EXHIBIT 14
DATE 2/9/2011
HB 136

February 9, 2011

Chairman Reichner
House Education Committee

Re: House Bill 136

Dear Chairman Reichner and Members of the House Education Committee:

As you have likely heard, individual school district members of MTSBA have expressed a variety of views regarding House Bill 136, which includes key elements of the Governor's school funding proposal for the 2011 Legislative Session.

We have members that support House Bill 136 as introduced, members that support portions of House Bill 136, members that oppose portions of House Bill 136 and members that oppose House Bill 136 in its entirety. By the end of the hearing you will have likely heard from members representing each of the foregoing viewpoints. As such, we do not intend to testify at the hearing. We thought it would be helpful, however, to provide the Committee with a specific articulation of MTSBA's views that are based on resolutions passed by our members.

There are two resolutions passed by the MTSBA membership that address elements in House Bill 136. The first is our primary school funding resolution and the resulting Tier 1 funding priorities adopted in MTSBA's Legislative Platform.

Elements of House Bill 136 that MTSBA Supports:

House Bill 136 embraces an important element of our Tier 1 funding priorities through the proposed inflationary adjustment to the Basic and Per-ANB Entitlements, though it does not fully account for inflation that has transpired over the current and coming biennium as calculated in compliance with 20-9-326, MCA. The following compares the relevant MTSBA funding priorities and House Bill 136 provisions:

Tier 1 Funding Priority Adopted by MTSBA	**Included in House Bill 136?**
Inflationary adjustments to the basic and per-ANB entitlements and QEP for FY12 and FY13, in compliance with 20-9-326	**Yes.** HB 136 includes inflationary increases to the Basic and Per-ANB entitlements and the per quality educator payment of 1.9% for FY12 and 1.53% for FY13. Additionally, 20-9-326 is proposed to be amended to incorporate inflation for the QEP in present law.
Inflationary adjustment catch up for FY10 statutory shortfall of 2% in the Basic and Per-ANB Entitlements	**No.** Raw inflation for FY10 and FY11, calculated in compliance with 20-9-326 in the 2009 Legislature, was 3.43% in FY10 and 3% in FY11. Per 20-9-326, the 3.43% in FY10 was capped at 3% (see 20-9-326(2)). Because the state did not have sufficient funding to fund inflation calculated in accordance with the law on an ongoing basis in FY10 and FY11, it funded 2% on the FY10 inflation amount on a one time only basis. So, true inflation calculated in compliance with 20-9-326, MCA would have been 3% in FY10 and 3% in FY11. The amount incorporated into the statute was based on ***1%*** and 3%, with the

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	remaining 2% in FY10 funded with one time only funds. In order to bring funding current with inflation and in order to comply with the court rulings on adequacy, the law should be amended to adjust the statutory amounts for the Basic and Per ANB entitlements by 2% to cover the current biennium shortfall and should then be adjusted by 1.9% in FY10 and 1.53% in FY11. The only bill in the 2011 Legislature to propose this to date is Senate Bill 79 by Senator Gary Branae.

Suggested Amendment:

1. We believe that HB 136 needs to be amended to incorporate the same 2% catch up provision from SB 79 in order to honor the intent of the state's response to the Court's decision in Columbia Falls v. State.
2. The Legislature's own definition of the Basic System of Free Quality Schools in 20-9-309(4)(b)(iii) requires that the formula be "self-executing and include a mechanism for annual inflationary adjustments."
3. Inflation calculated pursuant to 20-9-326, MCA, compared to the actual inflation appropriated for ongoing purposes:

Fiscal Year	Inflation Calculated Pursuant to 20-9-326, Raw Calculation	Inflation After Imposition of 3% Cap Under 20-9-326	Inflation Actually Provided on an Ongoing Basis in Law
2010	3.22%	3%	1%
2011	4.03%	3%	3%
2012, Per HB 136	1.9%	1.9%	1.9%
2013, Per HB 136	1.53%	1.53%	1.53%
Cumulative Inflation 2010-2013	10.68%	9.43%	7.43%
Shortfall		**(1.25%)**	**(3.25%)**

If HB 136 is adopted as introduced, the state will have fallen behind true inflation by 3.25% and by 1.25% even when imposition of a 3% cap provided by 20-9-326 is included.

4. Judge Sherlock in his most recent ruling adopted findings of fact and conclusions of law that essentially held that having a provision in law for calculating inflation was not enough to meet the test of a "self-executing" formula and that actual inflationary adjustments adopted pursuant to 20-9-326 would be the means by which the state's compliance would be assessed:
   a. **Conclusion of Law Number 9:** *"The funding formula established by the legislature is not, at this time entirely self-executing, even though it includes a mechanism for inflationary adjustments."*
   b. **Finding of Fact Number 119:** *". . . . Following are some of the problems the court sees that could cause this court's conclusion to be reversed in the future . . . the State has made excellent contributions to ongoing state aid from 2005 through 2008. However, beginning in fiscal year 2009, the increase in the amount of State aid will drop to 1.9 percent. In order to avoid future problems, this figure should reflect to the trend of 2005-2008."*

Addressing this issue of inflationary shortfall in state share could be accomplished by amending the amounts from Senate Bill 79 (Senator Branae) for the Basic and Per ANB entitlements into House Bill 136.

Other Elements of the Governor's Funding Proposal:

In addition to the inflationary adjustments in House Bill 136, we also support other elements of the Governor's K-12 funding proposal that are incorporated in other legislation, including:

1. Restoration of At Risk funding of $5 million per year, which was temporarily cut in the last biennium to $1 because school districts had one time only Title 1 funds under the American Recovery and Reinvestment Act (ARRA).
2. Inflationary adjustments to special education
3. Payment of maintenance of effort for special education

Elements of House Bill 136 that MTSBA Opposes:

The second resolution passed by our membership that pertains to HB 136 calls on MTSBA to oppose a variety of budget cut options that originated during the interim in discussions of the Legislative Finance Committee. Among the budget cut options presented by the Legislative Fiscal Division to the Interim Committee were several proposals to cut existing funding sources and make up the difference by taking local oil and gas revenues away from schools. The MTSBA Delegate Assembly unanimously passed a resolution calling on MTSBA to oppose the budget cut options identified by the LFD, a decision which was unanimously endorsed by the membership at large during the annual business session in October, 2010. House Bill 136 includes an even more dramatic reduction in local oil and gas revenues than any of the proposals opposed by the MTSBA membership and we oppose provisions in House Bill 136 pertaining to this issue.

The proposal in House Bill 136 to take oil and gas revenues stems from a separate proposal of the Governor's office to reduce existing state general fund support of the Quality Educator Payment, a proposal reflected in House Bill 2. The purpose of sections in House Bill 136 pertaining to oil and natural gas production taxes then is not a proposal to share such revenues among schools, but is rather a proposal to make up for a corresponding cut in state general fund support for schools that is an integral part of the Governor's K-12 funding proposal. The fiscal note for House Bill 136 itself estimates that the net effect of House Bill 136 is a $65 million savings to the state general fund over the biennium (see the bottom of page 1 of the fiscal note). How do you increase funding for schools across the board and come up with a $65 million savings to the state general fund? By increasing local property taxes by a like amount.

The provisions of House Bill 136 pertaining to oil and natural gas production taxes will have a hidden impact that is not readily apparent in the bill. Oil and natural gas production taxes are currently treated as a BASE budget revenue source under 20-9-141, MCA. Additionally, the law requires school districts to reduce mills across all budgeted funds of the district with these revenues. These provisions stem from a change in the law years ago, when oil and gas revenues were treated as tax base for school districts. So, to the extent that those revenues are appropriated under House Bill 136 to make up for the $38 million cut in existing state general fund support for schools in the QEP payment, those revenues will have to be made up locally with increased property taxes.

In addition to local property tax increases, House Bill 136 provisions relating to oil and natural gas production taxes will leave affected school districts vulnerable to significant budget cuts.

Under current law, a school district must submit any increase in over BASE taxes to a vote. Imagine the likely outcome of such elections once House Bill 136 kicks in and taxpayers realize that their BASE taxes went up dramatically without a vote once the oil and gas revenues are gone. In the same year that those taxes dramatically increase, the district will have to ask the voters to pay an increase in voted taxes in order to make up for the lost oil and gas revenue in the above Base portion of their general fund budget and the only place the voters will have an opportunity to express their opposition to the nonvoted increases in their BASE taxes is by saying "no" to the proposal to raise their over BASE taxes to keep the district whole.

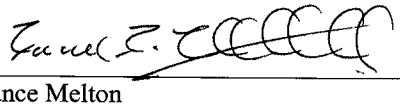
House Bill 136 sets the stage for affected school districts to lose as much as 30% of their budgets in one high stakes levy election within a couple of years after passage and does nothing to mitigate the risk of harm to programs and services serving children in the affected communities once the levy election inevitably fails.

Other Issues in House Bill 136:

1. We support the Montana Digital Academy and have no problem with the proposed changes for that program under HB 136.
2. We oppose the current statutory framework for distributing funding for school construction. We believe that the grant program administered by the Department of Commerce results in significant inequities in the distribution of the state's share of funding, in violation of Article X, Section 1 of the Montana Constitution. We believe that funding that is deemed available for school construction should be sent out on a formula basis, under the Quality Educator Payment (QEP) to ensure that all school districts have state resources available for school construction and maintenance needs and to allow school districts to budget for these funds. The current grant system is akin to a lottery system that pits school districts against one another in a competition for funds that are inadequate to meet everyone's needs.

I hope that the above information is helpful to the Committee as it deliberates on House Bill 136. Please let me know if you have any questions.

Sincerely,



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