MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN DON RYAN**, on January 12, 2005 at 3:05 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. 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: Sen. Jim Elliott

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 152, 12/30/2004
Executive Action: None.

There will be a VisionNet Conference with rural schools at the Hustad Center on January 13, 2005, from 3:30 to 5:00 p.m.

Amendments to SB 152 will be distributed to Committee members for review. Executive Action will be held on Thursday, January 13, 2005, followed by a Joint meeting with the House Select Committee on Education on Friday, January 14, 2005.

{Tape: 1; Side: A; Time Counter: 6.5}

HEARING ON SB 152 (CONTINUED)

Proponents' Testimony: None.

Opponents' Testimony:

SEN. DAN McGEE said that he was more concerned with SB 152 rather than being an opponent. He stated the following:

(1) It would be prudent to include Article X, Section 1 of the Constitution in the WHEREAS clauses which states..."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." ... The reference to educational opportunity is a critical matter. **SEN. McGEE** will put this in the form of an amendment.
(2) Include also in the WHEREAS clauses, Article X, Section 8 that states..."The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law."... What happens at the local school district level is also a critical issue. If the Legislature crafts something from the state level, it must be very careful about how that is going to be handed down to the local school boards.
(3) He is concerned with the constitutional issue regarding the District Court and Supreme Court findings. The Supreme Court has issued an order but the Legislature does not have a decision, therefore, it lacks logic. The Legislature does know that the Supreme Court does not entirely agree with the District Court. SB 152 states..."WHEREAS, based on the Montana Supreme Court's order, it is clear that the Court concluded..." **SEN. McGEE** feels that it is not clear what the Court concluded.
(4) There is a separation of powers--the Judicial Branch and the Legislative Branch. The Legislature does not have the right to order the Court as to what it decides in a case. This is fundamental. Courts, on their part, have no right to dictate to the Legislature what it shall legislate. His concern is with the phrase "educationally relevant factors". The Court is saying to the Legislature that it has not funded the school system appropriately because "educationally relevant factors" were not used. However, the Court does not define what educationally relevant factors are, and then it expects the Legislature to define that phrase. In that sense, the Court has now legislated to the Legislature what it is to

legislate. **SEN. McGEE** felt this to be a violation of the separation of powers.

(5) If the Legislature as a whole comes up with the phrase "educationally relevant factors" and defines the phrase, it is legitimate. However, if the Legislature acts as if the Court has ordered us to respond to a phrase that it has created, that is legislating to the Legislature. Therefore, in stating that the state's current funding system is not based on "educationally relevant factors", the Legislature is responding directly to the Court as if it is the Legislature.

(6) **SEN. McGEE** did not necessarily agree with the genesis of "educationally relevant factors". However, if the state is going to have that phrase, SB 152 is missing a reference to the children which he believes to be an "educationally relevant factor". SB 152 does not say anything about school funding being in any way related to children. SB 152 includes language related to facilities, teachers, accreditation standards, and transportation, but never once, children. He said that he could start a school in a ghost town. If the Legislature were to fund, based on SB 152 the way it is drafted, he would receive the revenue for the school and never have a child. Even though it may not be articulated that children are the basis of Montana's school funding formula, is it not true that Montana gives money as a BASE aid to a school equal across the state and if a school has the children, the school receives money for the children. He felt this to be an "educationally relevant factor".

(7) Finally, **SEN. McGEE'S** concern is the reference to the accreditation standards. He believes that the Legislature is the chief policymaking entity for the people and residents of the State of Montana. There can be a Board of Education, and the Board should be made up of people who are experts in the realm of education. The Board should look at what is necessary to run a school and get curriculum out to the children. However, if the Legislature adopts the policy that it is going to have a definition of "educationally relevant factors" and accreditation standards, both of the terms are wide open and subjective. What it renders the Legislature is an ATM machine for the education establishment. There are no constraints that the Legislature has with regard to funding.

SEN. McGEE said that he would work with staff to craft amendments that will address his concerns. He said his intent is to not torpedo the whole concept of SB 152. However, he felt that the bill was very broad and that the Legislature needed to go back to the fundamental concept that the Constitution brought forward--

opportunity. Then the Legislature can deal with a basic and quality education.

Steve White, Legislative Liaison, Montana Coalition of Home Educators, said that the home school community opposes Sections 1 and 2 of SB 152. In 1983, SB 445 was enacted as 20-5-109, MCA, and SB 152 seeks to change some of the wording in that statute. He said Sections 1 and 2 strikes "instructional" and inserts "educational". This was not the intent of the 1983 Legislature.

Mr. White said that the reason that educational and instructional is a significant change to home schools is that "instructional" is just that. "Educational" could become part of a broader scope of a program, and ultimately become the recommendation for a particular textbook or accreditation. "Instructional" is the action of educating which is why there is an OPI. He said that 20-7-111, MCA, which is mandated by the Board of Public Education becomes the foundation of what the home school community has to do to be exempt from compulsory attendance. **Mr. White** requested that 20-5-109 and 20-7-111, MCA, be left in statute as they currently are.

Mr. White provided a verbatim transcript of the 1972 Constitutional Convention that covered a debate about the language "full educational potential" and how far the Legislature should go in determining the amount of money that should be appropriated for education.

EXHIBIT(eds08a01)

Mr. White stated that the transcript states..."We also want to make it clear that 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." **Mr. White** felt that the framers of the Constitution wanted to provide a basic system of education that would fulfill the terms of the Constitution, and if a local community wanted to increase programs, they were allowed to do it. **Mr. White** encouraged the Committee to read the transcript before taking Executive Action on SB 152.

{Tape: 1; Side: B; Time Counter: 2.3}

Questions from Committee Members and Responses:

SEN. BOB STORY said that some items listed in the definition of a basic, quality school system seem to be more appropriate as educationally relevant factors. He questioned how the two could be tied together and work. **SEN. DON RYAN** stated the following:

(1) The definition of a basic system of quality education is listed as the ability to have the accreditation standards met in every school because that is what the professionals have told the Legislature. The Board of Public Education is part of the checks and balance system, and the Legislature consents to the people on the Board based upon Executive Branch recommendations. The Board continuously revises its standards.
(2) The 1972 Constitution and the Legislature requires Indian education for all, and the state is obligated to fund a portion of it. If Indian education is currently being conducted in schools, it has become a complete, local burden because the state has never funded it.
(3) Currently, Montana has special education and gifted and talented students with unique challenges and abilities. The state is obligated to implement educational needs for special needs students to provide them with opportunities needed to move forward.
(4) The most important factor is that the Legislature ensure that every school district has the resources to have quality teachers and the ability to recruit and retain quality teachers. Eight percent of all funding for public schools is salaries. The Legislature also needs to ensure that schools have the resources for books, technology, specialized materials, and distance learning.
(5) The reason the state got sued is because it did not tie the current funding formula to a particular per-student need. Currently, Montana school districts are struggling to meet accreditation standards because of the lack of funding. The state also capped the spending of certain school districts which limited their ability to gather necessary resources to meet the definition of "quality" which created inequities within the districts.
(6) If all Montana communities had a certain school size, there would be no problem. However, Montana has variations in school size and in populations of the students. Montana's public school system should be fair to everyone. SB 152 will allow the Legislature to address the inequities of certain districts in getting the needed resources to their children.

SEN. STORY asked where, under the definition of "basic system", does it mention quality teachers. **SEN. RYAN** said that quality teachers are addressed under salaries and mandated employee benefits and under inservice training and staff development. Montana is not competitive in bringing quality teachers to the state and it is losing good teachers. As a result, salaries and benefits must be components of the basic system and fair throughout the state. **SEN. STORY** asked if it were **SEN. RYAN'S** intention that the definitions under Section(3)(2)--basic system of free quality education--would also be considered educationally

relevant factors for funding purposes or are they only describing a "basic education". **SEN. RYAN** said that the work before the Committee is to begin working on a new school funding formula. When it questions why it should put funding toward a school district for a particular purpose, the Committee can tie it back to a definition of basic system.

Referring to an analogy of building a house, **SEN. STORY** asked if it were **SEN. RYAN'S** intention to look at the design of a house and then question whether he could afford it or was it to have someone design the house and then pay the bill. **SEN. RYAN** said that he could spend $100,000 building a house. However, if he builds it with no design in mind and builds it out of straw, it will blow away in the wind. This is why he has included educationally relevant factors in the definition of basic system, so that when the house is built, there is a structure there that makes some sense. Once the house is built, then the determination of how much money is needed can be made from the structure. The state has the obligation to fund a certain level of education, and if districts want to put more funding into it, they can, thereby leaving budget authority at the local level. **SEN. STORY** asked if the Legislature would be able to "tweak" or make adjustments within the process of funding schools. He said that the Constitutional Convention stated that the school funding system should not break the state of Montana. **SEN. RYAN** said that Committee members know how school funding works and that is why it is important for it to do its job. He added that he did not want to turn the issue over to a study commission because of the varying amounts that they come up with. The Committee's job is to develop a school funding system for Montana, and he believes that Montana has the expertise within the state to do that and meet the demands of the Court.

SEN. GREGORY BARKUS questioned whether the Committee had gone far enough in determining what "basic" education was. **SEN. RYAN** said that according to the Constitution, the state needs a "basic" system for free quality elementary and secondary schools. What does the Legislature want within that system? The state must develop a system whereby the state can deliver the revenue needed to provide that system. It is up to the school districts to meet the accreditation standards, to hire the best teachers, and to provide Indian Education For All. The Legislature must develop a system whereby the state has met its obligation of providing necessary funding for the districts. **SEN. BARKUS** asked if the state would be in jeopardy of being sued if children are provided the opportunity to learn but choose not to. **SEN. RYAN** said that it is up to the school districts to provide a quality education once the state provides the resources necessary to accomplish the task. **SEN. BARKUS** requested clarification on the evaluation

section of teachers and what part it plays in the quality system. **SEN. RYAN** responded that two ideas could be to (1) reward school districts for hiring better teachers and (2) the possibility of a tiered-licensure. Currently, schools receive no additional funding for producing quality.

{Tape: 2; Side: A; Time Counter: 1.9}

SEN. JERRY BLACK said that the Committee could be building a house that it may not be able to afford, particularly in the area of the ability to recruit and retain qualified teachers. He asked how Montana could pay for or compete with other states that may have unlimited funds to recruit and retain Montana's qualified teachers. **SEN. RYAN** did not believe that the sum of money to recruit and retain teaches would be a huge amount. He said that in the 1960's and 1970's, Montana was attracting teachers nationwide. Currently, out-of-state teachers do not apply for Montana teaching positions because Montana is Mississippi in teacher pay. The Legislature needs to construct a funding system that addresses the fixed costs of school districts so that they will not have to cut programs and one that better utilizes administrative dollars. **SEN. BLACK** believed that the way SB 152 is stated, the Court could say that if Montana could not retain teachers, it did not meet the "ability" to recruit and retain teachers. Therefore, the state must provide that ability.

{Tape: 2; Side: A; Time Counter: 9.3}

SEN. McGEE asked if there was a correlation between living expenses and tax bases in places other than Montana that are competitive in teacher salaries. **SEN. RYAN** said that the competitive advantages will be discussed in the next phase of building a funding structure.

Closing by Sponsor:

SEN. RYAN said that SB 152 is not the "Holy Grail", but it is legislation that can be built upon to provide a framework to continue the next phase of the Legislature's job.

{Tape: 2; Side: A; Time Counter: 26.5}

SEN. STORY questioned whether "instructional" and "educational" were interchangeable terms. **Connie Erickson, Research Analyst, Legislative Services Division**, said that the suggestion came from OPI because the term that is generally used is "educational" program as opposed to "instructional" program. Ms. Erickson felt that it would not make much difference which term is used because the important reference is to 20-7-111, MCA (See Page 2, line 7

of SB 152). **SEN. STORY** asked if the accreditation standards specified more than one educational program. **Ms. Erickson** said that the accreditation standards are not tiered standards. The standards lay out what schools should have in terms of numbers of administrators, etc.

ADJOURNMENT

Adjournment: 5:00 P.M.

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SEN. DON RYAN, Chairman

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LOIS O'CONNOR, Secretary

DR/lo

Additional Exhibits:

EXHIBIT(eds08aad0.PDF)