

MINUTES

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

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN DON RYAN**, on January 10, 2005 at 3:00 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. 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: SB 170, 1/7/2005; SB 171, 1/7/2005;
SB 57, 1/7/2005
Executive Action: None.

HEARING ON SB 170

{Tape: 1; Side: A; Time Counter: 3.0}

Opening Statement by Sponsor:

SEN. JEFF MANGAN, SD 12, stated that SB 170 is based upon the recommendations of the Public School Renewal Commission and provides school districts with more flexibility in setting their school calendars. He said that for years Montana schools have been tightly constrained to a 180-day schedule for students, but some Montana communities have asserted that by removing this constraint, it would improve the efficiency and effectiveness of their schools. Schools will still be required to meet the required number of comparable instructional hours.

Proponents Testimony:

Lance Melton, Executive Director, Montana School Boards Association (MTSBA); Madalyn Quinlan, Office of Public Instruction (OPI); and Steve Meloy, Executive Secretary, Board of Public Education, provided written comments in support of SB 170. [EXHIBIT \(eds06a01\)](#)

[EXHIBIT \(eds06a02\)](#)

[EXHIBIT \(eds06a03\)](#)

Darrel Rud, Executive Director, School Administrators of Montana (SAM), spoke in support of SB 170 stating that SB 170 will be good for a quality education and for children. Mr. Rud also spoke as a proponent on behalf of the **Montana Rural Education Association (MREA)** and the **Montana Taxpayers Association**.

Opponents Testimony: None

Questions from Committee Members and Responses:

SEN. GREGORY BARKUS asked why SB 170 contained no sidebars as to the length of the school day. **SEN. MANGAN** said that local school boards are committed to the children and schools in their individual districts, and he felt comfortable allowing the local boards to make decisions that affect their communities and schools.

SEN. DAN MCGEE asked why collective bargaining language was needed when it was not needed previously. **Mr. Melton** said that, although unlikely, the concern is that if a school district significantly changes its school calendar, it becomes a change in

working conditions which school districts must bargain. Rather than get into a battle about whether school districts will find this out after losing each unfair labor practice charge, it was included in SB 170. **SEN. McGEE** questioned the necessity of SB 170 if the collective bargaining system was going to dictate the flexibility of the school calendar. **Mr. Melton** said that SB 170 has a substantial change in flexibility. Current law requires that a school district offer both hours and in a set number of days. He felt it to be an infringement on local control and an overregulation. He said that school districts are bound by the obligation to bargain with their employees who are organized under the Public Employee Collective Bargaining Act.

SEN. BOB STORY asked how school districts were going to get teachers to come to work for extra days after they fulfill their public instruction-related days (PIRD). **Mr. Melton** said that teachers are exempt personnel under the Fair Labor Standards Act. Whether they work a 6-hour day or a 10-hour day, teachers receive a daily rate of pay, and he does not foresees anything other than a slight deviation in the number of minutes per day necessary to provide teachers with access to high quality professional development. **SEN. STORY** asked if it were intentional in the drafting of SB 170 that the penalty would decrease for not meeting the required number of days or hours. **SEN. MANGAN** said that the issue was not discussed with staff but that it could be brought up again during Executive Action.

Closing by Sponsor:

SEN. MANGAN said that he would review the amendments proposed by the OPI and the issue discovered by **SEN. STORY**. H requested the Committee's support.

HEARING ON SB 171

{Tape: 1; Side: B; Time Counter: 5.4}

Opening Statement by Sponsor:

SEN. STEVEN GALLUS, SD 37, said that SB 171 allows the Presidents of the units of the university system to offer mulityear contracts to athletic coaches. He said that it would level the playing field for the Montana university system with other surrounding states and it would stabilize athletic departments and the contracts that they sign. **SEN. GALLUS** said that **Don Reed, Athletic Director, University of Montana**, supports SB 171 but would like to see by-back clauses included in the contract system.

SEN. GALLUS requested that the Committee amend SB 171 to "strike" chancellors in the title and the body of the bill.

Proponents' Testimony:

Tom Facey, Representative, HD 95, said that intercollegiate athletics is problematic and the current policy that the Board of Regents has sends a message that the win-loss record of the coach is the most important thing. In addition, 1-year contracts would be more expensive because if a family knows that it has a contract for one year, it is going to ask for more money knowing that it may be gone and in need of moving expenses.

{Tape: 1; Side: B; Time Counter: 11.7}

Opponents' Testimony:

Leroy Schramm, Citizen, Helena, provided a copy of the Board of Regent's current powers and duties (20-25-301, MCA).

EXHIBIT (eds06a04)

Mr. Schramm said that presidents of Montana's university system currently have the authority to offer multiyear contracts to employees, that multiyear contracts have no benefit at all to the university system, and that they will not keep coaches in Montana's university systems who want to leave.

SB 171 states that personal services contracts cannot be enforced against the employee beyond a term of two years. **Mr. Schramm** said that specific performance under personal service contracts are unenforceable. Employment contracts are unique in contract law and, by their very nature, are very one-sided. They can be enforced against an employer but cannot be effectively enforced against the employee who wants to leave because it violates the 13th Amendment to the U.S. Constitution which bans involuntary servitude.

In closing, **Mr. Schramm**, felt that carving out a special section of statute and saying that it will apply only to university system coaches betrays a skewed sense of values that athletics is different than or more important than any other field.

Informational Testimony:

Kathy Crego, Director of Labor Relations, Montana University System, said that the Board of Regents currently has the authority to offer multiyear contracts and the Regents see SB 171 as unnecessary.

{Tape: 1; Side: B; Time Counter: 24.6}

Questions from Committee Members and Responses:

SEN. MANGAN asked about the current system. **Ms. Crego** said that the Board of Regents approves all hires. Although it may be the president or chancellor of an institution that undertakes recruitment, the ultimate hire is approved by the Board. She added that at this point, the Board has not entered into any contract for any employee that they hire for any longer than a 1-year period.

SEN. STORY asked how much power the Legislature had to enforce 20-25-301, MCA, since the Board is a constitutional entity. **Mr. Schramm** said that the primary case on the Board of Regent's authority is the Board of Regents v. Judge (1974) when the Legislature said that the Board could not pay presidents more than an x-amount and the Regents went to court. The court said that the Regents can pay their presidents anything that they want.

SEN. MCGEE asked about the rationale behind having the president as opposed to the Regents offering multiyear contracts to athletic coaches. **SEN. GALLUS** said that SB 171 is a fire under the Regents who have been asked many times to offer multiyear contracts to coaching staff for stability purposes. He added that SB 171 is not about servitude or the Civil War, it is about athletics and it gives complete authority to the Board of Regents.

Closing by Sponsor:

SEN. GALLUS requested the Committee's support.

HEARING ON SB 57

{Tape: 2; Side: A; Time Counter: 15.6}

Opening Statement by Sponsor:

SEN. RICK LAIBLE, SD 44, said that SB 57 allows local schools to transfer students from Montana home school districts to the Job Corps and still retain the average number belonging (ANB) funding for those students.

SEN. LAIBLE added that some school districts that are in districts that have a Job Corps have decided to include 18-year

old students who attend the Job Corp even if their home school is in another state. As a result, Job Corp students who are 18 years of age are able to state the Job Corp as their place of residence. Montana taxpayers are currently funding the education of out-of-state students which was never the Legislature's intent. The intent was for Montana students to be able to transfer to the Job Corp and, at the same time, for their school district to not be penalized by losing their ANB funding.

Proponents' Testimony:

Debbie Shea, Citizen, Butte, said that she carried the same legislation in the 2001 Session which had broad-based support. As a result, Montana received national recognition for its progressive thinking. However, things can become abused which has happened in this case. She urged the Committee's support.

Opponents' Testimony: None.

Informational Testimony:

Lance Melton, MTSBA, provided information on the determination of residency.

EXHIBIT (eds06a05)

Mr. Melton said that if SB 57 is passed, changes are needed to ensure that attorneys do not have to argue about whether current statute was inadvertently repealed by something that was done this Session with regard to residency. SB 57 should include language that states that residency will be determined according to 1-1-215, MCA. **Mr. Melton** added that he would oppose any legislation that would seek to require students to be residents of the state in order to receive educational services.

Questions from Committee Members and Responses:

SEN. STORY asked if a student could legally be told that the student could not enroll in a specific school district. **Mr. Melton** said that SB 57 does not restrict a student from enrolling in a school district, but, if the student is still a resident of another state, that student would have to pay tuition. Current law states that a school district has to enroll any pupil. If an 18-year old student shows up at the school district or Job Corp, educational services are required to be provided. **SEN. STORY** asked if SB 57 prevents anything. **Mr. Melton** said that SB 57 is very restricted in its purpose of being tied specifically to a student in the Job Corp program and not a general prohibition on

a student moving from another state and wanting to receive educational services.

Closing by Sponsor:

SEN. LAIBLE requested the Committee's support.

HEARING ON SB 152 (CONTINUED)

{Tape: 2; Side: B; Time Counter: 3.1}

Informational Testimony:

Ms. Quinlan, Office of Public Instruction (OPI), provided answers to several informational questions posed by **SEN. DON RYAN** regarding real-life situations that school districts have to deal with in regard to educationally relevant factors. She stated the following:

- (1) addressing the needs of schools or districts with low population density;
 - (a) long travel distances to and from school,
 - (b) teachers in rural areas often need to teach multiple subjects,
 - (c) middle schools and high schools are faced with needing to offer the full range of academic programs that are necessary to meet accreditation standards, and
 - (d) the difficulty of recruiting staff to rural areas,
- (2) addressing the needs of students at-risk;
 - (a) students who do not come to school ready to learn,
 - (b) students whose parents have a limited education and who come from poverty situations,
 - (c) gifted and talented students who may be bored with the curriculum that is being presented or who need a different or accelerated delivery of educational services, and
 - (d) students with learning disabilities and limited English proficiency;
- (3) the use of research to ensure best practices;
 - (a) schools need the ability to look at the whole cycle of school improvement,
 - (b) the resources to design a curriculum based on the state accreditation and performance standards,
 - (c) to evaluate and set their sights on their best teaching methods,
 - (d) to assess results and make program improvements based on the cycle of school improvement,

- (e) provide professional development opportunities for staff within or outside the district, and
 - (f) provide regional services areas to provide professional development opportunities for teachers in the special education field,
- (4) recruit and retain qualified teachers;
- (a) the ability to find teachers who are licensed in Montana and endorsed to teach in the subject areas that the school needs--a challenge for rural schools,
- (5) the preservation of local control for school districts;
- (a) what types of resources are needed or how those resource needs may vary based on different size school districts and their governance structure.

Questions from Committee Members and Responses:

SEN. BOB HAWKS asked about OPI's approach to the No Child Left Behind Act and is Montana anticipating what may come down from the federal government. **Ms. Quinlan** responded that Montana currently has a new criteria reference test for assessing students. OPI is using that data to determine adequate yearly progress of school districts. The area that will be a huge hit to the state is the area of highly qualified teachers. Federal law requires teachers to pass a proficiency test or have a major or minor in each subject area that they teach. **Ms. Quinlan** said that even if the state could get to that standard, there are many teachers who need to go back to school to get their degrees to make them qualified to teach. The fact that Montana has accepted money under the No Child Left Behind Act puts Montana on the line to be in compliance with the Act even if 85% of the money is coming from state and local sources.

SEN. MCGEE asked why the state is assuming that teachers have to go back to school instead of passing a rigorous test. **Ms. Quinlan** said that the state is not assuming that teachers have to go back to school to get their degree, it just does not have the system built for the tests in the various subject areas or the resources to implement the system.

SEN. JERRY BLACK asked if facilities and technical equipment for low-density population districts should be addressed in the assessment. **Ms. Quinlan** said that capital outlay and equal access to facilities are important and they are components of a basic system of education. Montana schools are taking advantage of distance learning opportunities, and it needs to be factored in as part of the educational services that will be delivered in the 21st Century.

SEN. STORY requested an explanation of the statement "federal standards become state standards". **Ms. Quinlan** said that federal standards become state standards in the area of highly qualified teachers. In order for Montana to accept the money under the No Child Left Behind, it must have a definitional pile of qualified teachers who are accepted by the federal government. **SEN. STORY** asked if the present funding system dealt with low-density population districts to some extent. **Ms. Quinlan** said yes, in that the basic entitlement is available to every high school no matter what its size. While the basic entitlement is not representative of fixed costs, many people associate it with that. In addition, the per-pupil funding formula has a rate in statute and funding is decreased as the size of the school district grows.

SEN. HAWKS asked if it were true that most schools that do not meet the accreditation standards fall into the low-density group. **Ms. Quinlan** was unsure but would provide the information along with some reasons that schools do not meet the accreditation standards.

{Tape: 3; Side: A; Time Counter: 0.1}

SEN. BLACK asked if Montana is meeting its accreditation standards and the No Child Left Behind Act, would it providing a quality education. **Ms. Quinlan** said the definition of a quality education is collective. Meeting the accreditation standards and the No Child Left Behind Act is an indication that Montana is moving toward or has a quality education. However, those are not the only two pieces of the system that need to be reviewed.

SEN. BARKUS believed that Montana needed to maintain an evaluation system for teachers in order to meet the requirements of the District Court. He also questioned how educationally relevant local control was. **SEN. RYAN** said that local control is very important because what people want their children to have is from the ground up.

Executive Action will be taken on SB 152 on Thursday, January 13, 2005.

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. DON RYAN, Chairman

LOIS O'CONNOR, Secretary

DR/LO

Additional Exhibits:

EXHIBIT ([eds06aad0.PDF](#))