

HOUSE BILL NO. 367

INTRODUCED BY DUSSAULT, B. BROWN, BENGTSON,
TVEIT, KEEDY, HARPER, WALDRON, LUND, BERG,
J. O'HARA, HAMMOND, McBRIDE, PHILLIPS

IN THE HOUSE

January 20, 1981	Introduced and referred to Committee on Education.
February 17, 1981	Committee recommend bill do pass as amended. Report adopted.
February 18, 1981	Bill printed and placed on members' desks.
February 21, 1981	Second reading, do pass.
February 23, 1981	Correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 97; Noes, 2. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Education and Cultural Resources.
March 17, 1981	Committee recommend bill be concurrred in as amended. Report adopted.
March 19, 1981	Second reading, concurrred in.
March 21, 1981	Third reading, concurrred in as amended. Ayes, 48; Noes, 0.

IN THE HOUSE

March 23, 1981	Returned from Senate with amendments.
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April 7, 1981

Second reading, amendments concurred in.

On motion rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in. Ayes, 94; Noes, 1. Sent to enrolling.

April 9, 1981

Correctly enrolled.

Signed by President.

Signed by Speaker.

Delivered to Governor.

April 15, 1981

Returned from Governor with recommended amendments.

April 20, 1981

Second reading, Governor's amendments concurred in.

On motion rules suspended and bill placed on third reading this day.

Third reading, Governor's amendments concurred in. Ayes, 91; Noes, 2. Transmitted to Senate.

IN THE SENATE

April 21, 1981

Bill received from House.

April 22, 1981

Second reading, Governor's amendments concurred in.

On motion rules suspended. Bill placed on calendar for third reading this day.

Third reading, Governor's amendments concurred in. Ayes, 47; Noes, 0.

IN THE HOUSE

April 23, 1981

Returned from Senate. Sent
to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 367

INTRODUCED BY *Alissa Ann Bengtson Trent Keedy*
Hope Wulson *Ernie Berg* *J. O'Hara* *Richard*
Bob Brown *McBride* *Phillips*
A BILL FOR AN ACT ENTITLED: "AN ACT TO INSURE THAT STATUTES

THAT IMPOSE NEW DUTIES ON SCHOOL DISTRICTS PROVIDE A SPECIFIC MEANS OF FINANCING."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Statutes imposing new duties on a school district to provide means of financing. (1) Any law enacted by the legislature after July 1, 1981, except any law implementing a federal law or a court decision, that requires a school district to perform an activity or provide a service or facility and that will require the direct expenditure of additional funds shall provide a specific means to finance the activity, service, or facility other than the existing property tax mill levy. Any law that fails to provide a specific means to finance such a service or facility is not effective until a specific means of financing, meeting the requirements of subsection (2), is provided by the legislature.

(2) Financing must be by means of a remission of money by the state to a special fund created for the purpose of funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of

performing the activity or providing the service or facility.

(3) The board of trustees may refuse to comply with or enforce any law that does not meet the requirements of this section.

(4) No legislation passed and approved after [the effective date of this act] supersedes or modifies any provision of this section, except to the extent that the legislation expressly does so.

(5) This section does not apply to any law under which the required expenditure of additional funds by the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing program.

-End-

-2- INTRODUCED BILL
HB 367

Approved by Committee
on Education

1 HOUSE BILL NO. 367
2 INTRODUCED BY DUSSAULT, B. BROWN, BENGTSON,
3 TVEIT, KEEDY, HARPER, WALDRON, LUND, BERG,
4 J. O'HARA, HAMMOND, McBRIDE, PHILLIPS
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO INSURE THAT STATUTES
7 THAT IMPOSE NEW DUTIES ON SCHOOL DISTRICTS PROVIDE A
8 SPECIFIC MEANS OF FINANCING."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Statutes imposing new duties on a school
12 district to provide means of financing. (1) Any law enacted
13 by the legislature after July 1, 1991, except any law
14 implementing a federal law or a court decision, that
15 requires a school district to perform an activity or provide
16 a service or facility and that will require the direct
17 expenditure of additional funds shall provide a specific
18 means to finance the activity, service, or facility other
19 than the existing property tax mill levy. Any law that fails
20 to provide a specific means to finance such a service or
21 facility is not effective until a specific means of
22 financing, meeting the requirements of subsection (2), is
23 provided by the legislature.

24 (2) Financing must be by means of a remission of money
25 by the state ~~to a special fund created~~ for the purpose of

1 funding the activity, service, or facility. Financing must
2 bear a reasonable relationship to the actual cost of
3 performing the activity or providing the service or
4 facility.

5 ~~(3) The board of trustees may refuse to comply with or~~
6 ~~enforce any law that does not meet the requirements of this~~
7 ~~section. IF THE BOARD OF TRUSTEES BELIEVE THAT ANY LAW DOES~~
8 ~~NOT COMPLY WITH THE PROVISIONS OF THIS [ACT] THEY MAY APPEAL~~
9 ~~TO THE STATE BOARD OF PUBLIC EDUCATION FOR RELIEF FROM~~
10 ~~COMPLYING WITH OR ENFORCING THAT LAW. THE BOARD OF TRUSTEES~~
11 ~~MAY REFUSE TO COMPLY WITH OR ENFORCE THE LAW IF GRANTED~~
12 ~~NONCOMPLIANCE RELIEF BY THE STATE BOARD OF PUBLIC EDUCATION.~~
13 ~~THE STATE BOARD OF PUBLIC EDUCATION SHALL GRANT~~
14 ~~NONCOMPLIANCE RELIEF IF IT FINDS THAT:~~

15 ~~(A) COMPLIANCE WITH THE LAW WOULD REQUIRE A~~
16 ~~SIGNIFICANT EXPENDITURE BY THE SCHOOL DISTRICT; AND~~

17 ~~(B) THE LAW DOES NOT MEET THE FUNDING REQUIREMENTS OF~~
18 ~~THIS [ACT].~~

19 (4) No legislation passed and approved after [the
20 effective date of this act] supersedes or modifies any
21 provision of this section, except to the extent that the
22 legislation expressly does so.

23 (5) This section does not apply to any law under which
24 the required expenditure of additional funds by the board of
25 trustees is an insubstantial amount that can be readily

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1 absorbed into the budget of an existing program.

-End-

HOUSE BILL NO. 367

INTRODUCED BY DUSSAULT, B. BROWN, BENGTSO,
TVEIT, KEEDY, HARPER, WALDRON, LUND, BERG,
J. O'HARA, HAMMOND, McBRIDE, PHILLIPS

A BILL FOR AN ACT ENTITLED: "AN ACT TO INSURE THAT STATUTES
THAT IMPOSE NEW DUTIES ON SCHOOL DISTRICTS PROVIDE A
SPECIFIC MEANS OF FINANCING."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Statutes imposing new duties on a school
district to provide means of financing. (1) Any law enacted
by the legislature after July 1, 1981, except any law
implementing a federal law or a court decision, that
requires a school district to perform an activity or provide
a service or facility and that will require the direct
expenditure of additional funds shall provide a specific
means to finance the activity, service, or facility other
than the existing property tax mill levy. Any law that fails
to provide a specific means to finance such a service or
facility is not effective until a specific means of
financing, meeting the requirements of subsection (2), is
provided by the legislature.

(2) Financing must be by means of a remission of money
by the state to a special fund created for the purpose of

funding the activity, service, or facility. Financing must
bear a reasonable relationship to the actual cost of
performing the activity or providing the service or
facility.

(3) ~~The board of trustees may refuse to comply with or
enforce any law that does not meet the requirements of this
section. IF THE BOARD OF TRUSTEES BELIEVE THAT ANY LAW DOES
NOT COMPLY WITH THE PROVISIONS OF THIS [ACT] THEY MAY APPEAL
TO THE STATE BOARD OF PUBLIC EDUCATION FOR RELIEF FROM
COMPLYING WITH OR ENFORCING THAT LAW. THE BOARD OF TRUSTEES
MAY REFUSE TO COMPLY WITH OR ENFORCE THE LAW IF GRANTED
NONCOMPLIANCE RELIEF BY THE STATE BOARD OF PUBLIC EDUCATION.
THE STATE BOARD OF PUBLIC EDUCATION SHALL GRANT
NONCOMPLIANCE RELIEF IF IT FINDS THAT:~~

- (A) COMPLIANCE WITH THE LAW WOULD REQUIRE A
SIGNIFICANT EXPENDITURE BY THE SCHOOL DISTRICT; AND
(B) THE LAW DOES NOT MEET THE FUNDING REQUIREMENTS OF
THIS [ACT].

(4) No legislation passed and approved after [the
effective date of this act] supersedes or modifies any
provision of this section, except to the extent that the
legislation expressly does so.

(5) This section does not apply to any law under which
the required expenditure of additional funds by the board of
trustees is an insubstantial amount that can be readily

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1 absorbed into the budget of an existing program.

-End-

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INTRODUCED BY DUSSAULT, B. BROWN, BENGTON,

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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(2) Financing must be by means of a remission of money by the state ~~to a special fund created~~ for the purpose of

funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

~~(3) The board of trustees may refuse to comply with or enforce any law that does not meet the requirements of this section.~~ IF THE BOARD OF TRUSTEES BELIEVE OF A SCHOOL DISTRICT BELIEVES THAT ANY LAW DOES NOT COMPLY WITH THE PROVISIONS OF THIS [ACT] THEY, THE BOARD MAY APPEAL TO THE STATE BOARD OF PUBLIC EDUCATION FOR RELIEF FROM COMPLYING WITH OR ENFORCING THAT LAW. THE BOARD OF TRUSTEES MAY REFUSE TO COMPLY WITH OR ENFORCE THE LAW IF GRANTED NONCOMPLIANCE RELIEF BY THE STATE BOARD OF PUBLIC EDUCATION. THE STATE BOARD OF PUBLIC EDUCATION SHALL GRANT NONCOMPLIANCE RELIEF IF IT FINDS THAT:

(A) COMPLIANCE WITH THE LAW WOULD REQUIRE A SIGNIFICANT SUBSTANTIAL EXPENDITURE BY THE SCHOOL DISTRICT THAT CANNOT BE READILY ABSORBED AS PROVIDED IN SUBSECTION (5); AND

(B) THE LAW DOES NOT MEET THE FUNDING REQUIREMENTS OF THIS [ACT].

(4) No legislation passed and approved after [the effective date of this act] supersedes or modifies any provision of this section, except to the extent that the legislation expressly does so.

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1 (5) This section does not apply to any law under which
2 the required expenditure of additional funds by the board of
3 trustees is an insubstantial amount that can be readily
4 absorbed into the budget of an existing program.

-End-

March 17, 1981

SENATE STANDING COMMITTEE REPORT
(Education and Cultural Resources)

That House Bill No. 367 be amended as follows:

1. Page 2, line 7.

Following: "TRUSTEES"

Strike: "BELIEVE"

Insert: "of a school district believes"

2. Page 2, line 8.

Following: "[ACT]"

Strike: "THEY"

Insert: ", the board"

3. Page 2, line 9.

Following: "THE"

Strike: "STATE"

4. Page 2, line 12.

Following: "THE"

Strike: "STATE"

5. Page 2, line 13.

Following: "THE"

Strike: "STATE"

6. Page 2, line 16.

Following: line 15

Strike: "SIGNIFICANT"

Insert: "substantial"

Following: "DISTRICT"

Insert: "that cannot be readily absorbed as provided in subsection
(5)"

April 14, 1981

GOVERNOR'S PROPOSED AMENDMENT TO HOUSE BILL NO. 367;
REFERENCE COPY, AS FOLLOWS:

1. Page 2, Line 5 through line 21
Strike: subsection 3 in its entirety
Renumber: subsequent subsections

1 HOUSE BILL NO. 367

2 INTRODUCED BY OUSSAULT, B. BROWN, BENGTSON,

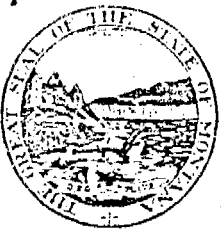
3 TVEIT, KEEDY, HARPER, WALDRON, LUND, BERG,

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6 A BILL FOR AN ACT ENTITLED: "AN ACT TO INSURE THAT STATUTES
7 THAT IMPOSE NEW DUTIES ON SCHOOL DISTRICTS PROVIDE A
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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:11 Section 1. Statutes imposing new duties on a school
12 district to provide means of financing. (1) Any law enacted
13 by the legislature after July 1, 1981, except any law
14 implementing a federal law or a court decision, that
15 requires a school district to perform an activity or provide
16 a service or facility and that will require the direct
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18 means to finance the activity, service, or facility other
19 than the existing property tax mill levy. Any law that fails
20 to provide a specific means to finance such a service or
21 facility is not effective until a specific means of
22 financing, meeting the requirements of subsection (2), is
23 provided by the legislature.24 (2) Financing must be by means of a remission of money
25 by the state ~~to a special fund created for the purpose of~~1 funding the activity, service, or facility. Financing must
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3 performing the activity or providing the service or
4 facility.5 ~~(3) The board of trustees may refuse to comply with or~~
6 ~~enforce any law that does not meet the requirements of this~~
7 ~~section. IF THE BOARD OF TRUSTEES BELIEVE OF A SCHOOL~~
8 ~~DISTRICT BELIEVES THAT ANY LAW DOES NOT COMPLY WITH THE~~
9 ~~PROVISIONS OF THIS [ACT] THEY THE BOARD MAY APPEAL TO THE~~
10 ~~STATE BOARD OF PUBLIC EDUCATION FOR RELIEF FROM COMPLYING~~
11 ~~WITH OR ENFORCING THAT LAW. THE BOARD OF TRUSTEES MAY REFUSE~~
12 ~~TO COMPLY WITH OR ENFORCE THE LAW IF GRANTED NONCOMPLIANCE~~
13 ~~RELIEF BY THE STATE BOARD OF PUBLIC EDUCATION. THE STATE~~
14 ~~BOARD OF PUBLIC EDUCATION SHALL GRANT NONCOMPLIANCE RELIEF~~
15 ~~IF IT FINDS THAT~~16 ~~(A) COMPLIANCE WITH THE LAW WOULD REQUIRE A~~
17 ~~SIGNIFICANT SUBSTANTIAL EXPENDITURE BY THE SCHOOL DISTRICT~~
18 ~~THAT CANNOT BE READILY ABSORBED AS PROVIDED IN SUBSECTION~~
19 ~~(5) AND~~20 ~~(B) THE LAW DOES NOT MEET THE FUNDING REQUIREMENTS OF~~
21 ~~THIS [ACT].~~22 (4) (3) No legislation passed and approved after [the
23 effective date of this act] supersedes or modifies any
24 provision of this section, except to the extent that the
25 legislation expressly does so.

1 ~~(5)(4)~~ This section does not apply to any law under
2 which the required expenditure of additional funds by the
3 board of trustees is an insubstantial amount that can be
4 readily absorbed into the budget of an existing program.

-End-



TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

April 14, 1981

The Honorable Jean A. Turnage
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return House Bill No. 367, "AN ACT TO INSURE THAT STATUTES THAT IMPOSE NEW DUTIES ON SCHOOL DISTRICTS PROVIDE A SPECIFIC MEANS OF FINANCING," without my signature and recommend the attached amendment.

Subsection 3 of the bill provides that the trustees of a school district may appeal to the board of public education for relief from complying with a law which does not comply with the provisions of the bill. It further vests the board of public education with the authority to grant noncompliance relief upon finding that compliance with the law would require a substantial expenditure by the school district and that the law fails to meet the funding requirements of the bill.

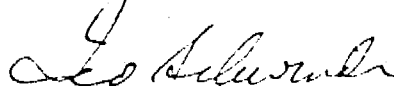
Making a determination whether one law meets other legal requirements and granting relief from the obligations of a statute is a judicial function. Under Montana's Constitution, judicial powers are vested in the judiciary. A provision such as this, which purports to vest judicial power in an agency, is a nullity under Article III, Section 1, Separation of Powers.

Senator Turnage and Representative Marks
April 14, 1981
Page Two

Deleting subsection 3 remedies the Constitutional
problem yet leaves the substance of the bill intact.

I urge your concurrence in this amendment.

Sincerely,



TED SCHWINDEN
Governor