EXHIBIT 4
DATE 1-27-05
HB 415

SB 152 Key Provisions: What is Required in the Definition of the Basic System of Free Quality Schools:

Senate Bill 152 has passed the Senate and defines the basic system of free quality public elementary and secondary schools in Montana in a manner that is consistent with the Constitution, the Court's orders in Columbia Falls Elementary v. State (2004) and Helena Elementary v. State (1989), and laws and regulations requiring the delivery of particular services to children in our public schools. I thought it would be helpful to break down the definition and identify the source of existing authority for each part of the definition as included in SB 152.

The definition of the basic system of free quality public elementary and secondary schools in SB 152 is included in section 1 of this 2-section bill. It includes each of the following:

Subsection of Section 1 of the Bill	Item Included in the Definition of the Basic System of Free Quality Public Elementary and Secondary Schools	Reference to Existing Law Requiring Provision of Item
(2)(a)(I)	Accreditation standards of the Board of Public Education	• Article X reference to the BPE's authority to "generally supervise" K-12 public education; • Montana Supreme Court held in Helena Elementary v. State (1989) that the accreditation standards are minimum standards upon which quality must be built. The Court further held that the accreditation standards did not fully encompass the Legislature's obligation for funding K-12 public education.
(2)(a)(II)	Generic reference to any other requirements imposed on school districts by local, state or federal law.	• This generic reference is really self-executing. One would need to find a reference to a specific mandate imposed by existing law to bring meaning to this provision. It is essentially a provision to ensure against unfunded mandates going forward. There are a variety of such mandates that exist in law and several more proposed each session, the compliance with which costs money. The costs of compliance are routinely ignored. A few examples include, but are not limited to items like: o Building codes o Prevailing wage requirements for public contracts o Bidding law restrictions o Transportation

		○ The 1% public contractor's tax that is paid on the basis of any school construction ○ Zoning ○ Minimum wage ○ Collective bargaining ○ Payroll-related taxes ○ NCLB ○ IDEA ○ Section 504 ○ ADA ○ OSHA ○ State imposed tests ○ State-required policies and procedures for hiring and firing, disciplining children
(2)(b)	Indian Education for All under Title 20, Chapter 1, Part 5	This section could just as well be included under the previous subsection, in that it is required by law but not funded. This is also a reference to the fact that the state did not even defend its compliance with the provisions in our Constitution governing cultural integrity of American Indians. Correspondingly, Judge Sherlock held definitively in Columbia Falls Elementary v. State that the state was failing in its obligations with this portion of the Montana Constitution.
(2)(c)	Implementation of educational programs that promote the full development of a student's potential, including special needs students, students with disabilities, at-risk students and gifted and talented students	• Delivery of such services are already implicitly or explicitly required. For example, in order to receive and use various federal funds (Title Funds, IDEA), a school district is required to provide services to students with disabilities and at-risk (identified through the proxy of poverty) and ensure their success. One can also find a requirement of meeting the needs of such children through the performance and content standards of the Board of Public Education, as well as the gifted and talented rule of the Board of Public Education.
(2)(d)	Salaries and mandated employee benefits, including health and retirement benefits	• School districts are required to collectively bargain with staff on issues of collective bargaining under Title 39, and are specifically required to establish health plans when voted upon by its employees under Title 2, Chapter

		18, Part 7. • Article VIII, Section 15 specifically requires that public retirement programs be maintained on an actuarially sound basis. • Title 19 specifically requires commitment of funds to support both the Public Employee's Retirement System (PERS) and the Teacher's Retirement System (TRS). • Judge Sherlock held in finding 160(c), in Columbia Falls Elementary v. State, that proof of the inadequacy of the funding for our system was based in part on "the decreasing salaries and benefits that are offered to Montana teachers compared to their counterparts in the United States."
(2)(e)	Resources and equipment necessary to provide the programs identified in (2)(a) through (2)(d), including textbooks, library materials, other instructional materials, specialized materials and delivery systems for students with special needs, distance learning, in-service training, capital outlay, transportation and a procedure to track student achievement	• First, the resources required under this section are only those "required" to deliver the other programs listed above. • Specialized materials for children are "related services" required under IDEA. • In-service training is required by the accreditation standards (ARM Section 10.16.3135). • Capital outlay and transportation are both identified as items that must be addressed in Judge Sherlock's order in Columbia Falls Elementary v. State and in the Montana Supreme Court's opinion in Helena Elementary v. State (1989). o Finding 192 of Judge Sherlock's opinion specifies as follows: *"In this regard, it is important to further recognize and find that the State's constitutional obligations are not limited to general fund budgets.* ***Rather, the cost of the basic system includes all costs,*** *whether funded through the general fund or other funds,* ***including such significant funds as capital outlay/debt service, retirement and transportation.***" • Student assessments are required by accreditation standards, state law and the

		NCLB.

The items referenced in the chart above are the comprehensive definition of the basic system of free quality public elementary and secondary schools under our constitution. As one can see, everything listed in the definition is required by one law or another, and there is nothing in the definition that Montana's public school districts are not already required to provide. It is extremely odd then, that legislators would find fault with being responsible for funding what has long been required by law.

After defining the basic system of free quality public elementary and secondary schools, SB 152 goes on to specify a process by which the Legislature will develop educationally-relevant factors to fund as the vehicle for providing an assurance of the definition referenced above. Subsection (3) specifies that the Legislature will consider items such as:

- The number of students in a school district (a cost criteria specified in virtually every model for determining funding equity, including the federal range ratio method identified in federal law);
- Addressing the needs of isolated schools and districts based on population density (which could be either low or high density, and are criterion referenced in the federal range ratio method for measuring equity);
- Addressing the needs of at-risk students (Required under NCLB. One need only look at our list of schools failing to meet AYP to understand that poverty has a large impact on student achievement);
- Using research on best educational practices for promoting student achievement (A sensible limitation, to ensure that resources committed are designed to promote student achievement);
- The ability to recruit and retain qualified educators (Referenced in Judge Sherlock's order and supported by research as the most effective way of positively impacting the development of a child); and
- The preservation of local control under Article X, Section 8.

This section does not expand the definition of quality, it just identifies guidelines that the Legislature will use to craft and fund a system.

Senate Bill 152 concludes in its operative language by identifying a process that the Legislature will use to determine the costs of complying with the definition above. It provides that the Legislature will either conduct a study of its own or will adopt analyses contained in existing studies completed by reputable and reliable experts. It further commits to doing a new study every 6 years to reassess educational needs and costs related to the basic system of free quality public elementary and secondary schools and incorporate the results into the funding formula.

SUMMARY:

School boards and their staff have had to contemplate the various items included in the definition of the basic system of free quality schools in SB 152 for years. Virtually all if not all of the definition is already required through various laws and rules as established in

the chart above. The consternation over the potential cost of SB 152 is not necessarily a bad thing, as it requires groups who have either never had to confront or who have conveniently ignored these realities to address and fund them in a deliberate manner.

The process of squaring up the reality of what is included in the definition of quality with the reality of how politics have controlled the process over the years will undoubtedly be challenging for everyone. For those feeling the pressure for the first time, it should come as some comfort to know that elected trustees have been dealing with these issues for years and have managed to keep our schools afloat during that time. It is time for the Legislature to join this partnership as intended in our Constitution, and SB 152 represents a valid attempt worthy of legislative support.