

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By CHAIRMAN DARYL TOEWS, on March 21, 1997, at
3:09 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. John R. Hertel (R)
Sen. Loren Jenkins (R)
Sen. Mike Sprague (R)
Sen. Barry "Spook" Stang (D)
Sen. Mignon Waterman (D)

Members Excused: Sen. Wm. E. "Bill" Glaser (R)

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 246, HB 469; Posted 3/12/97
Executive Action: HB 469 NO FINAL ACTION TAKEN
HB 246 TABLED

HEARING ON HB 246

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

Proponents: Lance Melton, Montana School Boards Association
Don Waldron, Montana Rural Education Association

Opponents: Eric Feaver, Montana Education Association

Opening Statement by Sponsor:

REP. RICHARD SIMPKINS, HD 49, Great Falls, said HB 246 clarified
some sections of law of who had the authority in education. He

referred to (**EXHIBIT 1**) and drew the Committee's attention to the green highlighted side, saying the key was general supervision.

REP. SIMPKINS referred to the lawsuit involving the State Board of Public Education suing the legislature regarding the gifted and talented program and the judge's ruling that because of general supervision, the State Board of Public Education had the constitutional authority to publish its own rules, i.e. the legislature couldn't use its administrative rules procedure to cancel the Board's rules. He stated "to exercise general supervision" had meaning as defined by the court; constitutionally, it belonged to the State Board of Public Education. He referred to Page 1, Line 11, of HB 246 and said there was a constitutionally assigned responsibility to the State Board of Public Education and the legislature was to pass the same thing on to the Superintendent of Public Instruction.

REP. SIMPKINS referred to the yellow highlighted portion of (**EXHIBIT 1**) and reported all the Constitution said about the duties of the Superintendent of Public Instruction was under the executive branch of government; in other words, it was removed from the education section when it was decided it would be an elected office. He explained the duties as provided by law were already done, and referred to Section 20-3-106 of HB 246. He said the bill had not touched any of the duties; however, he proposed clarifying the position of the Constitutional responsibility vs. the law by stating the Superintendent of Public Instruction had the general supervision. **REP. SIMPKINS** maintained it had been interpreted if the Superintendent of Public Instruction couldn't fit the rules under any duty, it became "general supervision"; however, he didn't feel that was Constitutional because general supervision had to come straight from the State Board of Public Education. He referred to Section 1 of HB 246 and said it met the legislature's responsibility; if it wanted the duties extended, it should add to the duties. He felt it was important to keep the authorities of both the Superintendent and Board straight; however, that meant amending Section 2 -- he stressed it was no attempt to do away with county superintendents.

REP. SIMPKINS referred to the notes of the Constitutional Convention which he maintained stated very clearly the powers rested with the elected Board of Trustees on the local level.

Proponents' Testimony:

Lance Melton, Montana School Boards Association (MSBA), said originally HB 246 struck any reference to school supervision by the Superintendent of Public Instruction as well as county superintendents. He said MSBA appreciated the work of both but felt it appropriate to specify the duties of both offices; therefore, the "capital letter amendments" in the bill. He urged the Committee's support.

Don Waldron, Montana Rural Education Association (MREA), said HB 246 wouldn't change the operation of the local schools, local school boards, county superintendents or OPI. He expressed support for the bill as it was changed.

Opponents' Testimony

Eric Feaver, Montana Education Association (MEA), said HB 246 was unnecessary, suggesting if the amendments to HB 246 implied the Constitutional position of the Superintendent of Public Instruction was now under the supervision or authority of the Board of Public Education, the bill was inappropriate. He felt HB 246 didn't do that directly; however, it implied it. **Mr. Feaver** reiterated how the Constitution clearly provided for the Superintendent of Public Instruction as well as the Board of Public Education; however, one entity was not over the other and this legislation should not make it so.

{Tape: 1; Side: A; Approx. Time Count: 3:20 p.m.}

Questions From Committee Members and Responses:

SEN. MIGNON WATERMAN asked the reason for the bill, if HB 246 as amended didn't change the duties of county superintendents, state superintendent or local school boards. **Don Waldron** said it clarified and limited the separation of the duties.

SEN. CASEY EMERSON referred to the yellow highlighted section of (EXHIBIT 1) and asked if the Superintendent was under the legislature and Governor. **Don Waldron** said the real problem the sponsor had was the duties included general supervision because four people having general supervision caused conflicts; therefore, they were specifically outlined.

Closing by Sponsor:

REP. RICHARD SIMPKINS said it had to be understood who was under the executive branch as well as the separation of powers, reiterating the Superintendent and auditor was in the executive branch; therefore, not controlled by the legislature. He maintained it was a difficult line to hold; however, the relationship had to be worked out among the Board of Public Education, Superintendent of Public Instruction and local Boards of Trustees on how schools were managed. **REP. SIMPKINS** contended the very essence of the Constitution was local control; therefore, it was helpful to specifically assign the duties or change the law to address specific duty changes. He said the State Board of Public Education could do just about anything it wanted by just putting it into a rule; in fact, they didn't have to hold hearings. The Superintendent of Public Instruction, however, didn't have that right because those duties were assigned by the legislature.

{Tape: 1; Side: A; Approx. Time Count: 3:26 a.m.}

HEARING ON HB 469

Sponsor: REP. MATT BRAINARD, HD 62, Missoula

Proponents: Jay Sage, Private Citizen
Bobbie Rossignol, Private Citizen
Richard Overcast, Private Citizen

Opponents: Lance Melton, Montana School Boards Association
Don Waldron, Montana Rural Education Association
Larry Fasbender, Great Falls Public Schools
Terry Minow, Montana Federation of Teachers
Eric Feaver, Montana Education Association

Opening Statement by Sponsor:

REP. MATT BRAINARD, HD 62, Missoula, said HB 469 limited the number of mill levy and/or elections to two each calendar year. He said currently school districts could have as many as four such elections between April 1 and the August deadline and people were tired of repeat elections; in fact, when he was campaigning people told him when he ran for the office of a legislator, there was only one election. They wondered why citizens had to return to the polls time after time in school elections.

Proponents' Testimony:

Jay Sage, Private Citizen, said Article II, Section 1, of the Montana Constitution stated government originated with the people, was founded on their will only and was instituted only for the good of the whole; however, the words had little or no meaning when it came to school mill levy elections. He asked the Committee to respect the people's will by passing HB 469.

Bobbie Rossignol, Private Citizen, read her written testimony.
(EXHIBIT 2)

Jim Hollandsworth, Private Citizen, couldn't be present so he sent his testimony with Bobbie Rossignol. (EXHIBIT 3)

Richard Overcast, Private Citizen, said it would be sweet for legislators to be able to say, if they didn't like the outcome of their elections, they'd run it again and again. He said it didn't sound like a democracy and he didn't feel it was right to continue to go to the polls to defeat them. He said human nature was if a person voted the first time, he or she would not go the second time because it seemed unnecessary, especially if the loss was by a large margin. Mr. Overcast suggested eventually people were worn down so the opposition got what it wanted, in spite of the will of the people. He stressed people should not be subjected to this kind of treatment and the practice should be stopped; in fact, he asked to be counted as an upset citizen who didn't like to keep going to the polls. He stated there was

taxpayer cost in running the elections as well as employer cost in employees leaving work to vote at the polls.

Opponents' Testimony:

Lance Melton, Montana School Boards Association (MSBA), addressed the following previous testimony: (1) Legislators had only one chance in their election -- so do school board trustees; (2) Legislators set their budget once every two years -- it's true, but it's set without a vote of the public; school districts were the only governmental agency who submitted their budget to a vote of the people. A school district budget was a complex item which was not easy to understand or explain; in fact, it was funded by state and local dollars, with the state providing a certain amount of money which got districts to a BASE budget and the local dollars funding the amount between the BASE and maximum budget amount. **Mr. Melton** said MSBA felt it was important for the public to be involved in school elections; however, it was difficult to get enough voters to turn out. He reminded the Committee bond elections required a voter turnout of 30%, a super majority and separate super majority of 40% and then 50%; therefore, at times more than two bond elections might have to be held. **Mr. Melton** stressed MSBA felt folks should not be encouraged to stay home and not vote; however, they felt that's what would happen under HB 469 with respect to bond elections.

Mr. Melton explained the amendments in (EXHIBIT 4). He asked the Committee to accept the amendments and take incremental approaches to fixing the problem but allow sufficient time to study the issue, as called for in HJR 23.

Don Waldron, Montana Rural Education Association (MREA), said their four concerns were already addressed but he asked the Committee to oppose HB 469; however, if the bill passed, he hoped the Committee would accept the MSBA amendments.

Larry Fasbender, Great Falls Public Schools, said Great Falls was one of those places who had a number of bond elections before one passed and part of the problem was the voters didn't turn out in sufficient numbers to meet the law requirements. He said if HB 469 wasn't TABLED, at least let the schools have more than two bond elections in order to meet the educational needs of the students. He contended HJR 23 was one way to look at the problem and more closely pass legislation which would accommodate the needs of everybody.

Terry Minow, Montana Federation of Teachers (MFT), said MFT opposed HB 469 in its original as well as amended form. She said running more than one bond election was not a popular decision in local communities; however, it was a decision the local school board could choose to make. She said if the Committee planned to pass the legislation, she hoped the members would look favorably on the MSBA amendments.

Eric Feaver, Montana Education Association (MEA), reiterated the comments already made.

{Tape: 1; Side: A; Approx. Time Count: 3:42 p.m.}

Questions From Committee Members and Responses:

SEN. MIGNON WATERMAN asked REP. MATT BRAINARD if trustees in his area had made a commitment to not run more than one election and then backed out on that promise; if so, why wasn't it solved at the local level. He said his home district had never turned down a bond or mill levy; however, in other districts, (Missoula, for example) mill levy elections and school funding had been very contentious. He stated school board elections themselves didn't seem to be able to handle the problem because there were four elections available, i.e. people thought the school board played games. REP. BRAINARD admitted this was not necessarily a problem across Montana because 90% of the mill levy elections were passed the first time; therefore, the process was properly being followed in many districts. He suggested a reason for poor voter turnout was they didn't think it was critical to vote because they would have four chances; in fact, sometimes they thought if they stayed away from the polls, they could kill the bond issue.

SEN. DELWYN GAGE asked the proponents how many had either run for or served on a school board and was told none had.

SEN. CASEY EMERSON commented bond issues used to require a 40% turnout instead of 30%, could be voted on only by the property owners and passed when they were needed. He wondered if the sponsor had that information. REP. MATT BRAINARD said he hadn't found that in his research.

SEN. MIKE SPRAGUE asked the sponsor's feelings on the amendment of three times. REP. BRAINARD said he hoped the Committee would resist the amendments because he didn't think they would do either the bill or communities any good.

SEN. SPRAGUE said he agreed with the idea not everybody got a second chance to make a first impression, but felt two times was acceptable. He wondered if the sponsor heard the same thing from his constituents. REP. BRAINARD said he heard his constituents say they wanted a "bare bones, no frills" budget the first time and wanted it laid out in a timely fashion which would allow time for discussion. SEN. SPRAGUE asked if two times was acceptable and REP. BRAINARD said it was, in light of the fact 90% of the districts didn't have a problem passing the elections.

SEN. JOHN HERTEL asked if it was true 30% of the voters didn't turn out in Great Falls because they wanted to kill the bond election. Larry Fasbender said he didn't think that was true; rather, he thought it was voter apathy; in fact, only about three Primary Elections in the past ten years saw a voter turnout exceeding 40%, i.e. if Primaries had the same rules as school

elections, nobody would get elected. He stressed the rules were not the same for schools as they were for anybody else;, and he had sat in on school board meetings in which the trustees agonized over what the budget ought to be and at what level it could be passed.

SEN. HERTEL asked if the 30% were removed, would voter turnout increase. **Larry Fasbender** said he didn't know; however, he believed individual responsibility should be active rather than passive.

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

Closing by Sponsor:

REP. MATT BRAINARD asked for the inclusion of (EXHIBIT 5) in the minutes and went on to say voter resistance to any more tax levies was critical because in most cases, the economy was not that good nor were voters that well off; if people had more spendable incomes, they would be more free with their tax money. REP. BRAINARD asked what legislators could do to restore public confidence in the election site. He said in the last session he introduced a bill which would have allowed trustee elections to be held with the General Election and money elections with the Primary Election; however, it failed in the House Committee because it was felt it would be too difficult to combine school elections with the others. He maintained unless the school boards could take the time to get the word out, there would be repeat elections. He suggested it would be better if, after the first one went down, they took the time to inform the public, work on the budget and make it right; in fact, there would be bigger voter turnout. REP. BRAINARD said he resisted the amendments because they didn't change the situation. He reported HB 469 passed the House State Administration Committee with a bipartisan 13-3 vote and the House floor with a bipartisan 70-30 vote, with House Education Committee members voting 12-6 on the third reading vote. He asked the Committee to concur on HB 469.

{Tape: 1; Side: B; Approx. Time Count: 4:01 p.m.}

EXECUTIVE ACTION ON HB 469

Motion: SEN. MIKE SPRAGUE MOVED HB 469 BE CONCURRED IN.

Motion: SEN. MIGNON WATERMAN MOVED DO PASS ON MSBA AMENDMENTS, #3 & #4 (EXHIBIT 4).

Discussion: SEN. MIGNON WATERMAN said she separated the amendments because she saw #3 & #4 as addressing bond issue elections. She used the Malta fire as an illustration, saying the bond issue may have passed, but the voter turnout was too low, perhaps for natural reasons, such as a storm, etc.

SEN. LOREN JENKINS said the Malta situation was already covered on Page 4, Line 7, through unforeseen emergencies.

SEN. DARYL TOEWS said he thought amendments #3 & #4 had merit because there were times when it was appropriate to run another election and sometimes the legislature had not yet solved the funding issue at the time of bond elections.

SEN. CASEY EMERSON said the easier the election became, the harder it would be to pass.

SEN. MIKE SPRAGUE said voter apathy was also noticed during the legislature, in that both proponents and opponents were requested for testimony on bills; if no opponents showed up, committees assumed there was agreement, but it probably was apathy. He maintained the same held true in elections; therefore, it was important for school districts to make a compelling reason for bond issues. He felt voters didn't show up, not because it wasn't convenient but because they were saying something.

SEN. TOEWS commented the way to get people out for school elections was to stir up a controversy just before mill levy election time.

SEN. DELWYN GAGE contended people didn't vote because they were too lazy and removing the 30% would tell the voters they needed to get there to let the school board know their thoughts.

Vote: Motion CARRIED 7-3 ON A ROLL CALL VOTE.

Discussion: **SEN. DELWYN GAGE** said if the Constitution stressed local control, what was the legislature doing making those decisions for school boards; if legislators wanted to make that decision, they should leave the legislature and get onto the school boards. He maintained people who didn't vote were just too lazy.

Substitute Motion: **SEN. DELWYN GAGE** MOVED HB 469 AS AMENDED BE NOT CONCURRED IN.

Discussion: **SEN. LOREN JENKINS** said he had never served on the school board but he got tired of paying taxes. He said he sometimes missed school elections because he was busy farming to make a living and couldn't get to the polls; that didn't mean he was too lazy to go.

SEN. BARRY "SPOOK" STANG said if he couldn't make a school election, he asked for a ballot through the mail and took care of it that way; in fact, he hadn't yet missed a school election. He addressed the issue of local control and suggested the legislature voted on the budget several times as it moved through the legislative process.

SEN. CASEY EMERSON contended the more often an election was run, the smaller the turnout would be. There would be better turnouts if the election was run only once or twice.

SEN. MIGNON WATERMAN said she took exception to the statement trustees were sloppy the first time they ran a mill levy because she served on the school board for 12 years and had worked with trustees around the state. She stated they took their responsibility very seriously and tried to do the best they could. She referred to voter resistance and said if 90% of the levies were being approved, the voter resistance was not huge.

SEN. JOHN HERTEL said it was a privilege to vote in a school election. He said he had served on the school board a few years and election time was not the only time people could complain about the budget.

SEN. DELWYN GAGE WITHDREW THE SUBSTITUTE MOTION HB 469 AS AMENDED BE NOT CONCURRED IN.

Substitute Motion: SEN. BARRY "SPOOK" STANG MOVED TO TABLE HB 469. Motion FAILED 5-5 ON A ROLL CALL VOTE.

Vote: Motion DO CONCUR HB 469 AS AMENDED FAILED 4-6 ON A ROLL CALL VOTE.

EXECUTIVE ACTION ON HB 246

Discussion: SEN. CASEY EMERSON said HB 246 clarified what was said in the Constitution, although he wasn't sure it was absolutely necessary.

SEN. BARRY "SPOOK" STANG said he didn't think HB 246 really solved the problem either, with or without the amendments.

Motion/Vote: SEN. BARRY "SPOOK" STANG MOVED TO TABLE HB 246. Motion CARRIED 6-5 ON A ROLL CALL VOTE. (THE VOTE WAS LEFT OPEN FOR SEN. BILL GLASER WHO WAS EXCUSED).

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

DISCUSSION ON HB 542

Amendments: SEN. DEBBIE SHEA explained the amendments in (EXHIBIT 6).

Discussion: SEN. DARYL TOEWS asked for the logic behind the state always paying for geographic reasons. SEN. SHEA said it was because it was something nobody had control over. Lance Melton said the change from "and" to "or" was because of a technical error in the bill, explaining it seemed the state would pay only if both the subsections (1)(d) and (1)(e) were satisfied. Subsection (1)(b) was because of testimony regarding

geographical features of Montana, something which was not the counties' or districts' fault.

SEN. MIGNON WATERMAN asked if "and" was in existing law and was told it wasn't.

Amendments: **SEN. MIGNON WATERMAN** explained amendments HB054201.AEM (**EXHIBIT 7**), saying it was the intent to let the students presently enrolled in one school finish; however, in the future the school district should make the decision. She said it addressed the possibility of a student moving into a district as a junior who could finish by 2000, and the student who lived next door who was grandfathered in, explaining as long as people knew the cutoff date was July 1, 2000, and the students could finish; in other words, new students coming into the district could do it. The effective date would be upon passage and approval. She felt if the implementation of the bill was delayed for four years, it might as not be passed.

SEN. DARYL TOEWS asked for explanation of "grandfathering in" and "effective date",

Eddye McClure said there was sometimes confusion between "effective date" and "applicability date", explaining "effective date" meant when the language would change, i.e. when the Governor signed the bill. **Ms. McClure** said **SEN. WATERMAN'S** amendment would protect everyone who now lived there as well as those who might move in; however, next year's freshmen would not be able to finish by 2000 so they would get only three years paid for by the state. She stressed the freshmen would know up front that was the situation.

SEN. SHEA asked how many students would be affected by the amendments. **SEN. TOEWS** said that information wasn't available. **Eddye McClure** said both high school and elementary students were affected, stressing again after July 1, 2000, the payment source would differ.

SEN. DEBBIE SHEA said in her amendments the date was 2001 because at this late date families weren't being given the opportunity to think about it; therefore, the 2001 date was more fair.

SEN. MIKE SPRAGUE said the 2001 date made more sense because it would provide less trauma for the students.

SEN. DELWYN GAGE asked when a student was considered enrolled in a school district. **Geralyn Driscoll, Office of Public Instruction (OPI)**, said it could be argued a student enrolled in a school district every year; therefore, it should be defined in Amendments HB054205.AEM (**EXHIBIT 8**).

SEN. BARRY "SPOOK" STANG said his concept would be any student who was currently enrolled should have the opportunity to finish,

{Tape: 2; Side: A; Approx. Time Count: 4:41 p.m.}

i.e. students who were eighth graders this year should get to make the choice for the next year. He stated the date should be a date certain to end it. He said the statement pertaining to there was no harm in spending a little more money to extend it another year was wrong because people in his district were paying so the students could attend in Helena rather than in their own district. He said he agreed with **SEN. RAY PECK** in that if HB 542 was implemented, nothing would happen because neither district would want to change the tax base; it would be cheaper to pay the tuition.

SEN. CASEY EMERSON said he didn't think districts would want to bus students 40 or 50 miles when they could be bused 10 miles the other way because the cost of the education would be raised; therefore, he suggested the students would be left where they now were.

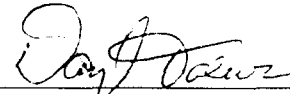
IT WAS SUGGESTED NO ACTION BE TAKEN ON HB 542, BUT TO CONTINUE THE DISCUSSION ON MONDAY, MARCH 24, 1997.

Eddy McClure said the Committee had to decide on two things: (1) The language to change the effective date; (2) Which students should be affected.

SEN. STANG stressed he felt the practice had to end with the class which entered the school this year.

ADJOURNMENT

Adjournment: The meeting adjourned at 4:44 p.m.



SEN. DARYL TOEWS, Chairman



JANICE SOFT, Secretary

DT/JS