

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON EDUCATION & CULTURAL RESOURCES

**Call to Order:** By VICE CHAIRMAN CASEY EMERSON, in the absence of CHAIRMAN DARYL TOEWS, on March 5, 1997, at 3:10 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 79, HB 347; Posted 02/24/97  
Executive Action: None

#### HEARING ON HB 79

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

**Proponents:** None.

**Opponents:** Wayne Buchanan, Board of Public Education  
Eric Feaver, Montana Education Association  
Terry Minow, Montana Federation of Teachers  
Dori Nielson, Office of Public Instruction

**Informational:** Donna Maddux, Flathead County Supt. of Schools

Opening Statement by Sponsor:

REP. RICHARD SIMPKINS, HD 49, Great Falls, said HB 79 completed a law which the legislature had never completed; in other words, it corrected a situation which existed now because schools could currently receive unfunded mandates without any question. He said HB 79 addressed the issue of the State Board of Public Education and its authority to pass rules (they do have Constitutional rulemaking authority) even if they're not funded by the legislature. He referred to Lines 25-29 and said the language did not give a completed answer regarding the legislature. REP. SIMPKINS used "Project Excellence" in 1989 as an example to say it had a \$35 million impact on our schools. He reiterated how the Board of Public Education made the request to the legislature on December 31; however, the letter not distributed, but put into a file and forgotten. The legislature recessed and the State Board of Public Education published the rules implementing "Project Excellence" which reduced classroom size, required librarians and counselors in the elementary schools and a few other things. REP. SIMPKINS stressed there was no fiscal note because a bill was never introduced. He referred to Line 18 and said the Board of Public Education would have to declare the financial impact, which was defined on Line 29. He declared the Board could not implement the rule without adequate funding from the legislature, which stopped an unfunded mandate.

REP. SIMPKINS related there would be testimony regarding waivers and he challenged the Committee to consider waivers were not any good because laws would not be passed which would not be enforced. He maintained HB 79 would enable the Board, school districts and the legislature to work together in education.

Proponents' Testimony: None.

Opponents' Testimony:

Wayne Buchanan, Board of Public Education, said he and REP. SIMPKINS had been debating this bill for the past six years and the idea was not any better now than it was then. He suggested HB 79 made the assumption the Board of Public Education had been irresponsible and passed unfunded mandates. He addressed REP. SIMPKINS' reference to deferrals and said a survey went to all the school administrators which asked which new accreditation standards would be costly. He said the administrators identified six standards, which now have been enlarged to eight, so the Board told them they could request a deferral from the Office of Public Instruction. He mentioned the first few years there were quite a few deferrals; however, the number had declined to only a fraction of the original number. Dr. Buchanan informed the Committee the Board already had in "Project Excellence" language which allowed for alternative standards, i.e. school districts could substitute (use an alternative) standards for any or all standards in the school accreditation standards, and all were nearly always approved by the Board of Public Education. He was

of the opinion the Board had acted responsibly and reiterated how a few years ago the Board had delivered a letter to a Senator which said the deferrals would stay in place as long as was necessary.

**Dr. Buchanan** said HB 79 called for line items on the BASE amount, which would be a problem because the line item could only be used for the change the Board was requiring; not only that, only some school districts would be impacted so it did not seem wise to have all school districts benefit from the fact only a few school districts had to spend money on the change in rules. He didn't think HB 79 was necessary because no reports had come across his desk in the past several years regarding the cost of accreditation standards; also, HB 79 would discourage change in future rules but it would not affect "Project Excellence." He asked the Committee to NOT CONCUR on HB 79.

**Eric Feaver, Montana Education Association (MEA)**, said the Board had long since dealt with this issue in front of the Education Committee, who had historically refused to go the next step indicated in HB 79. He suggested HB 79 was: (1) Likely unconstitutional because there was a case in point which dealt with the rulemaking authority of the Board of Public Education vs. the legislative authority to deal with the accreditation standards or school programs. He said there was not much in statute which dealt with school programs; however, a provision in statute spoke to gifted and talented as a permissive program for school districts and a standard required gifted and talented education by school districts. **Mr. Feaver** reiterated how that was contested in District Court and Judge Sherlock ruled the Board of Public Education, under our Constitution, had general supervisory authority over the school districts; therefore, the Board was within its boundaries to adopt an accreditation standard which was a mandate. The decision was not appealed to the state Supreme Court, so it was the "law of the land." He maintained if HB 79 passed, eventually there would be another legal question; (2) Unworkable because in the current BASE program there was no way to delineate the dollars which went to any standard -- he did not know how the legislature would know if the standard adopted by the Board would or would not be funded through the BASE funding program. He believed HB 79 invited the legislature to become the Board of Public Education, and contended the legislature would not have the time to deal with accreditation standards and the governance of Montana's public school system. He lauded the Board for its patience when waiting for school districts to conform to the standards adopted by that Board; in fact, no school district had ever been financially harmed in any way by the Board of Public Education because it was unable to comply with the accreditation standards.

**Mr. Feaver** suggested the definition of an unfunded mandate was in the eye of the beholder, explaining most of them came from the local school patrons rather than the Board of Public Education because they urged school districts to adopt programs they wanted

for their children. He used school athletics as an example, saying there was not one rule or standard in Montana law to provide for their existence. **Mr. Feaver** recounted HB 79 was unconstitutional, unworkable and unnecessary; therefore, he asked the Committee to NOT CONCUR.

**Terry Minow, Montana Federation of Teachers (MFT)**, said her testimony was the same as **Eric Feaver's** when he said HB 79 was unconstitutional, unworkable and unnecessary; therefore, she felt it unnecessary to repeat it.

**Dori Nielson, Office of Public Instruction (OPI)**, said OPI opposed HB 79 but would not repeat the arguments heard already; however, she referred to the part of the bill which said the funding for the rules, policies and standards should be requested from the BASE funding. She reminded the Committee the Board of Public Education made rules in the areas of transportation, special education, certification, etc. -- many areas outside the accreditation -- and unless future BASE funding would be provided for all areas, it would be unworkable.

*{Tape: 1; Side: A; Approx. Time Count: 3:31 p.m.}*

#### Informational Testimony:

**Donna Maddux, Flathead County Superintendent of Schools**, said **REP. SIMPKINS'** position would be supported by many trustees in her area; however, they also lived through "Project Excellence." She explained in her area "Project Excellence" meant having guidance counselors, librarians and workable ratios between beginning students and teachers in the elementary schools. **Ms. Maddux** said two isolated rural schools in her county used alternative standards (use of public libraries and public health) to meet the issues of guidance counselors and librarians because they were the areas which posed the most difficulty in finding staff. She maintained the standards were high; however, the offices which supervised schools were working with them to meet the standards.

#### Questions From Committee Members and Responses:

**SEN. DELWYN GAGE** asked if HB 79 would be an avenue to access the Supreme Court regarding the Sherlock Case because many people were shocked the Governor didn't appeal the Case. **REP. RICHARD SIMPKINS** said if districts disagreed with HB 79, they could go to court; in fact, that had to be established because either there was an oligarchy or they [legislature] were over the State Board of Public Education. He asked how they [legislature] could operate with an independent Board who could demand funds but could not be stopped.

**SEN. GAGE** asked if a rule was proposed which had a substantial financial impact and the district was at 104%, i.e. funded by the legislature, how would the district spend the money. **REP.**

**SIMPKINS** said even if the district was overfunded, it could not exceed 100%.

**SEN. STEVE DOHERTY** asked why it was a good idea to delete Subsection (4) of the current law. **REP. SIMPKINS** said this law pertained only to a rule or proposal with a substantial financial impact on the school.

**SEN. DOHERTY** asked the same question to **Dr. Buchanan** and was told he agreed with **REP. SIMPKINS**.

**SEN. DOHERTY** asked about the counterargument if the language was deleted, by implication it was said it could not be done. **Dr. Buchanan** said that thought had occurred to him also; however, the rest of the language was clear enough so there should not be a problem.

**SEN. DOHERTY** asked what determined a substantial financial impact. **Dr. Buchanan** referred to Lines 29-30 and said that could be a problem because it was not clear whether the rule would be negated if only one school had trouble, or would it require a preponderance of schools. He said this was one of the unworkable things about HB 79.

**SEN. GAGE** said he assumed the new language in Line 28 required the new policy or standard be submitted to the legislature because of the funding, not because of the rule, policy or standard itself. **REP. SIMPKINS** said it referred to just the money.

*{Tape: 1; Side: A; Approx. Time Count: 3:39 p.m.}*

Closing by Sponsor:

**REP. RICHARD SIMPKINS** stressed no one was accusing the Board of being negligent; however, how could a show be run on the hope those who would follow would be just as good as those who were leading? He stated current law said local boards of trustees had to beg the Board of Public Education for an exception, which was unconstitutional because the original intent of the creation of the Board was to be administrative, especially in the areas of federal regulations and funding. He mentioned how the original notes indicated "control" was not part of the Board duties because it was left to the local school districts. **REP. SIMPKINS** said the judge ruled on a definition by a Nebraska Court (not Montana) and declared the Board had general rulemaking authority, which cost \$35 million. The reason the rule wasn't appealed was the legislature could not use its rulemaking procedures to cancel the Board's rules because it (Board) had Constitutional rulemaking authority in line with their general supervision; however, they did not rule on whether the State Board of Education could pass a rule contrary to law. He said Greg Petesch felt an appeal should have been made based on the fact the State Board of Public Education was using the legislative

rulemaking authority for administrative purposes and therefore, must have agreed to accept the legislative procedures. **REP. SIMPKINS** referred to his bill about the Pledge of Allegiance and said it was also the State Board of Public Education's bill because they put out a resolution in 1989 which encouraged every teacher in every school to begin the day by saying the Pledge; however, he talked to teachers who had never seen the resolution, and that was why he had the bill drafted -- to put their resolution into law.

**REP. SIMPKINS** addressed other testimony: (1) HB 2 would take care of the line item concern; (2) Guidance counselors in the elementary school were at the social level, not career path; therefore, the need for them was questionable; (3) The study done by Sandy Whitney was item-by-item, right out of "Project Excellence", and another study showed there were over 1,000 too many teachers just to carry out the accreditation standard; (4) This body had not been able to address basic education to meet the Constitutional requirement -- he was willing to work with **Eric Feaver** to come up with a definition of basic education; (5) This bill encouraged the Board of Public Education to work with this body instead of suing it; perhaps another court case was needed to "put this to rest"; (6) BASE funding was old law; it was just moved from one place to another. He reminded the Committee the language must remain which said the legislature must provide the funding, and reiterated how puzzling it was the \$35 million imposed on the public schools because of "Project Excellence" was not considered an unfunded mandate. He asked the Committee to give serious consideration to HB 79 because the Board of Public Education did not want the legislature to have a say in Montana's education.

**VICE CHAIRMAN CASEY EMERSON** relinquished the chair to **CHAIRMAN DARYL TOEWS**, who returned.

*{Tape: 1; Side: A; Approx. Time Count: 3:50 p.m.}*

HEARING ON HB 347

Sponsor: REP. BOB LAWSON, HD 80, Whitefish

Proponents: Don Waldron, Montana Rural Education Association  
Lance Melton, Montana School Boards Association &  
School Administrators of Montana  
David Fern, Whitefish School Board Trustee  
Terry Minow, Montana Federation of Teachers &  
Montana Education Association  
Donna Maddux, Flathead County Superintendent of  
Schools

Opponents: None.

Opening Statement by Sponsor:

REP. BOB LAWSON, HD 80, Whitefish, explained: (1) Lines 16-17 were added back into HB 347 because too much had originally been deleted -- the goal had been to not go outside the limits; (2) Page 2, Line 12 -- "except as provided" was the key to the bill; (3) Page 3, Lines 11-12 -- the meat of HB 347. Title 20, Chapter 6, Part 5, referred to the power of the trustees to open and close schools; (4) Page 4, Lines 23-24 -- the applicability date of July 1, 1997. He said the fiscal note was not signed because he was not notified to do so but he had no problem with the note. He then drew attention to the assumptions on the note, reading them to the Committee. REP. LAWSON stated present law required all school districts to be within the 80-100% equalization range, or between BASE and maximum General Fund budgets and HB 347 did not propose to disturb the equalization funding structure. He explained the 4% per year was the allowable growth within the 80-100% budget limitation; even if the district had the support of the local voters and even if a growth in student population or unique circumstances was being experienced. He said HB 347 sought a limited exemption from the 4% limit on the growth of the General Fund budget in the year the district opened a new school, and reiterated how the growth could occur only if supported by the local voters. He said present law did not give the voters the authority to open a new school so HB 347 proposed to empower the voters to make a decision regarding growth in the district budget in excess of 4% in a given year when it opened a new school under Title 20, Chapter 6, Part 5. REP. LAWSON asked for the Committee's consideration and DO CONCUR on HB 347.

{Tape: 1; Side: B; Approx. Time Count: 3:55 p.m.}

Proponents' Testimony:

Don Waldron, Montana Rural Education Association (MREA), said when new schools opened, it took anywhere from several months to a year to prepare, because of curriculum, staff, etc., planning; therefore, money was needed for that time. Mr. Waldron said HB 347 made sense because only local dollars voted on by the voters would fund it. He urged the Committee's support.

Lance Melton, Montana School Boards Association (MSBA) and School Administrators of Montana (SAM), said HB 347 was brought forward because of a unanimous resolution at MSBA & SAM's general assembly in October, 1996. He reminded the Committee HB 347 did not interfere with the 80-100% equalized spending range but did allow the local voters to determine the level of growth; also, there was no fiscal impact to the state. He urged DO CONCUR.

David Fern, Trustee, Whitefish School District, read his written testimony. (EXHIBIT 1)

Terry Minow, Montana Federation of Teachers & Montana Education Association, said they supported HB 347 because it provided

necessary flexibility when a new school opened. She urged the Committee's support because it was a modest proposal which maintained local control.

**Donna Maddux, Flathead County Superintendent of Schools**, asked the Committee to support HB 347, and explained it would bring fiscal responsibility because it did not interfere with the underfunded schools lawsuit nor deal with Constitutional issues of that window of funding; however, it attempted to deal with the fact a frugal district could have a building fund to save enough money to build a school but not enough money to have those one-time startup costs before the funding came in the following year. She related how rural schools in her area were experiencing growth and needed funds to purchase middle schools; therefore, something like HB 347 could be used to do that.

Opponents' Testimony: None.

{Tape: 1; Side: B; Approx. Time Count: 4:06 p.m.}

Questions From Committee Members and Responses:

**SEN. BARRY "SPOOK" STANG** asked if the 104% was built into the BASE for the next year, and if after the third consecutive year the district had to go back down. **REP. BOB LAWSON** said once the exception was made, it did not drop back down because it established a new BASE which could only be increased by 4% per year.

**SEN. DELWYN GAGE** asked how HB 347 fit with reappraisal bills. **Lance Melton** said boards set their budgets by dollar amount and he didn't see any of those bills impacting what HB 347 would do because there might be different mills or percentage but the dollar would be the same, i.e. if the district grew at a percentage of its budget, it would be a dollar amount.

**SEN. GAGE** asked **SEN. STANG** how HB 347 fit with his bill and was told it depended on what year the school came in -- if it came in this year, it would build into its base the 104%; if **SEN. MIKE FOSTER'S** amendment came, it would have to vote the increase over this year to next year; however, three years down the line it would vote the whole increase. In other words, HB 347 would fit into the bill; however, the base would be higher if it started in this school year, so the voters might not have to vote as big an increase for the next year, unless they automatically went to the 4%. It would have to be voted in two years because it was not a permissive levy.

**SEN. GAGE** asked about the tech school being grades 11, 12, 13 & 14, wondering from where the grades 11 & 12 students came. **David Fern** said from a proportional basis of the three schools; however, they would be affiliated with their home school and would graduate from it. **Mr. Fern** said it was much like the



Billings Career Center regarding transporting students and using it as a home base.

**SEN. GAGE** asked how the funding after the first year would get to the school. **David Fern** said the dollars would follow the students to the school, i.e. the cost of the school would be \$1.5 million per year, and Whitefish would be responsible for paying about 20% in goods and services. This would mean about \$300,000 would suddenly be added to the budget but there would not be the student increase to make up for it; therefore, additional dollars would be needed for the additional cleaning, heating, etc. He said the participating school districts would know their obligation, which was considered by the interlocal agreement to make the school.

**SEN. GAGE** asked how that affected the school budgets regarding the funding of the student shift. **Mr. Fern** said as far as he knew it would continue as at present; the money would still come to the home school and then would shift down to the school in question.

**SEN. GAGE** commented it appeared there would be almost the same costs at the schools shifting down as currently. **David Fern** said they hoped to save money by developing curriculum which was in demand and which they could not afford at the home schools; the reality was currently students were taking classes they weren't very interested in, but the current menu of classes offered was very limited. Many students who would normally take one or two academic courses would move down to take a vocational technical course in Kalispell; the savings would be less of certain types of courses would have to be offered. **Mr. Fern** reiterated how difficult it was to do a school through linking districts together because there were no vocational school districts. He said they wanted approval from bonding.

**SEN. WILLIAM GLASER** commented the Big Fork, Whitefish and Flathead High Schools were currently spending 83% of their maximum budget. He wondered why Big Fork, who had no voted levy, would suddenly approve a voted levy. **David Fern** said it was a tool they may or may not use. **SEN. GLASER** asked if the idea had been presented to the voters. **Mr. Fern** said the issue of making the school happen had been discussed but they had gone to the voters with only two bond issues; however, it could be a situation where the growth did not need to exceed 4% and maybe none of the districts needed to.

**SEN. MIGNON WATERMAN** asked if the alternative would have been to build vocational additions onto each high school, but building one to be shared by all was more cost-effective. **David Fern** assented.

**SEN. LOREN JENKINS** asked if this would affect equalization. **Dori Nielson** said this new school would not be a new school district; consequently, OPI would work with them in the count of students

and ANB money going to the home school. She reminded the Committee several bills were addressing the issue of districts cooperating with each other and someone would have to take ownership.

**SEN. DARYL TOEWS** asked why the legislature should allow building the one-time funding in the BASE. **Dori Nielson** said she was not aware the bill stated the BASE.

**SEN. JENKINS** asked if each district would go to 104%. **Ms. Nielson** said it would be 104% of their existing budget.

**SEN. DEBBIE SHEA** asked **Don Waldron** for an explanation and he said a vocational unit would be built which students from the three districts could use, and the cost would be divided among the three districts. He said the building would never have any ANB because the ANB would stay with the districts, i.e. they would keep it but rent the vocational facility. He finished by saying one may want 2%, one may want 1% and one may want the full 4%.

**SEN. GAGE** said it appeared someone had to own the school and asked if all would own a piece of it. **Mr. Fern** said the interlocal agreement (which the voters voted on) stated the three high school districts would own the school -- not the ground -- in proportion to their number of juniors and seniors according to the 1996 count. He remarked the bond was based on the projected cost of \$8 million; however, the land was given on a long-term \$1-per-year lease by the trustees of Flathead Community College (FCC). **Mr. Fern** pointed out it was a partnership -- the Board of Directors directed the school but did not own it; in fact, the districts could be reimbursed if FCC chose to use the school for college-level courses.

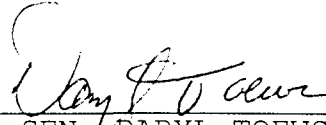
*{Tape: 1; Side: B; Approx. Time Count: 4:23 p.m.}*

Closing by Sponsor:

**REP. BOB LAWSON** reminded the Committee schools could keep doing now what they've been doing but this was an extenuating circumstance of educational cooperation and innovation between districts to better meet the needs of the kids. He reminded them interlocal agreements between the three school districts and FCC were already in place, but there could be other circumstances involving elementary schools in the Flathead or other secondary schools throughout the state. **REP. LAWSON** said the issue was still one of local control and voter approval, the exception to exceed the 104% cap was limited, and had nothing to do with the 80 - 100%. He said if HB 347 went to the floor, **SEN. BOB DEPRATU** would carry it.

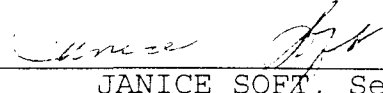
ADJOURNMENT

**Adjournment:** The meeting adjourned at 4:25 p.m.



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SEN. DARYL TOEWS, Chairman



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JANICE SOFT, Secretary

DT/JS