

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By CHAIRMAN DARYL TOEWS, on February 12, 1997, at 3:16 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: Eddye 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 192, HB 259; Posted
02/07/97
Executive Action: None

HEARING ON HB 192

Sponsor: REP. H.S. "SONNY" HANSON, HD 9, Billings

Proponents: Richard Crofts, Commissioner of Higher Education
Gail Gray, Office of Public Instruction
Wayne Buchanan, Board of Public Education

Opponents: None

Opening Statement by Sponsor:

REP. H.S. "SONNY" HANSON, HD 9, Billings, said HB 192 was needed because legislation was necessary to force the State Board of Education to implement its constitutional duties as outlined in (EXHIBIT 1). He reminded the Committee the State Board of Education formed when the Board of Regents and Board of Public Education met, and was responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. REP. HANSON maintained the State Board of Education had not done this in the 24 years since the Constitution was passed; therefore, the legislature needed to give guidance. He said HB 192 had three elements: (1) Page 1, Line 27 - Page 2, Line 10, what should be addressed to meet those Constitutional requirements; (2) Page 2, Line 30 - Page 3, Line 1, the source of funding; (3) Page 5, Line 12-13, the source of staff.

Proponents' Testimony:

Richard Crofts, Commissioner of Higher Education, said the University System supported HB 192 because it provided helpful direction as to the type of report the legislature liked, but was not now getting. He said it also gave added impetus to continue and to expand its efforts to coordinate all public education in Montana.

Gail Gray, Office of Public Instruction (OPI), wanted to emphasize the Board of Education was more effective in reporting and planning than it had ever been. She said OPI felt this would continue and had no problem with the reporting as long as there was not a drain on OPI staff. Ms. Gray said REP. HANSON had assured them that would not happen and with that caveat, OPI supported HB 192.

Wayne Buchanan, Board of Public Education, offered support of HB 192 also. He said during the past year the Commissioner of Higher Education had arranged the Montana Academic Forum which included K-12 and University people. Dr. Buchanan stated it was the best conference of its kind he had ever attended, and they would continue to meet together. He proclaimed the next time the legislature met, they would find the mission the Governor had worked so hard on accomplished. He said the Board of Education met five times during the past year and were making great strides toward fulfilling that responsibility.

Opponents' Testimony: None.

{Tape: 1; Side: A; Approx. Time Count: 3:23 p.m.}

Questions From Committee Members and Responses:

SEN. DELWYN GAGE suggested it was more essential than ever to have a dean on the advisory council. Richard Crofts said he

couldn't agree more and **Wayne Buchanan** said he couldn't agree less.

SEN. BARRY "SPOOK" STANG asked how OPI would staff the requirements in HB 192. **REP. H.S. "SONNY" HANSON** said OPI staff would not be increased because Superintendent of Public Instruction **Nancy Keenan** had said OPI was already furnishing staff to the Board of Public Education; consequently, since this was part of their Constitutional duties he assumed they were moving in that direction. He stated he saw no need for additional monies.

SEN. DARYL TOEWS asked **Gail Gray** the same question and was told OPI would support HB 192 as long as OPI did not anticipate significant new responsibilities.

SEN. MIGNON WATERMAN asked if legislation requiring a fiscal note would be added in a Conference Committee. **SEN. TOEWS** said he did not know.

SEN. WATERMAN asked **Gail Gray** if OPI was consulted in the preparation of the fiscal note and was told it was. **Ms. Gray** said at first it was thought there would be a substantial increase to the workload but after the hearing in the House they realized the increase would not be significant. Also, if OPI got the school improvement package, the requirements of HB 192 would be part of the plan.

SEN. LOREN JENKINS asked **Gail Gray** if the fiscal note was faulty and was told it would be hard to tell until the group worked through the bill, i.e. what the Board of Education deemed necessary and what the legislature felt was an appropriate report from the Board. **SEN. JENKINS** asked if OPI had personnel currently working for the Board of Education. **Ms. Gray** said no personnel was specifically assigned to the Board of Public Education.

SEN. BILL GLASER pointed out Pages 2 and 3 of HB 192 instructed them to absorb the cost.

SEN. GAGE said the fiscal note indicated OPI would absorb the cost, and wondered why it would not be shared, as indicated in HB 192. **REP. HANSON** said it was a joint effort by the Board of Public Education (which did not have its own funding) and the Board of Regents (which had its own funding). He further explained the funding for the educational system came through OPI; therefore, the Board of Public Education needed that assistance. Also, the information needed by the Board of Regents was at OPI. **REP. HANSON** informed the Committee the Commissioner indicated the Board of Regents could handle this within their present budget. He claimed the caveat, "It's in the Constitution."

SEN. BARRY "SPOOK" STANG referred to the title of the bill and wondered if HB 192 would direct all students to be taught to prepare for college; if so, what would happen to the 75% of the students who did not go on to college. **REP. HANSON** explained the Constitution formed the two Boards so there could be seamless education between K-12 and higher education. **SEN. STANG** maintained the intent of this and of the Constitution was to prepare kids to attend college; however, the direction of K-12 education should not be solely for the purpose of college preparation. He suggested adjusting the title to reflect that idea. **REP. HANSON** said he understood the title was not part of the law; rather, it was an indication of what was included in the body of the law. He referred to the body of the bill and said the items addressed were the Constitutional requirements designed by the framers of the Constitution.

Closing by Sponsor:

REP. H.S. "SONNY" HANSON referred to notes by Constitutional Convention Delegate Harper on the two boards in the Constitution: "responsible for long-range planning and evaluation of policies and programs for the state's educational system. What we mean, simply, is this: Somebody needs to take an overall look and see how elementary education, secondary education, vocational education, community college, university systems and all related terms of overall planning." **REP. HANSON** said the driving force for the language was the framers wanted a unified budget.

{Tape: 1; Side: A; Approx. Time Count: 3:40 p.m.}

HEARING ON HB 259

Sponsor: REP. H.S. "SONNY" HANSON, HD 9, Billings

Proponents: None.

Opponents: Richard Crofts, Commissioner of Higher Education
LeRoy Schramm, Legal Council for Board of Regents
Gail Gray, Office of Public Instruction

Opening Statement by Sponsor:

REP. H.S. "SONNY" HANSON, HD 9, Billings, referred to the yellow highlighted portion of (EXHIBIT 1) and said the conditions for HB 259 were in the Constitution but had never been implemented. He explained the unified budget for the total educational system meant kindergarten through higher education. **REP. HANSON** explained almost half the Constitutional Convention wanted one board because of their desire for one educational budget; however, they lost. The result was two boards and the yellow highlighted Constitutional language was added. He maintained a unified budget had never been submitted to the Governor as required by the Constitution; however, in 1996 a sincere effort was made to submit a unified budget, though they never got it

done. **REP. HANSON** then referred to and explained added language in HB 259.

Proponents' Testimony: None.

Opponents' Testimony:

Richard Crofts, Commissioner of Higher Education, expressed opposition to HB 259. He focused on five questions: (1) What has the State Board of Education done? He said the Board met about five or six times this past year to prepare the unified budget, and these meetings had the attendance of the Governor and representatives from the Governor's Budget Office. **Mr. Crofts** said he and Superintendent Keenan sent a memo (which was endorsed by the Board) in September to the Board of Education which outlined the following three priorities from the budgets submitted by the University System and OPI: (a) Qualitative Improvements of Education; (b) Access to Education (c) Use of Technology to Improve Both Access and Quality. He said the information was given to the Governor who probably used it in the preparation of his own budget; (2) What did the Governor say about this process? **Mr. Crofts** used the meeting notes to quote the Governor as saying, "In my view, we will have satisfied it for the first time in history"; (3) What exactly is the problem this bill is trying to solve? He said he believed HB 192 gave appropriate direction to the Board of Education so he supported it. He referred to **REP. HANSON'S** remarks that a unified budget had never been submitted; however, **Mr. Crofts** was of the opinion it had been. He suggested the Committee talk to Appropriations Subcommittee members and ask if the executive or legislative branches were crying out for more information before it made budget decisions or recommendations for K-12 or higher education. He maintained they would be told the Subcommittee was already overwhelmed by the information; certainly not crying out for more. **Mr. Crofts** suggested HB 259 really did not give direction, i.e. the definition in the bill was a unified budget; yet, the issue was a unified budget request; (4) What do you think would happen if the Board of Education submitted to the executive and legislature a thoroughly and radically unified request? **Mr. Crofts** answered his own question by saying as soon as it reached the Governor's desk, he would begin to pick it apart to identify the funding streams and their direction; and if he didn't, the legislature would; (5) What is the best way to bring about change? **Mr. Crofts** said he and **REP. HANSON** had two radically different views: **REP. HANSON** wanted to pass a law and to micromanage in a way which was flawed constitutionally; furthermore, the requirement of a unified budget request was already in the Constitution and another was not needed. **Richard Crofts'** view was to build systems of accountability, getting the right people working together and putting enough pressure on them to ensure their going the way they should go. Change was brought about by dialogue, discussion, clear statements of goals and directions and clear statements about what the accountability measures would be. He felt progress had been made regarding

trust between the University System and the legislature. He offered the opinion most of the control in HB 259 was aimed at the Board of Regents and the University System. He closed by saying he hoped to continue the working together and passing another statute was not likely to help that along.

LeRoy Schramm, Board of Regents, read his written testimony.
(EXHIBIT 2)

{Tape: 1; Side: b; Approx. Time Count: 4:03 p.m.}

Gail Gray, Office of Public Instruction (OPI), said the idea sounded good and simple; however, it was not simple. She informed the Committee the Board of Education had spent more time on this than they ever had in the past and they were committed to continue. **Ms. Gray** said HB 259 would not help that so she urged the Committee to defeat the bill.

Informational Testimony:

Wayne Buchanan, Board of Public Education, said there was very little doubt about the Constitutional language -- it was very simple and straight forward. He asked the Committee to remember the legislature saw fit to create two very unequal boards and HB 192 and HB 259 exacerbated the problem. He said one Board had seven members with broad Constitutional powers and considerable staff, while on the other hand there was a Board with limited Constitutional powers and a staff of two. **Dr. Buchanan** stated these two Boards were to sit down as equals and carve out a unified budget and long-range planning for the total system. He reminded the Committee of the **Richard Crofts'** testimony that he and Superintendent Keenan got together to decide what the appropriations ought to be and then provided a memo to the Board of Public Education, a Board that had no financial staff or financial data to offer criticism or input. **Dr. Buchanan** said the Board of Public Education had little choice but to accept the information provided by the Superintendent of Public Instruction; however, he wanted to stress Superintendent Keenan had been very cooperative and prompt in responding to the requests of the Board of Public Education.

He referred to Page 6, Lines 17-19, and explained "each entity" meant the Board of Regents and the Board of Public Education (the Superintendent of Public Instruction was not a player in this; Constitutionally he or she was the secretary of the Board of Education). **Dr. Buchanan** said at present it was a comfortable situation; however, in the future the Board of Public Education may not be able to carry it out. It was his opinion HB 259 required things by law but were not providing the means to accomplish them.

{Tape: 1; Side: B; Approx. Time Count: 4:15 p.m.}

Questions From Committee Members and Responses:

SEN. DARYL TOEWS commented on the statement the Board of Regents had followed the legislature's request for the past 20 years; he suggested that was the issue -- two years might be more appropriate.

SEN. MIGNON WATERMAN referred to Page 8, Subsection (8), and asked how a grant would be handled which came in after the unified budget. **REP. HANSON** said Subsection (8) was just a mechanism to keep them from making the unified budget and then later asking for more money. **SEN. WATERMAN** asked how the entity receiving the grant would ask for it. **REP. HANSON** said he was not sure. **SEN. WATERMAN** said currently agencies and offices could request something that came up because the budgeting process took a year. She referred again to the bill and said now the request could not be considered unless it came in with the unified budget request, which was September 1. **REP. HANSON** replied each University System unit submitted its budget to the Commissioner, which meant everything was there. At that point it was blended with K-12 and submitted to the Governor, who could say no. **REP. HANSON** was of the opinion anything special could be dealt with separately and submitted through the legislative process. **SEN. WATERMAN** stressed she found "it can't be considered" a problem and wondered how to get around it in statute. **SEN. DARYL TOEWS** offered language could be added which would say if a grant was coming from another source, it could be expended through a line item for each.

SEN. CASEY EMERSON asked if it didn't refer more to a request that has been tacked on, i.e. not part of the unified budget. **REP. HANSON** said the basic thrust was if the agreement was on one budget figure, they would not come later and ask for more.

SEN. LOREN JENKINS asked how many people were on the State Board of Education. **REP. HANSON** said seven on the Board of Regents and seven on the Board of Public Education. **SEN. JENKINS** commented he thought the intent of HB 259 was to clarify the unified budget request in the Constitution. **REP. HANSON** agreed. **SEN. JENKINS** asked if this Board was comparable to a high school board of trustees who worked to present a unified budget. **REP. HANSON** said there were two separate budgets which got together and established priorities among themselves before submitting them to the Governor, who would establish his priorities from those submitted. The differences, however, were: (1) The Regents, through their Commissioner, took every University unit and scaled them down until they arrived at what they wanted to apply for, and K-12 did the same thing; (2) A high school Board of Trustees had only one superintendent, while the Board of Education had two superintendents, each thinking his or her budget was greater and more important than the other.

SEN. STEVE DOHERTY asked what would happen to the supplemental budget, should HB 259 pass. **Gail Gray** said she assumed the same

process as now would be followed. **SEN. DOHERTY** asked **REP. HANSON** how this was going to work and was told it worked last year, was working now and had the Governor's approval. **REP. HANSON** said now they were attempting to put it into law, and suggested following **SEN. TOEWS'** advice to add language to address the extra grants.

SEN. DELWYN GAGE asked to whom the appropriation would be made under the unified budget law. **REP. HANSON** said it would be made just as it presently was. **SEN. GAGE** asked **SEN. TOEWS** if the Board submitted a unified budget to the Education Committee, the Committee would ask the Board which part was the Regents' and which was the Board of Public Ed's. **SEN. TOEWS** agreed.

{Tape: 1; Side: B; Approx. Time Count: 4:28 p.m.}

SEN. DEBBIE SHEA asked if this was already in law. **REP. HANSON** said Article 10, Section 9, dealt with a Constitutional requirement, which was law, but the implementation of that Constitutional article was a page and a half which listed the specific duties. **SEN. SHEA** asked if they were doing it now and **REP. HANSON** said they had just started because, he felt, they had a reason to get together; that being C-30. He said people and personalities would change; therefore, it was important to put into statute. **SEN. SHEA** asked if HB 259 was a hit on the University System and OPI. **REP. HANSON** said he was only trying to get them to follow the Constitution; it was not a hit but a means for the legislature to perform its duties in allocating a fund.

SEN. DOHERTY said he read Article 10, Section 9, in the Constitution as being self-executing. **LeRoy Schramm** said "shall" usually meant it was self-executing; however, in addition to the Constitution the language was already in the law (Page 7, Lines 25-27, of HB 259). **SEN. DOHERTY** wondered why an additional section was needed, since the language was already in statute. Also, if they hadn't been following the law, why hadn't they been hauled into court. **REP. HANSON** said it was not self-executing, according to attorneys who knew the Constitution; however, it was difficult to enforce the Regents to follow the law. **REP. HANSON** said present law contained no hooks to force them to submit a unified budget, and that was the reason for HB 259. **SEN. DOHERTY** wondered about Page 8, Subsection (8), of HB 259 and asked what happened if OPI made the request. **SEN. HANSON** said OPI was not in the Constitution; he was dealing with legislative articles. He said OPI got together with the Commissioner but did not have a position in the Constitution.

SEN. GAGE asked if the University System and K-12 got together and each submitted a budget to the Board with the request the Board put the two together, would the request for a unified budget be satisfied. **REP. HANSON** said a unified budget meant one budget, which was what the framers of the Constitution wanted. **SEN. GAGE** asked where "establishing priorities" was located in HB

259. **REP. HANSON** said priorities had to be in place before submitting a unified budget and **SEN. GAGE** maintained it wasn't necessarily true, and used his previous comment to support his statement. **REP. HANSON** insisted the Constitutional Convention wanted to force the people to get together and establish priorities for the benefit of the educational system. **SEN. GAGE** said he now understood the Governor would make the determination on those priorities. **REP. HANSON** said it was not so; this was a first-step phase.

SEN. WATERMAN asked **REP. HANSON** if he saw a difference between "unified budget" and "unified budget requests" and was told he did not because it was not a self-executing statement; thus, singular or plural was immaterial. Also, two budget requests came to them -- two came in and one went out.

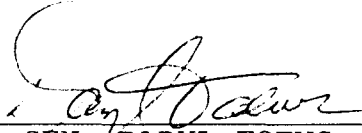
SEN. DOHERTY asked **Richard Crofts** to respond to **SEN. GAGE'S** question. **Mr. Crofts** said life required one to watch for intended as well as unintended consequences, and that emphasis on control would put the Board of Education, Board of Regents and Board of Public Education to be very careful not to make a mistake. He suggested this would result in the Board concentrating not on the discussion of what was needed but on a discussion which would center around making sure everything was covered. **Mr. Crofts** said HB 259 encouraged the type of behavior no one wanted because of the use of control instead of people working on priorities and goals.

Closing by Sponsor:

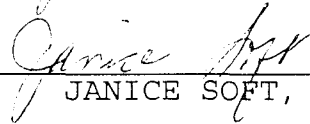
REP. H. S. "SONNY" HANSON said the way to get things done was to have specific time frames. He suggested it was interesting to hear the Commissioner say the law was not needed because they were already doing it and to hear OPI say it was in the Constitution, when the fact of the matter was the Constitution was not being implemented.

ADJOURNMENT

Adjournment: The meeting adjourned at 4:43 p.m.



SEN. DARYL TOEWS, Chairman



JANICE SOFT, Secretary

DT/JS