

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**SELECT COMMITTEE ON SCHOOL FUNDING**

**Call to Order:** By **CHAIRMAN JOHN COBB**, on February 2, 1993, at 3:00 p.m.

**ROLL CALL**

**Members Present:**

Rep. John Cobb, Chairman (R)  
Rep. Ray Peck, Vice Chairman (D)  
Rep. Bill Boharski (R)  
Rep. Russell Fagg (R)  
Rep. Mike Kadas (D)  
Rep. Angela Russell (D)  
Rep. Dick Simpkins (R)  
Rep. Dave Wanzenried (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Andrea Merrill, Legislative Council  
Eddy McClure, Legislative Council  
Dori Nielson, Office of Public Instruction  
Evy Hendrickson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: None  
Executive Action: None

Clay Smith, representing the Attorney General's Office, said he has been working on both the underfunded lawsuit (Helena) case and the Montana Rural Education Association case. The Helena case began trial in January of this year and concluded after two weeks. They will submit post trial findings and briefs the next day. The district court issued an order in mid December precluding the use by the state of a substantial amount of evidence relating to test result comparisons of various kinds developed in connection with the case. Five days after the district court decision, a petition was filed for supervisory control with the Supreme Court and it is still pending.

Mr. Smith said the significance of the petition goes beyond the admission of the test results because, at base, what led Judge Sherlock to exclude the evidence really goes to the heart of the interpretation of the equal education opportunity provision. Mr.

Smith said it is his hope that, whatever else comes out of this litigation, they will get a definitive interpretation of that provision. Unless they do, they will likely be back in court again. They are currently in Helena II and hopefully can avoid III, IV and V.

Mr. Smith said to summarize the position of attorney Jim Goetz, the equal education opportunity provision requires equalization of per student expenditure levels except that disparities are warranted by what educational factors. Those factors can include special education costs and other areas of expenditures not yet defined. In its decision, the Supreme Court used the term but did not explain it in any detail. Judge Loble's 1988 decision also used the term but didn't explain it in any detail. Judge Sherlock may require a definition; assuming that his December 18 order is correct, they will be receiving a determination on this issue.

The State's position is that equal education opportunity has to be read in the overall context of Article X, Section 1 of the Montana Constitution. It means that access to a constitutionally sound educational system and the components of that system are described in the first section of subsection 3: access to "a basic system of free quality public elementary and secondary schools" and access to that system where the state shares the cost of the system which is funded and distributed in an equitable manner.

Mr. Smith said the test score evidence they proposed to introduce went to the existence of a basic quality system of schools which is another way of saying a basic, quality education.

Judge Sherlock ruled in December that equal educational opportunity has an independent meaning. That means, even assuming that the requirements of subsection 3 are met, the equal educational opportunity provision forbids disparities that are substantial in nature from equalized spending. In the state's view, the constitution does not prohibit expenditure disparities because the constitutional convention recognized that local levies would continue to be a component of the system. As long as they have locally voted levies and any degree of trustee discretion in the setting of budgets and expenditure levels, there will be an inequality in terms of expenditures. There will also be an inequality in the kinds of programs that are offered from one school to another. That inequality may or may not arrive from differences in spending. Some schools use their money more efficiently than others.

Mr. Smith said in a state with 520 districts there's not only going to be great differences in spending throughout the state but also different kinds of educational programs.

Mr. Smith reviewed Table 1 of the federal range ratios for Montana elementary and high school districts using ANB categories

and 1990-91 enrollment and general fund expenditures. **EXHIBIT 1A** He said this is being reviewed by **Judge Sherlock** and contrasts the party's differing views of what is relevant in terms of determining levels of expenditure disparities in the system. The plaintiffs are a selected group of 64 districts and their demographics are somewhat different than the state as a whole.

The plaintiffs contend the federal range ratios are the crux of the case. The ratios measure the difference in expenditures between the 95th and the 5th percentile. The 95th percentile constitutes the highest spending districts; the 5th is the lowest. **Mr. Smith** said the ratios are somewhat misleading because there are lots of factors in Montana's school finance system, e.g., the weighted nature of the foundation program and the fact that some districts have substantial amounts of PL 874 assistance which basically is on top of anything the state supplies. There is a good deal of discretion for school district trustees to spend over the foundation program either with the permissive amount or the over-permissive component.

The State has argued before **Judge Sherlock** that a more meaningful comparison would be to group the plaintiff districts together and to compare their average expenditures to the state (pages 2 through 7, **EXHIBIT 1A**). **Mr. Smith** said **Judge Sherlock** has been given 300 pages of exhibits.

**Mr. Smith** reviewed the information relating to elementary and high school expenditures per student. **EXHIBIT 1A** This compares expenditures by grouping districts into three categories. Under the schedule a student receives 2.5 more dollars in schedule payments if he/she is in the 24 and below category than a student in the over 600 category; 2.5 to 1. The actual expenditure is 2.1 to 1. This shows that the foundation program schedules are not weighted to the disadvantage of the student in the lowest category. The ratios are much better under the schedules from the small school's standpoint than they are using actual expenditures.

**Mr. Smith** distributed descriptive statistics for the entire state, the plaintiff districts and local millages for districts for the committee's information. **EXHIBIT 1B**

**REP. SIMPKINS** asked if the teacher compensation issue might support a statewide salary plan. **Mr. Smith** said no, they don't have to have a state salary matrix for teachers. **REP. SIMPKINS** asked if he feels **Judge Sherlock** will be going in depth this time to remedy the constitution in order to accomplish the wording in Article X. **Mr. Smith** responded no, although to a certain extent **Judge Sherlock's** December 18 order suggests he is going to bypass a lot of that.

One of the issues in the case is what constitutes an educationally relevant factor; the State has argued that it's the district trustees' decision to spend more on educationally

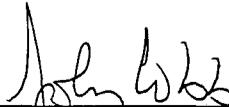
relevant factors. The constitutional convention stated that they recognized that, even after the new language went into the constitution, there would continue to be locally voted levies.

REP. KADAS asked when Mr. Smith thought the Supreme Court would rule on this. He responded that the matter is under supervisory control and could lead to one of three things: 1) they could dismiss the application; 2) they could issue an order of setting an ordinary briefing schedule; or 3) they could issue a full-blown decision.

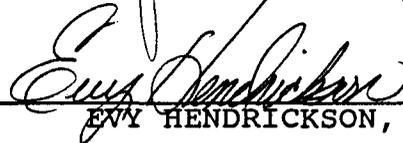
Mr. Smith said Judge Sherlock has indicated a desire to move quickly towards a decision, but he will certainly wait until the Supreme Court acts on the application.

**ADJOURNMENT**

Adjournment: 5:00 p.m.



REP. JOHN COBB, Chairman



EVY HENDRICKSON, Secretary

JC/eh



EXHIBIT 1A  
 DATE 2-2-93  
 HB \_\_\_\_\_

Table 1

Federal Range Ratios for Montana Elementary and High School Districts  
 Using ANB Categories and 1990-91 Enrollment and General Fund Expenditures

ANB Category	Total		Percent		No. of Dist.	GF/ENR Range (\$)		Restricted Range		Federal Range Ratio	
	ANB	ENR	ANB	ENR		Pupil Wid.(\$)	Dist. Wid.	Pupil Wid.	Dist. Wid.		
<u>Elementary School Districts</u> <i>3th pupil</i>											
1-9	286	287	0.3	0.3	44	1469-9655	2633-8240	2682-8494	2.130	2.167	
10-17	520	467	0.5	0.4	42	1632-9555	1725-6653	2439-6653	2.857	1.728	
18-40	1223	1169	1.2	1.1	49	2011-12400	2132-4917	2132-5407	1.306	1.536	
41-100	5001	5008	4.7	4.5	72	2019-10621	2328-6980	2408-6978	1.998	1.898	
101-300	15580	16014	14.7	14.4	87	2143-8752	2507-5317	2558-5317	1.121	1.079	
>300	82983	88060	78.6	79.3	70	2260-5649	2579-4069	2579-4454	.578	.727	
All Dist.	105593	111005	100.0	100.0	364	1469-12400	2579-4520	2364-6699	.753	1.834	
1-100	7030	6931	6.7	6.2	207	1469-12400	2237-6978	2210-7272	2.119	2.290	
>100	98563	104074	93.3	93.8	157	2143-8752	2558-4069	2558-5244	.591	1.050	
<u>High School Districts</u>											
1-24	123	115	0.3	0.3	6	8799-17439	8799-17439	8799-17439	.982	.982	
25-40	825	791	1.9	1.9	24	6686-18077	6834-15183	6834-15183	1.222	1.222	
41-100	3658	3477	8.6	8.4	55	3835-13707	4503-11425	4620-11812	1.537	1.557	
101-200	5194	4980	12.3	11.9	34	4215-9957	4233-7805	4384-7805	.844	.780	
201-300	3562	3509	8.4	8.5	15	3795-8603	3893-5907	3893-5907	.517	.517	
301-600	7799	7656	18.4	18.4	18	3374-10205	3540-6216	3540-6216	.756	.756	
>600	21248	21101	50.1	50.7	11	3412-4892	3661-4317	3661-4317	.179	.179	
All Dist.	42409	41629	100.0	100.0	163	3374-18077	3598-8473	3835-13126	1.355	2.423	
1-100	4606	4383	10.9	10.5	85	3835-18077	4503-13126	4841-13707	1.915	1.831	
>100	37803	37246	89.1	89.5	78	3374-10205	3598-6185	3661-7416	.719	1.026	

92 Budget Elem \$ per Student, All Dists (per ENR)

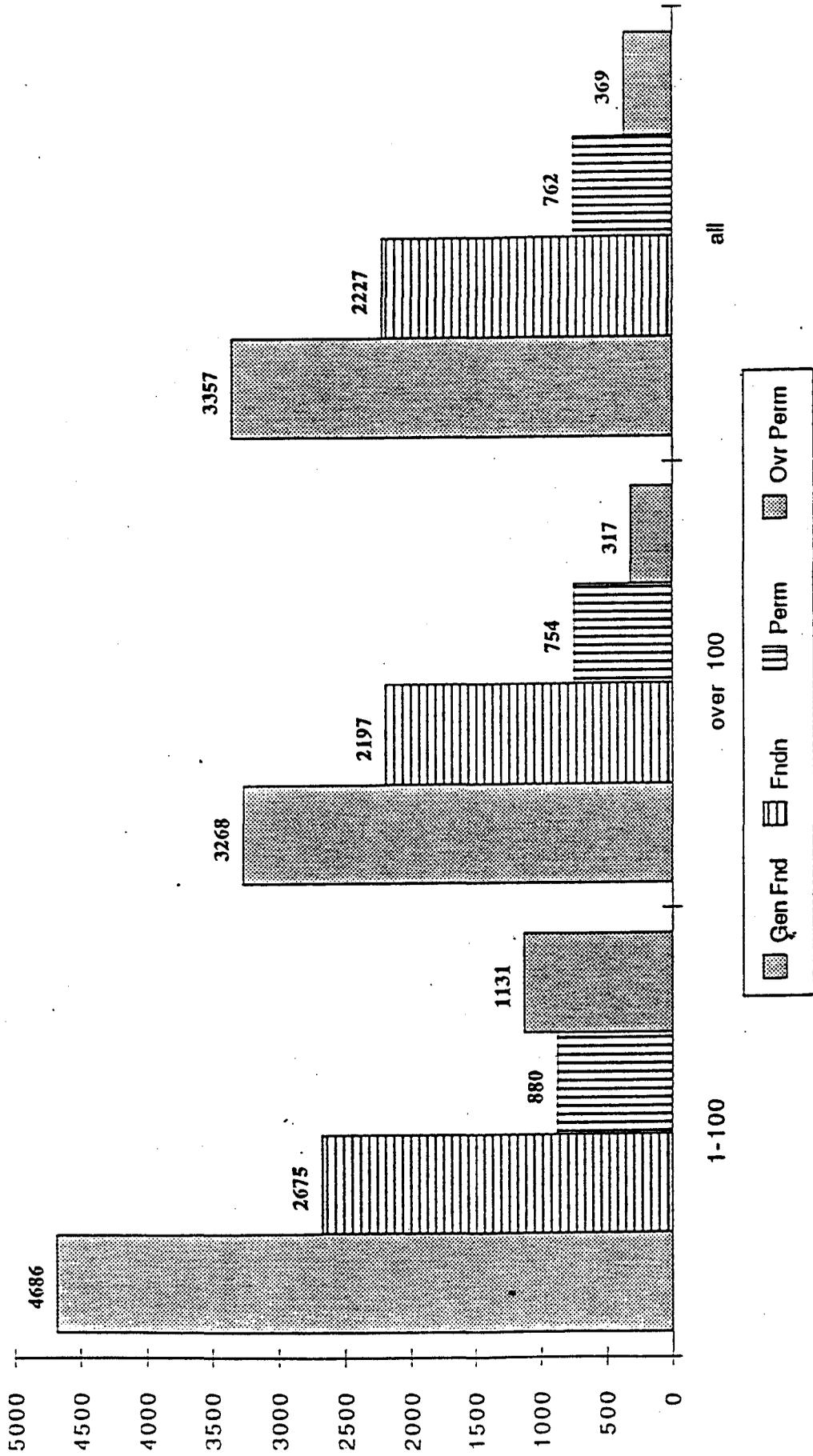
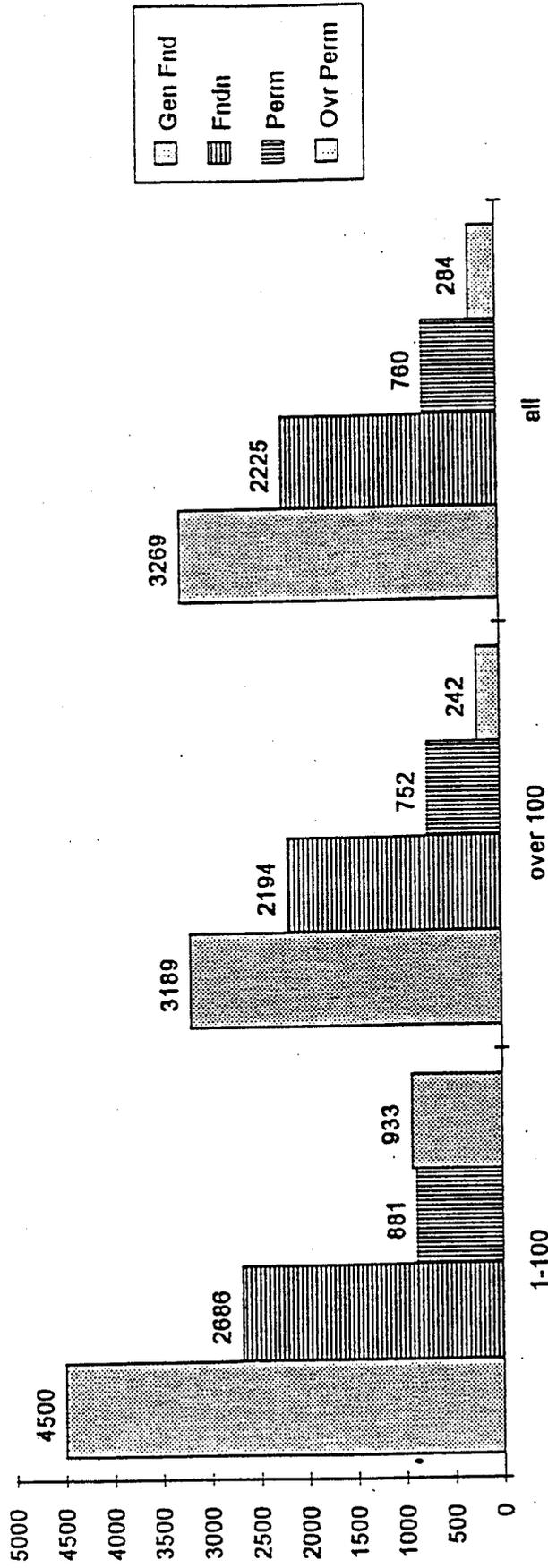
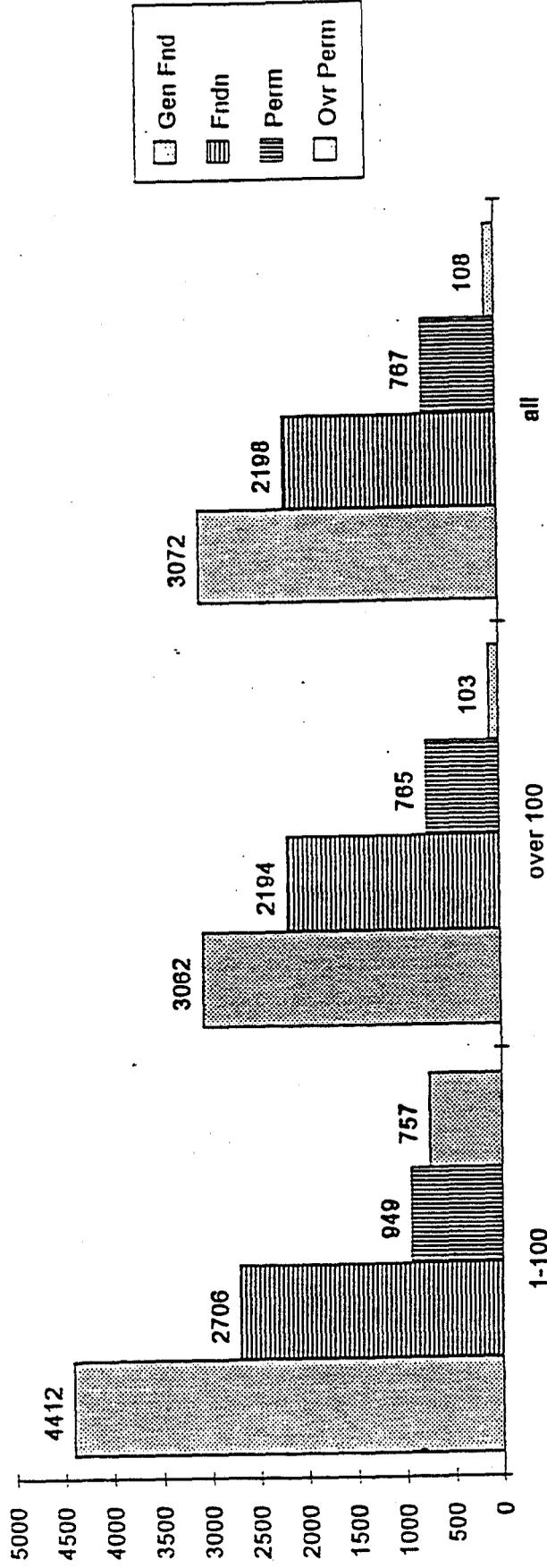


EXHIBIT 1A  
 DATE 2-2-93

92 Budget Elem \$ per student No Fed \$ (per ENR)



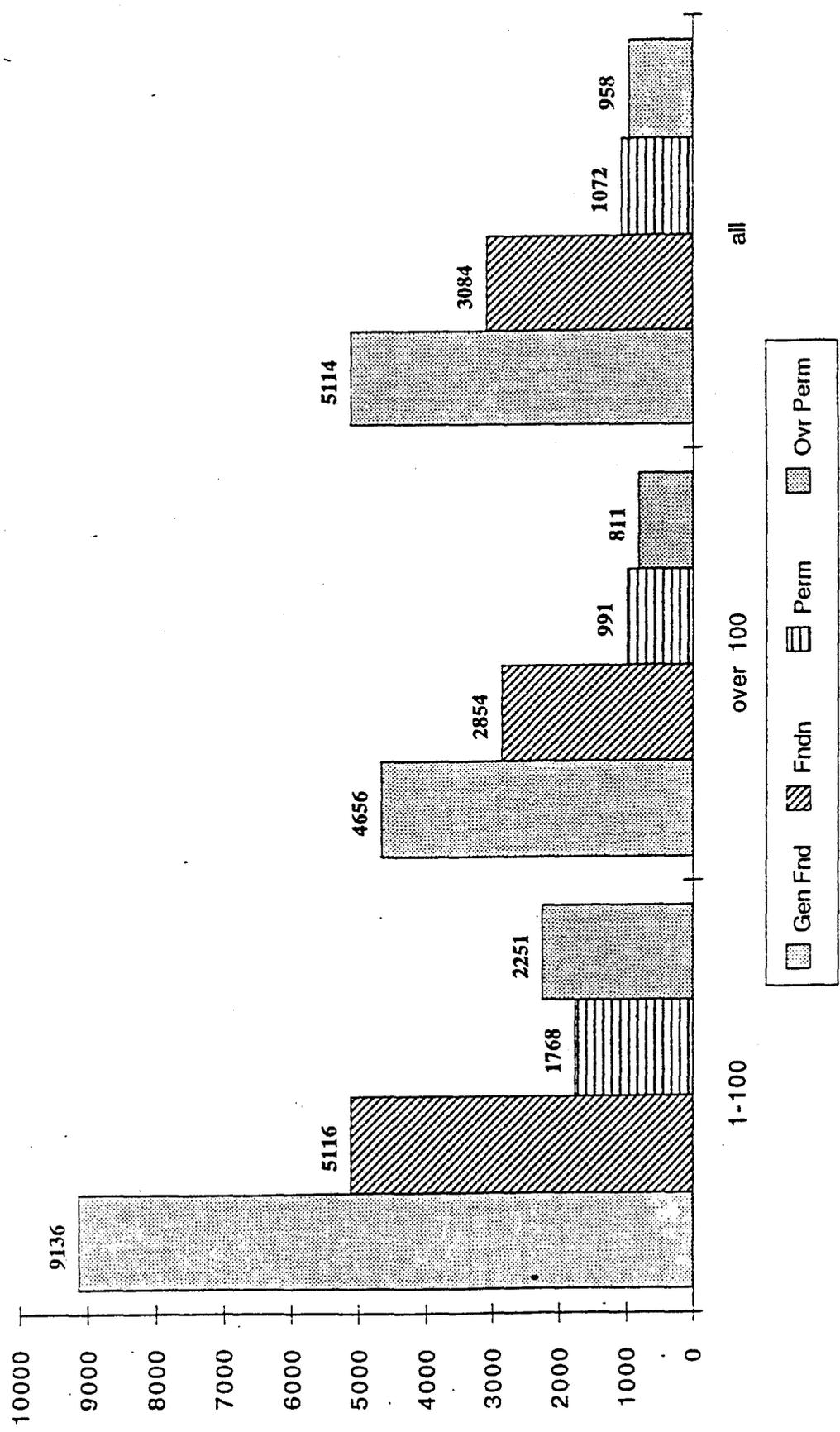
92 Budget Elem \$ per Student Plaintiff Dist (per ENR)



169

EXHIBIT 1A  
DATE 2-2-93

### 92 Budget HS \$ per Student All Dists (per ENR)



92 Budget HS \$ per Student No Fed \$ (per ENR)

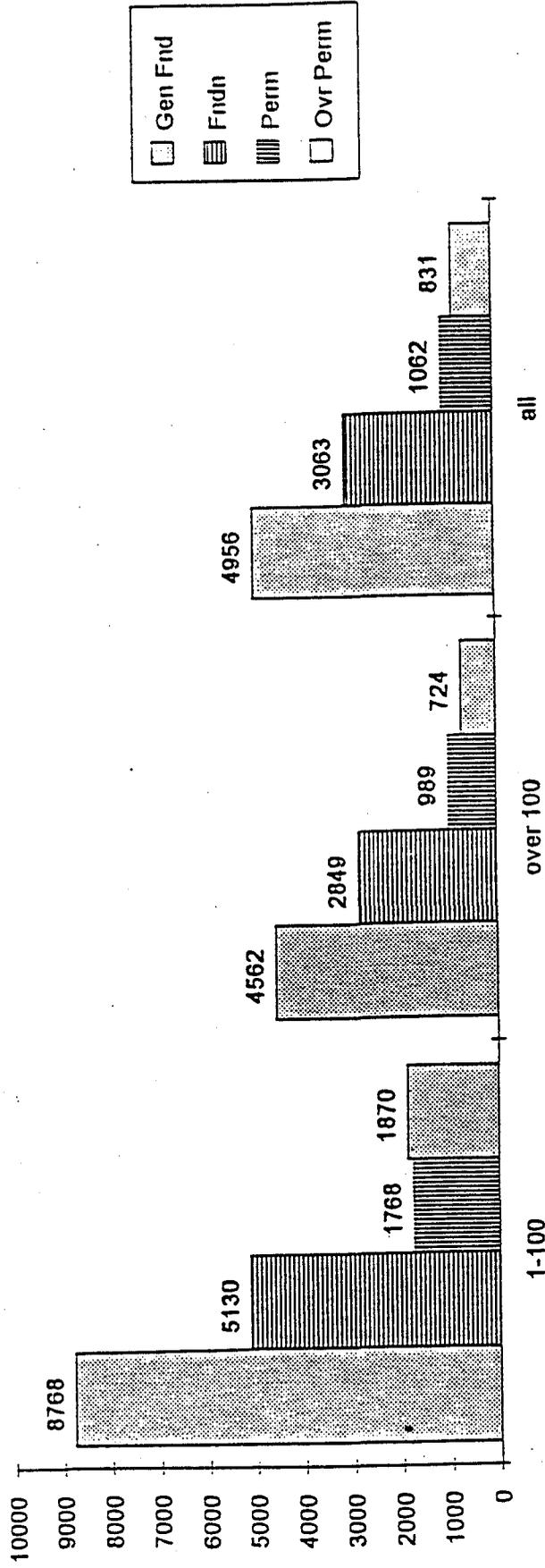


EXHIBIT 1A  
DATE 2-2-93  
X

92 Budget HS \$ per Student Plaintiff Dist (per ENR)

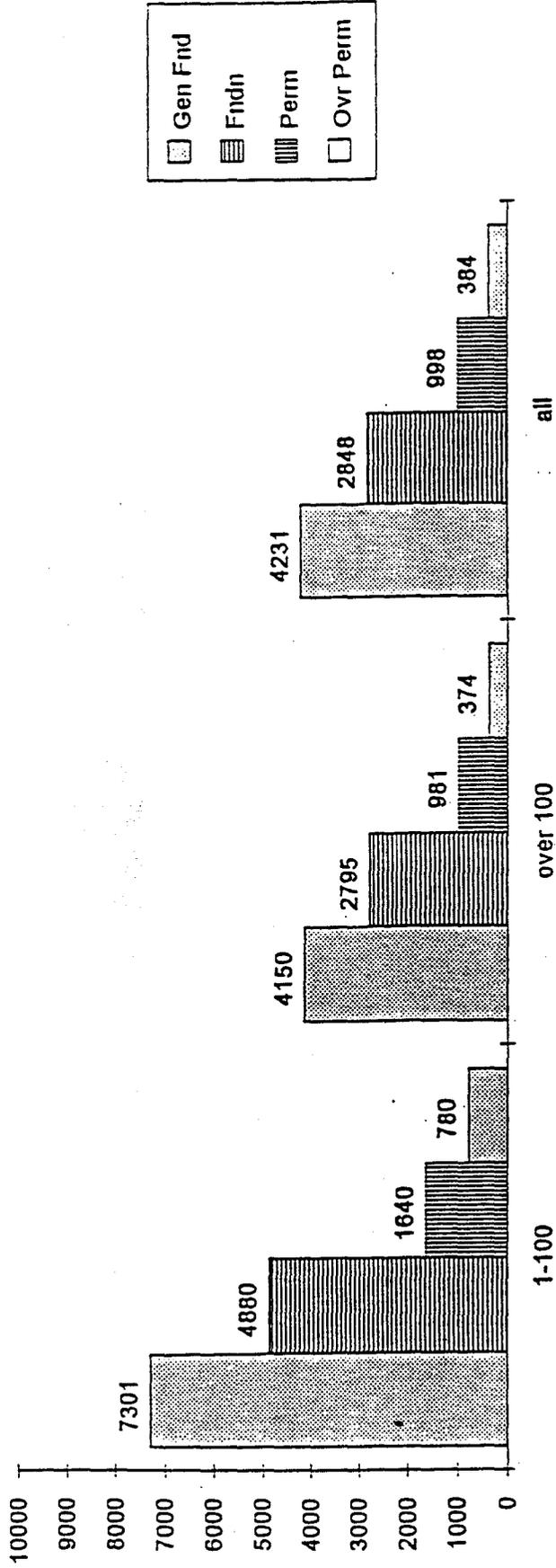


EXHIBIT 18  
 DATE 2-2-93  
 HB \_\_\_\_\_

Table 1. Descriptive Statistics for the Entire State

CATEGORY	N	ANB	ANB	BUDGET	BUDGET	EXPEND	EXPEND	PPEXP	PPEXP	PFMILVAL	PFMILVAL
		MEAN	ST. DEV.	MEAN	ST. DEV.	MEAN	ST. DEV.	MEAN	ST. DEV.	MEAN	ST. DEV.
1	45	6.58	1.88	\$32,644.91	\$8,040.86	\$28,523.44	\$7,481.19	\$4,620.44	\$1,478.81	\$101.41	\$103.76
2	30	11.27	1.01	\$43,142.63	\$18,876.74	\$37,657.65	\$14,827.38	\$3,315.38	\$1,090.59	\$94.94	\$161.32
3	10	17.00	15.30	\$61,196.00	\$17,563.22	\$51,000.66	\$13,817.72	\$3,284.92	\$813.02	\$42.40	\$33.49
4	1	20.00	-	\$51,014.00	-	\$44,619.05	-	\$2,230.95	-	\$10.50	-
5	49	24.90	5.69	\$86,161.47	\$44,062.38	\$72,028.38	\$24,999.55	\$2,912.32	\$657.78	\$36.43	\$28.47
6	72	69.46	17.37	\$326,197.68	\$132,629.90	\$294,559.93	\$126,018.70	\$4,211.38	\$1,366.82	\$39.05	\$70.87
7	87	179.08	53.34	\$657,639.17	\$235,121.51	\$625,167.78	\$23,078.13	\$3,535.52	\$931.61	\$19.30	\$31.16
8	70	1185.47	1696.32	\$3,887,630.87	\$5,380,191.83	\$3,831,718.84	\$5,362,217.30	\$3,275.07	\$603.66	\$15.85	\$27.84
9	6	20.50	3.51	\$357,440.50	\$70,518.03	\$208,012.60	\$37,195.77	\$10,273.73	\$1,670.92	\$77.58	\$29.75
10	24	34.38	4.24	\$361,328.67	\$85,947.51	\$326,084.99	\$94,959.40	\$9,495.23	\$2,467.89	\$78.94	\$46.20
11	53	65.21	19.60	\$487,246.83	\$119,344.06	\$452,750.31	\$103,153.56	\$7,315.30	\$2,074.85	\$49.81	\$31.08
12	36	149.83	28.75	\$827,608.17	\$259,746.64	\$788,615.62	\$226,866.47	\$5,294.33	\$1,261.13	\$46.65	\$36.69
13	15	237.47	30.87	\$1,163,770.60	\$363,776.86	\$1,095,864.07	\$236,682.66	\$4,665.93	\$1,143.99	\$39.74	\$14.88
14	18	433.28	76.28	\$2,129,535.17	\$853,555.89	\$1,981,557.42	\$552,246.45	\$4,643.00	\$1,359.37	\$45.40	\$80.33
15	11	1931.64	1345.77	\$7,888,533.55	\$5,437,399.65	\$784,935.57	\$5,456,326.61	\$4,048.49	\$311.42	\$27.86	\$4.45

Table 2. Descriptive Statistics for Plaintiff Districts

CATEGORY	N	ANB MEAN	ANB ST. DEV.	BUDGET MEAN	BUDGET ST. DEV.	EXPEND MEAN	EXPEND ST. DEV.	PPEX MEAN	PPEX ST. DEV.	PPMV MEAN	PPMV ST. DEV.
1	8	6.50	2.39	\$36,495.75	\$10,480.17	\$30,780.90	\$9,776.66	\$5,172.30	\$1,918.56	\$150.46	\$92.80
2	4	11.75	0.96	\$46,991.25	\$13,209.20	\$39,761.81	\$9,331.20	\$3,368.64	\$664.23	\$77.00	\$48.77
3	2	15.00	1.41	\$75,925.00	\$23,753.13	\$56,619.34	\$3,217.28	\$3,718.32	\$142.02	\$46.58	\$37.86
4	1	20.00		\$51,014.00		\$44,619.05		\$2,230.95		\$10.50	
5	13	25.31	5.06	\$85,060.46	\$24,730.58	\$70,396.23	\$12,082.12	\$2,857.79	\$644.49	\$53.66	\$45.22
6	26	67.35	19.26	\$356,890.50	\$120,577.15	\$313,541.12	\$121,298.41	\$4,617.28	\$1,141.55	\$60.84	\$111.73
7	27	181.15	\$2.00	\$701,778.33	\$200,491.20	\$637,949.22	\$179,075.19	\$3,610.79	\$897.83	\$29.61	\$53.09
8	9	482.78	122.45	\$1,631,249.22	\$474,924.84	\$1,579,681.58	\$438,716.19	\$3,267.41	\$310.01	\$33.25	\$52.86
9	3	22.33	2.08	\$270,147.67	\$66,015.16	\$224,343.41	\$51,524.87	\$9,975.42	\$1,497.90	\$85.46	\$44.55
10	16	34.63	4.40	\$387,900.56	\$90,581.12	\$347,895.55	\$109,538.75	\$10,030.57	\$2,810.05	\$88.80	\$51.72
11	20	67.75	20.52	\$521,854.60	\$122,583.05	\$472,625.25	\$97,126.35	\$7,258.59	\$1,278.81	\$57.66	\$25.76
12	12	152.08	31.50	\$897,837.92	\$269,446.99	\$824,135.07	\$253,938.85	\$5,387.25	\$992.29	\$62.08	\$55.20
13	5	226.40	26.42	\$1,221,979.60	\$359,809.77	\$1,155,752.73	\$255,154.58	\$5,067.35	\$639.16	\$45.46	\$17.00
14	0										
15	0										
Overall	146	112.32	121.43	\$541,334.86	\$439,981.26	\$496,112.22	\$420,325.52	\$5,303.53	\$2,608.40	\$60.25	\$69.99

Table 12. Local Millages for Districts

All Districts

	Mean	Std. Dev.	Std. Error	Count
Total County	59.360	10.893	.475	527
Local Perm.	14.366	15.829	.690	527
Local Voted	6.975	13.534	.590	527
Total Local	34.743	27.199	1.185	527

Plaintiff Districts

	Mean	Std. Dev.	Std. Error	Count
Total County	60.353	12.940	1.071	146
Local Perm.	8.979	13.192	1.092	146
Local Voted	11.793	15.395	1.274	146
Total Local	30.961	21.001	1.738	146

Non - Plaintiff Districts

	Mean	Std. Dev.	Std. Error	Count
Total County	58.980	9.992	.512	381
Local Perm.	16.430	16.278	.834	381
Local Voted	5.129	12.278	.629	381
Total Local	36.192	29.122	1.492	381

Comparison Non-Plaintiffs

	Mean	Std. Dev.	Std. Error	Count
Total County	59.525	10.010	.557	323
Local Perm.	15.832	16.892	.940	323
Local Voted	4.558	12.074	.672	323
Total Local	34.772	30.234	1.682	323