become irrelevant as the waters of freedom and choice flow around them.

Sincerely yours,

Ford Johnson  
404 West Alder  
Missoula, Montana 59801  
721-7712 (home)  
728-3957 (work)

Testimony in Support of House Bill 582

by

Robert G. Natelson<sup>1</sup>

Mr. Chairman; Members of the Committee:

My name is Rob Natelson, and I am Chairman of Montanans for Better Government. I'm also Professor of Law at the University of Montana School of Law.

I cannot be here in person today (as I was here when I testified for a similar measure during the 1993 special session) because this hearing was scheduled in the time slot in which I teach a very large required class at the law school. I know that opponents will enjoy criticizing me for not being here, but that's nothing compared to what they would say if I cut class to show up!

Of course I do not speak for the University or the law school, but I believe my views on school choice do represent the mainstream conclusions of those educational researchers not employed by the government school system. School choice also represents the mainstream view of the Republican Party -- for example, President Bush, a moderate Republican, supported a choice plan more intensive than the plan embodied in this bill. Similarly, school choice represents the mainstream views of the American people. National polls consistently show large majorities for choice and that voters are more likely to elect candidates who favor choice -- even though the anti-choice forces have won some referenda by out-spending reformers on the order of 10-1.

Here in Montana, school choice is part of the state Republican platform. Every incumbent state legislator who voted for choice in the 1993 special session and sought reelection was in fact re-elected, including races where challengers raised the issue.

Now, before turning to the positive aspects of this bill, I would like to anticipate some of the opponents' arguments.

The opponents will claim that school choice is unconstitutional. Under the U.S. Constitution, this is no longer a viable argument;<sup>2</sup> under the state constitution, it may be a

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<sup>1</sup> Professor of Law, University of Montana; Chairman of Montanans for Better Government. The opinions expressed in this testimony are his and not necessarily those of any other person or institution.

<sup>2</sup> *Mueller v. Allen* 463 U.S. 388 (1983) (tuition deductions upheld); *Witters v. Wash. Dept. of Services for the Blind*, 474 U.S. 481 (1986) (tuition vouchers upheld); *Luthens v. Bair*, 788 F.Supp. 1032 (S.D. Iowa 1992); *Campbell v. Manchester Board Director*, 641 A.2d 352 (Vt. 1994) (reimbursement for tuition paid to religious school upheld).

viable argument against *vouchers*, but is not much of an argument against *tax credits*.<sup>3</sup> On the contrary, during the debate in the 1993 special session, Professor David DeWolf, a constitutional law expert from Gonzaga University, testified that any attempt to use Montana's so-called "Blaine Amendment"<sup>4</sup> against tuition tax credits might result, not in the voiding of the credits, but in the voiding of the *Blaine Amendment* as violating the religion clauses of the First Amendment to the U.S. Constitution.

No doubt if this bill is passed the special interests will sue to overturn it; lawsuits are their standard response to defeat in the democratic process. But we need to remember that they are not invulnerable, as demonstrated when they lost in their recent effort to abolish the right of Montanans to vote on taxes.

Opponents may claim this bill would cost money. Practical experience in places with public-private school choice proves the opposite. British Columbia, for example, implemented a choice plan in 1978. Since that time, the percentage of children in private schools has gradually risen, saving British Columbia taxpayers millions of dollars. Similarly, the public-private high school choice plan in place in Vermont for over a century (upheld last year by the Vermont Supreme Court) has proved highly cost effective. And this counts only the direct tax savings, not the efficiencies arising from competition itself. The exact dollar amount of savings from competition are never known in advance, but they are usually substantial.

Opponents may argue that Senate Bill 370 -- which purports to be a charter schools bill -- is a substitute for this measure. Senate Bill 370 is an object lesson in how a good idea can be mangled when caught between the millstones of lobbyists and legislature. The charter school concept contemplates breaking the monopoly of the local school board; under S.B. 370, however, charter schools can be sponsored *only* by the local school board. The charter school concept contemplates ending school board control and collective bargaining rules; S.B. 370 would largely keep both. The charter school concept emphasizes the rights of parents and groups of entrepreneurial teachers. S.B. 370 emphasizes the rights of school district trustees, the state board of public education, and the unions. At its *best*, the concept of charter schools is only a halfway step toward true choice. But S.B. 370 is not even a real charter schools bill; it's like hanging a sign saying "elephant" on a dog, and then calling it an elephant.

Next, I respectfully caution you against relying on research on choice from the Office

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<sup>3</sup> See *Montana State Welfare Bd. v. Lutheran Social Services of Montana*, 156 Mont. 381, 480 P.2d 181 (1971), where under the (stricter) version of the Blaine Amendment in the 1889 constitution, the Montana Supreme Court held that payment of medical expenses on behalf of indigent mothers did not "indirectly" benefit religious adoption agencies, even though those agencies were thereby relieved of having to pay such expenses. The point was that the program was designed to benefit *mothers*, not religious institutions. Similarly, HB 582 is designed to benefit *children* not religious schools. The court noted that not only were such payments *permissible*, but that refusal to make them to a mother who chose a religious adoption agency might violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution!

<sup>4</sup> Mont. Const., Art. X, §6. *Montana State Welfare Bd. v. Lutheran Social Services of Montana*, 156 Mont. 381, 480 P.2d 181 (1971) would seem to support such an argument because the court was doubtful of the ability of the state to discriminate against religious institutions.

of Public Instruction. I've learned the hard way that OPI's work is not always reliable. In the 1993 choice debate, for example, Superintendent Keenan argued that private schools would engage in invidious discrimination, apparently unaware that state law already forbids private schools from engaging in this sort of conduct.<sup>5</sup> At that time also, OPI argued that only 2% of public school children would switch to private education alternatives. But the basis of that argument turned out to be a study of programs in which private education alternatives were excluded! You may also recall that in the special session, OPI admitted gross miscalculation of state equalization aid formulas. And most recently, you saw a written exchange between myself and Rep. Peck. In that exchange, Rep. Peck incorrectly claimed that the Census figure that shows that Montana has more per capita school employees than any other state in the nation was based on extrapolation from only one Montana school district. In fact, a check with the Census Bureau revealed that it was based on at least 146 school districts. I am not certain that Rep. Peck relied on OPI research; but if he did, that would be consistent.

Choice opponents impliedly concede the findings of independent studies to the effect that schools operating in an environment of choice and markets work better than schools in an environment of monopoly and bureaucracy. But they argue that the research isn't fair, because private schools can "cream" the market and refuse to accept students they don't want.

When opponents respond in this way, they reveal that either they haven't read or that they haven't understood the research. What the studies conclude is not that private schools are necessarily better than public schools, but that *any* schools -- public or private -- are better in an environment of choice and markets than in an environment of monopoly and bureaucracy. Moreover, the researchers who conduct these studies are not stupid; they know there are differences between public and private schools, and when they conduct their studies it is standard procedure to compensate for those differences. Yet even *after* full compensation, the results are clear: education in an environment of choice and markets works better than education in an environment of monopoly and bureaucracy.

Now as to the merits of this proposal: Not very often do you have an opportunity to vote on a bill in which almost everyone will come out a winner.

*State and local taxpayers will win* because for every \$1000 credit, they save an average of about \$7000. This is only an average, of course, and will vary according to place and time. In areas of rapidly increasing enrollment -- which is where most of the private schools exist already -- the savings will tend to be higher because of reduction in start-up costs.

*Private schools will win* because they will be able to offer their services to a wider market. New demand will be fueled by families now financially locked out of effective choice. New demand will stimulate educational alternatives to arise in parts of Montana where alternatives do not exist today -- including rural areas.

*Public schools will win* because they will learn from the experiences of their competitors, as happens in any competitive market. This learning will benefit even public schools not facing direct local competition. Moreover, competition would create pressures to

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<sup>5</sup> Mont. Code Ann. §§49-2-101(6) and 49-2-307.

relax mandates and free public school employees to do their job as they know it can be done. That portion of the financial savings not used for tax relief could be used to increase per pupil support of public education. The beneficial effects of private school competition on public schools are not speculative; they are documented in several studies.<sup>6</sup>

*Teachers would win* -- especially good teachers. In the system today, teachers are treated too much like bureaucrats and too little like professionals. Choice would re-create the schools of an earlier time, in which the teacher-family relationship was more like the relationship between professional and client. In a competitive environment, good teachers would be in special demand, and no doubt would command salaries somewhat higher than those they receive today.

The debate over choice is one area in which there is a sharp conflict of interest between teachers and the union officials who purport to represent teachers. An environment of choice might result in fewer teachers being added to the payrolls -- although this is uncertain<sup>7</sup> -- but it also would result in good teachers being better paid and enjoying more job satisfaction. Union officials, on the other hand, make out best when the payrolls are crammed with poorly paid, dissatisfied personnel. Teachers of Montana, my point is this: Choice is in your best interest, and on this subject the personal interests of your union officials are diametrically opposed to yours.

And finally, and most importantly, under choice *children would win*. All too often the current system tries to put children into one-size-fits-all education. But one-size-fits-all doesn't make any more sense in schooling than it makes in trousers. An environment with more choice means an environment responsive to the different needs of children and the different values of families. And because under choice each family can opt for the approach best for their children, an environment of choice will be an environment far less riven by all those unresolved -- and perhaps unresolvable -- education battles about OBE, sex education, look-say vs. phonetics, progressive vs. traditional, and religion vs. secularism. Those conflicts could be resolved to the satisfaction of all, because each family could choose the schooling method it deems best.

Mr. Chairman, Members of the Committee: Based on my contacts from all parts of the state, I can testify that Montanans are becoming increasingly doubtful over the ability of this legislative session to accomplish the kind of fundamental change you were sent here to accomplish. But this is one area in which you can ease that doubt -- decisively and dramatically -- and reaffirm the faith of the people who sent you here: Enact school choice!

Thank you very much.

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<sup>6</sup> E.g. Couch & Shughart, *Private school enrollment and public school performance*, 76 PUBLIC CHOICE 301 (1993).

<sup>7</sup> A recent study of privatized industries found *increases* in employment after privatization, rather than the expected decreases. This was more than paid for by greatly increased productivity. William L. Megginson, Robert C. Nash & Matthias Van Randenborgh, *The Financial and Operating Performance of Newly Privatized Firms: An International Empirical Analysis*, 49 J. FIN. 403 (1994).



EXHIBIT 8  
DATE 3/9/95  
HB 582

TESTIMONY OF ROGER KOOPMAN

Supporting HB 582

MR. CHAIRMAN. This is one of those bills that is all upside and no downside -- where the potential benefit is enormous and the risk is zero.

While I find the fiscal arguments in favor of this bill to be extremely compelling, the educational arguments are even more compelling. And the moral arguments are perhaps the most compelling of all.

Our primary focus should always be on what is best for our children. That's why I like to call this bill "The Student Empowerment Act", because it puts the education consumer in his proper place at the head of the line. By enhancing freedom of choice, HB 582 liberates Montana's educational marketplace and provides a powerful stimulus for innovation, competition, and the enrichment of educational opportunity. The individuality of students -- their values, their learning styles, their special needs -- are far better addressed in an atmosphere of diversity and freedom. That is exactly what this bill would accomplish -- producing all winners and no losers.

At the same time, this bill affirms a very sacred principle: the right of parents to choose how their children will be trained and educated. Clearly, it is not the intent of this legislation to endorse any form of education over another. It's simple purpose is to make it **easier** for parents to choose. And frankly, Mr. Chairman, the more we can encourage parents to become better involved in their children's education, the more **everyone** benefits.

Perhaps the most oft-repeated and fallacious argument against school choice is the assertion that "it is wrong to use public funds (through a simple tax credit to parents) to 'subsidize' private schools." This is a strange twist of logic, that jettisons the whole principle of government **of, by, and for the people**. For whose money are we really talking about here -- the government's or the people's? When did we suddenly start accepting the notion that the tax dollars we give to government are no longer the people's money? When did we abandon the idea that the public treasury belongs to the **people** -- that government holds it in trust only? And isn't it curious that while nobody objects to "public funds" being directed to private colleges through the GI Bill, a mere tax credit (not a government voucher) to promote choice in K-12 education is attacked as radical and downright unamerican?

In reading over the language of House Bill 582, I do have one serious concern. In Section 1-(2), the bill does something (inadvertently, I believe), that runs sharply contrary to the whole

concept of this legislation. By limiting qualifying expenses to "tuition and fees", the bill has the practical effect of **limiting** parental choice to the types of non-public education that conform with these parameters. I would suggest that the last thing we want to do is establish in law, state "approved" and "unapproved" parental choices.

Yet a significant amount of the costs of many private schools are in the form of textbooks and other materials that are passed on to parents directly, rather than in the form of fees or tuition. Many if not most home-based schools would fall into that category as well. It would be profoundly wrong to discriminate against these highly successful forms of education, and I can't imagine that it would be the intent of the legislature to do so. To resolve this, I would strongly urge that the committee amend this bill by adding, after "fees", these three words: "and curriculum materials."

With that amendment, I would strongly support this bill. Without it, I would have some genuine concerns.

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Testimony by Bob BALYeat 22 White Ln. 965-  
 John Taylor Gatto Great Falls Mt 59404 2248  
 teacher of Year  
 New York School  
 District  
 Billings conference  
 1992

EXHIBIT 9  
 DATE 3/9/95  
 HB 582

"the best way to start the long trail out of  
 the school mess we're in is to give  
 people back the school money currently  
 deducted in taxes." "to encourage  
 a full free market range of alternative  
 forms of schooling to develop and to  
 trust people to purchase the school  
 services that are best for them."

- ① Intro: Businessman from G.F. area  
 Area Representative for M.B.G. in Cascade County,  
 Lewis & Clark Co.  
 & Choutau Co.  
 Family (most importantly)
- ② Testimony: yesterday (business day) yesterday 4/20. because  
 I sold (after tax comm. hearing) I could choose
- ③ Example: Chrysler V.S. G.M. ~~opponents~~ are, who. where to sell.
- ④ Quote: J.T.G (above) ↑  
 Please notice who is against this bill: ~~not~~ parents  
 who are afraid of  
 having too  
 many  
 alternatives  
 available  
 to them
- ⑤ Challenge: I ~~ask~~ <sup>ASK</sup> you support  
 real tax savings not just  
 cutting a little from  
 and at the same time  
 improve our educational  
 system. ~~parents~~ <sup>parents</sup> ~~increase~~ <sup>paid</sup> ~~representatives~~ <sup>representatives</sup> ~~that take~~ <sup>that take</sup> ~~from the~~ <sup>from the</sup> ~~parents~~ <sup>parents</sup> ~~2) or parents~~ <sup>2) or parents</sup>

Mr. Chairman, members of the committee:

For the record, my name is Laurie Koutnik, Executive Director of Christian Coalition of Montana, our state's largest family advocacy organization, and I rise in support of Rep. Boharski's HB 582 presented here today.

Giving parents a choice in choosing an educational setting for their children is surely not a new concept, but one whose time for serious consideration and support has arrived. In fact, we know the current Congress is seriously discussing it, President Clinton has come out in favor of it, and all the current Republican contenders for the '96 Presidential bid all support it. Why? Because it not only has support of the people in keeping with the American tradition of choosing for one's self, but because it makes good sense, both rationally and fiscally.

America was built on a free enterprise, market approach. We know that competition is healthy and good. As in any free market approach, when consumers have a choice, suppliers benefit from the drive to pursue service and quality for customers.

America has always taken a stand against monopolies which deprive freedom of choice. Today, there is nationally the recognition that the current public education system has become a monopoly.

Many fine articles and books have addressed this concern and problems this monopoly presents. Thomas Sowell's book "Inside American Education: The Decline, The Deception, The Dogma," concludes that to break the monopoly public schools have on education, the public must be allowed to "opt out" through various school "choice" programs that let children from all walks of life, no matter of race, religion or socio-economic means, into better schools, public or otherwise.

Currently, of the \$33 billion we spend on the federal level for education, 70 percent never reaches the classroom. It makes sense to convert these monies into financial incentives that will allow parents through a tax credit approach to send their children to the best schools in their community, whether they are private, public, or parochial. Many parents contend that the private education they would prefer for their children is an option only if tuition tax credit is made available. In fact, some parents contend that private education is denied as a choice because educational monies, through their taxes, are consumed by an education system that is always demanding more funds. There is no end to its appetite for our tax revenues, spending upward of nearly sixty cents out of every dollar raised here in Montana, while private schools have consistently operated at about 1/2 the cost. Definitely the government, both state and federal, would have a reduction in educational expenditures.

A recent Newsweek nation-wide poll indicates that 23% of parents with children in public schools might switch to private schools if tuition tax credit is allowed. However, given the public perception in Montana that public education is doing a good job, the percentages would be a lower rate. None the less, reduction in tax revenues could be achieved if only a small percentage as low as 5% shift from public to private schools.

It is highly doubtful that a tax credit could kill the public education system, however, it could

provoke a “ belt tightening” effect on the ever mushrooming expense it demands. Tuition tax credits would definitely take the fat out of public education, decrease federal monies needed to help reduce the national deficit, and would force schools to pursue cost effectiveness. In a time when we are looking for ways to assist our national financial dilemma, every little bit will help. In fact, I submit, if tuition tax credit proposes the crumbling of public education, as some here might want you to believe, and public ed cannot stand on its own merits, should we continue to prop it up?

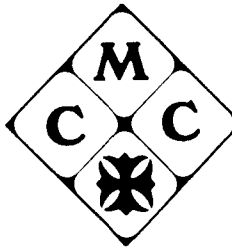
Tuition tax credits would instead force public school systems to provide quality education that meets the demands of parents and future academic needs of children.

You will hear from opponents that tuition tax credit will bring certain disaster to our schools in Montana. Some will propose that this approach would establish an educational caste system with advantaged youth leaving the poor and disadvantaged behind. This is ill founded. I am all too aware of private and parochial schools who have in fact “ picked up the tab” so to speak for those less fortunate among us or those expelled from public ed for various reasons. Many a time, I remember, the nuns and priests in the local diocese, being the only ones caring enough to try again with those who did not fit in conventional learning settings. Never minding their handicap, they were encouraged, like the rest, to pursue the best they could do while teachers went out of their way to help and students were never tolerated to think poorly of another. Personal responsibility and accountability was emphasized, and charity abounded.

While other will contend that money need to meet maintenance costs and teacher salaries will be lost, I submit that tuition tax credit will only supply the necessary relief from over crowding in the classrooms we experience or the need to build additional facilities.

Rural areas may not have opportunity to utilize private or parochial schools, may be another contention. However, my own father moved our family from the farm 11 miles from the Canadian border on the Hi-line to Havre just so we could attend parochial school. This demonstrates that for parents given a choice, they will sacrifice and accommodate the circumstances to enroll their children in the school of their choosing. However, back then the ratio of tax dollars extracted from families was a much lower rate. Tuition tax credits can offset this inequality today.

We cannot afford to overlook school tuition tax credit in the education equation for our children any longer. Please give a recommend “do pass” on HB 582. Thank you. children?



# Montana Catholic Conference

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM SHARON HOFF, REPRESENTING THE MONTANA CATHOLIC CONFERENCE. IN THIS CAPACITY I ACT AS LIAISON FOR MONTANA'S TWO ROMAN CATHOLIC BISHOPS ON ISSUES OF PUBLIC POLICY. THE MONTANA CATHOLIC CONFERENCE SUPPORTS HB582 BECAUSE WE SUPPORT PARENTAL CHOICE IN EDUCATION.

TUITION TAX CREDITS ARE A GOOD WAY TO ADDRESS PARENTAL CHOICE IN EDUCATION. HB582 NOT ONLY ALLOWS TUITION TAX CREDIT FOR PARENTS WHO SEND THEIR CHILDREN TO PRIVATE SCHOOLS, IT ALSO ALLOWS TUITION TAX CREDIT FOR PARENTS WHO SEND THEIR CHILDREN TO PUBLIC SCHOOLS LOCATED IN DISTRICTS OTHER THAN THE DISTRICT IN WHICH THEY RESIDE.

THOSE WHO OPPOSE SCHOOL CHOICE INITIATIVES MAKE TWO ARGUMENTS, THAT VOUCHERS ARE UNCONSTITUTIONAL AND THAT ALL AID (REGARDLESS OF APPROACH) IS UNCONSTITUTIONAL. IN THE CASE OF HB582, WE ARE NOT DEALING WITH VOUCHERS BUT WITH TUITION TAX CREDITS WHICH ARE AVAILABLE NOT ONLY PARENTS WITH CHILDREN ENROLLED IN PRIVATE, SCHOOLS, BUT TO ALL PARENTS WHO PAY TUITION FOR THEIR CHILDREN'S EDUCATION. DECISIONS BY THE U. S. SUPREME COURT IN RECENT YEARS CLEARLY SUPPORT THE CONSTITUTIONALITY OF SCHOOL CHOICE INITIATIVES THAT INCLUDE FINANCIAL BENEFITS FOR PARENTS WHO ENROLL THEIR CHILDREN IN RELIGIOUSLY AFFILIATED SCHOOLS AS WELL AS IN PUBLIC SCHOOLS.

LOOKING SPECIFICALLY AT SCHOOLS SPONSORED BY RELIGIOUS ORGANIZATIONS, IN 1983, THE SUPREME COURT UPHELD A MINNESOTA STATUTE THAT ALLOWED AN INCOME TAX DEDUCTION FOR TUITION PAID TO PAROCHIAL SCHOOLS, (*MUELLER V. ALLEN, SUPRA.*). THE COURT NOTED THAT "BY CHANNELING WHATEVER ASSISTANCE IT MAY PROVIDE TO PAROCHIAL SCHOOLS THROUGH INDIVIDUAL PARENTS, MINNESOTA REDUCED THE ESTABLISHMENT CLAUSE OBJECTIONS TO WHICH ITS ACTION IS SUBJECT." (*MUELLER*, 463 U.S. AT 399.) THE COURT ALSO NOTED THAT WHEN PAROCHIAL SCHOOLS ARE SUPPORTED ONLY AS A RESULT OF PRIVATE DECISIONS OF INDIVIDUAL PARENTS, NO IMPRIMATUR OF STATE APPROVAL CAN BE DEEMED TO HAVE BEEN CONFERRED, EITHER ON RELIGION SPECIFICALLY, OR ON RELIGION GENERALLY. *ID.*

THE SUPREME COURT HAS CONSISTENTLY REJECTED THE APPROACH THAT THE ESTABLISHMENT CLAUSE PREVENTS THE UNITED STATES GOVERNMENT FROM PROVIDING ANY DIRECT OR INDIRECT FINANCIAL ASSISTANCE TO RELIGIOUS ORGANIZATIONS. (*SEE, E.G., BOWEN, V. KENDRICK*, 487 U.S. 589 (1988). BENEFITS UPHELD BY THE SUPREME COURT INCLUDE PROPERTY TAX EXEMPTIONS FOR CHURCHES (*WALZ V. TAX COMMISSION*, 397 U.S. 664 1970), DIRECT CASH PAYMENTS TO RELIGIOUS SCHOOLS FOR STATE-MANDATED SERVICES (*COMM. FOR PUB. EDUC. V. REAGAN*, 444 US 645 (1980), TAX DEDUCTIONS FOR TUITION PAID TO RELIGIOUS SCHOOLS (*MUELLER V. ALLEN*, 463 U.S. 388 1983), AND FINANCIAL ASSISTANCE TO STUDENTS ATTENDING RELIGIOUS COLLEGES (*AMERICANS UNITED FOR SEPARATION OF CHURCH & STATE V. BLANTON*, 443 F. SUPP. 97 (M.D. TENN. 1977), *AFF'D*, 434 U.S. 803 (1977). IN THE MUELLER DECISION,

THE SUPREME COURT UPHELD PROGRAMS THAT PROVIDED BENEFITS TO  
STUDENTS ATTENDING BOTH PUBLIC AND PRIVATE SCHOOLS.

WE URGE THE COMMITTEE'S SUPPORT FOR PARENTAL CHOICE IN  
EDUCATION AND A DO PASS ON HB582. THANK YOU.



House Education Committee 8:00 A.M.  
H.B. 582 March 9, 1995 Room 437

My name is Ed Wipf, I'm from Martinsdale Colony, Martinsdale, MT.

Mr. Chairman and members of this committee, I'd like to thank you for the opportunity to testify before this committee of H.B. 582.

H.B. 582 would provide an incentive for parents that place their children in non public schools benefit not only both students in public and private schools but also the taxpayer.

The tax credit this bill would provide for tuition for elementary and secondary education is substantially less than the \$3000.<sup>00</sup> plus figure that it costs the state to educate a student in a public school. This windfall would be a actual savings to the taxpayer and would reduce the work load and responsibility of our public education system.

The state is presently experiencing an era in which the taxpayer has been less than generous when voting on <sup>school</sup> mill levies and bond issues concerning education. This has created a shortage of classroom space and understaffing in the classrooms causing hardship for students, teachers and administration at both the local and state level.

The children would benefit by being in a classroom with a more homelike and possibly <sup>safer</sup> environment, where they could <sup>study</sup> in smaller classes, would not be exposed to the problems, peer pressures and influence that unfortunately a lot of children in our public schools are presently exposed to.

I urge you that you look at this bill as a piece legislation where

*Feaver testimony*

HB 582 (Boharski)

EXHIBIT 13  
DATE 3/9/95  
HB 582

Hearing: House Taxation, March 9, 1995

Unconstitutional!

See Montana Constitution

1. Article 5 - Legislature

Section 11 - Bills

Subsection (5) 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.

2. Article 10 - Education and Public Lands

Section 6 - Aid Prohibited to Sectarian Schools

Subsection (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.

**NON-PUBLIC SCHOOL ENROLLMENT COMPARISONS****HOMESCHOOLS**

| YEAR      | NUMBER OF SCHOOLS | K  | 1-8   | 9-12 | TOTAL |
|-----------|-------------------|----|-------|------|-------|
| 1991-1992 | 997               | 66 | 1,375 | 218  | 1,659 |
| 1992-1993 | 1,194             | 74 | 1,595 | 288  | 1,957 |
| 1993-1994 | 1,402             | 61 | 1,886 | 387  | 2,334 |
| 1994-1995 | 1,730             | 87 | 2,387 | 436  | 2,910 |

**PRIVATE SCHOOLS**

| YEAR      | NUMBER OF SCHOOLS | K   | 1-8   | 9-12  | TOTAL |
|-----------|-------------------|-----|-------|-------|-------|
| 1991-1992 | 137               | 642 | 5,649 | 1,720 | 8,011 |
| 1992-1993 | 126               | 918 | 5,277 | 1,872 | 8,067 |
| 1993-1994 | 131               | 784 | 5,436 | 1,961 | 8,181 |
| 1994-1995 | 125               | 765 | 5,860 | 1,962 | 8,587 |

03/01/95

**MEA THE GENERAL FUND COST OF TUITION TAX CREDITS**

| FY    | PRIVATE<br>& HOME<br>SCHOOL<br>STUDENTS | %<br>CHANGE<br>FROM PRIOR<br>YEAR | ----- TUITION CREDIT GF COST ----- |                     |                       |                       |
|-------|---|-----------------------------------|------------------------------------|---------------------|-----------------------|-----------------------|
|       |   |                                   | 375<br>TY95<br>FY96                | 750<br>TY96<br>FY97 | 1,000<br>TY97<br>FY98 | 1,000<br>TY98<br>FY99 |
| FY92  | 9,670                                   | NA                                |                                    |                     |                       |                       |
| FY93  | 10,024                                  | 3.66%                             |                                    |                     |                       |                       |
| FY94  | 10,515                                  | 4.90%                             |                                    |                     |                       |                       |
| FY95  | 11,497                                  | 9.34%                             | 4,311,375                          | 8,622,750           | 11,497,000            | 11,497,000            |
| FY96* | 12,072                                  | 5.00%                             | 4,526,944                          |                     |                       |                       |
| FY97* | 12,675                                  | 5.00%                             |                                    | 9,506,582           |                       |                       |
| FY98* | 13,309                                  | 5.00%                             |                                    |                     | 13,309,215            |                       |
| FY99* | 13,975                                  | 5.00%                             |                                    |                     |                       | 13,974,675            |

\* STUDENT GROWTH PROJECTED AT A +5% ANNUALLY AFTER FY95



EXHIBIT 14  
DATE 3/9/95  
HB 582

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

March 9, 1995

Mr. Chairmen, Members of the Committee.

For the record, my name is Scott Crichton. I am the Executive Director of the American Civil Liberties Union of Montana. ACLU is celebrating 75 years of defending traditional American values as expressed in the Constitution and the Bill of Rights. We spoke against HB 81 during the November 1993 special session, a bill very similar to HB 582. And we rise in opposition today.

First, I remind you that the Montana Constitution is stronger and more specific 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 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 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 that decision.

This is a significant distinction, underscored in a more recent case (Zobrest v. Catalina Foothills School District, 509 US, 125 Led 2d 1, 1133 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 warn that the line was finely drawn.

Fourth, were this bill to become law, the relationship between the state and religious institutions that would result, or that necessarily would have to exist, for the state to avoid advancing religion, will be of such nature and duration as to constitute "excessive entanglement". Do the private 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 the 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 interest of public schools, nor is it in the best interest of private schools, nor is it in the best interest of the state of Montana to give this bill further consideration.

I strongly urge you to vote against HB 582. Thank you for your time and consideration.



# Montana State AFL-CIO

EXHIBIT 15  
DATE 3/9/95  
HB 582 Donald R. Judge  
Executive Secretary

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

406-442-1708

Testimony of Helen Christensen, Montana State AFL-CIO on HB582  
before the House Taxation Committee, March 9, 1995

Mr. Chairman, members of the committee, for the record my name is Helen Christensen representing the Montana State AFL-CIO and I rise in opposition to House Bill 582.

This bill raises for all of us Montanans two fundamental questions that deserve answering before you cast your vote on HB582:

- (1) Do Montanans want a strong public school system available to all Montana children and paid for by all Montana taxpayers?

or

- (2) Do Montanans want to reduce our commitment to universal funding for a single universal public education system in order to provide public funding for a second selective private education system?

Traditionally the burden of universal education has been one Americans have been willing to shoulder because we recognize that our communities, indeed our state and our nation, benefit from strong public schools and a universally educated population. The great strengths of this nation -- our economic, cultural and intellectual strength -- are rooted in the promise of a free education for all.

If you choose to weaken our commitment to universal funding of the public schools by relieving some taxpayers of the state's burden and not others, you will simultaneously weaken the very foundation of universal education. What will follow, as sure as day follows night, is a corresponding weakening of our communities, our state and our nation.

That is a sad and unforgivable legacy for tomorrow's children. Please join us in opposing HB582.

Thank you.

## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

14

Sexation COMMITTEE BILL NO. HB 582  
 DATE 3/9/95 SPONSOR(S) Rep. Boharski

PLEASE PRINT

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PLEASE PRINT

| NAME AND ADDRESS               | REPRESENTING                    | BILL          | OPPOSE       | SUPPORT      |
|--------------------------------|---------------------------------|---------------|--------------|--------------|
| <u>Eri De</u>                  | <u>MSA</u>                      |               | <del>X</del> |              |
| <u>Ronan Frazee</u>            | <u>SAM</u>                      |               | X            |              |
| <u>William Kelly</u>           | <u>MSBA</u>                     |               | X            |              |
| <u>Lowell Knowlen</u>          | <u>Self</u>                     | <u>HB 582</u> |              | X            |
| <u>Edward J. Wipf</u>          | <u>Self</u>                     | <u>HB 582</u> |              | ✓            |
| <u>Sam S. Hofer</u>            | <u>Self</u>                     | <u>582</u>    |              | X            |
| <u>Helen Christensen</u>       | <u>Mont. State A.L. CO</u>      | <u>HB 582</u> | X            |              |
| <u>John Maler</u>              | <u>M.F.A.</u>                   | <u>HB 582</u> | X            | <del>✓</del> |
| <u>Everett L. Lysen</u>        | <u>Self</u>                     | <u>582</u>    | X            |              |
| <u>Garry Don Besten</u>        | <u>Man. Chi. Sch.</u>           | <u>582</u>    |              | X            |
| <u>Laurie Kentrick</u>         | <u>Christian Coalition MT</u>   | <u>582</u>    |              | ✓            |
| <u>SHARON HOFF</u>             | <u>MT CATH. CONF</u>            | <u>582</u>    |              | ✓            |
| <u>St. Katherine Franchett</u> | <u>MONTANA Catholic Schools</u> | <u>582</u>    |              | ✓            |

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| NAME AND ADDRESS        | REPRESENTING  | BILL   | OPPOSE | SUPPORT |
|-------------------------|---|--------|--------|---------|
| Andy Klein              | Self  | 582    |        | ✓       |
| Vardell Jackson         | Self  | 582    |        | ✓       |
| St. Louis Haag          | Self  | 582    |        | ✓       |
| Ken Canfield            | Self  | 582    |        | ✓       |
| Linda Jackson           | Self  | 582    |        | ✓       |
| Charles J. Foretzen     | SELF  | 582    |        | ✓       |
| Robert E. (Bob) Balyeat | Family, Self & <sup>Montanans</sup> for Better Gov't. | HB 582 |        | X       |
| Scott St. Arnaud        | Self & AFSCME   | 582    | X      |         |
| Jim Hollandsworth       | Self  | 582    |        | ✓       |
| Ford Johnson            | Self  | 582    |        | ✓       |
| JOE BALYEAT             | MTs. FOR BETTER GOVT.<br>& SELF                       | 582    |        | ✓       |
| DAVID SPADY             | SELF  | 582    |        | ✓       |
| Betty Nathan            | Mts for Better Government                             | 582    |        | ✓       |

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| NAME AND ADDRESS                                 | REPRESENTING           | BILL | OPPOSE | SUPPORT |
|--|------------------------|------|--------|---------|
| 518 N. 18 <sup>th</sup><br>Tom Schneider Bozeman | self                   | 582  |        | X       |
| South Church                                     | NCLU / MCT             |      |        | X       |
| Duane A. Denny                                   | Columbus Schools       | 582  | X      |         |
| Arlene Randolph                                  | Eagle Forum            |      |        | ✓       |
| Fred Happel                                      | MT. for Better<br>Govt |      |        |         |
| Roger Hoopman                                    | self                   | 582  |        | ✓       |
|  |                        |      |        |         |
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