

Exhibit Number: 9

**2005 Montana Legislature
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House Bill 456
Introduced by R. Koopman**

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EXHIBIT 9
DATE 2-7-05
HB 456

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HOUSE BILL NO. 456

INTRODUCED BY R. KOOPMAN

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE ESTABLISHMENT OF CHARTER SCHOOLS AND CHARTER SCHOOL DISTRICTS AS A MEANS OF PROVIDING ADDITIONAL EDUCATIONAL OPPORTUNITIES TO THE CHILDREN OF MONTANA; REQUIRING AN APPLICANT TO OBTAIN A SPONSOR TO ESTABLISH A CHARTER SCHOOL OR CHARTER SCHOOL DISTRICT; REMOVING THE MORATORIUM ON CREATING NEW SCHOOL DISTRICTS ONLY FOR THE PURPOSE OF CREATING CHARTER SCHOOL DISTRICTS; AUTHORIZING BOARDS OF TRUSTEES FOR CHARTER SCHOOL DISTRICTS; PROHIBITING THE CHARGING OF TUITION BY A CHARTER SCHOOL DISTRICT; PROVIDING FUNDING AT 95 PERCENT OF THE PRO RATA SHARE OF THE TOTAL PER-ANB ENTITLEMENT WITHIN THE BASE BUDGET AND THE MAXIMUM FUND BUDGET OF THE CHILD'S DISTRICT OF RESIDENCE; AMENDING SECTIONS 20-2-121, 20-5-321, 20-5-323, 20-5-324, 20-6-104, AND 20-9-306, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Montana Charter Schools Act".

NEW SECTION. **Section 2. Legislative intent.** (1) Pursuant to Article X, section 1, of the Montana constitution, it is the goal of the people of Montana to establish a system of education that will develop the full educational potential of each person and to guarantee equality of educational opportunity to each person in the state.

(2) Pursuant to Article X, section 1(2), of the Montana constitution, the state has recognized the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) Pursuant to Article X, section 1(3), of the Montana constitution, the state shall accomplish the goals of this section within a basic system of free quality public elementary and secondary schools.

(4) Because different children have different educational needs, the legislature finds that the most practicable and possibly the only way of reconciling and accomplishing these constitutional requirements is to increase family choice of schools and school accountability within the state's public school system.

MEA-MFT firmly rejects the proposed policy conclusion reached by HB 456 that "the most practicable and possibly the only way of reconciling and accomplishing these constitutional requirements is to increase family choice of schools."

Further, nothing in this act by definition will "increase" school accountability. Indeed it may decrease significantly or even imperil the meaning of accountability for the education of all our children.

(5) In authorizing charter schools and charter school districts, it is the intent of the legislature to authorize parents, teachers, and community members to create new, innovative, and more flexible ways of educating all children within the public school system that will result in improved pupil learning and increased learning opportunities for pupils while requiring the measurement of learning outcomes and establishing new forms of accountability for Montana's schools.

Absolutely nothing in current law prevents "parents, teachers, and community members" from creating "new, innovative, and more flexible ways of educating all children within the public school system."

This act does not recognize that under existing board of public education standards, school districts may right now create charter schools. See board of public education rule 10-55-604 attached.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Applicant" means a governmental entity, a private organization, a private person, or a tribally controlled community college or other tribally controlled entity located in Montana.

**What is the definition of "a private organization" or "a private person?"
Could it be a sectarian group, albeit one that does not "teach" a religious point
of view? Could it be a for-profit organization? Could it be a family?**

(2) "Board of trustees" or "board" means the board of trustees for a charter school district established in [section 4].

(3) "Charter school" means a public school established within a charter school district or within an existing school district.

(4) "Charter school district" means a public school district established under the provisions of [sections 1 through 9], including any preexisting elementary, high school, or K-12 district serving as an applicant for or as an operator of a charter school.

(5) (a) "Sponsor" means:

(i) a school within an elementary or high school district, as defined in 20-6-101, or within a K-12 district, as defined in 20-6-701;

(ii) an elementary or high school district, as defined in 20-6-101, or a K-12 district, as defined in 20-6-701;

(iii) a unit of the university system, as defined in 20-25-201;

(iv) a community college district, as defined in 20-15-101; or

(v) the governing body of a local government.

Montana Constitution, Article 10. Section 8, seems to preclude any unit of the Montana university system or any local government entity from establishing a charter school as contemplated in this act or at least not doing so without the

specific approval of a local school board of trustees. Article 10 – Education and Public Lands – Section 8. School District Trustees – states: “The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.”

Then the question, what is “local government?” Montana Constitution, Article 9 – Local Government – Section 1. Definition – states: “The term ‘local government units’ includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.”

Would a weed district be a local government entity authorized by this act to sponsor a charter school applicant?

(b) The term does not include the board of public education or the office of public instruction.

NEW SECTION. **Section 4. Charter school district board of trustees -- powers and duties.** (1) There is a board of trustees for each charter school district.

(2) The board consists of five members elected as provided in the district's charter. If an applicant for or an operator of a charter school is an existing public school district, the board of trustees may be identical to the board of trustees of the existing public school district.

Five members from the same private organization? From the same family?

(3) The board of trustees of a charter school district:

(a) shall exercise general supervision over the charter schools formed within the boundaries of the charter school district;

(b) shall provide leadership and support for sponsors to increase the innovation in and the effectiveness, accountability, and fiscal soundness of charter schools;

(c) shall develop an attendance agreement as required in [section 9];

(d) shall keep a record of its proceedings;

(e) shall sign a contract with a sponsor for the establishment of a charter school or a charter school district;

Again, under this act any unit of the university system and any local government entity could sponsor a charter school whether any existing local school district or districts liked it or not – and siphon off substantial state funding, as you will read below.

(f) may contract, sue, and be sued;

(g) shall secure insurance for liability and property loss;

(h) may pledge, assign, or encumber the school's or district's assets to be used as collateral for loans or extensions of credit; and

(i) may accept gifts, donations, or grants.

(4) The board shall adopt rules:

(a) governing the conduct of the board's business; and

(b) establishing the financial reporting procedures required of charter schools.

(5) The members of the board are not personally liable for:

(a) any acts or omissions of a charter school or a charter school district, including acts or omissions relating to the:

(i) application submitted by a charter school district;

(ii) charter of a charter school district;

(iii) operation of a charter school or charter school district; or

(iv) performance of a charter school or charter school district; or

(b) the debts or financial obligations of a charter school district or persons who operate a charter school district.

Who is liable if the charter school proves to be a child failure or an educational fraud? This act would appear to create a no-risk operation.

(6) A member of the board is prohibited from working for a sponsor or as an employee, agent, or contractor of an entity with whom a charter school contracts, directly or indirectly, for professional services, goods, or facilities. A member of the board who violates this prohibition is individually liable to the charter school district for any damage caused by the violation.

A member of the board may not work for the sponsor, but could in fact work for himself. At least nothing herein precludes that.

(7) The board of trustees for a charter school district is allocated to the board of public education for administrative purposes only as provided in 2-15-121. However, the board may hire its own personnel, and the provisions of 2-15-121(2)(d) do not apply.

2-15-121 reads: " Allocation for administrative purposes only. (1) An agency allocated to a department for administrative purposes only in this chapter shall:

(a) exercise its quasi-judicial, quasi-legislative, licensing and policy making functions independently of the department without approval or control of the department."

2-15-121 (a) helps provide statutory support for the huge autonomy charter schools would enjoy.

NEW SECTION. **Section 5. Charter school districts -- application -- duties of sponsors.**

(1) An applicant may apply to a sponsor to establish and maintain a charter school district. The application must include but is not limited to the following:

(a) a description of the facility or facilities and the location or locations of the charter school or schools proposed for the district;

(b) a mission statement for the district;

(c) a description of the organizational structure of the district and of any charter schools within the district;

(d) a financial plan for the first 3 years of operation; and