

MINUTES

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

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN DON RYAN**, on February 4, 2005 at 3:15 A.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. Sam Kitzenberg (R)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Bob Story Jr. (R)

Members Excused: None.

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: None.
Executive Action: SB 177; SB 224; SB 13; SB 10

{Tape: 1; Side: A; Time Counter: 0.3}

EXECUTIVE ACTION ON SB 177

Motion: SEN. JEFF MANGAN (D), SD 12, moved that SB 177 DO PASS.

Discussion:

SEN. DON RYAN (D), SB 10, said that he agreed to amend SB 177 to make it a 2-year funding bill. It increases the per-ANB entitlement in elementary schools by \$250 and high schools by \$50. If a school district can better use the funds in the high school, for example, SB 177 will give the local boards the flexibility to move only their general fund money around. The amendment will also extend the soft caps through the current biennium, and with local voter approval, it will allow schools to stay above the 100% maximum cap. The 3-year ANB averaging applies to both years of the biennium but does not apply to the special education allowable cost payments, and there is cost a of living adjustment (COLA) in both years.

Motion: SEN. MANGAN moved amendment #SB017701.ace.

EXHIBIT (eds28a01)

SEN. DAN MCGEE (R), SD 29, asked about the 106%. **Joan Anderson, Office of Public Instruction (OPI),** said that if a school district anticipates a glut of children and if it wants to build them into its budget for the following year, the district can ask for an anticipated ANB increase. Under current law, when a district does that, it must absorb the first 6% of the enrollment increase without additional ANB added to its budget for the next year. If the district exceeds a 106% enrollment increase, the number of children above the 106% drive a new ANB figure that districts are allowed to budget for going into the next year. A proposed amendment attempts to keep the same structure while ensuring that the 3-year average language worked with it.

SEN. BOB STORY (R), SD 30, questioned the language related to unified and joint boards and how it would affect the smaller feeder-elementary districts that come into the high school district. **Ms. Anderson** said that unification means that the high school and elementary boards located in the same town are operating under one board. There are also outlying elementary districts that have their own boards that are separate from the unified board. She added that a joint board would be any two entities that join together for a particular purpose--an interlocal agreement between two school districts. Almost every system in the state is currently operating under a unified board.

There are only a handful of districts who operate as a county high school.

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SEN. STORY asked how the new ANB calculation would affect the smaller high schools. **SEN. RYAN** said that SB017701.ace narrows the disparity between what is put into a high school student and an elementary student. By addressing declining enrollment and when a district has a large number of per-ANB in the high school, the amendment would give more relief than what is done at the elementary level. **SEN. STORY** asked if the \$250 for elementary and \$50 for high school would be applied each fiscal year. **SEN. RYAN** said that high schools will receive \$250 along with a cost of living adjustment (COLA) in the second year of the biennium, not \$500 total in the elementary and \$100 total in the high school during the biennium. **SEN. STORY** asked if the 3-year ANB averaging remained up and down and should there be a title amendment to reflect what is in the bill. **SEN. RYAN** said the averaging is only for declining enrollment. Staff will clean up the title.

Amy Carlson, Office of Budget and Program Planning (OBPP), said that SB 177 may need a revised fiscal note because the current fiscal note did not reflect the amendment language as she read it. The current fiscal note applies inflation first and then the entitlement increases. The difference is the compounding of the \$250 and \$50 on top of the other increases. **Ms. Carlson** provided a summary of her assumptions that included 3-year averaging and the higher of the 3-year average or current ANB. She said that her calculations would be slightly less than the numbers reflected in the way SB 177 was corrected.

EXHIBIT (eds28a02)

{Tape: 1; Side: B; Time Counter: 2.1}

SEN. STORY said that the Legislature determines how much money is put into school schedules. All SB 454 (2003 Session) did is require administration to budget an inflationary factor in their budgets. In addition, the consumer price index (CPI) in SB 454 was no guarantee to the schools. It was a way to keep the money from being spent in the budgeting process until the Legislature could appropriate the funds. It was always intended that schools review their declining enrollments, establish a base, and put the inflation factor to that figure. The second year will be whatever the first year is with whatever amount the Legislature determines to be the inflationary factor. There is nothing required in law that the Legislature put any number in the schedules. All the law requires is that OBPP set aside a certain amount of revenue so

that it is available. **SEN. MANGAN** said that there is also nothing in the law that says that there could not be both an inflationary factor in addition to another figure on top of that. **SEN. STORY** agreed, but added that whoever is preparing the fiscal note needs to know which order the sponsor of the amendment wanted it to be done so that the fiscal note can be calculated properly.

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Committee members and staff continued discussing SB011701.ace. It was decided that a revised fiscal note and clarification of the amendments was needed to reflect **SEN. RYAN'S** intent. **SEN. STORY** also requested that the simplest process to do the calculation be used.

Motion: SEN. MANGAN withdrew his DO PASS motion on SB 177.

Referring to the inserted Section 7 of SB011701.ace, **SEN. STORY** inquired about the changes made to the annual inflation-related adjustments to the basic entitlements and per-ANB entitlements. **Madalyn Quinlan, OPI**, said that in calendar year 2004, OPI was preparing the budget for fiscal years 2006 and 2007. In preparing the amendments, OPI jumped forward a year because 2005 is time that OPI is preparing the inflator for the ensuing fiscal year. Since OPI moved into the next calendar year, it needed to make the amendment reflect the method that was in statute. She said that the amendment did not change anything. However, once the language about preparing and submitting the agency budget was added, the Committee moved into the actual calculation for the ensuing year in terms of the time period where the calculation is being done. OPI will continue to use the same data points that it would have used otherwise. Further explanation can be received from **Jim Standaert, Legislative Fiscal Division**.

{Tape: 2; Side: A; Time Counter: 2.4}

EXECUTIVE ACTION ON SB 224

Motion: SEN. JESSE LASLOVICH (D), SD 43, moved that SB 224 DO PASS.

Motion: SEN. LASLOVICH moved amendment #SB022401.ace.

EXHIBIT (eds28a03)

Discussion:

Connie Erickson, Legislative Services Division, said SB022401.ace provides a definition of "off-site instructional setting" and clarifies certain student residency issues.

Ms. Quinlan said that in addition to serving resident students, there are other students that districts must serve even if the parents of those students reside somewhere else. It made sense that those students could be served by distance learning in addition to resident students.

SEN. MANGAN questioned whether the off-site instructional setting definition was too specific. **Ms. Quinlan** responded that if a student enrolls in district, they will also be enrolled in a school even they never physically attend that school. An off-site instructional setting does not have to be accredited or included in the accreditation review, only the programs and course offerings of a school.

SEN. BOB HAWKS (D), SD 33, asked if the amendment covered a situation where a school is indirectly servicing an off-site setting from an off-site source, such as distance learning from MSU-Bozeman. **Ms. Quinlan** said that if a program is being delivered directly from MSU-Bozeman to the student and there is no involvement of the local district in that delivery, the student will not generate ANB funding for the school district.

SEN. HAWKS asked if schools were responsible for all students in their district whether they are enrolled in the school or not and if they are ANB credited, why should the university's distance learning to those students not be credited ANB. **Ms. Quinlan** said that a student must enroll in a district before the district has a responsibility to provide an educational service to that student. If the program is coming directly from the university system without the district being involved, the student is more or less a home school student, not a public school student.

SEN. McGEE asked why subsection (2) was stricken from NEW SECTION 1. **Ms. Quinlan** said that under current law, a school district can contract with another district or public or private entity to provide services. OPI did not want to say that only the districts of residence may claim a pupil educated offsite. It is only the district of attendance that can claim the ANB. The first sentence is unnecessary, and the second sentence is wrong. **SEN. McGEE** said since the university system is not an accredited school, will SB 224 prohibit a university from offering that instruction. **Ms. Quinlan** said no, that accredited schools are still delivering those services. Even though they have contracted with the university to provide the service, the notion is that it is the

school that is choosing which distance learning opportunities are going to be provided to the student.

SEN. MANGAN asked whether the language "a location separate from the main school site where instruction is delivered to a student who is enrolled in the district" would solve the concern. **Ms. Quinlan** said that it would not be a problem to change the language, but she felt that it was the word "delivers" that is causing the confusion. **Ms. Erickson** voiced her concern over the conceptual amendment. She said that the Committee was getting away from the idea that it is the school district that is providing the service. The idea behind the amendment is for school district to provide offsite services and collect ANB.

SEN. McGEE said that he did not want to inadvertently hamper a university system from being able to deliver services through long distance. He said that he would offer an amendment on the Senate floor.

Vote: **SEN. LASLOVICH'S** motion to approve amendment #SB022401.ace passed unanimously by voice vote.

Motion/Vote: **SEN. LASLOVICH** moved that SB 224 DO PASS AS AMENDED. Motion passed unanimously by voice vote.

{Tape: 2; Side: A; Time Counter: 25.3}

EXECUTIVE ACTION ON SB 13

Motion/Vote: **SEN. STORY** moved that SB 13 BE TABLED. Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Time Counter: 26.0}

EXECUTIVE ACTION ON SB 10

Motion: **SEN. MCGEE** moved that SB 10 DO PASS.

Discussion:

SEN. STORY said that the Board of Public Education is a constitutional board, and they have constitutional rulemaking authority in decisions not appealed to the Supreme Court. Rulemaking authority is what the Board uses to set their standards, and they are not subject to the Montana Administrative Procedure Act (MAPA). There is no recourse to the Board's decisions on rule adoptions other than going to court. SB 10 attempts to push the envelope on that issue and create a situation where the Supreme Court may have to address the issue.

Ms. Erickson said that the Board is not required to abide by MAPA, but it has chosen to do that. Under the new interim committee structure, the Education and Local Government Committee is responsible for reviewing rules within their preview which covers the Board's rules. Although the interim committee has not reviewed any of the rules that the Board has adopted, the reason has been timing. When the Board notices its rules, in many cases, it does not coincide with the timeframes of the interim committee meetings. However, **Eddy McClure, Staff Attorney, Legislative Services Division**, receives and reviews all of the Board's rules. In addition, the Board of Regents does not follow MAPA because it adopts its rules as policies. The interim committee may want to take a more active role in rule review in the next interim.

SEN. MCGEE asked how the interim committee could have any authority over another constitutionally created board. **Ms. Erickson** said that there is very little the interim committee can do other than to invite the Board of Public Education to explain its rationale for adopting a rule. **SEN. MCGEE** felt that the intent of SB 10 deserved debate by the Committee of the Whole because it is a policy issue.

SEN. RYAN said that as a member of the interim committee, he received a copy of every rule change that the Board discussed, and it does follow MAPA. He felt that if the Board every chose not to use the MAPA process, there might be a reason for the Legislature to step in.

Substitute Motion/Vote: **SEN. MANGAN** made a substitute motion that SB 10 BE TABLED. Substitute motion carried 8 to 3 by roll call vote with SENATORS BARKUS, MCGEE, and STORY voting no. **SEN. ELLIOTT** voted aye by proxy.

ADJOURNMENT

Adjournment: 5:15 P.M.

SEN. DON RYAN, Chairman

LOIS O'CONNOR, Secretary

DR/lo

Additional Exhibits:

EXHIBIT ([eds28aad0.PDF](#))