

MINUTES

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

COMMITTEE ON EDUCATION

Call to Order: By CHAIRMAN DARYL TOEWS, on March 27, 1995, at
3:38 p.m.

ROLL CALL

Members Present:

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

Members Excused: Sen. Kenneth "Ken" Mesaros (R)

Members Absent: N/A

Staff Present: Eddy McClure, Legislative Council
Janice Soft, Committee Secretary

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

Committee Business Summary:

Hearing: HB 365, HB 479
Executive Action: HB 479, HB 365, HB 480

HEARING ON HB 365

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, Augusta, said page 1 of HB 365 covered a request from the legislature to the Board of Regents regarding university remedial education while page 2 covered the number of university graduates; this request was based on what Texas required of their university units. He stated the university system presently had much information available; however, it was difficult to access it.

Proponents' Testimony:

Dick Crofts, Deputy Commissioner of Higher Education, agreed with REP. COBB that most of the requested information in HB 365 was currently available; however, not instantly or easily. Mr. Crofts said a more important issue was a state-wide electronic student record system, i.e. track a student as he or she moved from campus to campus. He said, however, states which have implemented such a program have spent thousands or hundreds of thousands of dollars. He said the university systems had the hardware, but not the software, to accomplish that.

Opponents' Testimony:

Don Waldron, Montana Rural Education Association (MREA), referred to Page 1, Lines 22-23, and suggested the records should indicate whether the high school students were college-track or were on some other track before entering college. Mr. Waldron said that was the only disagreement MREA had; he agreed with the other points of HB 365.

Questions From Committee Members and Responses:

SEN. LOREN JENKINS asked whether, upon his transfer from one unit to another, his credits would follow him. Dick Crofts said until there is a state-wide system which follows the student, the legislature could not receive some of the requested information.

SEN. DELWYN GAGE referred to Page 1, Lines 25-26, and asked if the intent was to know from which high school university remedial students graduated. REP. COBB said it was.

Closing by Sponsor:

REP. COBB said the testimony gave the idea if enough money was given the university system, it would be able to follow the students. He wondered if the funding was for students or for the institutions. He said each student in the system should be tracked; each university unit should not do as it pleased. REP. COBB said since there was a 15-20% graduation rate, it should be known what happened to the other 80-85%. He said the bottom line was the money should be spent for the students, i.e. if only about 20% are graduating from the university system, perhaps more money should be spent on vo-tech, etc.

REP. COBB said he would find a sponsor.

HEARING ON HB 479Opening Statement by Sponsor:

REP. PEGGY ARNOTT, HD 20, Billings, said HB 479 was designed to allow school districts to set aside \$20,000 or up to 4% of their General Fund budget into a reserve for long-range planning. She said the legislature needed to encourage long-range planning for schools by allowing them to operate in a business-like manner.

REP. ARNOTT stated currently, school mindset was if there was any money left, it must be spent, i.e. spend it or lose it. She gave as an example schools who needed expensive technology equipment, but without saving for it, were unable to make the purchase; or if the equipment could be purchased, it was bought in piece-meal fashion which meant the pieces were not compatible. In other words, the money was wasted.

REP. ARNOTT said she was not asking for new monies, nor was she asking for monies to be levied. She informed the committee HB 479 had been amended in every way thought possible in order to keep schools accountable regarding the Building Reserve Fund. She reported in four years, the legislature would be able to review the process to determine whether the districts were wisely using those funds.

Proponents' Testimony:

REP. WILLIAM WISEMAN, HD 41, Great Falls, said the school in his district was the Centerville school. He said the superintendent and the school board informed him their school could not be run like a business because they were not allowed to set aside money to add to their school building for the increased enrollment they knew was coming. REP. WISEMAN maintained if the above-mentioned school district could not set aside funds for the inevitable building project, the taxpayers would have to begin at point 0 with bonds upon which they would pay interest for 20 years. He asked the committee's favorable consideration of HB 479.

Don Waldron, Montana Rural Education Association (MREA), reminded the committee HB 479 said "building reserve" and a building reserve required a public vote and a specific reason for the use of the money. Mr. Waldron suggested the stated use of the money be as broad as possible, to give the district the needed leverage to spend the money for the purposes stated in HB 479. He stressed even though money was set aside for a specific purpose, if there was not enough money to accomplish that purpose, schools could place money into the building reserve fund for several years. Mr. Waldron opined HB 479 was a responsible way for schools to do business and the safeguards were in place. He urged a favorable consideration of HB 479.

Loran Frazier, School Administrators of Montana (SAM), said HB 479 gave school districts a chance to plan. He opined the fiscal

note was high; however, he had no figures, except there wouldn't be very many districts who could participate because of a decrease in revenues. **Mr. Frazier** urged support for HB 479.

Michael Keedy, Montana School Boards Association (MSBA), said HB 479 provided additional financial authority for schools at a time when they were in a budget crunch situation. **Mr. Keedy** urged support for HB 479.

Opponents' Testimony:

Eric Feaver, Montana Education Association (MEA), said HB 479 would ultimately establish a direct competitor for teachers' salaries and benefits, because the money could be set aside a year in advance. He said teachers' salaries already competed with districts' general needs. **Mr. Feaver** claimed HB 479 was a shift of monies from the General Fund to the Building Reserve Fund, which should not be encouraged; also, there would be a cost to the state because there would not be cash reappropriated. **Mr. Feaver** urged the committee to oppose HB 479.

John Malee, Montana Federation of Teachers (MFT), expressed opposition for HB 479.

Questions From Committee Members and Responses:

SEN. JENKINS referred to "Technical Notes" at the bottom of the fiscal note and asked for explanation. **REP. ARNOTT** said it was an overlooked technical amendment.

SEN. JENKINS asked if the intent was \$20,000 or 4%, whichever was greater. **REP. ARNOTT** said it was the district's choice.

SEN. MIGNON WATERMAN asked if the amount could be 4% per year. **REP. ARNOTT** concurred. **SEN. WATERMAN** asked what the Billings amount would be. **Kathy Fabiano, OPI**, said she did not know, but she thought the General Funds for all schools amounted to about \$600 million.

SEN. CASEY EMERSON asked about the "set-aside" funds and wondered what the total percentage might be. **Mr. Waldron** said it could be eight percent.

SEN. GAGE referred to Page 3, Subsection 3, and wondered if the language only established the fund. **Don Waldron** said it would be necessary to go back to the law which said the Building Reserve Fund must state its specific purpose and be established by voter approval. He said double planning was involved -- planning the fund and planning for future, specific expenditures which must be approved by OPI.

SEN. GAGE suggested on Page 3, Line 4, "establish or" should be stricken, so as to remove any doubt. **Mr. Waldron** said a fund may already be established to which money for technology could be

added by submitting a plan to OPI by March 31. He said the plan would need to follow the guidelines and would need to be approved by OPI; also, if the fund would need to be established, it would need to be through the vote of the taxpayers.

SEN. GAGE asked if the projections in the fiscal note were close to what OPI's figures were. **Kathy Fabiano** said districts state-wide spent about 97% of their General Fund budgets, leaving about \$18 million unspent and \$16 million reappropriated.

SEN. JOHN HERTEL asked if the money in the Building Reserve Fund could be used for anything else besides future building-related projects. **REP. ARNOTT** said it must be used for its specific purpose; otherwise it would revert back to the General Fund.

SEN. WATERMAN commented the money could be used for equipment, according to Page 1, Line 24.

SEN. JENKINS referred to Page 3, Line 4, and wondered if the district could transfer less than 4%. He suggested changing it to "up to 4% of the district General Fund budget, or \$20,000; whichever is greater." **REP. ARNOTT** said "up to" was meant to cover both \$20,000 and the 4%; however, if it needed to be changed, legal counsel could change it.

SEN. HERTEL asked if the money in the Building Reserve Fund could be part of an investment pool. **REP. ARNOTT** said it could.

SEN. DARYL TOEWS asked if it was necessary to keep **HB 479** so restrictive. **REP. ARNOTT** replied it was, because it was intended to keep the local trustees accountable in their use of the district's money.

Closing by Sponsor:

REP. ARNOTT said it was not intended for local control to be lost in **HB 479**. She opined good stewards were currently being penalized by not being allowed to save for future building projects. **REP. ARNOTT** said the intent of **HB 479** was to encourage wise use of tax dollars, a plan of how the money should be spent and public involvement. She urged DO PASS for **HB 479**.

{Tape: 1; Side: B}

EXECUTIVE ACTION ON HOUSE BILL 479

Motion/Vote: **SEN. LOREN JENKINS** MOVED TO ADOPT #1, #3 AND #4 OF AMENDMENTS HB047901.AEM (EXHIBIT 1). Motion CARRIED UNANIMOUSLY by voice vote.

Motion: **SEN. STEVE DOHERTY** MOVED TO ADOPT #2 AND #5 OF AMENDMENTS HB047901.AEM.

Discussion: SEN. HERTEL asked if his amendments applied to equipment. SEN. DOHERTY said future construction, equipping or enlarging the school building would be a friendly amendment.

SEN. EMERSON commented he thought the concept was good, but it would not hold up during the next legislative session.

Vote: Motion TO ADOPT #2 AND #5 OF AMENDMENTS HB047901.AEM CARRIED UNANIMOUSLY by voice vote.

Motion/Vote: SEN. CASEY EMERSON MOVED HB 479 AS AMENDED BE CONCURRED IN. Motion CARRIED UNANIMOUSLY by voice vote.

SEN. LOREN JENKINS will carry HB 479.

EXECUTIVE ACTION ON HOUSE BILL 365

Motion: SEN. LOREN JENKINS MOVED HB 365 BE CONCURRED IN.

Discussion: SEN. BARRY "SPOOK" STANG commented the information was currently available for anyone who was ambitious enough to pursue it.

SEN. TOEWS said there is the UTU (University Teachers Union) agreement which already contained some of the items asked for in HB 365.

SEN. GAGE wondered if it was necessary to require the information every year.

SEN. EMERSON remarked it appeared about 75% of the information requested was already available and could be obtained easily. While it may not be all that was asked for, it was better than nothing. He wondered if it was possible to determine exactly what could be gotten from the universities' computers at relatively little cost. Dick Crofts said what made the request difficult was the requirement it be done through the system. He said each campus could give the information on most of the questions; however, each campus operated under different student record and computer systems.

SEN. EMERSON said HB 365 indicated in several places, "each unit." He suggested references to system-wide answers be deleted from HB 365; then the ability of each university unit and the request of HB 365 would match.

SEN. TOEWS wondered if the information could be requested and received without HB 365.

SEN. JENKINS asked if SEN. TOEWS knew the answers to the questions in HB 365. SEN. TOEWS responded the university system had been responsive in supplying the requested information.

SEN. EMERSON asked **Dick Crofts** if he could supply the requested information before the end of this legislative session. **Mr. Crofts** said they would make their best effort.

SEN. DOHERTY suggested all information be in one place so it would be readily accessible. **SEN. TOEWS** answered the UTU agreement required tracking to see if the student had taken all the courses in the required sequence, or if the student changed majors.

SEN. JENKINS asked if the UTU agreement covered the students who could not get into the required courses. **Dick Crofts** said both universities are well on the way to making commitments with students that they will graduate in four years if they meet regularly with advisors and do not change majors.

SEN. GAGE asked if each unit of the university system was already keeping the information listed, or would it be necessary for each unit to begin compiling the information. **Mr. Crofts** said most of it was already being collected.

Vote: Motion HB 365 BE CONCURRED IN FAILED 5-4 on roll call vote #1.

Substitute Motion/Vote: **SEN. LOREN JENKINS** MOVED TO TABLE HB 365. Motion CARRIED 8-1 on voice vote, with **SEN. GAGE** voting "No."

EXECUTIVE ACTION ON HOUSE BILL 480

Motion/Vote: **SEN. BARRY "SPOOK" STANG** MOVED TO TABLE HB 480. Motion CARRIED 6-3 on voice vote, with **SEN. GAGE**, **SEN. EMERSON** and **SEN. JENKINS** voting "No."

Motion: **SEN. CASEY EMERSON** MOVED TO BRING HB 480 OFF THE TABLE.

Discussion: **SEN. EMERSON** commented corporal punishment should still be allowed in schools because when it was, both teachers and students knew where everyone stood.

SEN. STANG said he might agree with **SEN. EMERSON** that something needed to be done, but he was of the opinion it was too late in the 1995 legislative session to introduce that concept because there was not time for a fair hearing which would include the public.

SEN. EMERSON said he understood **SEN. STANG'S** opinion, but he wanted to pursue the idea because in two years, the situation would be worse and would affect even younger children than now.

Vote: Motion TO BRING HB 480 OFF THE TABLE CARRIED 5-3 on roll call vote #2.

Discussion: SEN. TOEWS asked OPI's opinion on the legal implications of corporal punishment. Gail Gray said she didn't know about the legal implication, but Superintendent Nancy Keenan had been on record since 1991 as being opposed to corporal punishment; however, she felt very strongly about discipline in schools and felt the issue needed to be addressed.

Eric Feaver said teachers did not have authority to administer corporal punishment, even before 1991; however, there were teachers who thought they did, and MEA was defending these teachers charged with criminal assault. Mr. Feaver said the 1991 law gave the authority to administrators who were to notify the parents before the punishment, were to have a witness and were to mete it without undue anger. He said the issue was not whether corporal punishment was right or wrong; rather, a liability issue which was unavoidable.

Motion: SEN. CASEY MOVED TO ADOPT AMENDMENTS HB048012.AEM (EXHIBIT 2).

SEN. EMERSON gave several examples of teachers who were assaulted by students and said one of the teachers fought back. The case was taken to the Supreme Court who exonerated the teacher on the basis of self-defense.

SEN. DOHERTY said current changes in code would provide for such students to be tried as adults, i.e. they would do time. He agreed with SEN. STANG'S comments it was too late in this legislative session to consider the corporal punishment issue. He opined assaultive, problem students needed to be dealt with in the criminal justice system.

Vote: Motion TO ADOPT AMENDMENTS HB048012.AEM FAILED 7-2 on roll call vote #3.

Motion/Vote: SEN. STEVE DOHERTY MOVED TO TABLE 480 AS AMENDED. Motion CARRIED 7-2 on roll call vote #4.

ADJOURNMENT

Adjournment: The meeting adjourned at 5:15 p.m.



SEN. DARYL TOEWS, Chairman



JANICE SOFT, Secretary


DT/jes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 28, 1995

MR. PRESIDENT:

We, your committee on Education and Cultural Resources having had under consideration HB 479 (third reading copy -- blue), respectfully report that HB 479 be amended as follows and as so amended be concurred in.

Signed: 
Senator Daryl Toews, Chair

That such amendments read:

1. Title, line 7.

Following: "AT"

Insert: "OR ABOVE"

Following: "OR"

Insert: "UP TO"

2. Title, line 15.

Following: "MADE;"

Insert: "PROHIBITING THE LEGISLATURE FROM USING MONEY TRANSFERRED TO THE BUILDING RESERVE FUND TO REDUCE STATE AID OR FROM DIRECTING THE DISTRICT TO SPEND MONEY TO FUND GENERAL OBLIGATIONS OF THE DISTRICT;"

3. Page 3, line 3.

Following: "at"

Insert: "or above"

4. Page 3, line 4.


Following: "\$20,000 or"

Insert: "up to"

5. Page 3, line 21.

Insert: "(4) Any money deposited into the building reserve fund under this section must be used for future construction, equipping, or enlarging of school buildings or for purchasing land needed for school district purposes. Money in the fund may not be used by the legislature to reduce state aid to a school district, nor may the legislature require a district to use building reserve money to fund the general obligations of the school district."

-END-


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Amd. Coord.
Sec. of Senate


Senator Carrying Bill

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MONTANA SENATE
 1995 LEGISLATURE
 EDUCATION AND CULTURAL RESOURCES COMMITTEE
 ROLL CALL VOTE

DATE 3/27/95 BILL NO. HB 480 NUMBER 4

MOTION: Table HB 480 as amended

NAME	AYE	NO
SEN. JOHN HERTEL, VICE CHAIRMAN	✓	
SEN. DELWYN GAGE		✓
SEN. KEN MASAROS		
SEN. STEVE DOHERTY	✓	
SEN. MIGNON WATERMAN	✓	✓
SEN. BARRY "SPOOK" STANG	✓	✓
SEN. LOREN JENKINS	✓	
SEN. GARY FORRESTER	✓	
SEN. CASEY EMERSON		✓
SEN. DARYL TOEWS, CHAIRMAN	✓	

Amendments to House Bill No. 479
Third Reading Copy

For the Senate Committee on Education and Cultural Resources

Prepared by Eddy McClure
March 28, 1995

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Insert: "OR ABOVE"

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Insert: "UP TO"

2. Title, line 15.

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under this section must be used for future construction,
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purchasing land needed for school district purposes. Money
in the fund may not be used by the legislature to reduce
state aid to a school district, nor may the legislature
require a district to use building reserve money to fund the
general obligations of the school district."

Amendments to House Bill No. 480
Third Reading Copy

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

Prepared by Eddye
March 24, 1995

1. Title, line 18.

Following: "LEGISLATURE;"

Insert: "REVISING LAWS REGARDING CORPORAL PUNISHMENT OF PUPILS;"

2. Title, line 19.

Following: "20-4-201,"

Insert: "20-4-302,"

3. Page 5, line 26.

Insert: "Section 8. Section 20-4-302, MCA, is amended to read:

"20-4-302. Discipline and punishment of pupils -- definition of corporal punishment -- penalty -- defense Power of teacher or principal over pupils -- undue punishment. (1) A teacher or principal has the authority to hold a pupil to a strict accountability for disorderly conduct in school, on the way to or from school, or during intermission or recess.

~~(2) For the purposes of this section, "corporal punishment" means knowingly and purposely inflicting physical pain on a pupil as a disciplinary measure.~~

~~(3) A person who is employed or engaged by a school district may not inflict or cause to be inflicted corporal punishment on a pupil.~~

~~(4) (a) A person who is employed or engaged by a school district may use physical restraint, defined as the placing of hands on a pupil in a manner that is reasonable and necessary to:~~

~~(i) quell a disturbance;~~

~~(ii) provide self protection;~~

~~(iii) protect the pupil or others from physical injury;~~

~~(iv) obtain possession of a weapon or other dangerous object on the person of the pupil or within control of the pupil;~~

~~(v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting line, classroom, lunchroom, principal's office, or other on campus facility; or~~

~~(vi) protect property from serious harm.~~

~~(b) Physical pain resulting from the use of physical restraint as defined in subsection (4) (a) does not constitute corporal punishment as long as the restraint is reasonable and necessary.~~

(5) (2) Except as provided in subsection (3), whenever a principal considers it necessary to inflict corporal punishment to maintain orderly conduct of a pupil, the principal shall administer the corporal punishment without undue anger and only in the presence of a witness. Before any corporal punishment is administered, the parent or guardian shall be notified of the

principal's intent to punish the child.

(3) In the case of open and flagrant defiance of the teacher or principal or of the authority of the school, the teacher or principal may administer corporal punishment without giving notice.

(4) A teacher in a district employing neither a district superintendent nor a principal at the school where the teacher is assigned has the authority to suspend a pupil for good cause. When either a district superintendent or a school principal is employed, only the superintendent or principal has the authority to suspend a pupil for good cause and to administer corporal punishment in the presence of a witness without undue anger. Whenever a teacher suspends a pupil, the teacher shall notify the trustees and the county superintendent immediately of the action.

~~(6)~~ (5) A teacher has the duty to report the truancy or incorrigibility of a pupil to the district superintendent, the principal, or the trustees, or the county superintendent, whichever is applicable.

~~(7)~~ (6) If a person who is employed or engaged by a school district uses corporal punishment or more physical restraint than is reasonable or necessary, the person A teacher or principal who mistreats or abuses a pupil by administering any undue or severe punishment is guilty of a misdemeanor and, upon conviction of the misdemeanor by a court of competent jurisdiction, shall be fined not less than \$25 or more than \$500 \$100.

~~(8) A person named as a defendant in an action brought under this section may assert as an affirmative defense that the use of physical restraint was reasonable or necessary. If that defense is denied by the person bringing the charge, the issue of whether the restraint used was reasonable or necessary must be determined by the trier of fact."~~

{ Internal References to 20-4-302:
x20-5-202 }

Renumber: subsequent sections

DATE 3/28/95

SENATE COMMITTEE ON ~~HB 479~~ (Education)

BILLS BEING HEARD TODAY: HB 479, HB 365

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Rep Peggy Arwott	HB HD 20	HB 479	X	
Rep Bill Wiseman	HD 41	HB 479	X	
Viri Olaner	MEA	HB 479		X
DICK GROETS	OCH E	HB 365		X
John Malee	M.F.T.	HB 479		✓
Howe Frye	STAN	HB 479	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY