

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By CHAIRMAN DARYL TOEWS, on January 31, 1997, at
1:05 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

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 28, HB 7; Posted 01/27/97
Executive Action: None.

HEARING ON HB 28

Sponsor: REP. JOHN "SAM" ROSE, HD 87, Choteau

Proponents: Mike Voeller, Lee Newspapers
Loran Frazier, School Administrators of Montana
Lance Melton, Montana School Boards Association
Don Waldron, Montana Rural Education Association

Opponents: None.

Opening Statement by Sponsor:

REP. JOHN "SAM" ROSE said HB 28 was not intended to be contentious over testing so he quoted from "Reinventing Government", "What gets measured gets done. If you don't measure results you can't tell success from failure. If you can't recognize failure, you can't correct it. If you can't see success, you can't reward it; and if you can't see success, you can't learn from it." He suggested Montana's position on education must change so it becomes more efficient and effective in order to restore public confidence; the academic programs must be restructured to assure the public the programs were redesigned for the future and not the past. He said the curriculum and business methods must be examined; to sum everything up, education must become accountable. REP. ROSE suggested much of today's information gathered was to meet reporting and funding requirements, and the bottom line was how to enhance economic achievement or scholastic excellence. He stated schools must communicate with local boards and parents regarding achieved results, and testing was only one of many indicators. He said schools had and were using the materials so the results should be made available, explaining surveys could be used; in fact, many states had and were now using various types of tests. He declared test scores should be made public in Montana, not for contention but for improvement.

Proponents' Testimony:

Mike Voeller, Lee Newspapers, gave his written testimony (EXHIBIT 1)

Loran Frazier, School Administrators of Montana (SAM), said available test scores were no secret to anybody; however, the concern was how the scores were used in the context. He said there presently were three required tests given in grades 4, 8 and 11, so comparison was difficult. Mr. Frazier used California as an example to illustrate compiling results from the state's seven different tests was impossible; therefore, a \$500,000 task force was studying the problem, addressing it from the perspective of what do legislators, parents and others want to know. He explained the written testimony in (EXHIBIT 2) and used (EXHIBIT 3) to illustrate his own testimony. He encouraged the consideration of more than just test scores; perhaps a district profile which would include the list of items in (EXHIBIT 3).

Mr. Frazier expressed support for HB 28 with the cautions he had presented.

Lance Melton, Montana School Boards Association (MSBA), said they concurred with Loran Frazier's remarks; however, he stressed the disclosure of test data did not invade the individual's right of privacy because that right exceeded the public's right to know. He said they currently advised districts to disclose test results within the above framework and would continue to do so under HB 28.

Don Waldron, Montana Rural Education Association (MREA), said he felt ways had been found so individuals would not be disclosed, even in the smaller schools. He expressed support for HB 28 and thanked REP. ROSE for allowing them to have input.

Opponents' Testimony: None.

{Tape: 1; Side: A; Approx. Time Count: 1:22 p.m.}

Questions From Committee Members and Responses:

SEN. DELWYN GAGE referred to Page 3 and suggested "school district student assessment data" meant they did not get supporting student grades; rather, the assessment data from OPI. REP. ROSE said HB 28 had been overhauled to say when a person went to the schools, he or she got the scores or assessment. SEN. GAGE asked for clarification regarding the request for test scores -- did it mean actual test scores, student by student as long as the confidentiality was not violated, or would it just be the OPI or school district assessment. REP. ROSE said students in small schools would not be identified because of the size of the schools; confidentiality laws would be adhered to. SEN. GAGE wondered if the actual scores could be gotten even if the confidential information was blanked out. REP. ROSE said he assumed it could be done.

SEN. GAGE said it was his understanding rules were law, and wondered if those of OPI and school districts were included. Eddy McClure said they were as long as they conformed with the Montana Constitution or federal law, and the Board of Public Ed had a definition of what constituted student assessment data. SEN. GAGE referred to the fiscal note, No. 6, and asked if paper copies instead of diskettes would be available. Gail Gray, Office of Public Instruction (OPI), said OPI had paper backup for almost everything they had on computer.

SEN. LOREN JENKINS asked why Montana did not have one standardized test. REP. ROSE said because of the student profile and numbers, the validity of the single test might not be good; cost was the biggest factor. SEN. JENKINS commented what a student was taught in school had no barriers so he could not understand why one standard test could not fit all schools. REP. ROSE said the tests were determined by the Board of Education.

SEN. CASEY EMERSON asked how the test scores on the diskettes were grouped. Gail Gray, said if the tests were hand scored, the scores were sent; while if they were machine scored, the scores were sent in the way the schools submitted the tests. She said OPI was considering developing a program to look at the different regions of Montana, comparing school size, location, etc.

SEN. BARRY "SPOOK" STANG asked if there had been a problem in getting this information and REP. JOHN "SAM" ROSE said there was.

SEN. MIGNON WATERMAN asked what test information she would get on the computer disk from OPI. **Gail Gray** said she did not know at this point because it had not been developed; however, what was done was to send a state-wide profile of testing, including how Montana measured up to the nation, to individual districts. **SEN. WATERMAN** wanted to know what was being compared in that report. **Gail Gray** said a certain segment (reading, for example) was compared in all three tests.

{Tape: 1; Side: A; Approx. Time Count: 1:35 }

SEN. MIKE SPRAGUE wondered how the newspapers would treat test result news if HB 28 passed. **Mike Voeller** said he was not sure; the comparison might be local or regional. **SEN. SPRAGUE** wondered if the newspapers would use the information fairly and applicably. **Mr. Voeller** said he hoped the reporting would be responsible.

SEN. DEBBIE SHEA commented on a newspaper report which used test results unfairly several years before when it compared Butte Public Schools to private schools. She wondered how responsibly the newspaper would use the information to give a true assessment. **Mike Voeller** said responsible reporters should be thinking in those terms; however, if they were not, the school administration should point that out. **SEN. SHEA** said she agreed in theory but she hoped the newspapers realized their responsibility in factual reporting.

SEN. WATERMAN asked if HB 28 infringed on local control. **Loran Frazier** said he interpreted HB 28 as more knowledge being made available to the public; however, he did not see it as a mandate. **Lance Melton** said MSBA has always emphasized local control under the constraints of the Constitution and they did not see HB 28 as an infringement on that.

SEN. DELWYN GAGE asked what was in the confidentiality laws. **REP. JOHN "SAM" ROSE** said he had spent time with all segments of the educational community because student confidentiality was very important, and HB 28 was drawn up so confidentiality would not be violated. **SEN. GAGE** commented school board trustees did not know what was in those laws. **REP. ROSE** said that was why student names would never be associated with the scores. **SEN. GAGE** asked if just the assessments were available, or the data behind the assessments. **REP. ROSE** said test scores were only one of a few indicators, as mentioned by **Lance Melton** in (EXHIBIT 3). **SEN. GAGE** asked if there would be any objection to clarifying that in HB 28. **REP. ROSE** said he would have no objection but he felt the public had a right to know the assessment results because of the money being spent on education.

SEN. GAGE asked if OPI had rules dealing with confidentiality and also wondered how closely OPI would monitor the test data to ensure the abiding by the confidentiality laws. **Ms. Gray** said OPI used the Family Education Rights and Privacy Act, which were

printed as an appendage to the accreditation standards. She said she could not envision OPI releasing any information which could be tied to an individual student.

{Tape: 1; Side: B; Approx. Time Count: 1:52 p.m.}

Ms. Gray summarized by saying OPI was committed to doing what they could with their resources.

SEN. BILL GLASER asked if "trustees of the school districts" was added by the House Committee. **REP. ROSE** said it was added. **SEN. GLASER** commented the fiscal note was not correct and wondered if HB 28 was an unfunded mandate. **REP. ROSE** answered he did not see that it was.

SEN. WATERMAN asked why the effective date was "on passage and approval" instead of October 1, 1997. **Eddy McClure** replied that was the request.

Closing by Sponsor:

REP. JOHN "SAM" ROSE said when HB 28 was heard in the House, it was mentioned the United States was 28th of 44 industrial nations in its education, and Montana's highest rating was a B-. He stated it was alarming because Montana had a good education system which should be made known to people instead of being hidden from them.

{Tape: 1; Side: B; Approx. Time Count: 1:58 p.m.}

HEARING ON HB 77

Sponsor: **REP. RICHARD "DICK" SIMPKINS, HD 49, Great Falls**

Proponents: **Arlette Randash, Eagle Forum**
Don Waldron, Montana Rural Education Association
Lance Melton, Montana School Boards Association
Loran Frazier, School Administrators of Montana
Laurie Koutnik, Christian Coalition of Montana
SEN. DELWYN GAGE, SD 43, Cut Bank
Wayne Buchanan, Board of Public Education
Kamala Webb, Private Citizen

Opponents: **Mary Sheehy-Moe, Private Citizen**
Raymond Berg, Private Citizen
Gary Stein, Private Citizen
Lewis Kurdy, Private Citizen

Opening Statement by Sponsor:

REP. RICHARD "DICK" SIMPKINS, HD 49, Great Falls, said the "WHEREASES" in HB 77 clearly stated who was dismissed from reciting the Pledge of Allegiance. He referred to the New Section and stressed HB 77 did not mandate the preparation of any

curriculum; also, it clearly stated who would be required and how often to say the Pledge of Allegiance and who would be dismissed. **REP. SIMPKINS** said even if some students opted to not participate, it would be a wonderful way to teach diversity. He explained his reason for HB 77 by referring to the highlighted areas of (**EXHIBIT 4**), saying those laws had been on the books since 1941. **REP. SIMPKINS** also referred to (**EXHIBIT 4A**), mentioning it was his opinion most Montana teachers never saw the Resolution. He also referred to (**EXHIBIT 4B**), explaining the number of states which had daily recitation of the Pledge of Allegiance. **REP. SIMPKINS** referred to Page 3, Lines 8-9, of HB 77 and again stressed no curriculum needed to be developed; however, if the curriculum already was in place, teachers were obligated to teach it because a condition of their contract was to teach the school curriculum. He called attention to Page 3, Lines 13-14, and said that part had been on the books since 1941, and in his opinion it was a useless law. He next referenced (**EXHIBIT 5**) and explained it to the Committee.

Proponents' Testimony:

Arlette Randash, Eagle Forum, said they rose in support of HB 77 because we were a nation blessed by the opportunities and favorable institutions under our form of government. She said the flag was a symbol of the rich heritage our forefathers fought and died for, and suggested those who respected their heritage respected their future. She maintained rituals of commitment were as old as man and gave meaning and a sense of community to our lives, binding us together and building civic pride. **Ms. Randash** stated reciting the Pledge of Allegiance fostered patriotism which was so important to be nurtured, and the section in HB 77 which allowed for objections of conscience, guarded against nationalism.

Don Waldron, Montana Rural Education Association (MREA), expressed support for HB 77, explaining when he polled his members they assured him they were already doing that.

Lance Melton, Montana School Boards Association (MSBA), concurred with **Don Waldron's** comments, stressing they wanted the curriculum issue left to local control; also, the large majority of school districts were already reciting the Pledge so they did not want HB 77 to be construed as correction, but rather as affirmation. He asked the Committee to not consider restructuring any part of the bill which did not deal specifically with the title (Page 3, Lines 13-17).

Loran Frazier, School Administrators of Montana (SAM), said they concurred with the past testimony, explaining he had talked with about 90 school districts. He was assured these districts did not file the Resolution from the Board of Public Ed (**EXHIBIT 4A**) but were enacting it.

Laurie Koutnik, Christian Coalition of Montana, read her written testimony. (EXHIBIT 6)

SEN. DELWYN GAGE, SD 43, Cut Bank, said he considered it peculiar the only testifiers so far had been lobbyists; there were no private citizens who testified. He suggested patriotism was going downhill because in many instances, students were not being impressed with the meaning of the Pledge of Allegiance. He said he had respect for those who did not feel they could pledge allegiance to an object and commended them for attending the hearing.

Wayne Buchanan, Board of Public Education, wanted to be on record as supporting HB 77.

Kamala Webb, Private Citizen, said she was at the hearing just to listen but SEN. GAGE'S testimony prompted her to speak. She said her three children were taught the meaning of patriotism at school as well as at home. Ms. Webb said she was rising in full support of HB 77.

Opponents' Testimony:

Mary Sheehy-Moe, Private Citizen, said SEN. GAGE'S remarks had prompted her to speak also. She said no gesture could infuriate an American as much as the Nazi salute because everyone was required to do it. She said she opposed HB 77 out of patriotism, sharing an example of three young Jehovah's Witnesses who refused to salute the flag during World War II, the outcome of which was confinement in a reformatory. The Supreme Court opinion was no official could prescribe what would be orthodox in matters of belief. She admitted HB 77 did not force anyone; however, it did single children out who refused to salute the flag. She suggested one thing that bothered her was those who had testified thus far were those who usually talked about local control. She also challenged the statement curriculum was not mandated, saying any time something was to be done in school by teachers was curriculum, adding HB 77 explicitly said how and when the Pledge was to be delivered. Ms. Sheehy-Moe said there was only one Constitutional curriculum mandate in Montana -- respect for Native American cultures. She said a group of people removed from the local situation should not dictate what or how something should be taught.

Raymond Berg, Private Citizen, said he was a patriot but expressed concern for the prescribed orthodoxy, explaining one of our freedoms was the freedom to choose. He referred to Page 2, Line 15, "must be excused" and said there was no choice there. He also challenged REP. SIMPKINS' statement regarding a non-participatory student standing before peers to explain his or her beliefs. Mr. Berg reminded the Committee of the mistreatment of the Japanese here in the United States during World War II and the use of the Nazi salute to inspire its form of patriotism. He also contended there was a question of teacher liability if he or

she were to leave the room. He summarized by reminding the Committee to think of those who would refuse to say the Pledge -- where was their justice and dignity. He spoke in opposition to HB 77.

Gary Stein, Private Citizen, said he was compelled to speak after hearing **SEN. GAGE'S** comments. He said he considered himself a patriot in teaching U. S. History but was concerned about the distortion of the facts as stated in some of the testimony. He expressed opposition to HB 77, not because he was opposed to the Pledge, but was opposed to the idea of singling students out because of their beliefs. **Mr. Stein** agreed with **SEN. GAGE** when he said patriotism was declining, saying he had students who did not appreciate their heritage; however, he knew nothing could ever repay the veterans for defending our country and flag. He suggested veterans come to the classrooms to share some of their experiences with the students. **Mr. Stein** suggested the phrase "under God" added to the Pledge in 1954 was a direct result of McCarthyism. He again expressed opposition for HB 77 and regret for the wedge being driven between each others' feelings.

Lewis Kurdy, Private Citizen, said the policy in most school districts was the teacher must be in the room at all times because of the liability. He wondered who would supervise the room if the teacher wanted to be excused from saying the Pledge. **Mr. Kurdy** asked the Committee to carefully consider the question of liability and where it would rest in such a case.

Questions From Committee Members and Responses:

SEN. MIGNON WATERMAN asked what would happen in the case suggested by **Lewis Kurdy**. **REP. SIMPKINS** said a student could be assigned to lead the group.

SEN. WATERMAN asked if HB 77 was a mandate and an infringement on local control. **Don Waldron** said he did not think so and as to the issue of her previous question, the teacher and principal could work out the solution.

SEN. WATERMAN commented since there was no effective date, would it never become effective. **REP. SIMPKINS** said October 1.

SEN. BARRY "SPOOK" STANG asked if private schools were required to meet the same standards as public schools and was told they did. He then asked why the teaching of patriotism was not required in private and home schools. **REP. SIMPKINS** said it was a good question; however, they were not allowed to use the libraries or participate in the activities of the public schools. He stated the government kept the entities separate. **SEN. STANG** responded the Constitution required equal education to all students in Montana and wondered if **REP. SIMPKINS** had objections to adding private and home schools to HB 77. **REP. SIMPKINS** said he had none.

{Tape: 2; Side: A; Approx. Time Count: 2:38 p.m.}

SEN. STEVE DOHERTY asked if the teachers and students would be informed they had the right to refuse to say the Pledge. REP. SIMPKINS said it was stated so in HB 77. SEN. DOHERTY asked if HB 77 guaranteed there be no discrimination against the teachers and students regarding evaluations, permanent files, etc. REP. SIMPKINS said teachers were covered under contract and if such a discrimination would occur, there would be a huge labor dispute. SEN. DOHERTY asked if there might be another symbol to replace the Pledge in some future legislation to install patriotism. REP. SIMPKINS said he did not foresee another "next" because there was not another symbol like our flag which had such an historical value in the progression of our country.

SEN. DEBBIE SHEA commented a good job of teaching patriotism was stirring students when talking about the raising of the flag at Iwo Jima or incensing them by discussing the bombing of Pearl Harbor and it was her opinion the reciting of the Pledge could become very routine and unfeeling. She also asked if it would be prudent for a teacher to refuse to say the Pledge, in the event he or she forgot; the result of which could result in the loss of a paycheck. REP. SIMPKINS said he felt the majority of the teachers were already teaching the Pledge of Allegiance; however, he felt HB 77 standardized the procedure.

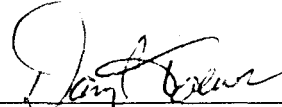
SEN. LOREN JENKINS wondered if someone refused to participate, could he or she just stand aside while the other students recited the Pledge. REP. RICHARD "DICK" SIMPKINS said "nondisruptive" was the key, and that situation would be a wonderful time to teach diversity.

Closing by Sponsor:

REP. RICHARD "DICK" SIMPKINS said the Attorney General's opinion in 1988 was the same as HB 77. He agreed no child should be persecuted, and addressed the issue of the internment of the Japanese, saying the U.S. was the only country to step forward, admit its mistake and offer compensation, even though it was not enough. REP. SIMPKINS said the only way he could imagine future legislation regarding patriotism would be to stop teaching it in schools. He reiterated he was not saying most teachers were not teaching patriotism; however, he maintained not everyone was.

ADJOURNMENT

Adjournment: The meeting adjourned at 2:50 p.m.



SEN DARYL TOEWS, Chairman



JANICE SOET, Secretary

DT/JS