

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By CHAIRMAN DARYL TOEWS, on March 19, 1997, at  
3:13 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 49; Posted 3/7/97  
Executive Action: HB 49, HB 560, HB 491

#### HEARING ON HB 49

Sponsor: REP. ALVIN ELLIS, JR., HD 23, Red Lodge

Proponents: Lance Melton, Montana School Boards Association  
Don Waldron, Montana Rural Education Association  
Loran Frazier, School Administrators of Montana  
Eric Feaver, Montana Education Association  
Terry Minow, Montana Federation of Teachers  
Erik Hanson, Governor's Office

Opponents: None

Opening Statement by Sponsor:

REP. ALVIN ELLIS, JR., HD 23, Red Lodge, said HB 49 amended seven sections of school labor law and was endorsed by all parties of school labor agreements, i.e. a consensus bill.

Proponents' Testimony:

Lance Melton, Montana School Boards Association (MSBA), said the first side of (EXHIBIT 1) indicated the compromise among the different parties, while the back side contained the summary of HB 49 as it now stood. He referred to the technical amendment HB004901.ACE (EXHIBIT 2) and said it corrected an oversight. He stated HB 49 brought closure to labor and management issues over teacher tenure which had been in dispute for many years. It finalized the step toward binding arbitration in districts which had collective bargaining as a means of resolving termination disputes and also removed language which was inserted into law in 1991 regarding a statement of true reasons to a nontenure teacher released at the end of the contract year. Mr. Melton said there was a distinction between the termination standards during the contract year as opposed to the end of the contract year for the teacher who had yet to receive tenure, explaining during the contract year every teacher was protected by "good cause." He referred to Page 2, Paragraph 3, and said there was not a specific definition in the bill; all had agreed to remove the definition from the bill because the courts and arbitration panels had developed the term over the years (cause, good cause, just cause) -- all meant essentially "a good, decent reason to terminate employment." He asked for the Committee's support of HB 49.

Don Waldron, Montana Rural Education Association (MREA), said he had nothing to add other than it was a long haul getting to this point. He expressed appreciation for the legislators who had helped to bring the bill and urged the Committee's support.

Loran Frazier, School Administrators of Montana (SAM), expressed commendation for the sponsor of HB 49 as well as the associations which worked hard on the bill. He said HB 49 gave more clarification and was a trend toward the future; students won when less time was spent on the legal battles. He commented the concerns probably arose out of the changes, explaining change was often uncomfortable. He asked support for HB 49.

Eric Feaver, Montana Education Association (MEA), said teacher tenure had been in Montana since 1912 and teachers were wedded to the tenure concept even though most could not describe what it meant; therefore, when the legislature dealt with the concept, it drew a great deal of attention. He suggested it might have been the right idea to talk about nontenure teachers in 1991 in a way which would lead to their better understanding of what their performance failures might be, and admitted MEA pushed hard to pass the bill which allowed for nontenure teachers to appeal the

reasons given for their termination. He said though it was not MEA's intent, confusion arose over the difference between a tenure teacher with substantial property rights and a nontenure teacher who seemed to have a process similar to a tenure teacher. **Mr. Feaver** said MEA would argue current law hadn't served nontenure teachers well because it offered nontenure teachers a promise of what they didn't have, i.e. tenure.

**Mr. Feaver** started an historical review, stating with today's public education moving more toward accountability, the MEA and MFT was moving toward reconnection with their professional roots:

This association began in 1882 as a professional association, which made it older than the State of Montana or the Stockgrowers of Montana. They began as an interest in the professional nature of teaching and administration and stayed true to that until collective bargaining came to public education in 1973 or 1974. At that time they separated from the administrators and took on the trappings of a labor union, bargaining hard contracts. They still bargained hard contracts, bringing all the vim and vigor they had to the bargaining table; however, they had never abandoned their professional roots, though in the bargaining, etc., they drew away from the idea a nontenure teacher was a probationary teacher, i.e. a teacher who probably could not step immediately into the classroom without some difficulties.

He said in today's market, nontenure teachers needed more than understanding and accommodating building administrators; in fact, they needed the mentorship, peer review, guidance and assistance by professional, mastered tenure teachers. **Mr. Feaver** suggested there might be future problems for them if appellate reasons were in statute; in fact, he felt they were on the cusp of changing attitudes about tenure and nontenure. He stated he hoped the 1999 legislature would see a bill which would allow them to use different terms so they had meaning in both the public's and their members' eyes: "Tenure was nothing more than continuing employment and nontenure was probationary." **Mr. Feaver** suggested they could then meet with MSBA and SAM to deal with the issues which were the most important to the students they served, i.e. classroom excellence, or instruction, which met the demands of the students, communities and legislature. He urged the Committee TO CONCUR in HB 49 which would allow them to get on with public education in Montana.

**Terry Minow, Montana Federation of Teachers (MFT)**, said she was glad to be one of the consensus groups who felt HB 49 represented meaningful tenure reform. She asked for the Committee's support.

**Erik Hanson, Governor's Office**, said the Governor fully supported HB 49 as amended. He expressed thanks to the sponsors and asked for the Committee's support.

Opponents' Testimony: None.

{Tape: 1; Side: A; Approx. Time Count: 3:28 p.m.}

Questions From Committee Members and Responses:

SEN. DEBBIE SHEA referred to a situation in her community in which a football coach was in the process of being hired; however, there was no teaching opening for him so she was afraid a nontenure teacher would be terminated in order to accommodate him. She wondered how that nontenure teacher would have protection under HB 49. Lance Melton said their position on tenure vs. nontenure was those terms said it all because the district's elected officials needed the flexibility to properly manage the district and to be able to identify which teachers would work out with the philosophy of the district in the long haul. He suggested tenure was equal protection from termination without cause, while nontenure was the opposite of that term; nontenure and the time needed to reach tenure allowed districts to properly manage themselves. He stressed he couldn't promise a good, nontenure teacher would never be let go, but the district needed the ability to figure out what would happen with a particular teacher, how it would work with that teacher, whether the district wanted him or her there over the long haul or whether he or she fit into the framework of the district.

SEN. SHEA suggested even if everything were aboveboard and the nontenure teacher was a quality teacher, HB 49 gave a loophole for the termination. Mr. Melton disagreed there was any loophole and said creating the statement of true reasons in 1991 (prior to that it was virtually identical to HB 49 which gives the ability to release a nontenure teacher at the conclusion of the contract year without cause). He said in 1991, Gov. Stan Stephens did an amendatory veto which created the statement of true reasons; in that bill he said he didn't want courts looking at both the truth and merit of the reason for letting the person go. Mr. Melton said SEN. SHEA was looking at both the truth and the merit of the nontenure teacher, an issue which was at the heart of the problem. He suggested it had to be assumed locally elected officials would be accountable to the voters of the district and run it with the best of intentions; the way to correct it would be the elective process.

SEN. SHEA said she had a concern for teachers who worked for years to get into the system but were not given at least the courtesy of a reasonable cause when terminated. She said she couldn't understand why trustees wouldn't want to have that in place as well. Lance Melton said the language was in line with the probationary status of other professions, admitting a quirk was nontenure teachers needed a longer period of time to reach tenure status; however, they also had job protection during the contract year, something other probationary employees didn't have.

**SEN. CASEY EMERSON** asked if anyone had gone past "final and binding arbitration" and carried it to District Court. **Eric Feaver** said the only way either an employer or employee could go beyond the arbitration was if there were clear violations of law in the arbiter's opinion, i.e. if the arbiter exceeded his or her authority. He said he was not aware of an arbitration which had been appealed; however, without HB 49 school districts could contest the arbitrable nature of the grievance at hand which could lead to litigation. He said they believed HB 49 would prevent that -- cases would be dealt with through arbitration.

**SEN. EMERSON** commented HB 49 would take a step or two out of the process, which would get the job done more quickly. **Mr. Feaver** said that was exactly what arbitration did; MEA had always felt arbitration was the way to settle disputes because it was done quickly, cheaply and without litigation.

**SEN. DELWYN GAGE** asked how the organizations polled their memberships for support of HB 49.

**Eric Feaver** said MEA had a process for developing legislative programs, involving a delegate assembly of about 315 MEA members elected statewide. He said their legislative program had a very clear statement which said MEA should support the elimination of tenure provided "due process and just cause" could be provided after a necessary and appropriate probationary period. **Mr. Feaver** said he would not be standing before the Committee if he didn't believe the MEA supported that position; in fact, it had been on the page of arbitration for quite some time. He admitted the repeal of "veracity of reasons given for a nontenure teacher" was a sensitive issue within MEA; however, he believed the legislative program was correct and MEA was complying and doing what its members elected them to do.

**Lance Melton** said portions of HB 49 passed unanimously at its Delegate and General Assembly which involved over 700 out of 1,500 trustees. He said information was FAXed to their members, sent in their bulletin and members advised as the proposal developed. **Mr. Melton** said the process involved inviting their comments as to whether MSBA was going in the right or wrong direction, etc; the response was overwhelming they were going in the right direction, especially in the area of working with others in the education community on this bill.

**Don Waldron** said MREA was the last to come aboard when the compromise was struck because they dealt with a board of directors who worked with various aspects of the bill and sent them in. He said they didn't get everything they wanted; however, he gave those items to the sponsor in case he could use them later. He said when everything was final, they decided enough of their "wants" had been included so decided to back off on the other items. He said he sent a letter to their members which explained the bill, asked for their input and the sending

of their responses to the Board. **Mr. Waldron** said there were no responses.

*{Tape: 1; Side: A; Approx. Time Count: 3:41 p.m.}*

**Loran Frazier** said SAM represented five affiliates, some members of which had problems with the language in the first drafting of the bill. He said the Legislative Committee Chairman sent information to all members of the superintendents and principals; all came back with a consensus with the bill in this draft. He suggested SAM had 90+% consensus.

**Terry Minow** said MFT set its positions through a convention which about 10 years ago took a position tenure could be abolished, in favor of "due process, just cause, binding arbitration." She said MFT had an executive council meeting in February at which HB 49 was the topic of discussion. **Ms. Minow** said the support was very strong, though not unanimous. She also mentioned MFT went together with MEA to inform its members of legislation status on a bi-weekly time schedule. She felt confident that for the most part, MFT members were pleased with HB 49.

**SEN. LOREN JENKINS** said he had talked to a teacher who favored abolishing tenure but felt more classroom evaluations should be done, and wondered if according to HB 49, evaluation would be "just cause." **Eric Feaver** said he hoped so; it should be based on actual supervision and evaluation of that performance because "good cause" should mean if a teacher was terminated, it would be done for a good documented reason which the employer could defend.

**SEN. JENKINS** asked **Terry Minow** the same question and was told a process had to be in place and HB 49 stated that process in cases of unfair termination; however, if a teacher, even after proper supervision and chance to improve, wasn't doing a good job it was only fair they move on.

**SEN. STEVE DOHERTY** asked if the tenure and nontenure reasons also applied to principals and superintendents. **Lance Melton** said superintendents were not included because they were hired during a contractual period and at the will of the board; however, principals were included with teachers.

**SEN. DOHERTY** asked if a principal could be fired before reaching tenure without true reasons. **Mr. Melton** said he or she could be.

**SEN. DOHERTY** asked what the standard of review would be when appeals were made to the county superintendent or District Court. **Lance Melton** said going before the county superintendent was only for the districts who did not have collective bargaining agreements; however, with respect to the appeals, HB 49 didn't change the review process or who paid the expenses. They didn't deal with binding arbitration in districts which had not previously experienced collective bargaining; in fact, that was

an important part of this proposal. He said everyone agreed the appeal process under current law was fairly lengthy so the intermediate appellate level (Office of Public Instruction) was removed.

**SEN. DOHERTY** asked how many districts didn't have collective bargaining agreements. **Mr. Melton** said about 80% of the teachers were in districts with collective bargaining and had experience in dealing with binding arbitration from the 1991 law; about 140 districts had no collective bargaining.

**SEN. DELWYN GAGE** referred to Page 4, Subsection (3), Line 2, and asked if the language was new. **REP. ELLIS** said previously "good cause" was defined and now it was not; however, it was a phrase recognized by all arbitrators and would be by any attorney advising a county superintendent of schools.

*{Tape: 1; Side: A; Approx. Time Count: 3:54 p.m.}*

Closing by Sponsor:

**REP. ALVIN ELLIS, JR.**, said eliminating OPI was not a political point; rather, it shortened the process to make it more efficient so it worked better for the students. He said some proponents made some concessions; however, students won in all sections. He maintained teachers were more comfortable with binding arbitration and gave three examples of termination of nontenure teachers from his district -- two cases went before the county superintendent at a cost of about \$10,000, while the third was settled by binding arbitration at a cost of about \$4,500 and 100 hours of the superintendent's time to prepare for the hearing. He suggested in both instances "dirty linen" was aired for all to see, which was harmful to the school and its students. **REP. ELLIS** urged the Committee's endorsement.

*{Tape: 1; Side: B; Approx. Time Count: 3:59 p.m.}*

EXECUTIVE ACTION ON HB 49

Motion/Vote: **SEN. MIGNON WATERMAN** MOVED DO PASS ON AMENDMENTS HB004901.ACE (EXHIBIT 2). Motion CARRIED UNANIMOUSLY 11-0.

Discussion: **SEN. DELWYN GAGE** asked if passage of HB 49 would cause either trustees or teacher representatives to drag their heels in negotiations before July 1, 1997. He said he understood if the contract was entered into before July 1, 1997, it wouldn't be effective for that contract period. **Lance Melton** referred to the saving clause on Page 12 and said he couldn't think of any agreements which specified the process for appeal, other than collective bargaining agreements which said binding arbitration; that would not be contradictory to HB 49. He said he thought standards of termination in HB 49 would continue to be viable under a contract. **Eric Feaver** said HB 49 eliminated using the county superintendent, OPI or District Court; therefore, he

didn't believe there were any grounds for concluding the bargaining units would try to delay contract resolution until July 1, 1997.

Motion: SEN. MIGNON WATERMAN MOVED HB 49 AS AMENDED BE CONCURRED IN.

Discussion: SEN. BILL GLASER commented he had been sitting in Education Committee meetings since 1985 and he was amazed at the maturity, professionalism and statesmanship of the industry.

SEN. DELWYN GAGE commented the legislature could take a lesson from that.

SEN. BARRY "SPOOK" STANG suggested there were opponents to HB 49 who weren't there because he had gotten calls regarding the bill; therefore, he wouldn't categorize HB 49 as the deal because he felt the deal was made up here among the powers-to-be -- the "little people" probably didn't know it was made.

SEN. GLASER said he was the only vote his people had; therefore, he planned to be a statesman. He again expressed commendation to those who crafted HB 49.

Vote: Motion HB 49 AS AMENDED BE CONCURRED IN CARRIED 10-1 WITH SEN. DEBBIE SHEA VOTING NO. SEN. DARYL TOEWS will carry HB 49.

#### EXECUTIVE ACTION ON HB 560

Motion/Vote: SEN. BARRY "SPOOK" STANG MOVED HB 560 BE CONCURRED IN. Motion CARRIED 10-1 WITH SEN. LOREN JENKINS VOTING NO. SEN. BARRY "SPOOK" STANG will carry HB 560.

#### EXECUTIVE ACTION ON HB 491

Motion: SEN. BARRY "SPOOK" STANG MOVED HB 491 BE CONCURRED IN.

Discussion: SEN. STANG commented he had been involved in this dispute for years because it was in the middle of his district. He referred to the testimony and said it was absolutely true -- the present system allowed no resolution; however, HB 491 would allow resolution.

SEN. DARYL TOEWS said he agreed it was a crummy system because no resolution could ever be reached.

SEN. DELWYN GAGE said he had talked to the people involved with HB 491 and asked them if they would like a "Passage and Approval" date to be added. Those people said they wanted to pursue this as soon as possible; therefore, they wanted the date.

Motion/Vote: SEN. DELWYN GAGE MOVED DO PASS ON AMENDMENTS HB049101.AEM (EXHIBIT 3). Motion CARRIED UNANIMOUSLY 11-0.



SENATE EDUCATION & CULTURAL RESOURCES COMMITTEE

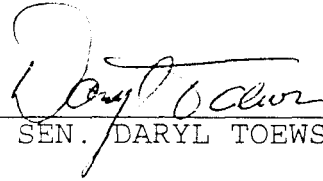
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Motion/Vote: SEN. BARRY "SPOOK" STANG MOVED HB 491 AS AMENDED BE  
CONCURRED IN. Motion CARRIED UNANIMOUSLY 11-0. SEN. BARRY  
"SPOOK" STANG will carry HB 491.

ADJOURNMENT

**Adjournment:** The meeting adjourned at 4:09 p.m.



SEN. DARYL TOEWS, Chairman



JANICE SOFT, Secretary

DT/JS