

**MINUTES**

**MONTANA SENATE  
59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON EDUCATION AND CULTURAL RESOURCES**

**Call to Order:** By **CHAIRMAN DON RYAN**, on January 21, 2005 at 3:10 P.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Don Ryan, Chairman (D)  
Sen. Gregory D. Barkus (R)  
Sen. Jerry W. Black (R)  
Sen. Jim Elliott (D)  
Sen. Kim Gillan (D)  
Sen. Bob Hawks (D)  
Sen. Jesse Laslovich (D)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee (R)  
Sen. Bob Story Jr. (R)

**Members Excused:** Sen. Sam Kitzenberg (R)

**Members Absent:** None.

**Staff Present:** Connie Erickson, Legislative Branch  
Lois O'Connor, Committee Secretary

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

**Committee Business Summary:**

Hearing & Date Posted: SB 10, 1/17/2005; SB 13, 1/17/2005;  
SB 227, 1/17/2005; SJ 2, 1/17/2005  
Executive Action: None.

*{Tape: 1; Side: A; Time Counter: 0.1}*

**HEARING ON SJ 2**

**Opening Statement by Sponsor:**

**SEN. GREGORY BARKUS, SD 4**, said that during the interim, he served as Chairman of the Postsecondary Education Policy and Budget Committee (PEPB) that established the "Shared Leadership For A Stronger Montana Economy".

"Shared Leadership" was interested in presenting a program whereby the Regents and the university system could play a stronger role in Montana's economic development. Through the work of "Shared Leadership", it developed six initiatives and approved three for immediate implementation. They are as follows:

- (1) develop a stronger business/university relationship or partnership for workforce training;
  - (a) The state lacks the connections that businesses ensure existing and potential industries of Montana to have a workforce prepared to meet their needs, and
  - (b) The role and value of 2-year colleges, providing both worker training and low-cost entry into the university system, is misunderstood.
- (2) remove barriers to access postsecondary education; and
  - (a) Postsecondary education is critical for individuals to compete in a stronger and global economy and to earn increasing wages over time, and
  - (b) Montana's economic future depends on its ability to reduce the barriers to postsecondary education.
- (3) expand distance learning.
  - (a) Montana's distance learning programs lack systemwide coordination, and
  - (b) Disparities are confusing and costly for students, especially those who use the offerings of more than one campus in the university system which cannot capture the economies of scale.

**SEN. BARKUS** added that the remaining three initiatives are: (1) to develop a stronger university system partnership through technology transfer and small business support; (2) to improve collaborative problemsolving between the university system and state, local, and tribal governments; and (3) to develop a strong partnership between university systems, marketing, and the tourism-promotion units.

**Proponents' Testimony:**

**Kayla French, Student Regent on the Board of Regents**, said that "Shared Leadership's" work and outcomes that will reap benefits for both students of Montana's university system and the state.

*{Tape: 1; Side: A; Time Counter: 6.4}*

**Sheila Stearns, Commissioner of Higher Education**, said that the most gratifying effort of "Shared Leadership" is that it found a hunger in the state to develop ways for public, private, and those who are currently engaged in policy roles to come together and share ideas for possible solutions to Montana's economic development. She felt that the process was a source of energy for economic improvement in the state and a way for the process to continue. She requested the Committee's support of SJ 2.

**Opponents' Testimony:** None.

*{Tape: 1; Side: A; Time Counter: 11.2}*

**Questions from Committee Members and Responses:**

**SEN. KIM GILLAN** asked if the language "support" implied financial support. **SEN. BARKUS** said that financial support is implied but not explicit.

**SEN. JESSE LASLOVICH** questioned why a resolution was needed when the Legislature would already support the efforts of "Shared Leadership". **SEN. BARKUS** said that SJ 2 was the impetus behind "Shared Leadership's" work. He felt it important that the Commissioner and Board of Regents needed to know that the Legislature is behind them and the Legislature needs to know that the Commissioner and Board are willing and ready to work with Montana's businesses and economy to move it forward.

**Closing by Sponsor:**

**SEN. BARKUS** requested Committee support for SJ 2.

*{Tape: 1; Side: A; Time Counter: 16.1}*

**HEARING ON SB 13**

**Opening Statement by Sponsor:**

**SEN. RICK LAIBLE, SD 44**, said that SB 13 is the result of a pilot project funded in 2003 to conduct a distance learning program. It

was found that no statute existed to define ANB for distance learning students. Without the change, it would be difficult for Montana schools to initiate and use a distance learning program and receive their ANB funding.

**Proponents' Testimony:**

*{Tape: 1; Side: A; Time Counter: 17.9}*

**Lance Melton, MT School Boards Association (MTSBA)**, said that he left written comments on SB 224 and it stands equally for SB 13. MTSBA believes that the terminology in SB 224 introduced by **SEN. LASLOVICH** is the preferred terminology. He requested that the Committee blend the two bills.

*{Tape: 1; Side: A; Time Counter: 19.9}*

**Dave Puyer, MT Rural Education Association (MREA)**, said that SB 224 is very similar to SB 13 in creating flexibility and opening up opportunities for schools to do better job of serving Montana's children. He requested a combination of SB 224 and SB 13.

**Opponents' Testimony:** None

**Informational Testimony:**

**Eric Feaver, MEA-MFT**, said that SB 13 is almost identical to SB 224. MEA-MFT, OPI, and MTSBA have prepared amendments for SB 224 for the Committee's consideration. He added that there was nothing more to blend and urged the Committee to either move forward with SB 224 or put the proposed amendments on to SB 13.

*{Tape: 1; Side: A; Time Counter: 22.3}*

**Questions from Committee Members and Responses:**

**SEN. BOB STORY** said that SB 13's language state the "electronic delivery of curriculum". He asked how the definition of "curriculum" was related to programs. **Mr. Melton** said that "curriculum" denotes special services that schools may have to provide to children. The core of what a school district does for children is the delivery of curriculum, but the services that go with it is the broader terminology used in SB 224. **SEN. STORY** asked if instruction was provided in the language "curriculum" or is "curriculum" just that. **Mr. Melton** said that the difference between SB 13 and SB 224 is that SB 13 is based almost explicitly on SB 231 introduced by **SEN. GRIMES** in the 2001 Session. MTSBA

requested that SB 13 be based upon that version. SB 224 is a further refined version of the idea that is referenced in SB 13.

**SEN. STORY** asked if rulemaking was a function of OPI or the Board of Public Education. **Madalyn Quinlan, OPI**, said that OPI adopts rules related to ANB.

**Closing by Sponsor:**

**SEN. LAIBLE** said that he was unaware of the existence of SB 224 and had no objection to whatever the Committee may decide on SB 13.

*{Tape: 1; Side: A; Time Counter: 27.3}*

**HEARING ON SB 10**

**Opening Statement by Sponsor:**

**SEN. RICK LAIBLE, SD 44**, provided written testimony in support of SB 13; background information from **Beth Baker, Assistant Attorney General**, regarding the SB 10 Legislative Responsibility Act; a copy of 20-7-902, MCA; and a synopsis of the minutes from the Constitutional Convention.

[EXHIBIT \(eds16a01\)](#)

[EXHIBIT \(eds16a02\)](#)

[EXHIBIT \(eds16a03\)](#)

[EXHIBIT \(eds16a04\)](#)

**Proponents' Testimony:** None.

*{Tape: 1; Side: B; Time Counter: 8.1}*

**Opponents' Testimony:**

**Lance Melton, MTSBA, and Steve Meloy, Board of Public Education**, provided written comments in opposition to SB 10.

[EXHIBIT \(eds16a05\)](#)

[EXHIBIT \(eds16a06\)](#)

*{Tape: 1; Side: B; Time Counter: 18.3}*

**Dave Puyer, MREA**, said that MREA's concern with SB 10 is that it takes a dynamic process between the Board of Public Education and local school districts and brings it to a grinding halt. SB 10 language highlights "any rule, policy, or standard having a

substantial financial impact". He said that to insist that everything come before the Legislature for funding or review would be a serious detriment to the work going on between Montana schools and the Board of Public Education.

**{Tape: 1; Side: B; Time Counter: 20.2}**

**Eric Feaver, MEA-MFT**, said that since 1984, the Board of Public Education and the Legislature have endured a tense dynamic. There has been a change in statute that requires the Board to notify the Legislature when it is contemplating the adoption of a rule with substantial financial impact. However, it does not prevent the Board from adopting the rule. He added that the Board is extremely prudent and cautious when it comes to rulemaking, particularly on rules that might lead to an expense to school districts. **Mr. Feaver** added that no one should assume, notwithstanding the current political and legal environment, that the education community is all of one mind on every issue. There can be significant disagreements on exactly what the proposed rules might do.

In conclusion, **Mr. Feaver** said that SB 10 is an anti-judicial bill that attacks one of the most accomplished District Court judges in Montana who is an expert on constitutional law (Judge Jeffery Sherlock). Secondly, SB 10 is an anti-standards bill.

**{Tape: 1; Side: B; Time Counter: 26.3}**

**Questions from Committee Members and Responses:**

**SEN. DAN MCGEE** said that the Legislature is charged with funding. He asked how accreditation standards are established by the Board. **Mr. Meloy** said that according to statute, accreditation standards are adopted by the Board based on recommendation from the Superintendent of Public Instruction. As OPI monitors the work of the Board, it may find an area that needs to be adjusted and bring it to the Board in the form of a request to adopt a rule under the Montana Administrative Procedure Act (MAPA). **SEN. MCGEE** asked there would ever come a time when OPI might recognize that the state may be unable to afford something. **Mr. Meloy** responded that current law requires the Board to come to the Legislature or identify a source of revenue for the districts to support the accreditation standard if a rule is dramatically different from what is currently in law. **SEN. MCGEE** asked if the Board considered the overall fiscal impact of its various rules. **Mr. Meloy** said yes.

**{Tape: 2; Side: A; Time Counter: 0.2}**

**SEN. KIM GILLAN** asked if the Board rules were subject to a public hearing. **Mr. Meloy** provided a copy of the Board's rules for public notice.

**EXHIBIT** (eds16a07)

**SEN. BARKUS** said that **Mr. Melton's** testimony states that SB 10 requires the Board to subject its constitutional role in supervising public education to an affordability analysis by the Legislature every 2 years. He asked if that was sidestepping the affordability issue. **Mr. Melton** said that the Court has said that it is the Board's obligation, and if done right, the standards it develops represent the foundation of a home. It is the Legislature's job to provide funding for the foundation and the home on top of it. He added that the Sherlock opinion states that the Board's authority is independent of legislative control. Therefore, being subject to an affordability analysis contradicts that opinion.

**SEN. BARKUS** requested a response to the same question from **SEN. LAIBLE**. **SEN. LAIBLE** said that the Constitution gives general supervision to the Board. The Legislature, as affirmed by Judge Sherlock's decision, is responsible to define a basic education and fund it. As a result, he felt that any rule, policy, or standard that has a substantial financial impact on school districts should come to the Legislature because the appropriation of funds is the Legislature's job. He said if all that is needed is public comment on a rule, the Legislature is not needed.

**{Tape: 2; Side: A; Time Counter: 9.8}**

**SEN. JEFF MANGAN** asked if the Legislature determines that a standard is part of a basic education that must be funded, would the Legislature be required to fund that standard without SB 10. **SEN. LAIBLE** said that SB 10 prohibits the Board from implementing any rule, policy, or standard that will have a financial impact on school districts until the Legislature appropriates money. He said that under current law, accreditation standards once enacted and approved by the Board are funded automatically. If the Legislature has no oversight over the accreditation standards, why are they included in SB 152.

**SEN. BOB STORY** asked how much public input does the Board receive on a typical rule. **Mr. Meloy** said that part of the concession that the Board makes in extending its hand to the Legislature to make determinations is using MAPA. Under the Sherlock decision, the Board is not required to use MAPA. MAPA is used to ensure public participation. If the Board feels that a rule is going to be controversial, it will always be noticed for public comment.

Out of the last six or seven rules that the Board has heard, two or three have been controversial enough to fill the Board room.

**SEN. STORY** asked why the Board considers that it is not under MAPA. **Mr. Meloy** said that MAPA is imposed by the Legislature on the processing of rules. The Sherlock decision states that the Board's constitutional rulemaking authority is inviolate without control from the Legislature.

**SEN. STORY** asked if an appeal process existed if a person or entity is dissatisfied with a rule or is the Board so constitutionally insulated that it is the last word. **Mr. Melton** said that the only redress that people or entities have is to voice their opposition, express their concerns, and hope that their concerns are accommodated. In his experience, it has been a successful endeavor. **SEN. STORY** asked if a rule remains a rule until someone can find a constitutional problem with it and file a lawsuit. **Mr. Melton** said yes.

*{Tape: 2; Side: B; Time Counter: 2.4}*

Closing by Sponsor:

**SEN. LAIBLE** said that SB 10 is not about anti-standards or whether the Board is doing a good job. SB 10 is about the Legislature and its function. He said is the Legislature responsible for the appropriation of every other agency except when it comes to the Board of Public Education rulings. If the Board can overrule the Legislature's own statutes, is the Legislature putting in jeopardy its own institution? SB 10 is a legislative institutional bill and about the Legislature as an institution.

*{Tape: 2; Side: B; Time Counter: 7.9}*

HEARING ON SB 227

Opening Statement by Sponsor:

**SEN. JESSE LASLOVICH, SD 43**, said that all state, county, and municipal employees are guaranteed a 6-month probationary period during which the employer may terminate the employee for any reason. Once the probationary period is up, employers must specify a cause for termination. However, for teachers, the probationary period is 3 years. SB 227 seeks to reduce the probationary period from 3 years to 2 years.

**SEN. LASLOVICH** said that currently, many new educators in Montana are not evaluated, not on even an annual basis, in part because administrators know that they do not have to demonstrate cause

for termination during an employees first three years of teaching. Without ongoing employee evaluations and records to draw upon, teachers can be left without any idea of how they are performing in the eyes of their employers. The same lack of evaluations makes it even more difficult to terminate educators once their probationary period expires. A 2-year period will ensure that districts monitor, assist, improve new teachers, and provide more timely and consistent dismissal of those who may not be performing.

In conclusion, **SEN. LASLOVICH** said that SB 227 would also help with the recruitment of teachers. With a 2-year probation period, new teachers will have some assurance of job security after two years making employment in Montana more attractive. Although it will not eliminate the problem of teacher retention, it may lead to more timely and consistent employment practices that assist in teacher retention.

**{Tape: 2; Side: B; Time Counter: 12.8}**

**Proponents' Testimony:**

**Eric Feaver, MEA-MFT**, said that SB 227 provides a major step toward the improvement of instruction and the improvement of supervision and evaluation of entry-level teachers. SB 227 does not eliminate teacher tenure, the probationary period, teacher dismissal, or nonrenewal at the end of any one of the two years that would be remaining in the probationary period without any cause. **Mr. Feaver** added that tenure is not a life-time job, and it does not protect the incompetent and uncaring. All that is needed to terminate a tenured teacher is cause.

**Mr. Feaver** said that in 1991 MEA-MFT was successful in passing legislation that it thought would a bite into the nonrenewal of nontenured teachers. However, the burden of proof fell upon the teacher to prove that the reasons for nonrenewal were not truthful which created a sea of litigation. In 1997, **Mr. Melton** and he worked to change the tenure statutes in a very profound way. They were successful in repealing the truthful reasons provision passed in 1991, and for teachers covered under collective bargaining, they eliminated the judicial procedures that they might wish to pursue should they be terminated. In addition, they required all teachers covered by collective bargaining agreements to arbitrate their terminations.

In conclusion, **Mr. Feaver** said that if SB 227 does not pass in this session, it may be back in the next session. It takes years to make a good teacher, and they learn throughout their careers. The worst kind of argument is that somehow a poor performing

teacher after two years needs a third to prove him or herself to really decide whether they are poor performing. SB 227 is a bill to hold those school districts that would employ for three years someone that they should have let go after two years.

*{Tape: 2; Side: B; Time Counter: 23.4}*

**Opponents' Testimony:**

**Lance Melton, MTSBA**, provided a survey response of MTSBA members regarding a tenure reform bill and a copy of contact years to tenure from surrounding states.

[EXHIBIT \(eds16a08\)](#)

[EXHIBIT \(eds16a09\)](#)

*{Tape: 2; Side: B; Time Counter: 28.2}*

**Dave Puyer, MREA**, said that SB 227 negatively reflects on the leadership and abilities of schools to supervise teachers and that teachers need the third year to hone their skills. SB 227 would also be unfair to the very people that MEA-MFT represents and create a climate of intense controversy in Montana. In addition, it will create an unfair situation for rural students. He suggested that the Committee allow the educational community the interim to come back to the 2007 Session with a solution.

*{Tape: 3; Side: A; Time Counter: 4.2}*

**Darrel Rude, School Administrators of Montana (SAM)**, provided written comments in opposition to SB 227.

[EXHIBIT \(eds16a10\)](#)

**Informational Testimony:** None.

*{Tape: 3; Side: A; Time Counter: 11.7}*

**Questions from Committee Members and Responses:**

**SEN. MANGAN** asked if this was an issue that has been going on since 1997, what is going to happen during another interim **Mr. Melton** said that the issue has not been discussed for two years and it takes time to get members behind it.

**SEN. MANGAN** asked **Tom Facey, Representative, HD 95**, for his opinion on reducing the nontenured teacher probationary period. **REP. FACEY** said that teachers should have more control of the

retention of teachers in the classroom, and they should have more power in terms of evaluating because teachers would be harder on themselves than most administrators. **SEN. MANGAN** asked if SB 227 would help in the recruitment and retention of teachers. **REP. FACEY** said that beginning teachers need a lot of mentoring. If it does not happen in the first three years, schools are sunk.

**SEN. GILLAN** said that in 1997, there was a great deal of momentum to eliminate tenure. She asked where the momentum has gone. **Mr. Feaver** said that there was a lot working together on how to address the immediate problem that Montana schools had in the 1990's over the growing number of termination cases that were being pursued. At the time, he did not have the capacity to reduce the tenure probationary period from 3 to 2 years or he would have done so.

**SEN. STORY** requested information on the number of teachers terminated in their first, second, and third years and the number of teachers who are given the opportunity to resign.

**Closing by Sponsor:**

**SEN. LASLOVICH** said that he did not want to eliminate tenure, and he felt that killing SB 227 was unreasonable. He added that the educational community has had plenty of time to address the issue. He added that North Dakota has a 1-year probationary period. If North Dakota can do it, surely Montana can do it. Two years is a long time and three years is much too long.

**ADJOURNMENT**

Adjournment: 5:40 P.M.

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SEN. DON RYAN, Chairman

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LOIS O'CONNOR, Secretary

DR/lo

Additional Exhibits:

**EXHIBIT ([eds16aad0.PDF](#))**