

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON EDUCATION**

Call to Order: By **CHAIRMAN GAY ANN MASOLO**, on February 19, 2001
at 3:00 P.M., in Room 137B Capitol.

ROLL CALL

Members Present:

Rep. Gay Ann Masolo, Chairman (R)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Bob Lawson, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Norma Bixby (D)
Rep. Gary Branae (D)
Rep. Nancy Fritz (D)
Rep. Verdell Jackson (R)
Rep. Hal Jacobson (D)
Rep. Larry Lehman (R)
Rep. Jeff Mangan (D)
Rep. Joe McKenney (R)
Rep. John Musgrove (D)
Rep. Alan Olson (R)
Rep. Ken Peterson (R)
Rep. Butch Waddill (R)
Rep. Allan Walters (R)
Rep. Merlin Wolery (R)

Members Excused: None.

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Nina Roatch, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 584, 2/14/2001
Executive Action: HB 584; HB 416; HB 557;
HB 558; HB 161; HB 181

HEARING ON HB 584

Sponsor: REPRESENTATIVE NANCY RICE FRITZ, HD 69, Missoula

Proponents: Bob Vogel, MSBA

**Opponents: Tom Belodeau, MEA-MFT
Dave Senn, TRS
George Day, Retired Teacher**

Opening Statement by Sponsor:

REPRESENTATIVE NANCY FRITZ, HD 69, Missoula, said the bill is an emergency measure to deal with the teacher shortage in Montana. The act authorizes schools to employ retired teachers for positions the schools are otherwise unable to fill. She directed the committee to Section 1 of the bill. "A teacher or specialist who retired on or before August 31, 2000, may be employed on a part-time or full-time basis by an employer without the loss or interruption of any payments or retirement benefits." Up to this time retired teachers can only work one-third time and still receive their benefits. The bill does not include administrators and it does not encourage present teachers to retire. It requires that the teacher be fully or temporarily certified. The district cannot hire the teacher unless it was unable to fill the position with a non-retired teacher or specialist. There must be a monthly report to OPI. That may have to be amended out if OPI doesn't see a need for such a report. The retired teacher re-employed under this section is ineligible for active membership under rule 1920. OPI and TRS shall report to an appropriate committee in the 2003 Legislative Session regarding the implementation and results of the bill. If a teacher is hired under these conditions and decides he wants to invest in retirement benefits, he must stop taking retirement benefits and go into the system as a regular teacher. If the teacher does that, when he comes out again and begins to collect retirement benefits, the years would be added into the benefits, but it would be under the same conditions under which he retired the first time. The bill authors didn't want teachers who had an early teacher retirement and then went back to teaching to qualify for greater benefits than the ones the teacher retired under the first time. This act will terminate June 30, 2003. The amendments give justification to the emergency act. The purpose of the bill and amendments is to attempt to solve the teacher shortage. One amendment says that an employer who hires the retiree shall make contributions to the Teacher's Retirement System as provided in 19-20-605. The district will be obligated to make contributions to the retirement system even though the

teacher will never get any benefit. She doesn't want a district to hire a retired teacher just so it won't have to make the contribution and the state needs to keep the Teachers Retirement System healthy. A retired member re-employed under the act is not exempt from any of employer's adopted hiring practices or the provisions of any applicable corrective bargaining agreement. There is an amendment talking about what OPI needs to report that would help the Legislature know who is being hired and where and how it is working. The **SPONSOR** has presented most of these ideas to the Montana Teachers Retirement System Board. They are concerned about possible challenges to the viability of that fund if it is drawn down because retired teachers are taking positions instead of regularly hired teachers. She doesn't think they were too concerned about the first two years. The main concern was, what will the Legislature do in 2003 if this is working and they don't find other solutions, might they expand this before the date of 2003. One of the persons on the board justly criticized her for not having the data available for justifying doing this now. He suggested it should wait for two years. After the meeting she went to OPI asking for the data about what positions are out there that need to be filled. What certification areas are most in need? Fortunately for her, just last year CSPAC commissioned a study on those questions. That study is now available and she was able to receive one copy. She urged the committee to seek a copy. The report identifies three teaching fields where nearly all sizes of schools are having difficulty hiring: music, special education and foreign languages. Guidance and library were following closely in demand. Elementary is identified as a difficult area by many remote rural schools. The report gives four main reasons why Montana is unable to attract and retain teachers. First, school districts of all sizes identified part time and multiple subject assignments as creating the most difficulty in hiring. The areas already mentioned are most likely to be part-time positions. These positions are the first to go when resources are cut and young teachers are reluctant to take these positions. Second, the main reason for shortages is low salaries and the lack of benefits. One hundred-five of two hundred rural districts do not offer insurance. The states recruiting Montana teachers, new and retired, offer higher retirement benefits and insurance. Issues related to rural isolation were identified as the third most common problem in filling positions. They are also related to retention problems. The last reason for the state's teacher shortage is the size of many elementary districts. Montana has more than one hundred elementary districts with forty or fewer students. The average salaries paid in these districts are often extremely low. Many are in the \$12,000-\$19,000 range with no benefits. The report suggests possible strategies for recruiting and retaining teachers. Particular attention is paid to keeping retirement age teachers and putting already retired teachers back to work.

Proponents' Testimony:

Bob Vogel, MSBA, stated that, in concept, the bill addresses continuing concerns in education. He is a recently retired member of CSPAC, so he has been around the issue of recruitment and retention for some time. This approach, looking at retired teachers and administrators to fill positions that are badly needed by Montana school districts, is one of the approaches they have looked at for quite some time. They still have a concern on the other end of the spectrum when they have new teachers and they want to keep them in Montana so that the state will continue to have a mature workforce in the teaching and administrative ranks. In talking about their support of the bill, he would like to mention that they would be a stronger supporter of the bill if it did include administrators. Another area that has been talked about in his association is that Montana needs help in the administrative ranks. He did notice in the new section of the bill, line 21, subsection b, there is a safeguard in the bill that the employer supplies evidence to OPI each year that the employer has been unable to fill the position with a non-retired teacher or specialist. They would hope that the committee would take a look at the phrase, "being unable" and look at language which is similar to that, but talk about a high degree of difficulty in finding teachers and not use the word unable. This bill may serve as a partial fix for some of the districts that are in dire need of certified employees. The real concern remains, how does Montana attract and retain new teachers and administrators? One of their concerns on the bill is, can TRS afford this action? What will it do to the TRS system? The concept of the bill is a good one.

Opponents' Testimony:

Dave Senn, Executive Director, Teacher Retirement System, said they rise in opposition to the bill because it has the potential to adversely affect the Teacher Retirement System. With the amendments that the **SPONSOR** has proposed, they relieve some of their concern, but a sunset is no guarantee. Expanding this proposal could be very expensive. Since April of last year they have looked at four different proposals to allow retirees to return to work in a full-time capacity and receive their retirement benefits. Those proposals have cost as little as 1% of salary and as much as 4%. When he says as little as 1%, that is five million dollars a year, 4% would be twenty million dollars a year. It is not inexpensive to fund these proposals through the retirement system. They think there are other alternatives and maybe better alternatives. He hasn't seen the report that **REPRESENTATIVE FRITZ** referred to, although it sounds like it has many recommendations that would affect TRS, he is

surprised that they haven't had an opportunity to comment on them. Another problem with this bill is, by the time they make all the exceptions to the bill, it is going to have little impact on recruiting teachers even in rural Montana or across the board, regardless of the size of the school district. Right now they see a lot of early retirement incentives to teachers in districts. They've seen them over the years, they are still being offered, and the most common reason that they hear for offering these early retirements is that districts will save money. They can hire someone down at the bottom of the salary matrix and retire someone at the top of the salary matrix. They can use the saved dollars in the budget elsewhere. Sometimes they increase the salary matrix for everyone that is left. The other reason they hear is because of declining enrollment they need fewer teachers. This bill does not seem to jive well with either of the reasons for offering early retirement incentives. There is something wrong, there is a conflict there. Why do we have to hire teachers back for a teacher shortage if we are offering retirement incentives? We need more study on these issues. Maybe offering full-time work to retired teachers is not the answer to the problem. Recently there was testimony to this committee about school funding, the results of declining enrollment and the projections for the future declines for enrollment across the state. The problem as he sees it, is when there is declining enrollment in school districts, the school districts lose money from the state. Why not let them keep that money? Why not let them use it to hire teachers, let them pay more to teachers. He has seen at least one bill in this session that would allow districts to consolidate and keep the state aid, rather than penalize them for consolidation. He would propose the same thing would work when teachers are laid off because of declining enrollment rather than reduce the funding that the state provides. This proposal is not good retirement policy. Retirement is something that someone receives at the end of their career. It shouldn't be a supplemental income planned to encourage people to retire and then come back and work at a lower salary. This will significantly lower salaries. He sees a very bright spot in **HB 294** which is carried by **REPRESENTATIVE LEWIS** that would allow the teachers' retirement board to increase the guaranteed annual benefit. It currently is a 1½ % increase paid to retirees once they have been retired for at least three years.

Tom Bilodeau, MEA-MFT, said they reluctantly stand in opposition to the bill. **HB 584** correctly recognizes a serious and growing staffing problem in Montana schools. Unfortunately, in their view, it does not offer an effective remedy or even a partial fix for the problem. The bill is bad pension policy. It provides a very short term and special TRS benefit for a select group of currently retired TRS members. As a general rule for pensions, the idea is to generate retirement income necessary to meet the

needs in the time of retirement. It is also a general goal to apply benefits equitably across all subgroups within a retirement system. This bill suggests that for those persons retired under TRS as of August 2000 who are willing to take a position, which may only last two years or less, and can find a school employer willing to hire them, that they can come on to employment in that school and continue to receive full TRS benefits even though all other current and future TRS retirees would not be eligible to receive those TRS benefits. In their view, it is a misuse of the pension system to subsidize employment staffing practices.

Mr. Senn also noted a serious concern that they have. They do not trust the sunset. This issue will inevitably, in one form or another, surface again in 2003. If there are even a few school districts which believe that this program has assisted them in staffing positions that they may or may not otherwise been able to fill, they are likely to have great difficulty in avoiding a stampede to expand and prolong the provisions of this bill. Even if they want to wait until the 2003 session, before they express concern about the sunset and whether or not it will stick, there is great concern that the TRS board consistent with its funding policies of recent years, its very prudent management of the TRS funds will not, as authorized under **HB 294**, vote to improve TRS Guaranteed Annual Benefit Adjustment (GABA) benefits this coming January. It is their expectation, should **HB 584** pass, the TRS board is likely to postpone that decision until after the 2003 legislative session. That would be a great loss of benefits for all current and future TRS retirees. It is a bad exchange to have to occur on behalf of a very limited and select group of retirees who would receive a special benefit from TRS which is not available to others. They believe the bill will not do much to solve staffing problems. Very few retirees will qualify for employment under the bill and very few school districts will have any particular budget or staffing reason to fill those vacancies, which promises under the terms of the bill, short-term temporary teachers. The bill is likely to undermine already depressed Montana teacher salaries. The proposed amendments to the bill suggest that retirees hired under terms of the bill will be guaranteed collective bargaining protections as they may exist in the district that they are hired into. That's good as far as it goes, but it is necessary to keep in mind what it means to have collective bargaining in statutory protections for a newly hired teacher in school districts in the state. Most new teachers have very limited statutory, salary or benefit protections under statute or contract. Most collective bargaining agreements limit the experience or step placement of a new teacher to the fifth or seventh step of the salary schedule regardless of how many years of experience that teacher may actually bring to the district. Accordingly, retirees under the bill are likely to be paid ten to fifteen thousand dollars less than they earned in their former teacher positions and ten to fifteen thousand

dollars less than their colleagues with similar experience employed in the new school district. With very limited school budgets most school districts will continue to seek qualified, or of late, less qualified new teachers who will come in at the BA base salary, typically five to six thousand dollars less than step five or seven on the salary schedule. Their budgets won't permit them to look toward retirees who may come in at twenty to twenty-five percent above the salaries they could pay a new BA graduate. New teachers are denied other statutory and contract rights. New teachers are not tenured. They are likely to have limited grievance processing rights. They are likely to have less leave accrual or future severance payments and if the bill's teacher is hired at 3/4 or 1/2 time, in most school districts they are entitled to only a prorated employer contribution towards health insurance premiums or, in some cases, no employer assistance towards health insurance at all. There are some districts which exclude from eligibility for the group health plan those individuals who work halftime or less. A further complication may arise in the now rare instance where a retiree does have some form of premium or health insurance assistance from his or her former employer. There are early retirement incentives in place, there is one presently proposed in Boulder, Helena undertook one recently that provides limited employer assistance for post retirement health premiums, but the assistance terminates if the individual is hired into a position that offers an employer-sponsored health plan. In MEA-MFT's view, **HB 584** threatens to derail future GABA improvements, improvements that would accrue to all current and future TRS members and retirees. It does this in exchange for allowing a select group of TRS retirees to receive a special state subsidized pension subsidized salary and the opportunity to work at what are likely to be heavily discounted pay levels. Montana does need to do something to address the staffing problem and to address the level of teacher and administrator pay. This is not the bill to do it.

Questions from Committee Members and Responses:

REPRESENTATIVE ALAN OLSON asked **Tom Bilodeau** if a district had a position that it couldn't fill, no applicants, what is the difference if it was to bring back a teacher out of retirement in Montana to put into the position verses bringing a retired teacher in from another state? **Mr. Bilodeau** said they believe there is significant difference. Currently under their TRS system, a teacher can return into a teaching position covered by TRS and earn up to one third of their final average compensation. That allows individuals an opportunity to return and earn partial income. That arrangement is funded and anticipated by the TRS fund itself. This proposal suggests that a retiree will be

brought in full time into a position that the district self-certifies by unspecified criteria as being difficult or unable to fill. Full time replacement of a staff position, when that position is going to be paid at what they would anticipate step 5 or step 7 of the salary schedule, undermines overall teachers' salaries and the future of teachers' salaries in the state. It undermines the revenue flow, the contributions that accrue to TRS. It is unanticipated or difficult to estimate the impact on TRS. TRS may experience costs that will undermine its ability to provide a living retirement income for those who have spent a career teaching in the state. The real problem here is salaries, let's not beat around the bush. Montana did not have a problem hiring teachers in the 60's and 70's and early 80's in the rural areas of the state. That was a time when salaries in Montana were competitive to what was offered in other states. By the early 90's Montana stands about 20% behind national average beginning salaries. By the end of the 90's Montana is 25% to 30% behind in both beginning and career level salaries. This bill attempts to use retirement funds to subsidize an already depressed and insufficient salary level for Montana teachers. That doesn't fix the problem or help over the long term to bring teachers into the rural areas of the state and keep them there.

REPRESENTATIVE OLSON asked if the district could find a way to certify, to OPI's satisfaction, that it had a position it could not fill, would that take care of one of his concerns?

Mr. Bilodeau said it would help, but still leaves their concern about undermining the salary base and the maximum through subsidization of the salaries by TRS pension funds.

REPRESENTATIVE OLSON said when we are looking at undermining the salary base, if Montana gets a retired educator from another state, that person is going to receive the five year teaching credit also. He asked him to explain why that is okay.

Mr. Bilodeau said that you don't do it by using TRS pension funds to subsidize on an expanded basis what's allowed under current law. One third continued employment is allowed under current law and that is budgeted for in the TRS funds and is available. That doesn't jeopardize the fund itself or its future. **REPRESENTATIVE**

OLSON asked what if this idea was to be run on an annual basis where every year a district had to certify that it couldn't fill the opening? **Mr. Bilodeau** said they would run into a problem with the wording, "couldn't fill." That is somewhat different than, "did not have applications" or "did not have a qualified applicant, certified or properly endorsed applicants." If the district could handle all those questions, you may be one step closer, annual rotation is generally not thought to be a very good educational practice. This approach lends itself to bandaids aids and stop gap measures which undermine the TRS fund, undermine GABA approval, and ultimately are not conducive to the teaching profession or the educational practice. **REPRESENTATIVE**

OLSON asked if there is anything that can be done to salvage the bill. **Mr. Bilodeau** said the best way, in their view, to salvage a bill of this type is to do what was proposed to the Governor's Interim Counsel and that is to provide an incentive in the TRS system itself to improve the formula, the pension benefit guaranteed to current employees, if they remain in the teaching profession for 30 years, rather than retiring at 25 years. It is their view that would have a far broader application and would attract far more people to remain in the system for five years or longer than this bill would attract in limited circumstances for very few people. The cost for that proposal is substantial and in the end it's the cost that is the deficiency in Montana teachers' salaries.

REPRESENTATIVE JEFF MANGAN asked **Mr. Senn** to tell him about the process in determining GABA benefits, with or without **HB 584**.

Mr. Senn said, under the GABA bill, the teachers retirement board is authorized to increase the GABA from the current level of 1.5% starting after three years of retirement up to a maximum of 3%, provided the actuarial funding is available to do that. An actuarial evaluation is conducted every two years in the system. What the teachers retirement board will have to look at is that valuation, what's the current market for investment, and any legislation that is passed by the body during this session. The first opportunity that the teachers retirement board will have to make an adjustment will be January 2002. As it sits today, with no changes made by this Legislature that affects the funding or brings funding into question, that increase will be about .5%. It will go from 1.5% to 1.95%. They have sufficient funding to do that and the amortization period of the TRS will not exceed 25 years. The Governmental Accounting Standard Board requires that its amortization period equal 30. The legislation authorizing the board to put 25 still has a cushion there to remain actuarial sound. In the board's judgement, any increase will not adversely affect TRS. **REPRESENTATIVE MANGAN** said he assumes that he has

talked to the board and has discussed this issue and obviously **Mr. Senn** doesn't have a crystal ball. Without **HB 584**, are you telling the committee that there will be an increase? **Mr. Senn** said as it sits today, yes, barring complete collapse of the Stock Market or something unforeseen or other legislation passing, there does appear to be sufficient funds to move it.

REPRESENTATIVE MANGAN asked him if there are other conditions besides **HB 584** that are a threat to that increase? **Mr. Senn** said there are concerns of the Teachers Retirement Board, rather than threats. As it sits today, the Stock Market is a concern to the Teachers Retirement Board and they have had some discussions about it. They are also concerned with other legislation that was proposed. **SENATOR SAM KITZENBERG** had a bill that was scheduled to be heard in the Senate and he pulled the bill

because it was a concern to the Teachers Retirement Board and that would have done very little in terms of improving benefits, but would have had a small cost to the TRS. They spent a lot of time looking at other proposals that will allow retirees to return to work, both during the interim and as the session got started. Each one of those were concerns to TRS. One proposal that **Mr. Bilodeau** spoke to was to increase the multiplier, it was a recommendation of the Governor's Task Force. It would have increased the multiplier to 2%, which is very similar to what a lot of other states have, but not many states will allow teachers to retire up to 25 years of service, regardless of age. Usually they have to be at least 60 and sometimes 65 years. There is a big difference when comparing Montana's TRS to other systems. It is not the multiplier, it is less than a lot of other states, but you can start drawing it as early as age 47 in some cases. The average age is 55. Montana has retirees with 25 years in the system and leaving at 47 years of age. That's where the problem is with the retirement system in comparing Montana with other states. Those are all concerns. With the 2% multiplier and someone who stays in the system for at least 30 years, the state could have done that with a small increase in funding. It would require .44% increase in the funding and not a lot of money. They would have done nothing with GABA then. It would have set 1.5% for a long time to come. **REPRESENTATIVE MANGAN** asked what indicators from the stock market do they look at when determining an increase? **Mr. Senn** said those indicators are far too short term. From one day to the next there can be huge swings. TRS is invested for the long term. They are looking at twenty and forty year trends. **REPRESENTATIVE MANGAN** asked if it is true that the same concern that he has in this bill is not necessarily what is going to happen the next two years, it's after 2003? **Mr. Senn** said that is a very good point. The proposals that he told about in his testimony could cost TRS as little as five million dollars per year and as much as twenty million dollars per year. Those are long term concerns.

REPRESENTATIVE MANGAN had a question for the **SPONSOR**. He feels he has heard that the sky is going to fall if her bill passes. He asked her to address those concerns. He asked if she believes the testimony? The **SPONSOR** said she has greater faith in the Legislature not ruining the system in 2003 if the bill is adopted. She does not think that is going to happen. There are some ways that they can get around it.

REPRESENTATIVE LARRY LEHMAN told **Mr. Bilodeau** that he is not going to mention the fact that administrators were obviously omitted from the bill and the shortage there is probably just as crucial as it is with teachers. **REPRESENTATIVE LEHMAN** asked,

regardless of how much time a teacher teaches, what percentage of an FTE is a teacher when the fourth contract is offered whether it is for half time etc., is the tenure factor involved?

Mr. Bilodeau said yes. Under this legislation, if the school had a new hire, the person would not be able to reach tenured status during the pendency of the bill. If the bill is renewed or expanded by the 2003 session and that same employee continued with the same employer, in the last year of the next biennium, they could potentially be tenured.

Closing by Sponsor:

REPRESENTATIVE FRITZ said the legislature needs to understand the implication of her proposal and she respects and shares many of the reservations of **Mr. Senn** and the retirement system. She believes this emergency act gives the state time to find real solutions. She believes that some people from the country and some people from the city don't understand that they have a difference. They give retirement incentives in the city because they want to get rid of high paying teachers. In the city there are lots of teachers available. Young teachers coming out of college want to teach in cities. They cost half or a third as much as a person who has been teaching in those districts with the higher salary schedules. She would hope that the committee realized they were talking mostly about part-time work in the bill.

{Tape : 1; Side : B}

EXECUTIVE ACTION ON HB 584

Motion: REP. GALVIN-HALCRO moved that HB 584 DO PASS.

Discussion:

Motion/Vote: REP. MANGAN moved that AMENDMENTS TO HB 584 DO PASS.

Motion carried 17-0. REPRESENTATIVE JACKSON had stepped out of the room and did not vote.

Motion: REP. GALVIN-HALCRO moved that HB 584 DO PASS AS AMENDED.

Discussion:

REPRESENTATIVE LARRY LEHMAN said that conceptually he thinks it is a great idea. In reality he thinks it would be a disaster.

In talking privately with **Mr. Senn** he questioned him about how many retired teachers would be affected, if in fact the teacher board decided not to give a GABA increase. The figure he gave him is approximately 6,500 teachers. He would be hesitant to be in favor of a bill that would jeopardize the retirement of 6,500 people for 100 or less people who could possibly be employed under the bill. He has to agree with them that the bill may not solve the teacher shortage and could make it worse. He believes it could be looked at in the 2003 Legislature. Although it sounds great on the surface, initially he thought it was a good bill, at this time he would vote against it.

REPRESENTATIVE MANGAN had a question for the **SPONSOR**. He said she had mentioned in her testimony about the monthly reporting to OPI and he notices that it is mentioned in the fiscal note. Is it okay the way it is written? The **SPONSOR** said they could take the report out of the bill. He moved a conceptual amendment to remove the monthly report to OPI from the bill. It would remove lines 23 - 25. OPI did not see a need for the report.

Motion/Vote: REP. MANGAN MOVED A CONCEPTUAL AMENDMENT TO HB 584 DO PASS. Motion carried 17-0. REPRESENTATIVE JACKSON had stepped out of the room and did not vote.

Motion: REP. GALVIN-HALCRO moved that **HB 584 DO PASS AS AMENDED.**

Discussion:

REPRESENTATIVE MANGAN said he was disappointed with the testimony from the opponents. There isn't any proof for what was said. The testimony was in the form of a threat. He believes that the valid concern is that the bill would continue after the sunset provision. Someone would have to come in with a bill and revise the law for that to happen. They could discuss that when it happens. This is the only bill he has seen this session that discusses the teacher shortage and teacher recruitment in rural areas that they have heard about for two years. The **SPONSOR** has done an admirable job in researching how this can be done with limited costs and it is a good bill. The testimony led the committee to believe if the bill is passed, there goes GABA. He believes that is shallow. If the bill fails, each member of the committee needs to follow GABA over the next two years and if it doesn't increase or increases at a lesser level, they'll have a lot of questions on the testimony given during the hearing.

REPRESENTATIVE GAY ANN MASOLO asked to question **Mr. Vogel**. Right now they have, in Helena, a retired principal filling in a position and other areas of the state there are retired teachers working. How do they do that? **Mr. Vogel** said he believes that

is being done on a temporary basis. You can have an individual working at one third of the salary. The **CHAIR** said she knew that, but the person is working full time. She referred the question to **Mr. Bilodeau**. He said that he would speak generally to the situations that he knows about. In some districts teachers have retired and been quietly promised future full-time employment. In Fairview, a teacher works half time for one third pay. They are not provided benefits. In Kalispell there was an arrangement for two retired administrators to share the superintendency. Each was being paid at one third of their final salary. There are many different situations. Sometimes a teacher works full time and receives one third salary and full benefits. Many different situations could be looked at.

Mr. Bilodeau said in most cases the arrangement is made between administration and the individual. There are very few teaching contracts that actually specify how to rehire a retiree on a part time basis.

REPRESENTATIVE WOLERY asked **REPRESENTATIVE FRITZ** if there is a provision in the bill that says at what level a retired teacher can be rehired and at what salary level? **REPRESENTATIVE FRITZ** said no. She is assuming that the district hiring the teacher would hire the person at either step 5 or step 7. **REPRESENTATIVE WOLERY** said he had a letter detailing what Kentucky has done. They hire their teachers at a ten year level. **REPRESENTATIVE FRITZ** said that in her district in Missoula, the one third time is used as a retirement incentive. Teachers who are at the top of the salary schedule are encouraged to retire and take the one third time. They get one third of their previous contract and they are still tenured. They are not retired from the district.

REPRESENTATIVE LEHMAN asked to question **Mr. Vogel**. He asked if **Mr. Vogel** was aware of school districts hiring retired administrators and or teachers and paying them in some other way other than salary? Might the district put money into a deferred annuity? **Mr. Vogel** said that he is aware of a number of instances where retired administrators and teachers are employed. They are under the restriction of the one third salary. There are instances where they have looked at ways of compensation for those individuals to get around the restrictions on the one third salary cap.

The **CHAIR** said she has hesitations about voting for the bill. She was like **REPRESENTATIVE LEHMAN** and thought that it was great but she hear the GABA and TRS bills in administration and she knows that they are actuarially sound and didn't cost the tax payers or the general fund any money. For that reason, she

thinks this bill is a good idea and maybe it needs to be looked into further. She is not going to vote for it.

REPRESENTATIVE JACOBSON said that he finds himself in a quandary. He has respect for **REPRESENTATIVE FRITZ**. Like the **CHAIR** he sits on the State Administration Committee and he voted for **HB 294**. He has a number of retired teachers who live in his district and there is uncertainty surrounding the increase in TRS. In that uncertainty he is going to oppose the bill.

REPRESENTATIVE MUSGROVE said he is very troubled by what is happening in the education system. He views this as a cannibalistic bill. We are eating ourselves. He doesn't think it is the right solution. The right solution is to find the money to pay teachers appropriately the way we do every other profession that has a standing in the community. For that reason, he will not support the bill.

Vote: Motion that **HB 584 DO PASS AS AMENDED** failed 8-10 with **Bixby, Fritz, Jackson, Mangan, Olson, Peterson, Waddill, and Wolery** voting aye.

Motion: **REP. LAWSON** moved that **HB 584 AS AMENDED BE TABLED** by a reverse vote of 10-8.

EXECUTIVE ACTION ON HB 416

Motion: **REP. GALVIN-HALCRO** moved that **HB 416 DO PASS**.

Discussion:

The **CHAIR** said the bill was sponsored by **REPRESENTATIVE JUNEAU** and was similar to **REPRESENTATIVE LAWSON's** bill.

REPRESENTATIVE NORMA BIXBY said that on the fiscal note they included numbers of GED people in the community colleges and she does not believe **REPRESENTATIVE JUNEAU** wanted them to do that. They included high school dropouts as well as the people in the community colleges. Without them the fiscal note would then be similar to **REPRESENTATIVE LAWSON's**. That is the difference in the amount of money.

The **CHAIR** said she had a conversation about it with **REPRESENTATIVE JUNEAU** and that is correct.

REPRESENTATIVE LAWSON said he thought his fiscal note was \$300,000 or \$400,000 for the first year and then \$500,000 or \$600,000 the second year.

Vote: Motion that **HB 416 DO PASS** carried 13-5 with Masolo, Olson, Peterson, Walters, and Wolery voting no.

EXECUTIVE ACTION ON HB 557

Motion: REP. GALVIN-HALCRO moved that **HB 557 DO PASS**.

Discussion:

REPRESENTATIVE WALTERS said he is going to oppose the bill as he respects those that gave testimony and they said the bill looks harmless at first but when one gets into the text, it is a cover for requiring schools to teach comprehensive sex education. He reminded the committee the bill was called a Trojan horse. It mentioned abstinence but really mentions some things that abstinence wouldn't pass and it would be a bill to circumvent abstinence. They said comprehensive sex education has failed and this is an attempt to stop the abstinence movement in Montana. It takes away local rights for a school to teach what it believes is right for its students. Teenage pregnancies have dropped dramatically and they gave credit to the abstinence program.

REPRESENTATIVE LEHMAN said he would like to make a couple points. The first is that he asked **Mr. Cooper** if OPI currently requires school districts in Montana to file curriculum guides from each local school district. The answer was no. The second point is that he learned a lesson and it was that a person cannot always calculate what a proposal is by the title. He will oppose the bill.

REPRESENTATIVE BIXBY said she doesn't think the bill has anything to do with sex education. She believes that it is just trying to make sure that there is a curriculum file that schools could send to OPI to report their curriculum on health information. It isn't talking about what kind of sex education the school has. It is just a reporting mechanism to let OPI know what is going on in the schools.

REPRESENTATIVE MANGAN said he has a conceptual amendment. He moved the following changes. On page 4, line 5, change "must" to "may". On line 7, strike "the file must be available to" and state "School districts may utilize curriculum resources..". On line 10 strike the first "only." On line 15 strike the word "only." On line 19, strike the last sentence. Strike "the" through the words "sexual intercourse." He believes unnecessary language in the bill could have let to some people's misconception of the bill.

Motion: REP. MANGAN moved that the **CONCEPTUAL AMENDMENT TO HB 557 DO PASS.**

Discussion:

REPRESENTATIVE OLSON had a question for **REPRESENTATIVE MANGAN**. He asked him if he wanted to remove the new section 3.

REPRESENTATIVE MANGAN said the **SPONSOR** of the bill said there was good reason for it to be in the bill.

Vote: Motion that **MANGAN CONCEPTUAL AMENDMENT TO HB 557 DO PASS** carried unanimously.

Motion: REP. MANGAN moved that **HB 557 DO PASS AS AMENDED.**

Discussion:

REPRESENTATIVE PETERSON said he believes the bill calls for an unfunded mandate, although the **SPONSOR** did try to exclude it by referring to the language of the statute. It is still an unfunded mandate to schools. He doesn't believe there is any procedure described in the bill for using the material. The **SPONSOR** told him that the parents could know what was in the curriculum and he does not like the bill.

REPRESENTATIVE OLSON said he would make a conceptual amendment to eliminate new section 3. It is the unfunded mandate law in the bill. He cannot vote for anything that has an unfunded mandate in it. The Legislature has no business passing unfunded mandates down to school districts.

Motion/Vote: REP. OLSON moved the **CONCEPTUAL AMENDMENT TO HB 557 TO REMOVE NEW SECTION 3 DO PASS.** Motion carried 13-5 with Andersen, Jackson, Lawson, Lehman, and Masolo voting no.

Motion: REP. WALTERS moved that **HB 557 DO PASS AS AMENDED.**

Discussion:

REPRESENTATIVE JACKSON stated that he plans to oppose the bill. OPI came into the hearing as an opponent to the bill. He has talked to OPI and they do not want it. He has had a lot of experience with this type of program. He helped implement it in the late 70's and early 80's. It is based on the idea that kids lack information and if they have the proper information they will make the right choices. The data that he had proved that it did cause unwanted pregnancies to increase. It had very explicit material for students.

REPRESENTATIVE MANGAN objected to the testimony of **REPRESENTATIVE JACKSON** and the **CHAIR** asked **REPRESENTATIVE JACKSON** to keep to the body of the bill.

REPRESENTATIVE JACKSON said he felt he was discussing the body of the bill. There is nothing in the bill that addresses the psychological impact of kids and that is what is being dealt within the abstinence education.

REPRESENTATIVE WALTER called for the question.

Vote: Motion that **HB 557 DO PASS AS AMENDED** failed 6-12 with **Bixby, Branae, Fritz, Galvin-Halcro, Jacobson, and Mangan** voting aye.

Motion: **REP. LAWSON** moved that **HB 557 AS AMENDED BE TABLED** by a reverse vote of 12-6. **Motion carried.**

EXECUTIVE ACTION ON HB 558

Motion: **REP. GALVIN-HALCRO** moved that **HB 558 DO PASS.**

Discussion:

REPRESENTATIVE ANDERSEN said she has a problem understanding why the bill is necessary. Current law says that "a non-public or home school shall maintain records on pupil attendance and disease immunization and make the records available to the county superintendent of schools on request." Why can't these people continue as they are now?

The **CHAIR** said that as she understands there was a problem in Billings and the superintendent said that non-public schools do not have to tell the county superintendent about their existence and therefore, he was having problems telling them about all of federal programs, etc., that are available.

REPRESENTATIVE BRANAE confirmed what the **CHAIR** had said. If the county superintendent has no record of the school, he can't notify them about the programs.

Connie Erickson said, if you read it as it is in current law, it says, "a non-public school is required to maintain records on pupil attendance and disease immunization, make records available to the county superintendent of schools on request." If one goes down to subsection 5, "home schools are required to notify the county superintendent of schools that they are in existence."

What this bill will do is strike "in the case of home schools" and it will now require non-public schools to also notify the county superintendent of their existence and the attendance.

REPRESENTATIVE ANDERSEN asked why can't the county superintendent just request that information and then they will have to give it?

Connie Erickson said the present law says the non-public school will give the information if requested. It says home schools are required to send the information to the county superintendent without it being requested.

REPRESENTATIVE ANDERSEN said she understands all that has been said. She doesn't understand why the Yellowstone County Superintendent of Schools doesn't know where the private schools are in the county. She understands that it would be difficult to know about all the home schools, but not the private schools.

REPRESENTATIVE JACKSON said that he understands that the private schools report their information to the local school superintendent because that is the person that has the information on the federal programs. Both types of education need the federal program information and it would be nice if the information went to the county superintendent and then was shared to all schools in the county.

REPRESENTATIVE BRANAE said he believes the problem in Billings is that the superintendent is not aware of all the private schools without hearing from them.

REPRESENTATIVE PETERSON said he would like to move an amendment striking sub paragraph 3 and paragraphs 4 and 5 be renumbered. The **CHAIR** asked him if he meant to change current law. He said yes.

Connie Erickson said she had a question as to whether **REPRESENTATIVE PETERSON** could do that under the title of the bill. The title is specific and what the amendment is saying is that non-public schools or home schools do not have to be housed in a building that complies with the code of local health and safety regulations.

REPRESENTATIVE PETERSON withdrew his amendment. He does believe that the subsection has nothing to do with the law.

REPRESENTATIVE LAWSON said his concern is that this is an unfunded mandate on the private schools that are not reporting now. He is concerned about telling them they have to make a

report and they are private schools and not receiving any funding.

REPRESENTATIVE LEHMAN said he is under the impression that one of the reasons for the bill was so that the county superintendent of schools would be more aware that all the children in the county, of compulsory age attendance, are attending school. The **CHAIR** said she agreed with him.

REPRESENTATIVE JACKSON said he had talked to **Bill Cooper** and he said the way he has stated the information about getting the information to superintendents is correct. He agrees that instead of non-public schools reporting to the local school superintendent, both non-public and home schools should report to the county superintendent of schools. That way the county superintendent will have the information and can distribute it to local schools when they advertise the federal programs. The way the bill is written, it will happen that way.

The **CHAIR** said the problem is probably greater in the bigger cities. Small communities don't have as many communication problems as larger areas.

REPRESENTATIVE OLSON said it is a good bill and should be passed. He called for the question.

Vote: Motion that **HB 558 DO PASS carried 14-4 with Andersen, Mangan, Walters, and Wolery voting no.**

{Tape : 2; Side : A}

EXECUTIVE ACTION ON HB 161

Motion: **REP. BRANAE** moved to **TAKE HB 161 FROM THE TABLE.**

Discussion:

REPRESENTATIVE BRANAE said he wanted the committee to look at the bill again as he feels it might allow more flexibility at the local level. There are some people from OPI who could address the issue. Without objection.

Vote: Motion **REMOVE HB 161 FROM THE TABLE. Carried 9-8 with Andersen, Jackson, Lawson, Masolo, McKenney, Peterson, Walters, and Wolery voting no. REPRESENTATIVE FRITZ was not present and did not vote.**

Motion: **REP. BRANAE** moved that **HB 161 DO PASS AS AMENDED**.

Discussion:

REPRESENTATIVE BRANAE asked **Bob Runkel** to speak to the bill.

Mr. Runkel said **HB 161** is a bill that gives local school districts an option and the option is whether they want to extend the category of a child with disability beyond the age of six. It gives them the choice, rather than any requirement, and the amendments were ones that were proposed by MSBA who felt they were important to make sure it was a local option. This bill does two things. It is an issue from the heart. Sometimes the process in special education can be kind of difficult as it applies to labeling children. Present law requires a school, when the child turns six, to make a determination as to whether the child meets criteria for certain specific disabilities. Sometimes those things are not only hard to determine at age six, but can have a significant impact on the parent and on others in how they regard the child. Those labels include such things as cognitive delay, emotional disturbance, learning disability, and factors that sometimes are very difficult to determine. Sometimes these are very hard to accept and when one is forced to do it at age six, it becomes even more difficult. The other thing that this bill does is eliminates that forced choice at age six that sometimes results in kids who are currently being served in the early childhood programs (pre-school programs) to be removed from special education because of the disability condition or the assumptions of the disability condition as opposed to whether the child really had an educational need to continue. It appears that there is quite a number of children who get booted out at that point and continue in school, experience failure and then get identified later on, oftentimes when they are quite far behind in school. From an educational side the bill is important. The bill is important in terms of the fact that there are so few things in special education that there are any choices on. Local schools have to toe the mark on numerous federal regulations. This is one area where the federal law is giving some discretion to schools in being able to utilize some special education resources on kids to the betterment of their entire education system. For that reason, it is an opportunity for local schools who opt for that approach to have that flexibility.

REPRESENTATIVE OLSON asked **Mr. Runkel** what the bill will do as far as increasing the requirements of local school districts for maintenance of effort on special education. **Mr. Runkel** said, on the surface, the answer to the question is there is no direct

relationship there, but the complicated answer is, if the district starts spending more money because it is serving more children, the bill could bring about more children being served. If the district assumes that responsibility, it is going to cost more money. Once that money is spent, it has to continue at that level.

The **CHAIR** said she had received a number of letters on the bill. They were against the bill because they said there isn't enough money for special education now. They felt like it would involve taking money from the general fund, it meant more meetings, it takes money away from the other students, etc. She voted no the first time and probably will vote no again.

REPRESENTATIVE LEHMAN asked **Mr. Runkel** if it is a local district option as to whether they wish to extend the age from six to nine. **Mr. Runkel** said that is correct. **REPRESENTATIVE LEHMAN** said assuming a local district opts to do it in a particular individual case, does that obligate them according to special education rules and regulations and current law to do that from there on? **Mr. Runkel** said, if the school would chose to change their policy, they could change their policy and no longer provide services or exercise the option of using the non-categorical or the developmental delay definition. They could change their mind. **REPRESENTATIVE LEHMAN** asked if he is saying that a school district would have to adopt a policy regarding these decisions. **Mr. Runkel** said one of the provisions in the bill is a delayed effective date. The purpose of that is to give OPI an opportunity to develop administrative rules that effectively and smoothly implement this program. One of the provisions that they would expect to cover in the administrative rules is to be sure that schools do have the option and that the option be exercised as a policy decision by the boards of the school districts.

REPRESENTATIVE LAWSON asked **Mr. Runkel**, with a highly mobile population that the state has now, if one district changed the categorization of a student, and that student moved to another district, would the new label follow the student to the new district, ir-regardless of the policy that they had or had not adopted? **Mr. Runkel** said the records would follow the child and the label would be in his records. The obligation would not be to serve the child as a disabled child, if the new district had not adopted the policy. It goes without saying, however, that an awareness of the needs of the child that has been identified in the previous district would put the receiving district on notice that this child may have some special needs that need to be addressed, whether in the district's regular education program or in some other fashion.

REPRESENTATIVE OLSON had a question for **Mr. Runkel**. He asked if that information transferred with the student and the student was working under an IEP in the former district, would the receiving district have to honor the IEP? **Mr. Runkel** said a receiving district does have to honor an IEP of a child that is eligible for special education. The basic purpose of this bill and the intent of federal law is to determine the eligibility, so by the fact that the child moved to a district that did not accept the definition, the district would not be obligated to implement that IEP. That is another complication that would need to be addressed in an administrative rule to make everybody fully appraised of the lack of obligation to implement the IEP because in that particular district the child would not meet the qualifications of a child with a disability. **REPRESENTATIVE OLSON** asked, if the bill was to pass, could the committee be assured that it would be addressed in the administrative rules. **Mr. Runkel** said he would make a point of making sure it was proposed as an administrative rule. The committee needs to be aware of the circumstance that if the child moves to a receiving district with an IEP, what the receiving school district would likely do is conduct an evaluation to determine whether the child actually meets one of the specific thirteen disability categories, so they would go through the evaluation process and determine whether the child has a disability under the thirteen disability categories. They may end up serving the kid, but the kid wouldn't be automatically served based on the developmental delay or non-categorical child title. **REPRESENTATIVE OLSON** asked him how many of the thirteen categories does a child have to meet to continue with the IEP? **Mr. Runkel** said he had to meet only one.

REPRESENTATIVE GALVIN-HALCRO asked **Mr. Runkel** if there are federal funds attached to special education funding? **Mr. Runkel** said there are substantial federal funds that are connected with special education. The current allocation runs in the neighborhood of nineteen million dollars. **REPRESENTATIVE GALVIN-HALCRO** asked, could this bill increase federal funding to special education for any district that did opt to include the label? **Mr. Runkel** said the adoption of this bill would not affect federal special education funding. Federal special education funding used to be based on the numbers of kids identified as eligible for special education. Two years ago that changed. Since that time, the base that was established, based on the count of numbers of kids with disabilities, remains the same amount of money and all of the new federal funds are distributed to schools based on public and private school enrollment. There is no financial incentive for schools to go with this

identification. Exercising this option doesn't mean that they would reap the benefits of more money. They would be doing it for the reasons that have been stated. **REPRESENTATIVE GALVIN-HALCRO** said as she understands the bill, it is entirely permissive, there is nothing mandatory in this bill, is that correct? **Mr. Runkel** said that is correct. **REPRESENTATIVE GALVIN-HALCRO** said all this bill would be doing for those school districts who would opt to use it, is give them another tool to help any child to be more successful? **Mr. Runkel** said that is the motivation behind the bill, although it would be incorrect for him to say that it would be "any" child. They would still be looking for kids with certain conditions and certain needs and the administrative rules would make it clear that it doesn't mean any child can receive the benefits from special education. It would be a limited group of children.

REPRESENTATIVE MANGAN wished to remind the committee about his amendment that was put on the bill during the hearing. He said he thinks Mr. Melton from MSBA had a problem with the bill, but they would support it with the Representative's amendment. It changed the wording from discretion to voluntary choice. There would be no concern whether or not it was mandatory.

REPRESENTATIVE WOLERY said he remembered testimony that it was voluntary and special needs wouldn't have to be identified, but if one reads the title it says, "the age of a child who may be identified with a disability without the specific disability being identified." Today he has heard from the experts that there would only have to be one of thirteen reasons to be identified, so he thinks it is still a bad bill.

REPRESENTATIVE LEHMAN had a question for **Mr. Runkel**. If the situation discussed where a student had an IEP and was labeled as a child with a disability was to move from one district to another, and that second school district opted to not accept the IEP, etc., would he see the possibility of a law suits resulting from this proposal if it became law? **Mr. Runkel** said he does not think that we have many suits filed. What could happen is that, if a kid who had received the benefit of those support services moved to a district that did not accept that developmental delay designation or child of disability, he would immediately be referred for an evaluation to determine whether the child qualified for one of the thirteen disability categories. If the school found out, in that evaluation, that the child didn't meet the disability categories, there is the option for the parent to file for a hearing to contest whether or not the school district's decision is right. There is the possibility that because the parent had enjoyed the benefit of the program moving to a district that didn't have the services and concluded that

the child didn't meet one of the thirteen conditions or a developmental delay category, the parent might choose to contest it.

REPRESENTATIVE JACKSON said he is going to vote against the bill for a couple of reasons. He has seen children labeled by this process and that is devastating. In the schools that he has served, kids do get individualized instruction and teachers and administrators do provide extra help for kids that need it without labeling. As an administrator, it puts one in a tough situation because once this is done and the kid is identified, it leverages the money away from other areas. It becomes inflexible. One disabled child in one of his schools needed so much extra help that the school had to give up the band program to finance the help.

Vote: Motion that **HB 161 DO PASS AS AMENDED failed 7-11 with Bixby, Branae, Galvin-Halcro, Jacobson, Mangan, Musgrove, and Waddill voting aye.**

Motion: REP. LAWSON moved that **HB 161 AS AMENDED BE TABLED by a reverse vote of 11-7. Motion carried.**

EXECUTIVE ACTION ON HB 181

REPRESENTATIVE WADDILL made a motion to take **HB 181** off the table. The **CHAIR** said she would allow him to explain his reason for doing so. He said that he received a email from Jim Marks which stated, "Please resurrect our braille bill. Blind and visually impaired Montanans face a very real crisis in literacy. Many of us do not know how to read and write due to systematic flaws that **HB 181** will repair. I had asked the Montana School for the Deaf and Blind to withdraw its fiscal note. Montana School for the Deaf and Blind staff agreed to do this because they support **HB 181** just as much as the Montana Association for the Blind does. Yes, Montana School for the Deaf and Blind ought to have more funding in order to deal with the ever growing demands for their expertise. Funding is a separate issue than **HB 181**. **HB 181** adds no obligations on the Montana School for the Deaf and Blind, not already required by the Individuals Facilities Education Act. We are working together on a sound piece of legislation, please help us put **HB 181** back on the table." **REPRESENTATIVE WADDILL** said he and his wife have a disabled child and he feels he had an obligation to attempt to bring the bill off the table.

**Motion/Vote: REP. WADDILL moved to REMOVE HB 181 FROM THE TABLE.
Motion failed 7-13 with Bixby, Branae, Jackson, Jacobson,
Musgrove, Waddill, and Wolery voting aye.**

ADJOURNMENT

Adjournment: 5:30 P.M.

REP. GAY ANN MASOLO, Chairman

NINA ROATCH, Secretary

GM/NR

EXHIBIT (edh41aad)