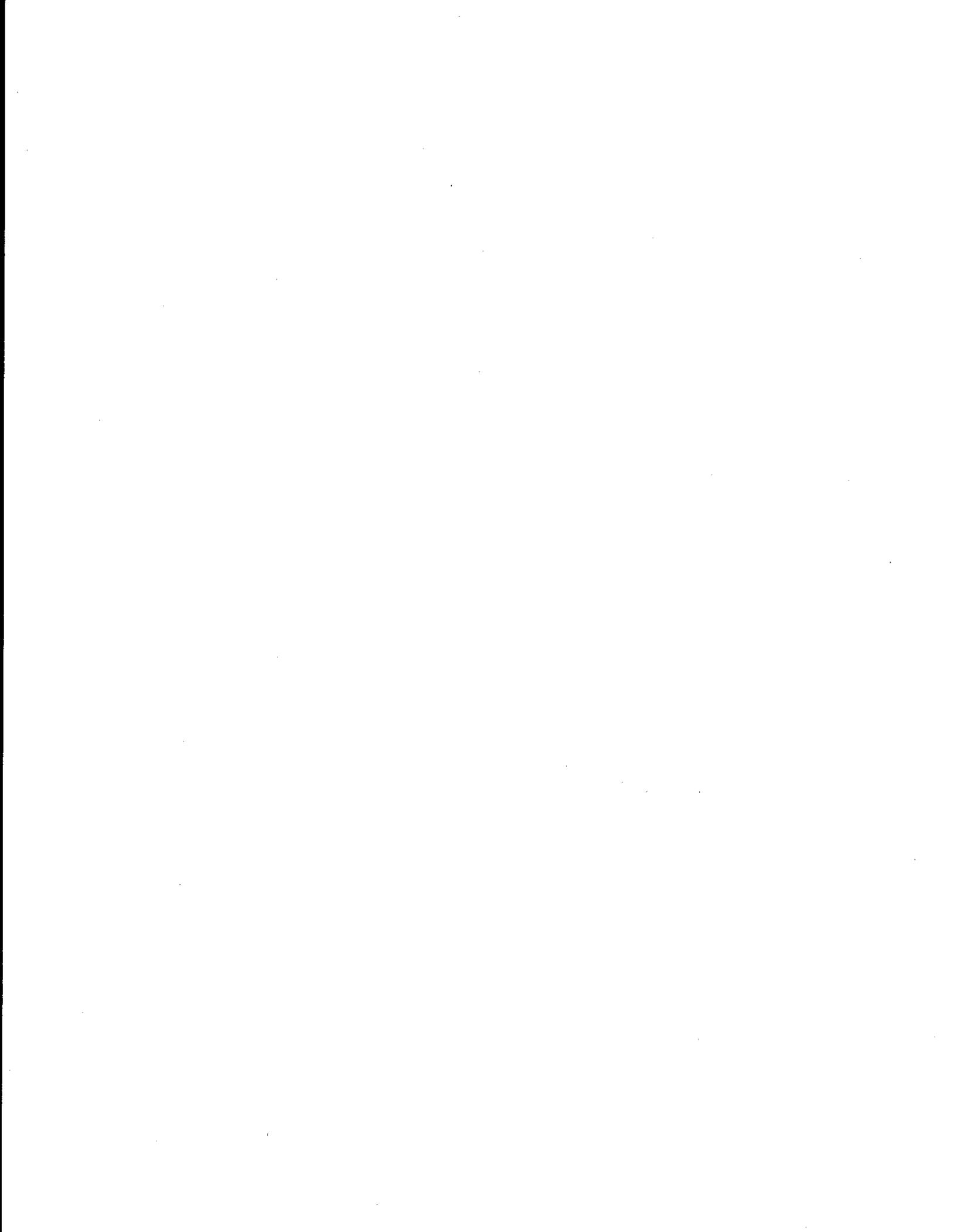


Montana State Legislature

Exhibit Number: 2

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ARTICLE X EDUCATION AND PUBLIC LANDS

Section

1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.
5. Public school fund revenue.
6. Aid prohibited to sectarian schools.
7. Nondiscrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

SENATE EDUCATION

EXHIBIT NO. 2DATE 1-5-05BILL NO. SB-152**Article Cross-References**

Superintendent of Public Instruction as Executive Branch officer, Art. VI, sec. 1 through 4, 6, and 7, Mont. Const. Education, Title 2, ch. 15, part 15; Title 20. State Lands, Title 77.

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes 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) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Cross-References

- Public school fund, Art. X, sec. 2 and 3, Mont. Const.
- Nondiscrimination in education, Art. X, sec. 7, Mont. Const.; 49-2-307; 49-3-203.
- State university funds, Art. X, sec. 10, Mont. Const.
- State Board of Education, 2-15-1501.
- Board of Regents of Higher Education, 2-15-1505.
- Commissioner of Higher Education, 2-15-1506.
- Board of Public Education, 2-15-1507.
- Property tax exemption of property used for educational purposes, 15-6-201.
- Education, Title 20.
- Vocational and technical education, Title 20, ch. 7, part 3.
- Montana State School for the Deaf and Blind, Title 20, ch. 8.
- State equalization aid, Title 20, ch. 9, part 3.
- Community college districts, Title 20, ch. 15.
- University System; Title 20, ch. 25.
- Charges for tuition — waivers, 20-25-421.
- Libraries, Title 22, ch. 1.

Constitutional Convention Transcript Cross-References

- Adoption, Trans. 2939, 2940.
- Committee report, Vol. II 718, 721 through 725, 993, 996, 1002, 1003, 1069.
- Cross-references, 1889 and 1972 Constitutions, Vol. II 757.
- Debate — committee report, Trans. 1949 through 1989, 2022, 2151 through 2159.
- Debate — style and drafting report, Trans. 2572, 2573, 2928.
- Delegate proposals, Vol. I 95, 139, 143, 169, 170, 204, 284.
- Final consideration, Trans. 2665 through 2667.
- Text as adopted, Vol. II 1099.

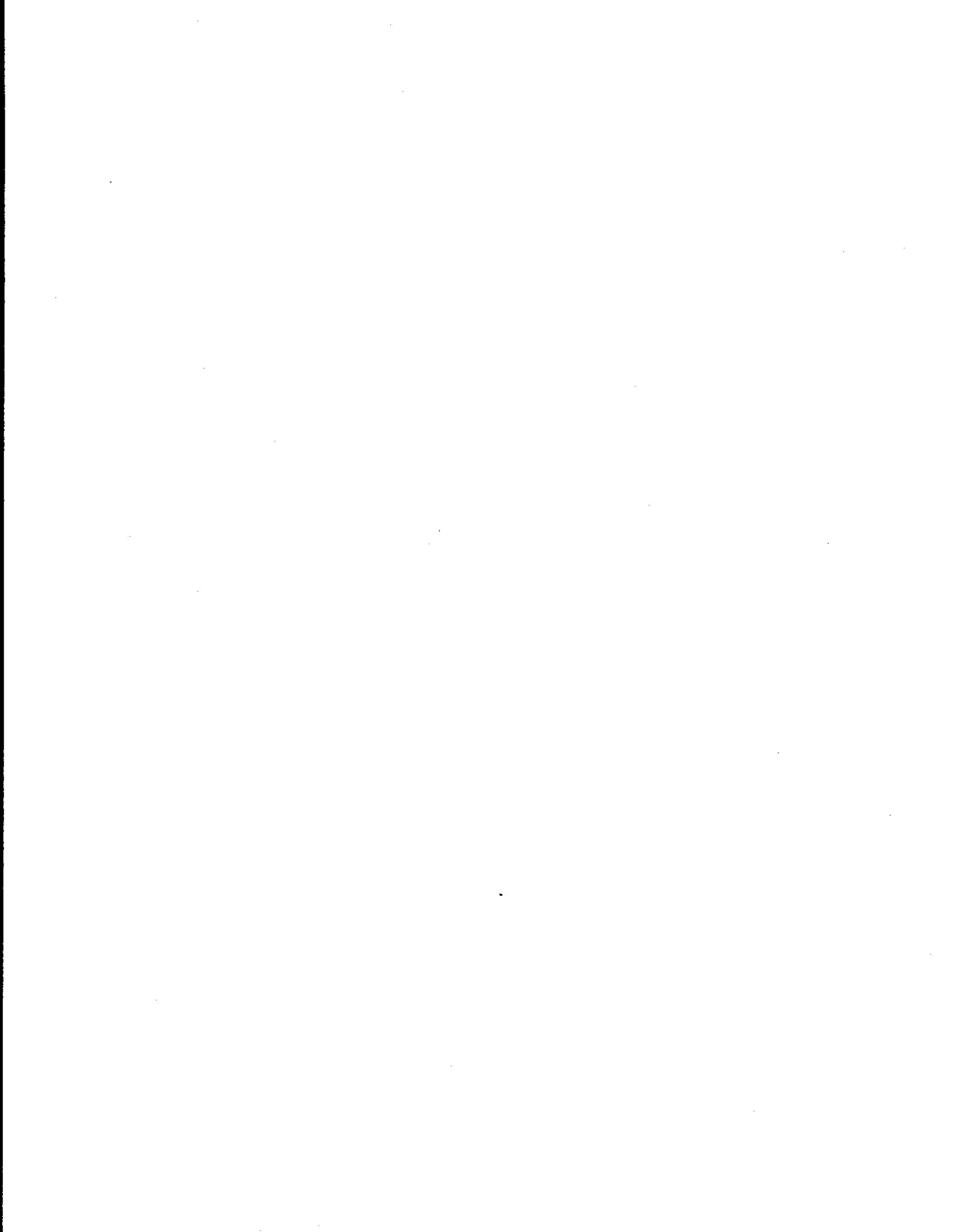
Section 2. Public school fund. The public school fund of the state shall consist of:

- (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,
- (2) Lands granted in lieu thereof,
- (3) Lands given or granted by any person or corporation under any law or grant of the United States,

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Article X of the Montana Constitution

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes 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) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Convention Notes:

Revises 1889 Constitution. Expresses the goal of the State to educate all of its citizens regardless of their ages. Creates a right to equal educational opportunity and specifically recognizes unique heritage of Indians.

Transcripts:

Delegate Champoux: (introductory remarks) Some of these changes have to do with basic aims of the educational system; others are concerned with structural or administrative adaptations to changing conditions in education. The most significant revisions are a clear statement of educational goals of the state, a mandate for the support of education allowing increased financial flexibility--and this was an extremely difficult one in light of the Serrano case, as we noted when we took up Revenue and Finance--the deletion of antiquated age and school term restrictions, and a revised administrative structure for both the public school system and for higher education. The committee views these proposed changes as vital to the quality and efficiency of education in Montana. The proposed article provides appropriate guarantees to the viability of the public school system, while leaving the way open to future transformations in the educational process. Vol. VI, at 1948.

Case law:

The fundamental purpose of construing a constitutional provision is to give effect to the intent of the framers and the people who adopted it. In construing provisions of the Constitution, recourse may be had to the proceedings of the constitutional convention. School District No. 12 v. Hughes and Colburg, 170 Mont. 267, 552 P.2d 328 (1976).

Subsection (1) Educational Goals

Transcripts:

Delegate Harbaugh: In subsection 1 we have a broad statement of the goal of education in our

state. And that goal, as it is stated, is to establish a system of education which will develop the full educational potential of each person. Now, this is something new, but the committee intends that this be taken in much the same respect as some of the provisions which we included and adopted in our Bill of Rights section yesterday--that really, just as we were in the area of political theory there, here we are also in the area of educational theory. And so we're setting forth a goal. Now, the committee realizes that economic resources of the state limit this goal, and yet it's our belief that it's very important to set forth a goal for education and that the development of our human resources to the fullest possible extent ought to be a primary goal of the state's educational enterprise. Vol. VI, at 1949-1950.

Delegate Harbaugh: We've also included in subsection 1 a statement guaranteeing equality of educational opportunity within this stated goal. Now, what does this mean? Well, basically, we are taking a stand which is in line with the more recent interpretations of the courts of this land, but it even reaches back further than that. And I'd like to read to you a quotation from Brown versus the Board of Education decision written in 1954 by the United States Supreme Court. In that decision, nearly 20 years ago, the Supreme Court said, and I quote: "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." And, of course, recent court decisions have affirmed this position. The committee recognizes that there is a corollary between the doctrine of equal protection under the law and the fundamental right to equality of educational opportunity. Now, does this statement set forth a mandate that opens the door to a welter of demands for making education absolutely equal for every person at every level? Obviously, it does not. The guarantee here is limited, as are all constitutional guarantees, by other factors and freedoms. No right is absolute, and it would be an absurd construction to interpret this guarantee as an absolute guarantee. One of the concrete limitations on this guarantee would be the ability of the state to finance a system of education which guarantees equality; and where the state can show a compelling cause--compelling state interest, such as the preservation of the economic welfare of the state, this would be a limiting factor imposed upon this guarantee. But the committee does wish to take the position that equality of educational opportunity is a fundamental right of all. And the time is long past when the state can afford to promote one standard of education for those who are members of one geographical area or economic or cultural group and a different standard for those who are members of some other geographical area or economic or cultural group within the borders of this state. Vol. VI, at 1950.

Delegate Nutting: The three words "full educational potential"--conceivably, could that mean kindergarten for every child in the State of Montana? Adult education for every person in Montana? Vo-tech for every person in Montana?

Delegate Harbaugh: Yes, it is conceivable that it could mean that. It's inconceivable to me, however, that the Legislature would ever authorize that sort of thing, because, as I stated in my introductory remarks, this would probably break the State of Montana. That would be in my estimation, a compelling state interest and would be completely wrong, I think, and a misconstruction of the broad, goal-oriented statement that we're making here, to look at that in this way.

Delegate Nutting: When you look at Section 1 and Section 2 and take them together--I know we make different statements on the floor, but still to read these two sections, I can't read them any other way but that the full educational potential of each person shall be developed. And in the last line, it shall be the duty of the Legislature to fully fund. So I--the statements we're making here on the floor and the statements that we--that I read on the page don't seem to be consistent.

Delegate Harbaugh: One of the reasons--the basic reason that I moved to amend this section to subsections is precisely for the reason that Mr. Nutting has pointed out. We are setting forth, in subsection 1, basically a broad philosophy of education. We're trying to lay out the goals of education. In subsection 2, which we will come to next, we're going to talk about the mandate--in other words, the implementation of those goals. And I think that you have to make this distinction, that the one is a goal; that the second is the mandate. Vol. VI, at 1957.

Delegate Harbaugh: (in response to Delegate Martin's motion to remove the word "full" before "educational potential") I feel that the comments that Mr. Martin made may be of a legitimate concern, but not at this point. As I explained in my other remarks and as Mr. Champoux has just stated, we're talking here about a broad statement of philosophy. Now, we're not talking about the financing of the school system, which you referred to, Mr. Martin. And I would resist the amendment. I think that "full" is a modifier here of the educational potential, and to remove it, I think, would not do anything really to change the impact or the intent of this section. I would resist the amendment. Vol. VI, at 1959.

Case law:

The guarantee of equality of educational opportunity applies to each person in the state and is binding on all branches of government, whether at the state, local, or school district level. As a result of the failure to adequately fund the foundation program, thereby forcing an excessive reliance on permissive levies, the state failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed under the Montana Constitution. Spending disparities among Montana school districts further resulted in a denial of equality of educational opportunity. Therefore, the 1985-86 system of funding public elementary and secondary schools was a violation of this section. Helena Elementary School District No. 1 v. State, 236 Mont. 44, 769 P.2d 684 (1989).

Subsection (2) Indian Education

Transcripts:

Delegate Eck: (Indian education amendment) During one of our very early hearings in the Bill of Rights Committee, there appeared before us two young Indian students representing student groups of the Fort Peck Reservation. They came asking what we could do, or what the Convention could do, to assure them that they would have the opportunity--and their schools--to study their own culture, perhaps their own language, and to develop a real feeling of pride in themselves for their own heritage and culture, and also a hope that other students all over Montana would recognize the importance and the real dignity of American Indians in the life of

Montana. Vol. VI, at 1950.

Delegate Champoux: We like to think of ourselves as a great melting pot where everyone becomes a --quote--“typical American”, a homogenized society. We are, in fact, a heterogeneous country, a mixing bowl, made up of a colorful patch full of people with different cultural backgrounds. And each group has contributed and woven into the pattern of American customs from their respective homelands. These people are good Americans, but the emotional tie still remains; the identification with the countries of their origin. The argument has been made that it is not possible to single out one ethnic group as a special group. For our Indian people, it is impossible not to mention them as a special group. The State of Montana is composed of the sovereign State of Montana and five autonomous self-governing Indian nations whose people have a dual citizenship. Every other ethnic group in this country has a country of origin to relate to in their pride of heritage, and we have learned in our schools about their countries. All of us have taken Greek history, Roman history, English history, French history, and so forth. Why not Indian history? The Irish have a national day. Try to deny the Irish in this country or in Butte (Laughter) the celebration of that national day. I hope I can be there next Friday to celebrate it with them. (Laughter) We'd have a revolution on our hands. Why not a Chief Charlo Day, Chief Joseph, Chief Hungry Horse, and so forth? What is the country of origin for our American Indians? It is America. What have the average Americans learned in our schools about our American people? Very little, if not nothing. How many delegates sitting in this assembly could answer these questions? Who were the Indians of the Iroquois nation? Which Indians belonged to the five civilized tribes? Now, those are easy questions. They're eastern questions, but they're easy ones. Which -- what happened to them? How about the native tribes? How many of us here can name the native tribes of Montana and tell me about their history and native cultures? We've all heard of George Kaplan, the great painter. Some of his works are to be found around this very Capitol. How many have heard this statement by George Kaplan about the Montana Indians? And I quote: “I love a people who are honest without laws, who have no jails and no poorhouses. I love a people who keep the commandments without ever having read them or heard them preached from the pulpit.” Are we to tell the Indian people that their history has no place in our schools? Are we to tell them- the Indian people that their ways, their governments were wrong and that they must accept ours, because ours are better? Or will we help them to retain their ethnic identity and make their adaptation as Americans? If there is ever to be a solution to the Indian problem in this country, it will only come about when our educational system provides the knowledge which is needed to understand. And I agree here with Mr. Harper--Reverend Harper wholeheartedly. It will only come when our educational system provides the knowledge which is needed to understand and respect the cultural difference between us and the state helps to preserve and protect their cultural integrity. This is a matter of pride. All of us are proud of our heritage, whether we be English, Irish, Jewish, or whatever. We are proud because we know about our history, our culture and our integrity--our heritage. Are we now to continue to deny this to these, the first citizens of the State of Montana? Vol. VI, at 1952.

Delegate Champoux: Just one brief point, sir, if I may. Mr. Harbaugh, when you use the word “goals”, do you intend that to mean for the future? There can be that connotation. I would suggest perhaps that we use the word “endeavors”, if it would be all right with you, sir. Vol. VI, at 1955.

Delegate Harbaugh: I used the word "goals" because I think that this ties the statement in with the goals which are set forth in subsection 1. And since this is going to be included in the Education Article, it would seem to me to be appropriate to use the word "goals" and to relate back to the goals which are mentioned -- the broad goals for education -- in subsection 1. Vol. VI, at 1955.

Subsection (3) Education Funding

Transcripts:

Delegate Harbaugh: (introductory remarks) This subsection is the mandate for implementing the establishment of our educational system within the state. And in this respect, as I noted earlier, it is similar to Sections 1 and 6 of our present Constitution. We might note here that the courts have construed the present Sections 1 and 6 not as a limitation on the Legislature, but as a mandate to the Legislature. And this section states that the Legislature shall provide for a system of high-quality, free public elementary and secondary schools. What do we mean by the words "high-quality?" They've been used as an instruction here to the Legislature to provide not just a minimum education system, a substandard system, but one that meets a contemporary need and is capable of producing well-informed citizens. Now, the committee recognizes that changing systems of financing the public school system are in the direction of providing equality of education and that this could lead to a reduction of the kind of education that we have. In other words, we recognize that, if in the future it is required that education be equalized across the districts, that this could jeopardize the quality of education, and we would not want to see this happen. And this is what we wish to safeguard against. And, therefore, we stressed in this Legislative mandate that the state shall provide a high-quality system of education. Now again, I'd like to point out that this is not untried ground that recently adopted, states--and I quote: "The state shall provide for an efficient system of high quality educational institutions and services". There are possibly some other words here that need explanation--the word "free". By the word "free" in subsection 2, it is understood by the committee to mean that those aspects of the elementary and secondary education which are essential to courses required by the schools for graduation shall be free of cost to the student. The words "public elementary and secondary" replace, in this article, the term "common schools", which was contained in the old Constitution--in the present Constitution. We feel that this is more precise. The term "common schools", back in 1889, referred primarily to the elementary school system. And also, we want to make it clear, by using the terms "public elementary and secondary", that the word "free" does not apply to all aspects of the educational system but that it applies to the basic education which the state is mandated to fund. In the second sentence of subsection 2, we've given a broad grant of power to the Legislature to provide for additional educational institutions and programs which it deems desirable. And according to the court interpretations of the present Article XI, Section 1, this right already rests with the Legislative Assembly under our present Constitution. So this is nothing new that is being added here. The last sentence of subsection 2 is directed toward the financing of the school system. Now, a great deal has been said about the Serrano-Priest case and other decisions across the land affecting the financing of the public school system. In analyzing our Montana finance structure, the committee found that there is great disparity

between the level of school financing among the various districts of the state. This isn't something that has just come to our attention. For several years, across the nation, there has been a nationwide study being conducted on methods of financing public education. One of our members, Mrs. Cain, as probably most of you know, attended a meeting in Denver at her own expense, during the course of this Convention, to attend a meeting which solidified the results of several years of study on this very question. And whether the Supreme Court of the land rules on this matter or not seems to me to be beside the point. It's our feeling that the state should make every effort to insure that insofar as it is possible, equality of financial expenditures for schoolchildren of our state is implemented. Now, in the last sentence of subsection 2, we simply provide the means whereby this may be done. The Legislature is to provide, by taxation or other means, and to distribute in an equitable manner funds for the funding of our school system. Now, I'd like to point out here that the language that we've incorporated here is very close to that of Section 6--that we have incorporated some of the language of Section 6 in this last statement. Clearly, the existing school foundation program does not meet the aims of equalizing educational burdens and benefits. A most recent study of our foundation program shows that the expenditures by the state actually subsidize districts that are wealthy more than they do districts that are poor and that, in fact, the foundation program aggravates factors which tend to make the level of education dependent on the wealth of the district. We use the term "full funding". What does this mean? Well, it means that the state will insure the funding of a basic minimum program. After the state has assessed the needs and established what a minimum program ought to be, we feel that the state ought then to provide, by whatever means it sees fit, for the funding of that program. And if we fail to do this, if we fail to provide even the minimum that we establish, then we fall far short of the goal that ought to be ours in education. The full funding requirement here will substitute equity and rationality for the confusion and for the inequities that have often plagued school financing in the past. And it will also do one other thing that I think is very important: it will free the local school boards from a preoccupation with matters of finance, so that they can focus on the real issue of education in our local communities. Mr. Chairman, I move the adoption of subsection 2. Vol. VI, at 1960-1961.

Delegate Habedank: Mr. President. I move to amend subsection 2 of Section 1 by adding, in front of the word "system" on line 13, page 3, the word "basic"; and in front of the word "public" on line 20, page 3, the word "basic". Mr. President. The explanation gave by the committee, through Mr. Harbaugh, shows that it is in--the intention of the committee that the Legislature shall be required to fund a basic system of quality education. This is carried out by their comments as shown on page 12, where they say "the fundamental principle established, however, is that every child should have approximately the same opportunity to receive an adequate basic education." On line 17, they again say they wish to "insure the quality--insure the existence of a quality--basic educational system." On page 14 of their comments, they again say, on lines 4 through 7: "Once the needs for a basic quality system of elementary and secondary schools have been realistically assessed, the state has the obligation to guarantee that this minimum basic program be fully funded." I am a former member of the Montana School Boards Association. I was its President back in 1952. I, along with Paul Harlow and many other dedicated citizens--at least, I think I was dedicated, and I'm sure Paul was--worked long and hard in developing the foundation program of education. At that time, it was called to our attention by educators that Section 1 of Article XI of the Constitution provided that it shall be the duty of the Legislative