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House BILL NO. 367

INTRODUCED BY

Jore Brainard *Mafer*

A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING PROVISIONS REQUIRING A PARENT TO ENROLL A CHILD IN SCHOOL AND PROVISIONS REQUIRING A CHILD TO ATTEND SCHOOL; AMENDING SECTIONS 20-1-308, 20-3-206, 20-5-111, 20-5-201, AND 20-7-435, MCA; REPEALING SECTIONS 20-5-102, 20-5-103, 20-5-104, 20-5-105, 20-5-106, 20-5-107, 20-5-108, AND 20-5-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, children are the wards of their parents and not wards of the state; and

WHEREAS, parents are accountable to God, not to the state, for the education and training of their children; and

WHEREAS, parental authority in the education of their children has been recognized over the years in our nation by such examples as Thomas Jefferson's statement, "It is better to tolerate the rare instance of a parent refusing to let his child be educated, than to shock the common feelings and ideas by the forcible asportation and education of the infant against the will of the father" and by a 1925 U.S. Supreme Court conclusion in Pierce v. Society of Sisters, that "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. . . . The child is not the mere creature of the state; . . ."; and

WHEREAS, pertaining as it does to epistemology, values, and purpose, education is basically a religious function, and as such, its free exercise is not to be infringed upon in any way by legislative action; and

WHEREAS, the Montana Board of Public Education states that "Traditionally, historically, and legally, the education of the child is the responsibility of the parents", and the proper discharge of responsibility presupposes the authority to control and act on that responsibility; and

WHEREAS, the Montana compulsory enrollment laws presuppose that a child is a ward of the state rather than a ward of the parent; and

WHEREAS, the Montana Constitution provides no basis for compulsory enrollment; therefore statutory law should in no way interfere with parents' authority regarding the education of their children;

1 and

2 WHEREAS, there is ambiguity and inconsistency between the Montana Constitution and Montana
3 statute regarding compulsory enrollment, which influences the reluctance of private educators to recognize
4 state authority in this area, while public officials feel an obligation to enforce statutes of questionable
5 foundation and ill-defined requirements; and

6 WHEREAS, for the sake of both parents and public school officials, it should be clear that the public
7 school system is responsible only for the children whose parents choose to enroll them in a public school;
8 and

9 WHEREAS, there is no evidence that compulsory enrollment or attendance laws have contributed
10 to the national literacy rate to a degree that would satisfy any "compelling interest" of the state; and

11 WHEREAS, compulsory enrollment or attendance laws may require that children attend school, but
12 the public school system cannot guarantee that a child in the school system will become literate or
13 educated.

14

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

16

17 **Section 1.** Section 20-1-308, MCA, is amended to read:

18 "**20-1-308. Religious instruction released time program.** (1) The trustees of an elementary or high
19 school district may provide for a religious instruction released time program under which a pupil may be
20 released from regular school attendance for a period not to exceed 2 hours per week for the purpose of
21 receiving religious instruction upon written request, renewed at least annually, of the pupil's parent or
22 guardian.

23 (2) ~~No A~~ religious instruction released time program may not be established or administered in ~~such~~
24 a way that public school property is ~~utilized~~ used for the purpose of religious instruction.

25 (3) ~~No public moneys~~ Public money may not be used, directly or indirectly, for ~~such~~ religious
26 instruction.

27 (4) ~~Any A~~ period for which a pupil is released under a religious instruction released time program
28 is part of the school day and week for purposes of 20-1-301, 20-1-302, ~~20-5-103~~, 20-9-311, and all other
29 provisions of Title 20, and ~~such a~~ release may not adversely affect the pupil's attendance record."

30

1 **Section 2.** Section 20-3-206, MCA, is amended to read:

2 "**20-3-206. Additional positions.** In ~~his~~ the capacity as county superintendent, ~~he~~ the county
3 superintendent also shall serve as:

4 (1) the ~~chairman~~ presiding officer of the county transportation committee, as prescribed by
5 20-10-131;

6 (2) a member of the high school boundary commission of the county, as prescribed by 20-6-304;
7 and

8 (3) ~~an attendance officer for a district under the conditions prescribed by 20-5-104; and~~

9 (4) ~~the clerk of a joint board of trustees under the conditions prescribed by 20-3-361."~~

10

11 **Section 3.** Section 20-5-111, MCA, is amended to read:

12 "**20-5-111. Responsibilities and rights of parent who provides home school -- rights of child in**
13 **home school.** ~~Subject to the provisions of 20-5-109, a~~ A parent has the authority to instruct ~~his~~ the
14 parent's child, stepchild, or ward in a home school and is solely responsible for:

15 (1) the educational philosophy of the home school;

16 (2) the selection of instructional materials, curriculum, and textbooks;

17 (3) the time, place, and method of instruction; and

18 (4) the evaluation of the home school instruction."

19

20 **Section 4.** Section 20-5-201, MCA, is amended to read:

21 "**20-5-201. Duties and sanctions.** (1) A ~~Except as provided in subsection (5), a pupil shall:~~

22 (a) shall comply with the policies of the trustees and the rules of the school that the pupil attends;

23 (b) shall pursue the required course of instruction;

24 (c) shall submit to the authority of the teachers, principal, and district superintendent of the district;

25 and

26 (d) must be subject to the control and authority of the teachers, principal, and district
27 superintendent while the pupil is in school or on school premises, on the way to and from school, or during
28 intermission or recess.

29 (2) A pupil who continually and willfully disobeys the provisions of this section, shows open
30 defiance of the authority vested in school personnel by this section, defaces or damages any school

1 building, school grounds, furniture, equipment, book belonging to the district, or harms or threatens to harm
2 another person or the person's property is liable for punishment, suspension, or expulsion under the
3 provisions of this title. When a pupil defaces or damages school property, the pupil's parent or guardian
4 is liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent,
5 or any trustee and the proof of any damage.

6 (3) In addition to the sanctions prescribed in this section, the trustees of a high school district may
7 deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil
8 from participating in school activities. The trustees may not take action under this subsection until the
9 incident or infraction causing the consideration has been investigated and the trustees have determined that
10 the high school pupil was involved in the incident or infraction.

11 (4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is
12 responsible for the cost of school materials or the loss or damage of school property until the pupil or the
13 pupil's parent or guardian satisfies the obligation.

14 (b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil
15 and the pupil's parent or guardian pursuant to subsection (4)(a) shall:

16 (i) upon receiving notice that the pupil has transferred to another school district in the state, notify
17 the pupil's parent or guardian in writing that the school district to which the pupil has transferred will be
18 requested to withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

19 (ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

20 (iii) at the same time, notify the school district of any financial obligation of the pupil and request
21 the withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

22 (iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school
23 district to which the pupil has transferred; and

24 (v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the
25 school district's decision to request that another school district withhold a pupil's grades, diploma, or
26 transcripts.

27 (c) Upon receiving notice that a school district has requested the withholding of the grades,
28 diploma, or transcripts of a pupil under this subsection (4), a school district to which the pupil has
29 transferred shall withhold the grades, diploma, or transcripts of the pupil until it receives notice, from the
30 district that initiated the decision, that the decision has been rescinded under the terms of subsection (4)(a).

1 (5) A pupil may not be compelled to attend a class or activity that is not required for graduation
2 if the pupil is excused from the class or activity by the pupil's parent or guardian."
3

4 **Section 5.** Section 20-7-435, MCA, is amended to read:

5 **"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state**
6 **residential treatment programs for eligible children with emotional disturbances.** (1) It is the intent of the
7 legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities
8 be provided with an appropriate educational opportunity in a cost-effective manner, including the provision
9 of a free appropriate public education for eligible children with disabilities that is consistent with state
10 standards for the provision of special education and related services. General education programs for eligible
11 children without disabilities must be provided in accordance with the requirements for a nonpublic school
12 under the provisions of ~~20-5-109~~ subsection (7).

13 (2) The superintendent of public instruction may contract with an in-state children's psychiatric
14 hospital or residential treatment facility for provision of an educational program for an eligible child in the
15 hospital or treatment facility.

16 (3) Whenever the superintendent of public instruction contracts with an in-state children's
17 psychiatric hospital or residential treatment facility for provision of an educational program for an eligible
18 child in the children's psychiatric hospital or residential treatment facility, the superintendent of public
19 instruction shall:

20 (a) ensure the provision of a free appropriate public education and an education that is consistent
21 with the requirements ~~for a nonpublic school in 20-5-109~~ in subsection (7) for children attending the
22 hospital or residential treatment facility;

23 (b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs
24 for providing special education, including the costs of retirement benefits, federal social security system
25 contributions, and unemployment compensation insurance;

26 (c) from appropriations provided for this purpose, fund any approved allowable costs under this
27 section, with the exception of services for which reimbursement is made under any provision of state or
28 federal law or an insurance policy;

29 (d) provide funding for allowable costs according to a proration based on average daily
30 membership.

1 (4) A supplemental education fee or tuition may not be charged for an eligible Montana child who
2 receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital
3 or residential treatment facility.

4 (5) If a children's psychiatric hospital or residential treatment facility fails to provide an education
5 ~~in accordance with 20-5-109~~ or a free appropriate public education under the provisions of this part for an
6 eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a
7 contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with
8 the school district in which the children's psychiatric hospital or residential treatment facility is located for
9 the supervision and implementation of an appropriate educational program that is consistent with
10 accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children attending
11 the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school
12 district must include all education and related services costs that may be negotiated under the provisions
13 of subsection (3) and all education and related services costs necessary to fulfill the requirements of
14 providing the child with an education.

15 (6) Funds provided to a district under this section, including funds received under the provisions
16 of 20-7-420:

17 (a) must be deposited in the miscellaneous programs fund of the district that provides the education
18 program for an eligible child, regardless of the age or grade placement of the child who is served under a
19 negotiated contract; and

20 (b) are not subject to the budget limitations in 20-9-308.

21 (7) For the purposes of this section, an educational program in a psychiatric hospital or residential
22 treatment facility:

23 (a) shall maintain records on pupil attendance and disease immunization and make the records
24 available to the county superintendent of schools on request;

25 (b) shall provide at least 180 days of pupil instruction or the equivalent in accordance with
26 20-1-301 and 20-1-302;

27 (c) must be housed in a building that complies with applicable local health and safety regulations;
28 and

29 (d) shall provide an organized course of study that includes instruction in the subjects required of
30 public schools as a basic instructional program pursuant to 20-7-111."

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0367, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act abolishing provisions requiring a parent to enroll a child in school and provisions requiring a child to attend school.

ASSUMPTIONS:


1. HB 367 repeals compulsory school attendance requirements, effective on passage and approval.
2. It is assumed that few parents will withdraw their children from the public school system as a result of the repeal of the compulsory attendance laws.
3. The Office of Public Instruction does not anticipate a change in enrollment and ANB projections for the 1997 biennium as a result of this proposal.

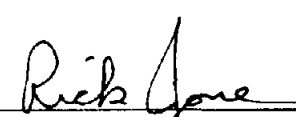
FISCAL IMPACT: Insignificant fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

TECHNICAL NOTES:

 2-2-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


RICK JORE, PRIMARY SPONSOR DATE

Fiscal Note for HB0367, as introduced

HB 367