SENATE EDUCATION
EXHIBIT NO. 7
DATE 1-21-05
BILL NO. SB-10

January 17, 2004

Re: SB-10 Legislative Responsibility Act

Opening:

This bill is not a partisan bill, it is, if anything, a unifying bill, which confirms the Legislature as a separate institution, as it were, separate from the executive and Judicial branches of our government, and asserts our responsibilities as stated in the Montana Constitution of 1972. (see hand outs)

History: (see copy of letter from Beth Baker, dated May 7, 1992)
In 1979 the Montana Legislature enacted a statute that allowed schools, permissively, to put in place "Gifted and Talented" programs. The Board of Public Education then adopted a rule **requiring** schools to have Gifted and Talented Programs. The Legislature, through the then-existing Administrative Code Committee, objected to the rule and said that the rule conflicts with the statute, saying "The statute is permissive, you can't change the statute by your administrative rule. The 1991 legislature repealed the rule and the Board of Public Education sued the committee and the State. This decision went to Judge Sherlock, who ruled that the Board of Public Educations general supervision authority granted them constitutional rule-making authority. The State argued that the Constitutional Convention transcripts clearly indicated that the intent of the framers was not to grant the Board of Public Education the same authority the Regents possess, which is "full control and supervision", as opposed to "general supervision" which the Board of Public Education possesses. The Assistant Attorney General, Beth Baker, agreed entirely with the States position that the Board of Public Education did not have authority granted in the Constitution, and that general supervision did not include the ability to override a statute. The Governor intervened at this time and requested that the Attorney General not appeal the decision, which he didn't, so that last decision rendered was that of Judge Sherlock.

This court ruling, decided in District Court, has given the Board of Public Education unconstitutionally, full control and supervision.

The fundamental meaning and allocation of powers by the Constitution should never be decided by less than the highest court in the land, especially when the fundamental authority of the separate branches of government are in question.

What does this bill do?
The title is complete as state.
"An act prohibiting the board of public education from implementing any, policy, or standard that will have a substantial financial impact on a school district until the Legislature appropriates money to fund implementation of the rule, policy, or standard."

Will this bill be challenged?
It is our hope that when this bill is passed, it will be litigated to it's conclusion with the Montana Supreme Court as it should have been resolved in 1989. This is too important a question to leave unanswered by the highest court in our state.

What happens if we are unable to pass this bill?
If this bill does not pass and the constitutional question is not answered, then we, the Legislature, when appropriating funds for education will become irrelevant! No more to the Board of Public Education than a credit card. Our constitutional responsibility as the appropriators of funds for education will be lost, and our institution will be forever weakened.

The legitimacy of submitting this bill is confirmed by the introduction of SB-152, sponsored by Don Ryan, which requires the Legislature to "define (the) system of free quality public elementary and secondary schools and to fund the state's share of the cost of the basic elementary and secondary school system", this as a result of the District Courts decision on November 9 of last year. As defined by the court "until such time as the legislature assesses education needs" would indicate the responsibility lies with the Legislature.

The same Judge who in 1989, through his decision granted to the Board of Public Education unconstitutionally "full control and supervision", now through his 2003 decision has rightfully decided that the Legislature has the responsibility to define educationally relevant facts and to fund them appropriately.

The future of our institution, the Legislature, is truly in your hands. Your lack of courage, your lack of commitment or your political cowardice will only hasten the destruction of our institution, our Legislature.

Please support Senate Bill 10