

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By **CHAIRMAN DARYL TOEWS**, on January 17, 1997, at 1:06 p.m., in Room 402.

ROLL CALL

Members Present:

Sen. Daryl Toews, Chairman (R)
Sen. C.A. Casey Emerson, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. Steve Doherty (D)
Sen. Delwyn Gage (R)
Sen. Wm. E. "Bill" Glaser (R)
Sen. John R. Hertel (R)
Sen. Loren Jenkins (R)
Sen. Mike Sprague (R)
Sen. Barry "Spook" Stang (D)
Sen. Mignon Waterman (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Legislative Services Division
Janice Soft, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 70, SB 71; Posted 01/09/97
Executive Action: SB 70, SB 71, SB 21, SB 15,
SB 4, SB 117

HEARING ON SB 70

Sponsor: SEN. DELWYN GAGE, SD 43, Cut Bank

Proponents: Kathy Fabiano, Office of Public Instruction
Lance Melton, Montana School Boards Association
Don Waldron, Montana Rural Education Association
Loran Frazier, School Administrators of Montana
(oral testimony sent with Don Waldron)
Linda Brannon, Montana Association of School
Business Officials

Opponents: None.

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, Cut Bank, said he would let someone from OPI explain SB 70.

Proponents' Testimony:

Kathy Fabiano, Office of Public Instruction (OPI), explained the changes to Montana Code as presented in SB 70. She said OPI was asking for one amendment to SB 70, and that would be to delete Section 34. **Ms. Fabiano** explained it was inadvertently left in SB 70. (EXHIBIT 1)

Lance Melton, Montana School Boards Association (MSBA), said MSBA supported SB 70 but they had minor amendments to Pages 9 and 10, because some language was inadvertently deleted. He said MSBA had shared the amendments with **SEN. GAGE**. He reminded the Committee MSBA supported OPI's attempt to clean up the language and MSBA would be available for questions. (EXHIBIT 2)

Don Waldron, Montana Rural Education Association (MREA), said MREA supported SB 70. **Mr. Waldron** also offered support on behalf of **Loran Frazier, School Administrators of Montana (SAM),** who could not attend this Committee hearing because of other commitments.

Linda Brannon, Indian Impact Schools and Montana Association of School Business Officials (MASBO), said both groups supported SB 70. She explained SB 70 helped school business officials because dates which were overlooked in the 1995 session were clarified. She stated the Indian Impact Schools supported SB 70 because the clarification of the 55, 22 and 33 mills cemented the calculations which Indian Impact Schools have been doing with the federal government. She said both groups had no problem with the OPI amendment but had not been able to study those amendments offered by MSBA.

Opponents' Testimony: None.

{Tape: 1; Side: A; Approx. Time Count: 1:17 p.m.}

Questions From Committee Members and Responses:

SEN. LOREN JENKINS asked **Kathy Fabiano** if she had seen and approved the amendments offered by MSBA. **Ms. Fabiano** said OPI had no objection to them.

SEN. DARYL TOEWS asked about the reference to non-budgeted and **Ms. Fabiano** clarified by saying the 1995 session created a new fund for school districts which would be receiving money for the first time in fiscal year 1998, and this money would be coming from the increased timber harvests. She said when the fund was created, it was a budgeted fund, which would make it the first time in history a budgeted fund would receive no tax levy monies.

Ms. Fabiano explained OPI thought school districts would have a hard time budgeting this fund because the distribution of the monies collected would be unpredictable until the fiscal year was over. At that time OPI would know how much the state had collected from the timber harvests, and then would distribute the money to schools, based on their ANB. She said OPI felt this fund met the definition of a non-budgeted fund rather than a budgeted. **SEN. TOEWS** commented this fund was outside the budget caps and **Ms. Fabiano** agreed.

SEN. TOEWS then asked about the child count for ANB, now taken in October and February, and its authenticity. **Ms. Fabiano** answered OPI asked auditors to check those counts at the time of their annual audit.

SEN. LOREN JENKINS asked about the language deletion of "PL 874" and replacement language of "Impact Aid". **Ms. Fabiano** said there was still Impact Aid money; however, it was reauthorized in 1994 by Congress so it was no longer Public Law 81-874. Therefore, OPI's attorneys recommended putting in the US Code reference. **Eddy McClure** said "Public Law" was usually something referred to before it became codified in federal law.

SEN. TOEWS referred to Page 5, Number 14, and commented on the stricken part of the code. **Ms. Fabiano** explained currently Section 20-9-334 said the county superintendent would allocate the county equalization monies to districts, when in fact, the distribution was done by the state superintendent, whose office was referenced in 335.

Closing by Sponsor:

SEN. GAGE asked the Committee to look favorably on SB 70.

{Tape: 1; Side: A; Approx. Time Count: 1:24 p.m.}

HEARING ON SB 71

Sponsor: SEN. DARYL TOEWS, SD 48, Lustre

Proponents: Gail Gray, Office of Public Instruction
Erik Hanson, Governor's Office
Don Waldron, Montana Rural Education Association
Loran Frazier, School Administrators of Montana
(oral testimony sent with Don Waldron)
Lance Melton, Montana School Boards Association

Opponents: None.

Chairman: SEN. DARYL TOEWS turned the meeting over to SEN. CASEY EMERSON, VICE CHAIRMAN, during the hearing of SB 71.

Opening Statement by Sponsor:

SEN. DARYL TOEWS, SD 48, Lustre, opened the hearing on SB 71 by saying he enjoyed working with OPI on SB 71. He explained SB 71 gave flexibility back to the schools, cost no money and talked about local control. **SEN. TOEWS** went on to say SB 71 eliminated some duties of the State Superintendent of Public Instruction, i.e. adult ed, PIR days, approval for kindergarten scheduling or closing of school because of an emergency. He said SB 71 allowed for flexibility in the length of the school day; in other words, SB 71 really did give some flexibility back to the local school districts. **SEN. TOEWS** informed the Committee there were amendments which would clean up the language. **(EXHIBIT 3)**

Proponents' Testimony:

Gail Gray, Office of Public Instruction (OPI), said SB 71 was an NFL bill: (1) N for no cost; (2) F for flexibility; (3) L for local control. She further explained SB 71 and its eliminating the following duties of the Superintendent of Public Instruction: (1) Approving the mill levies for adult ed, an unnecessary and intrusive function; (2) Reviewing and approving of PIR days because local districts were currently able to use the policies already in place by the Board of Public Education. Local districts could complete the forms and file them locally; (3) Approving of kindergarten variances, or number of days attended by kindergarten students; (4) Approving emergency closures because if the governor declared the emergency, and if the school was located in the emergency area, the trustees could declare the emergency as well; therefore, the day did not have to be made up. **Ms. Gray** emphasized this applied only to days and areas in which the governor declared an emergency; otherwise, schools were required to make a reasonable effort to make up the days and SB 71 offered several options; (5) Allowing flexibility in length of school days, i.e. aggregate hours instead of inflexible daily scheduling. **Ms. Gray** urged the Committee's approval of SB 71.

Erik Hanson, Governor's Office, said the Governor supported SB 71 because he believed in local control and the flexibility it provided. **Mr. Hanson** said the Governor especially supported the provision for emergency situations.

Don Waldron, Montana Rural Education Association (MREA), said MREA testified in favor of HB 52, which was similar to SB 71; however, they felt SB 71 was the better of the two. He suggested the Committee may want to look at HB 52, coordinate it with SB 71 and make adjustments. **Mr. Waldron** also brought oral approval from **Loran Frazier, School Administrators of Montana (SAM),** who was unable to testify personally because of another commitment.

Lance Melton, Montana School Boards Association (MSBA), expressed support for SB 71 because MSBA strongly advocated local control and flexibility. He urged a DO PASS.

Opponents' Testimony: None.

{Tape: 1; Side: A; Approx. Time Count: 1:34 p.m.}

Questions From Committee Members and Responses:

SEN. BARRY "SPOOK" STANG asked if SB 71 was a back door approach to the four-day school week. Gail Gray said it was not; rather, 180 days was still required -- the flexibility was in the aggregate number of hours.

SEN. STANG commented he understood the time was now changed to hours rather than days. SEN. TOEWS answered by saying no matter how it was figured, 180 days would still be the figure.

SEN. MIKE SPRAGUE asked if SB 71 was a delegating or abdicating of legislative authority. SEN. TOEWS said he viewed it as standing on campaign promises, i.e. delegating, or not giving up legislative power.

SEN. DELWYN GAGE asked Eric Feaver, Montana Education Association (MEA), his opinion on SEN. STANG'S concern on the four-day school week. Mr. Feaver said he agreed with SEN. TOEWS in that SB 71 was not a four-day school bill.

Closing by Sponsor:

SEN. TOEWS said it was his opinion SB 71 was headed in the right direction; therefore, he urged encouragement of OPI's efforts by passing SB 71.

SEN. CASEY EMERSON, VICE CHAIRMAN, turned the meeting back to SEN. DARYL TOEWS, CHAIRMAN.

EXECUTIVE ACTION ON SB 70

Amendments: Eddy McClure explained the amendments acted upon would be conceptual because Gail Gray, in her testimony, asked for the deletion of Section 34 and Lance Melton distributed copies of amendments MSBA was recommending.

Motion/Vote: SEN. LOREN JENKINS MOVED DO PASS FOR THE AMENDMENT TO REMOVE SECTION 34 IN ITS ENTIRETY. Motion CARRIED 10-1, with SEN. STANG voting NO.

Motion/Vote: SEN. DELWYN GAGE MOVED DO PASS FOR THE AMENDMENTS SUBMITTED BY MSBA. (EXHIBIT 2) Motion CARRIED 10-1, with SEN. SHEA voting NO. [Editor's Note: Both amendments are combined in SB007001.AEM, (EXHIBIT 4)]

Motion/Vote: SEN. CASEY EMERSON MOVED DO PASS FOR SB 70 AS AMENDED. Motion CARRIED UNANIMOUSLY, 11-0.

EXECUTIVE ACTION ON SB 71

Motion/Vote: SEN. LOREN JENKINS MOVED DO PASS ON THE TOEWS AMENDMENTS, SB007101.AEM, EXHIBIT 3. Motion CARRIED UNANIMOUSLY, 11-0.

Motion/Vote: SEN. MIGNON WATERMAN MOVED DO PASS ON SB 71 AS AMENDED. Motion CARRIED UNANIMOUSLY, 11-0.

EXECUTIVE ACTION ON SB 21

Motion: SEN. DEBBIE SHEA MOVED DO PASS FOR SB 21.

Discussion: SEN. BILL GLASER was concerned if SB 21 were extended until 2005, no reports might be issued until then.

SEN. MIKE SPRAGUE wondered how long the two-year policy had been in effect and was told it began in 1993. He then wondered if the two-year approval had been working adequately. SEN. WATERMAN answered it now had a track record and people were comfortable with it; they liked the forum and the opportunity to discuss the issues. She commented because of the feeling, it was foolish to bring a bill to every legislative session to extend the two years.

SEN. EMERSON wondered if there was a measurable result from the Joint Committee, i.e. had something happened that would not have happened without the Joint Committee's existence. SEN. TOEWS said major disagreement ran rampant but the Committee's existence had brought about dialogue; therefore, good things had happened.

SEN. SPRAGUE asked if the Joint Committee reported their results every two years and was told all committees reported. He then wondered if the time was extended to eight years, would it be eight years before a report would be forthcoming. SEN. BARRY "SPOOK" STANG answered all interim committees were required to file a report to the next legislature.

SEN. EMERSON asked if SB 21 authorized the meeting at Yellow Bay. SEN. TOEWS answered the Yellow Bay meeting was paid out of the Leadership budget, and Yellow Bay delegated to the Joint Committee on Postsecondary Education Policy and Budget power to do certain things.

Vote: Motion CARRIED 9-2, WITH SEN. SPRAGUE AND SEN. STANG voting NO.

{Tape: 1; Side: A; Approx. Time Count: 1:48 p.m.}

EXECUTIVE ACTION ON SB 15

Amendments: Eddye McClure explained the Halligan amendments, SB001501.AEM, (EXHIBIT 5). She said "and accredited schools" in

the Title, Line 5, covered 14 private schools which received some state funding.

{Tape: 1; Side: B; Approx. Time Count: 1:51 p.m.}

Ms. McClure asked **Gail Gray** to explain Amendment 6, Line 16. **Ms. Gray** said "accredited school" could mean a private school accredited by the Board of Public Education. She further explained OPI felt certain programs in detention centers, etc., would soon become accredited because of working with the public schools on a partnership basis. **SEN. SPRAGUE** wondered if working with the public schools would hinge on being accredited. **Ms. Gray** said OPI currently did not have authority to transfer student records to anyone in the juvenile justice area.

Eddy McClure said Amendment 7 was the result of the questions raised by **SEN. STEVE DOHERTY** and **SEN. MIGNON WATERMAN**. She informed the Committee the amendments to SB 21 gave direction as to what the legislature wanted. **Ms. McClure** referred to Page 2, Section 5, and said Montana had reciprocal tuition agreements with adjoining states and provinces, but the language would allow OPI to contract with schools who would wish to contract with Montana.

Discussion: **SEN. SPRAGUE** wondered if **SEN. HALLIGAN** had seen the actual amendments and **Eddy McClure** replied he had not but it was his wish if the Committee would see something to improve the bill, they had his permission to do it.

SEN. BILL GLASER suggested add "or electronic" after "written" on Line 17, because the near future could bring a communications system among Montana libraries, schools and hospitals which would be accomplished by a high-speed fiberoptics line. He explained the meaning of that was electronic, rather than paper, communicating. He went on to say Congress had provided a tremendous opportunity for installing an electronic system for schools, hospitals and libraries, and it needed to be grabbed.

SEN. WATERMAN commented the driving force behind SB 15 was records for youth in the juvenile justice system were not available. She asked (and received verification) if her understanding was correct the information could be sent as long as there was agreement to respect the privacy of the youth as stated in Amendment 8; also, she wondered if "prior to adjudication" meant once they were adjudicated, was there a way for the corrections system to get the records. **Gail Gray** said if a youth was sent to an accredited school, records were available and SB 15 was not necessary for that; however, the bigger issue was "prior to adjudication" status. She also commented when students returned to the public schools they sometimes needed more supervision so it was important to have copies (and stamped "COPY") so in case they were lost, records would still be available. **SEN. WATERMAN** wondered how the Aspen Youth Program received records and **Ms. Gray** reported she had met with a

representative of the Program and at this time the residential portion of the Program was considering being an alternative program of Jefferson High School, which would take care of the issue; however, there would be no solution for records for the wilderness experience.

Motion/Vote: SEN. MIGNON WATERMAN MOVED DO PASS FOR THE HALLIGAN AMENDMENTS, SB001501.AEM, EXHIBIT 5, AND THE AMENDMENTS SHOULD INCLUDE SEN. BILL GLASER'S AMENDMENT, "OR ELECTRONIC." Motion CARRIED UNANIMOUSLY 11-0.

Motion/Vote: SEN. DEBBIE SHEA MOVED DO PASS FOR SB 15 AS AMENDED. Motion CARRIED UNANIMOUSLY 11-0.

EXECUTIVE ACTION ON SB 4

Motion: SEN. DEBBIE SHEA MOVED DO NOT PASS FOR SB 4.

Discussion: SEN. SHEA commented SB 4 was regressive legislation and she felt sad that things were going this direction. She said educators around the state were working tirelessly to promote both higher discipline and academic standards, i.e. counseling, alternative education, in-school suspension, work programs, detention. SEN. SHEA remarked students across the state followed the deliberations of the legislature who needs to show them respect for who they are. She said educators in her community placed emphasis on teaching individual respect for his/her body and SB 4 did not promote that teaching. She appealed to the Committee's sense of fair play by mentioning students who would be recipients of corporal punishment would more than likely have low self-esteem or have been battered at home; therefore, they would hope school could be a safe haven. SEN. SHEA explained she had talked to students from Butte High about SB 4 and they commented corporal punishment was something finished relatively quickly; therefore, the boys did not see it as a deterrent to future behavior and the girls viewed it as regressive and demeaning. She finished by saying she appreciated the frustration with the discipline problems, but she did not feel corporal punishment was the answer.

SEN. WATERMAN commented she had sat on the Human Services Subcommittee on Finance and Claims and had heard testimony regarding foster care, abused and neglected youth, etc. She referred to a certain man named Raymond who had testified and she quoted, "My love and respect for them [foster family] is very influential on my choices. The most powerful source of discipline is that inner voice of respect and love. My mom once told me she was disappointed in me over something I had done. That really got to me." She went on to say Raymond had been disciplined in a lot of ways and was reflecting on the fact that at 18 years of age, being told by his mother she was disappointed in him was the toughest thing to handle. SEN. WATERMAN expressed agreement with SEN. SHEA the easy thing was to quickly mete out

the punishment; however, the best thing was to discipline at the emotional level.

SEN. GAGE shared personal stories about disciplining his own children -- what worked and what did not. He commented the only dislike he had about SB 4 was more responsibility was taken from the parents. He commented corporal punishment would provide another option for teachers.

SEN. SPRAGUE said SB 4 was not about parenting, but about teachers having the option to use or not to use corporal punishment. He expressed support for SB 4 because he had gotten calls from teachers who both agreed and disagreed on SB 4.

SEN. EMERSON said he would be willing to lend a video which talked about the real problems in education. He said both politicians and educators were of the opinion schools had gone downhill. He suggested legislators should be the kind of people to help straighten out the problem and the best way would be to return to the era when things were better. He explained those methods should be tried for about five years and if improvements did not seem to be forthcoming, a return to the present should be made. He charged the Committee to think of two things when deciding what to do with SB 4: (1) What will happen to the students who get punished by corporal punishment; (2) What will happen in schoolrooms if corporal punishment is not allowed. He was of the opinion there would be more violence in the classrooms if SB 4 did not pass. He further challenged the Committee by asking them if they wanted to perhaps make the schools better or were they content with the sliding. **SEN. EMERSON** said he wanted to stop the sliding and make things better. He reiterated how he taught from 1949-1979 and he could see the sliding of the schools. From the 1950's - early 1960's school teaching was good, students learned and schoolrooms were a relatively happy place; however, in 1967 changes came which resulted in students being harder to handle as well as their being disappointed in schools. He stated it may not be desirable to send a child to school and have a teacher rap him or her across the knuckles, but neither was it desirable to have that child stabbed by someone who had no discipline. He cautioned the Committee to look at both sides of the issue of corporal punishment, and suggested one side was the setting of standards. He reminded the Committee corporal punishment was not a mandate, but an option.

SEN. JOHN HERTEL commented he had talked with a number of teachers and none said he or she would use corporal punishment because of fear of the legality and vagueness of the definition; in fact, they did not appreciate the fact it was brought up. He said he could not agree with the idea schools had declined because of lack of corporal punishment.

SEN. BARRY "SPOOK" STANG said he totally disagreed with **SEN. EMERSON** and SB 4. He said he knocked on a lot of doors during his campaign and not once did he hear corporal punishment was

needed in our schools, nor did he hear our schools were going downhill. He explained the majority were happy with our schools, except for the fear too much money was being spent. He further related he represented three of the four Montana counties with the lowest per capita income, which would explain that fear.

SEN. STANG also commented the number of unruly students per capita in his district was probably among the highest in the state because of the poor economic conditions; however, none had asked for the reinstatement of corporal punishment. He commented he had recently talked with people both in and out of his district and none agreed with SB 4. **SEN. STANG** shared a personal example of how he received compliments from teachers regarding the behavior of his son, and he had always disciplined his son with means other than corporal punishment. He said he did not feel it was the school's job to see students had respect for elders; rather, it was the responsibility of the parents. He commented it might be more helpful for the parents rather than the students to receive the corporal punishment.

SEN. EMERSON commented he also had talked to many teachers, and nearly all said corporal punishment should be reinstated.

SEN. TOEWS said he did not think there was a correlation between self esteem and discipline problems; rather, it was between values and conduct. He said he did not care for the way corporal punishment was defined in the law -- there should be some room for pain.

SEN. GLASER addressed the politics of SB 4, saying it was a very divisive bill. He explained even if SB 4 were to pass both the Senate and House, the governor would not sign it. **SEN. GLASER** felt the legislature had more important things to do than deal with SB 4, so he offered a substitute motion.

Substitute Motion/Vote: **SEN. BILL GLASER MOVED TO TABLE SB 4.**
Motion FAILED 6-5, with a Roll Call Vote (No. 1).

Vote: **SEN. SHEA'S original motion, DO NOT PASS, CARRIED 7-4,**
with a Roll Call Vote (No. 2).

EXECUTIVE ACTION ON SB 117

Motion: **SEN. BARRY "SPOOK" STANG MOVED DO PASS FOR SB 117.**

Discussion: **SEN. GLASER** commented testimony was given regarding the Constitutional verbatim. He informed the Committee it was introduced at the Constitutional Convention as a Constitutional amendment by **SEN. DOROTHY ECK**, who explained she offered it because two Indian students representing a student group wished to have the language inserted, i.e. it was a "puff piece." **SEN. GLASER** maintained there was nothing very strong in the Constitutional Convention verbatim which propelled a great state interest to do this, i.e. there was no driving force to do anything except recognize the unique cultural heritage of the

American Indian and commit to the preservation of their cultural integrity. He said the rest of the language was added by the subcommittee who happened to be Native Americans. He ended by saying he had no feelings one way or the other toward SB 117.

SEN. EMERSON informed the Committee both he and **SEN. STANG** were on the Indian Studies Committee which read the background information on the Constitutional Convention. He said when they finished reading, they wondered if the intent was a course of study on Indian history in every school, or only in Indian schools. He agreed with **SEN. GLASER'S** testimony that it was a "puff piece." He stated it was the Indian Studies Committee's opinion such a study could not be mandated; if it were, the legislature would not pass it. Therefore, SB 117 and its day devoted to Indian culture.

SEN. GLASER brought the Committee back to the words of **SEN. ECK** who hoped Montana students would recognize the importance of the real dignity of the American Indians in the life of Montana. He agreed with "hope", explaining he would hope recognition would be given to the American Indians as well as other nationalities which were immigrants to the state; however, he realized SB 117 pertained to the American Indians only.

SEN. GAGE shared the Blackfeet Nation was in his district

{Tape: 2; Side: A; Approx. Time Count: 2:38 p.m.; Comments: Some testimony was lost due to changing tapes..}

He said he served for eight years on the Indian Affairs Committee and was told numerous times the issues the Committee was discussing went far deeper and farther than what was being discussed at that moment.

SEN. TOEWS commented SB 117 looked at a race of people, instead of individuals. He said it was his opinion the Constitution promised to protect the cultural integrity and it was important for citizens and government to do that; however, human rights people stressed the importance of individual merit, rather than that of race. He summarized by saying philosophically, he could not vote for SB 117.

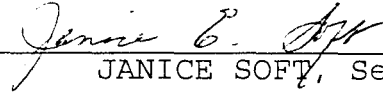
Vote: MOTION BY **SEN. STANG**, DO PASS ON SB 117, CARRIED 9-2, with **SENATOR LOREN JENKINS** AND **SEN. DARYL TOEWS** voting NO.

ADJOURNMENT

Adjournment: The meeting adjourned at 2:40 p.m.



SEN. DARYL TOEWS, Chairman



JANICE SOFT, Secretary

DT/JS