

**House Taxation Committee**

Testimony on SB 358

April 5 2011

I believe this a great opportunity to address the constructional issues in our school funding system. The title of the bill is **“an act revising Tax Increment Financing Laws** these are my concerns that tax increment laws disrupt school equity and school funding.

The Preamble of the constitution “equality of opportunity” Article X section 1 “equality of education opportunity is guaranteed “

Volume II Page 722: The subject of “equal education opportunity” has become a particularly important doctrine.

Volume II Page 724 “the committee feels that a strong directive is necessary” “the particular type of financing system is a matter properly left to legislative determination, but the fundamental principles upon which such a system is based are matters of a Constitutional nature; (1) that taxation for such a system be equitably apportioned; (2) that the school funds be distributed in an equal manner; and (3) that the funds supplied be sufficient to insure full funding. The first two of these principles follow from the meaning of “equal education opportunity” equality of tax burden for the support of education and equality of distribution of education funds.

**Effect on County or Other Local Revenues or Expenditures:**

1. If as a result of SB 358 as amended, cities and counties create more targeted economic development districts than they would have created under existing TIF laws, there will be reduced local government and local school district mill revenue. **If jurisdictions raise mills to offset revenue directed to targeted economic development districts, the remaining taxpayers within the taxing jurisdiction will need to support a greater portion of the property tax burden.**

**20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program.** (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts

**15-10-420. Procedure for calculating levy.** (b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

A school district with a TIF does not use the taxable value in the TIF so that school looks poor to the state and a school district that does not have TIF has to use all of their taxable value and for that, the TIF district skewed the calculations? The state share that is equitable share is Transportation, retirement, facility's and **Base Aid** "Base funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public education"

Currently there are schools with at least 10 percent of their taxable value are in TIF districts and it may as high as 13 percent and for that the equitable distribution of the state share is disrupted.

Comments on SB 403 "Sen. Ryan Zinke, R-Whitefish, "In the Legislature, it is our job to equalize it. It is our job to make it a fair system, so it shouldn't make a difference which side of the fence a kid grows up on."

In the Finance and claims committee on Saturday the March 19<sup>th</sup> 2011 on SB 403 Dan Villa from the Governor's office said "poor on paper the state contribution increases"

So when a school district with a TIF district does not have to use all of their taxable value they look poor on paper. This appears to be clearly a case of discrimination.

**Long-Term Impacts:**

1. If as a result of SB 358, as amended, cities and counties create more TED districts than they would have created under existing TIF laws, there will be a reduction in mill revenue for all jurisdictions with these districts (except the university 6 mill levies). **Currently about \$4.0 million in state equalization (95) mill revenue is retained in TIF districts and not transferred to the state general fund each year.**

Article X Section 3. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion. Volume II Page 725 "in securing assured sources of support for the education system, the committee agreed that Constitutional protection should be supplied to the public school fund".

This is not an opportunity to address this constitutional issue, this is an obligation to correct this constructional issue, Article III Section 3. "I will support, protect, and defend the constitution of Montana". The state law that provides this equalization aid is, MCA 20-9-309. **Basic system of free quality public elementary and secondary schools defined -- identifying educationally relevant factors -- establishment of funding formula and budgetary structure - - legislative review Pursuant to Article X, section 1, of the Montana constitution, the legislature is required to provide a basic system of free quality public elementary and secondary schools throughout the state of Montana that will guarantee equality of educational opportunity to all.**

If you believe that the oil and gas should be equitable shared then why not the 95 mills on the appreciated taxable value in a TIF when the Business are Cabela's, Wal-Mart, Sam's club, Fed Ex, McDonalds, Holiday Inn Yellowstone county equipment "John Deere farm equipment, and the list goes on and on this is truly a state resource that should be shared by the state.

The 6 mills for the university system are not captured but the Vo Tech and Community Colleges mills are, in direct violation of the constitution. In 2010 \$164,178.00 were captured in TIF's. "equal protection under the law"

**Section 10. State university funds.** The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

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## COMMENTS ON MAJORITY PROPOSAL

Education occupies a place of cardinal importance in the public realm. The educational system is charged with the task of shaping and cultivating the mind of each succeeding generation and with developing the capacities for cultural and technical advancement of society. State and local governments devote a far larger share of their financial resources to the support of education than to any other single public activity.

Because of this overriding importance of education, the committee recognizes the awesome task of providing the appropriate Constitutional provisions necessary to protect and nurture the public educational system. Each aspect of existing and proposed Constitutional language was thoroughly and deeply reflected upon by the committee in light of present and future needs. Fundamental to the committee's considerations were the twin goals of protecting the integrity of a quality educational system and allowing for flexibility to meet changes as yet unknown but which will certainly occur in future developments in the field of learning.

In light of these aims, the committee has preserved those provisions in the existing Constitution which have proven worth and which pose no hindrance to potential developments. On the other hand, the committee has made revisions in those places where it saw a definite need for constitutional improvement. Some of these changes have to do with basic aims of the educational system; others are concerned with structural or administrative adaptations to changing conditions in education. The most significant revisions are a clear statement of educational goals of the state, a mandate for the support of education allowing increased financial flexibility, deletion of antiquated age and school term restrictions, and a revised administrative structure for both the public school system and for higher education.

The committee views these proposed changes as vital to the quality and efficiency of education in Montana. The proposed article provides appropriate guarantees to the viability of the public school system, while leaving the way open to future transformations in the educational process.

Section 1. EDUCATIONAL GOALS AND DUTIES OF THE STATE. It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person. Equality of educational opportunity shall be guaranteed to each person of the state.

The legislature shall provide for a system of high quality free public elementary and secondary schools. The legislature may also provide for other educational institutions, public libraries and educational programs

as are deemed desirable. It shall be the duty of the legislature to provide by taxation or other means and to distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system.

#### COMMENTS

The proposed section by the committee would replace sections 1, 6 and 7 of the existing Constitution. The committee desires to broaden the goals set forth for an educational system beyond those which might have been appropriate for public schools at the time of writing the existing Constitution. The horizons of education are constantly expanding. There has been a growing recognition of educational rights which extend beyond arbitrary age and school term limitations. Society has accepted the duty to support a quality educational system, and courts have stressed that it must be made available on approximately equal terms. Thus, the committee proposes a new section which takes into account the widened perspectives embodied in these developments.

The first sentence, "It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person," is appropriate as a statement of purpose for education in the state. Learning is gradually being recognized as a process which extends from the early months till the late years of life. A long range goal of the state should be to foster and support this learning process for all citizens to the maximum level possible in any given era. The committee realizes that economic and human resources may be insufficient at present to promote learning "to the full educational potential of each person," but it feels strongly that the goal should be set forth as an ideal to serve as a guide for educational development in the state. All members of society should be ultimately eligible for the benefits of enlightenment and skills acquired through the educational process.

The subject of "equal educational opportunity" has become a particularly important doctrine in modern education. Recent federal, district and state court decisions have interpreted the Fourteenth Amendment to the federal Constitution as applying to educational financing. Under this doctrine, the state must show a compelling interest to maintain a classification system by wealth which interferes with the individual's fundamental right to an education. By this standard the courts have ruled that the school district financing systems in four states violate equal protection.

Montana's school financing system is similar to those

declared unconstitutional in the states where challenges have been made. The same vast discrepancies in tax burdens and educational support exist in Montana as exist elsewhere. A recent study by the Office of the Superintendent of Public Instruction (A Study of Basic Educational Program Funding Methodology in Montana, January 1972) shows that Montana school district wealth per ANB varies by as much as a ratio of 10,000 to 1. The enormous differences in tax bases mean that many rich districts can provide much better education facilities with lower tax rates. Some poor districts must tax their residents three or four times as much as rich districts to provide less than half as much money per student. Clearly, the existing school foundation program in Montana does not attain its aim of equalizing educational burdens and benefits. Indeed, the study shows that in the state as a whole, foundation program expenditures actually subsidize wealthier districts more than poorer districts, aggravating factors which already tend to make education a function of wealth.

This conforms to a national pattern in which states spend on the average twice as much to educate the children of the rich as to educate the children of the poor. Other forms of barriers to equal educational opportunity, such as cultural or linguistic factors in minority groups, may also hinder the development of children on an equal basis. Clearly the educational system must be directed to the elimination of blatant injustices which may predetermine a life-long disadvantage. The principle of equal educational opportunity, as a corollary to the right to equal protection of the laws, stands as a fundamental maxim for the public educational system.

It has been suggested that Constitutional statement of equal educational opportunity might be a mandate for the attainment of an impossible ideal, and that such a statement of principle could open the door to a welter of demands for making public education absolutely equal for every person in society on every level. This interpretation, however, would represent an extreme and absurd misconstruction of the meaning of the principle. The principle of "equal educational opportunity" is no more an abstract absolute than is the right to "equal protection of the laws" or any other Constitutionally guaranteed right or freedom. No right is absolute; each must be considered in connection with other rights and freedoms and in terms of the social context to which it is applied.

In keeping with the rationale articulated in Serrano v. Priest and other court decisions in this area, the committee agrees with the exemplary words of a landmark U.S. Supreme Court decision:

In these days, it is doubtful that any child may

reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. [Brown v. Board of Education. 347 U.S. 493 (1954)]

Likewise, the California Supreme Court held:

[I]ts uniqueness among public activities clearly demonstrates that education must respond to the command of the equal protection. [Serrano v. Priest, 96 Cal 601]

Both Brown and Serrano attacked the substantial disparities in the educational systems under review and concluded that neither race nor wealth could be used to impair the equal right of children to an education. Neither of these cases mandated some sort of precise equality of education for the entire lifespan of the human being. The fundamental principle established, however, is that every child should have approximately the same opportunity to receive an adequate basic education. What this means in practice will be legislatively defined in terms of prevailing social conditions.

The sentence "the legislature shall provide for a system of high quality free public elementary and secondary schools," is a mandate to the legislature to insure the existence of a quality basic educational system. The word "quality" is an instruction to the legislature to provide not simply a minimum educational system, but one which meets contemporary needs and produced capable, well-informed citizens. The word "free" is understood by the committee to mean that those aspects of an elementary or secondary education shall be free from cost which are essential to those courses required by the school for graduation.

The committee also believes that other educational institutions and programs and libraries are important parts of educational activity in the state. The particular sorts of institutions and programs, however, must be left for the legislature to determine, since changing conditions may require a variety of endeavors.

The final sentence in section 1 provides a vital mandate to the legislature for the support of the public school system. The committee feels that a strong directive is necessary to insure the support of the public elementary and secondary school system. The particular type of financing system is a matter properly left to legislative determination, but the fundamental principles upon which such a system is based are matters of a Constitutional nature. The committee specifies three tenets of a school financing system: (1) that taxation for such a system be equitably apportioned; (2) that the school funds be distributed in an equal manner; and (3) that the funds supplied be sufficient to insure full funding of the system.

The first two of these principles follow from the meaning of "equal educational opportunity." Two aspects of equal opportunity have been emphasized in the judicial decisions: equality of tax burden for the support of education and equality of distribution of educational funds. A wide variety of particular school financing plans, from a wholly state-financed program to a plan for substantial redistricting, have been suggested to meet these criteria. The selection of which plan best suits the situation in Montana is a matter for the legislature to decide. The Constitutional language solely established norms for the evaluation of such plans.

The third principle set forth by the committee, that of full funding, is a mandate to insure that the public school system will exist on a plane of equal quality rather than of equal poverty. The maxim of "full funding" is intended by the committee to require the establishment of the school system on a realistic basis.

Once the needs for a basic quality system of elementary and secondary schools have been realistically assessed, the state has the obligation to guarantee that this minimum basic program be fully funded. This requirement would substitute rationality and equity for the confusion and injustice which have often plagued school finance systems in the East.

Section 2. PUBLIC SCHOOL FUND. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government known as school lands; and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to this state for general educational purposes.

#### COMMENTS

In securing assured sources of support for the educational system, the committee agreed that Constitutional protection should be supplied to the public school fund. Section 2 in the existing Constitution has provided this protection by itemizing the components of the fund and unequivocally specifying that these contributing funds shall be used for education. The name

"public school fund:" which appears in this section is adopted as the name to be used consistently hereafter in the Constitution.

Section 3. PUBLIC SCHOOL FUND: INVIOLENT. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested under the restrictions to be provided by law.

#### COMMENTS

This section is identical to section 3 of the existing Constitution, with the exception that the Constitutional investment restrictions are removed. The committee is of the opinion that the investment policy for the public fund is properly a legislative matter. Beyond guaranteeing the inviolate character of the fund, a Constitutional provision cannot anticipate investment policies appropriate to changing conditions. Moreover, the existing language, "to be invested, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings," is both ambiguous and overly restrictive. The benefit to the schools might be much greater if in any given period the public school fund were otherwise securely invested. Flexibility requires that such policy decisions be made by the legislature.

Section 4. BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, which shall have the direction, control, leasing, exchange and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law.

#### COMMENTS

This section remains almost unchanged from the original Constitution. A board composed of four elective officials, the governor, superintendent of public instruction, attorney general, and secretary of state, serves an important function in supervising the management of the state school lands and the income derived from these lands. The board while operating under this Constitutional provision, has worked well in the past and would appear to be able to do the same for the foreseeable future. The only change deemed desirable at this time is the addition of the word "exchange" to the list of activities within the board's power. The need for this has become evident in cases where the state has been prevented from making advantageous exchanges of

land by the commission of this power from the Present Constitutional provision.

The committee also considered revising the membership of the board, and particularly reducing the number of members to three by the commission of the Secretary of State, but decided that the four Constitutionally named elective officers were an important source of direct popular control and that an even-numbered board requiring a majority of three for a decision would emphasize the principle of caution over that of expediency.

Section 5. PUBLIC SCHOOL FUND REVENUE. Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the Public school funds shall be equitably apportioned annually to Public elementary and secondary schools as provided by law.

The remaining five per centum (5%) of all the interest received on the school funds of the state, and the remaining five per centum (5%) of all the rents received from the leasing of school lands and of all other income from the public school funds, shall annually be added to the Public school funds of the state and become and forever remain an inseparable and inviolable part thereof.

#### COMMENTS

The proposed section 5 is a shortened and revised version of section 5 in the present Constitution. The intent of the provision, to Constitutionally protect the interest and income from the public school fund, is important; however the particular restrictions as to its distribution to schools are considered obsolete in light of present conditions. The language concerning the portions to be distributed and that which is to be reinvested remains the same as in the Present Constitution. The methods of distribution previously specified are replaced by a general phrase "shall be equitably apportioned annually to elementary and secondary schools as provided by law."

The replacement language provides the desired flexibility to the legislature to develop school financing programs in tune with current necessities. Particularly relevant to this change is the trend across the nation, in accordance with recent court decisions under the equal protection doctrine, to provide more equitable school financing systems. The "flat grant" type of aid provided under the old method of distributing income and interest to all school districts on a census basis is clearly anti-equalizing under the standards discussed in the commentary to section 1. By specifying only that the distribution must be

"equitable" the new language allows the legislature to determine the type of distribution which will attain this goal.

Restrictions in the form of specified districts, age, and school terms which may have been applicable at the time of writing of the 1889 Constitution, are no longer meaningful. Rather than attempt to apply new restrictions more in keeping with the contemporary school system, the committee determined that it was preferable to allow for changing needs as interpreted by the legislature by designating only a broad standard, namely "equitably apportioned as provided by law."

A further element in the distribution system authorized by the existing provision is the specification that the interest and income money be distributed to the "several school districts." This has been interpreted in the past to mean that funds deriving from this source be granted only to elementary schools, presumably because elementary schools were the only public schools in existence at the time when this provision was written. In keeping with its intention to expand legislative possibilities in educational finance, as discussed in the commentary on section 1 the committee has replaced the phrase "several school districts" with "public elementary and secondary schools." This could change the existing distribution system to include high schools as recipients of interest and income money. The immediate result is anticipated by the Office of the Superintendent of Public Instruction to result in a net saving of administrative costs to the state. (See appendix E.)

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS.  
Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or monies whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

#### COMMENTS

After long and serious consideration, a majority of the committee decided to retain the section in the existing Constitution (Article XI, section 8) which strongly prohibits direct or indirect aid from any public fund of the state to any sectarian educational institution or for any sectarian purpose. The committee recognizes the merit and thoughtfulness of arguments offered for and against any change in this section, but agrees fundamentally that any alteration in wording might jeopardize the precarious historical balance which has been struck between opposing doctrines and countervailing principles.

What other states have done and are doing in regards to urban-renewal and TIF districts

2011

Illinois: "State Senator Heather Steans has introduced TIF-Reform legislation in Springfield" from an article in the Chicago Sun Times March 14 2011: **Emmanuel (Rahm) and new alderman to tackle city TIF subsidies**  
Mayor-elect Rahm Emmanuel "tax-gobbling menace"

Idaho: **Urban renewal bills have momentum** March 8 2011 Coeur d'Alene (CDAPRESS.com)

- \* House Bill 95 - establishes agencies by county elections, limits bonds to 20 years and exempts farmland from being incorporated into new urban renewal areas;
- \* HB96 - allows taxing districts to "opt out" of a URD;
- \* HB97 - limits districts to specific projects; and
- \* HB110 - adds a public hearing requirement before an agency is created.

California: Wall Street Journal March 12 2011 "California's governor (Jerry Brown) wants to close his state's redevelopment agencies which abuse property rights and breed dependency among city governments". State Controller John Chiang "not a generator of jobs and economic growth"

New Mexico: SB-243 by Stephen Fischmann; An Act Relating to Tax Increment Districts

2010

Colorado: **New law bars ag land from urban-renewal district's** Denver Business Journal, April 14 2010; "Urban-Renewal districts no longer can include agriculture land within their boundaries under a bill signed (HB 1107) by Gov. Bill Ritter

2009

Oregon: **Tualatin drops urban renewal extension amid community, fire district opposition** The Oregonian April 06 2010, "urban-renewal to face stricter guidelines established by lawmakers in 2009"

Ohio: Ohio Department of Taxation: This paper provides a general explanation of the impact of recent reforms to TIF incentive districts and certain other economic development tax exemptions

2005

Indiana: **Property Tax Rates and Tax Increment Financing:** Michael J. Hicks, Ph.D. Bureau of Business Research Miller College of Business Ball State University

**Summary:** Existing research on tax incentives does not provide a strong call for their use.

2002 Iowa: **Do Tax Increment Finance District in Iowa Spur Regional Economic and Demographic Growth?** Department of Economics Iowa State University

“The ease with which TIF district designation can be done...has become a *de facto* entitlement for new industry”

“Iowa’s counties are specifically burdened”

“Iowa schools are held partially harmless, as state aid kicks in to offset the erosion in tax base”

“existing taxpayers, its households, wage earners, and retirees are aggressively subsidizing business growth”

“We found virtually no statistically meaningful economics, fiscal, and social correlates with this practice in our assessment; consequently, the evidence that we analyzed suggests that net positions are not being enhanced, that the overall expected benefits do not exceed the public cost”

“This analysis suggests that the enabling legislation for tax based incentives deserves revisiting. Though the TIF programs are highly popular among city government officials and why wouldn’t it be given the growth in property tax yield over the years, there is virtually no evidence of broad economic or social benefits in light of the costs”.