

*This research brief is intended to synthesize the background of education funding in Montana. The combination of issues are presented with the intention of giving the reader a description of where we have been and where we are now. The concepts outlined represent an overview to assist the reader in developing a context for what must now be done in Montana to provide a K-12 system of public schools that our children deserve.*

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## **Montana Constitution Education Clause Language ...**

### **Article X - Education and Public Lands**

*(1) 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.*

*(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.*

*(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system. (Montana Constitution, 1972).*

## **History of School Funding in Montana, A recent look ...**

- In 1949, Montana created a funding system that could best be characterized as a Foundation program (sometimes referred to as the Strayer-Haig Formula) establishing a minimum level of funding per pupil. The state aid was equivalent to the amount of minimum level not raised by local taxation. Districts were required to levy a certain number of mills to finance the program (along with state direct appropriation). Shortcomings of this system were that it allowed districts to spend above the minimum foundation level. Districts with larger taxable valuations were allowed to expand budgets at a pace greater than those districts with less taxable value. This inequity led to legal challenge. (Jean, 1998)
- At the time of the 1972 Constitutional Convention, the framers of Montana's new constitution expressed concern over the guarantee of equal educational opportunity. Both the text of Montana's education clause and the history of its formation show the state has two obligations with regard to public education: (1) an obligation to maintain a certain standard of educational quality across the state; and (2) an obligation to offer an equal opportunity to receive an education to that standard. Citing the California Supreme Court equal protection

decision *Serrano v. Priest*, which made a constitutional statement of equal protection principles, the Montana Constitution framers opted to include a general principle of educational quality in Article X, section 1(1). The convention delegates expressed concerns about the state's financial limitations, but stressed the importance of equality of educational standards across the state. (Wandler, 2004).

- Between 1950 and 1986, the amount of state funds for elementary and secondary schools had dropped from 81.2% to between 54% and 58% of the total funding. (Wandler, 2004).
- 1985, a coalition of 64 school districts filed a lawsuit in Helena District Court claiming that the funding of the education system in Montana, guaranteed under the Montana Constitution, was unconstitutional. *Helena Elementary School District No. 1 v. State* was filed alleging the Foundation program funding violated Article II, section 4, and Article X of the Montana Constitution.
- On January 13, 1985, the "Loble Decision" was handed down. This decision was challenged by the State of Montana and subsequently upheld by the Montana Supreme Court, confirmed:
  - < That the State of Montana, "... has failed to provide a system of quality public education granting to each student the equality of education opportunity guaranteed under Article X Section I of Montana's Constitution." (OPI, 2003).
  - < Montana's public school finance system is unconstitutional.
  - < Accreditation standards are minimum standards.
  - < General fund, transportation fund, retirement, and facilities were all part of a basic system of education.
- In June of 1989, a special session of the Legislature was called to address the problem. During that session, HB 28 was passed in an attempt to solve the equity problem.
- HB 28 increased state support for the foundation schedules, reduced local property tax burdens, and instituted a Guaranteed Tax Base (GTB) (a mechanism designed to assist low wealth districts by subsidizing their tax base through state assistance).
- However, the under-funded coalition did not feel that this solved the equity problem and the funding disparity issue ended up back in District Court. The result was two additional equity lawsuits filed in 1991.
- Subsequent legislative action passed by HB 667 (1993 Legislative Session) rendered the two lawsuits moot and established the current method of funding for all public schools in Montana.
- HB 667 created a formula (based on a combination of the Flat Grant-funding per budget unit, Foundation Program-funding per student, and partial funding from GTB) that established maximum and minimum general fund budget levels for all school districts. This model was developed to be revenue neutral, i.e. to cost the state no more than it would cost the state under HB 28
- Each school district was required to be within that range (between the maximum and minimum) on or before 1998.
- Facing decreasing revenue and a projected shortfall in the State budget, Governor Racicot called a special session in January 1994. HB 22 passed during this special session reducing the State's share to schools by 4.5% (an amount approximating what other areas of government were targeted to be cut). HB 22 also eliminated the provision of "permissive" growth of budgets, requiring annual voter approval for any budget growth beyond growth in

- the budget due to increased student numbers or mandatorily required to achieve equity.
- SB 460 (1999 Legislative Session) and SB 390 (2001 Legislative Session) expanded the capacity of districts to adopt budgets that exceed the Maximum level.
- From 1991 to 2003 the state share of School General Fund budgets has declined from 71.4% to 60.95%. (OPI, 2003). This reduction in the state share percentage has been passed on to local property taxpayers, raising concern about the fairness of the system.
- The inability of the funding system developed under HB 667 and modified by HB 22 to keep up with inflation has caused funding challenges in districts across the state. Those districts with declining enrollment have experienced the most significant impact. This has led some to believe that the equity required by the Loble decision has been achieved by simply making all schools poorer. This lends to discussions that equity and adequacy are quite different concepts.
- As a result of the above concerns, the Montana Education Coalition was formed in 2003.

### **Montana Quality Education Coalition (MQEC) ...**

- MQEC is comprised of school districts and educational organizations from throughout Montana. Currently, MQEC member school districts serve over 67% of Montana's K-12 students. Statewide educational organizations include: MEA-MFT, School Administrators of Montana (SAM), Montana School Boards Association (MTSBA), Montana Rural Education Association (MREA), and Indian Impact Schools of Montana (IISM).
- The Montana Quality Education Coalition (MQEC) exists to secure and maintain adequate school funding necessary to provide quality education for all Montana children as guaranteed by Article X of the Constitution of the State of Montana.
- [mqec\\_our\\_strategy.htm](#)MQEC adopted a "Two Pronged" Action Plan. First, MQEC is committed to working with the executive and legislative branches of Montana, and with the entire education community, to identify and enact meaningful and lasting reform of Montana's school funding system. Second, the Coalition filed a constitutional challenge in court, asking the judicial branch to declare that the State has not met its obligations under Article X of the Constitution of the State of Montana.
- On April 15, 2004, Helena District Court Judge Jeffery Sherlock found, in the matter of *Columbia Falls, et.al. v. State*, the current system of funding for Montana's public schools to be in violation of Montana's Constitutional requirement that the legislature provide a system of quality public schools. In the ruling Judge Sherlock highlights:
  - < Montana must increase funding for public education.
  - < The current system is structurally flawed because it is not based on "educationally relevant" factors.
  - < The minimum level of new funding in any new system must be adequate to allow every school to meet all standards (federal, state and local) required to provide a quality public education.
  - < The recruitment and retention of quality educators is an important component of a quality system of public education.

- < Any funding differentials between elementary and high school districts must be based on a determination of actual cost differentials.
- < A new funding system should be self-sustaining. It should include mechanisms to adjust for inflation, recognize and adjust for the impact of declining enrollment and provide for periodic review.
- < The Indian Education for All Act must be funded and implemented. (MQEC, 2004)
- On November 9, 2004 the Montana Supreme Court issued its preliminary order affirming Judge Sherlock's opinion in the school funding lawsuit.

### **Efforts to Study Montana School Funding/Education Issues ...**

- Over the years a number of efforts have been extended to study school funding. Between 1957 and 1991, the Legislature, the Office of Public Instruction, and the Board of Public Education completed a number of school funding studies with few resulting in substantive change to funding amounts or guarantees.
- The School Foundation Program Study Committee compared actual costs of school district "essentials" in 1949 and 1962. The committee found the Montana districts were justified to spend 2.75 times as much in response to the real effects of inflation rate, enrollment increases, and state and national educational program changes. The committee recommended increased state funding levels. (Wandler, 2004).
- In 1973, the Senate ordered the Board of Public Education to define "A basic quality education" under the new 1972 Constitution. Although the study was completed, there is no record of authorizing resolution in the published Laws of Montana. (Wandler, 2004)
- In 1975, the Board of Public Education, in a report to the 45<sup>th</sup> Legislature, defined a "basic quality education" as "a process which can enable students to transform their potential into actuality." Along with the definition, the Board reported eight curricula dimensions and made recommendations to the Legislature, including a recommendation to adjust per-pupil funding amounts according to the cost of providing necessary resources. This definition (according to Merrill) was criticized as being too vague and out-come based. During the same session, OPI recommended increasing per-pupil funding based on analysis of actual district expenditures and the legislature increased funds accordingly. (Wandler, 2004).
- In 1979, OPI recommended increased per-pupil funding in response to another study showing expenditures had increased beyond the guaranteed level, and that the expenditure level be studied annually. Per-pupil increases were enacted by the legislature but the annual expenditure review was not. (Wandler, 2004).
- Other studies were recommended in 1987 but were overshadowed by the *Helena Elementary v. State* case and subsequent legislative response.
- In 1992, the Legislature challenged the Board of Public Education's rule-making authority over the issue of requiring schools to develop programs for gifted/talented students. Helena District Court Judge Sherlock delivered an opinion favoring the Board's inviolate constitutional rule-making authority.
- In 1999-2000, an Accreditation Task Force, co-chaired by the Board of Public Education and OPI, reviewed and revised Montana's Accreditation Standards. This group of 21

stakeholders representing all areas of the state, recommended changes after careful line-by-line consideration and careful deliberate discussion. The Board of Public Education followed the established public hearing process and adopted the newly revised rules in 2001. (Montana Accreditation Standards, 2001).

### **Governor's K-12 Public School Funding Advisory Council ...**

- The 2001 Legislature, through HB 625, enacted a K-12 Public School Funding Study and established the K-12 Public School Funding Advisory Council to study the provisions during the 2001 interim. The bill charged the Governor and Superintendent of Public Instruction to study 12 outlined issues with findings and recommendations to be presented to the Education Interim Committee.
- On December 31, 2001 the Advisory Council issued its report outlining 8 recommendations and 3 areas for further study. In January of 2002, Governor Martz and Superintendent McCulloch responded to the report by memo to the Education and Local Government Interim Committee. In the spring of 2002, the interim committee held public meetings across Montana to discuss the findings. In August of 2002, the interim committee endorsed 8 recommendations from the Council for legislative consideration. In September of 2002, the Governor's Office endorsed 5 of the recommendations and included them in the executive budget for the 2003 Legislative session.
- The recommendations included:
  - < A statewide levy to fund the property tax portion of the BASE budgets (endorsed by interim committee but not the Governor).
  - < Establish a state health insurance pool.
  - < Revise the transportation funding structure.
  - < Calculate ANB for a district by using averaging over a 3 year period.
  - < Provide an annual inflation adjustment in the formula (endorsed by interim committee but not the Governor).
  - < Use HB 124 (2001) block grants for debt service to fund facility projects, and allow district trustees to allocate the remaining balance of a district's HB 124 (2001) block grants to any budgeted fund. (Funding Advisory Council, 2001).
- Areas recommended for further study included: a comprehensive study of the adequacy of school funding, further explore combining district budgeted funds, and to further pursue the recommendations of Governor Racicot's Task Force on Teacher Shortage/Teacher Salaries. (Funding Advisory Council, 2001).

### **Adequacy Study (Augenblick and Myers) ...**

- In 2001-02, a group of educational entities (led by the Montana School Board Association) commissioned Augenblick and Myers to engage in a study designed to determine the funding levels necessary for different school districts to produce specific levels of education.

- The professional judgement approach was used to define an adequate education. 83 Montana citizens with knowledge of education issues contributed to the information contained in the report.
- The study results were published in August 2002. (Augenblick and Myers, 2002).

### **Montana K-12 Public School Renewal Commission ...**

- In November of 2002, the Board of Public Education, in preparation for the 2003 Legislative Session, developed a Position Paper on Public School Funding and Structure. In order to establish collaborative partners in this effort, the Board approached the Governor's office through Lt. Governor Karl Ohs and later Governor Martz to move forward with a collaborative "call to action" around the concepts outlined in the position paper. Governor Martz supported the concept and announced her support during the State of the State Address to the Legislature in January 2003. Following a great deal of discussion with the education community the concepts from the position paper were crafted into legislation. HB 736, sponsored by Rep. Roy Brown and supported by both Democrat and Republican leadership in the House and Senate passed and created the Montana K-12 Public School Renewal Commission. (Miller, 2003).
- In July of 2003, 28 Commission members were selected to represent a broad range of education stakeholders including legislators, parents, state and county officials, educators, and the private sector. The commission met 17 times over a period of 15 months.
- Three working groups were appointed to focus on Taxation and Revenue, Regional Services, and Barriers to Consolidation.
- Members of the Commission met twice with the Legislative Interim Tax Reform Study Committee.
- The report of the Commissions Findings and Recommendations was presented to the Legislative Interim Education and Local Government Committee on September 15, 2004 by Commission Chair, Lt. Governor Karl Ohs, and Vice Chair, Dr. Kirk Miller. The interim committee endorsed the recommendations and urged individual lawmakers to carry the ideas to the 2005 Legislature.
- The Commission arrived at consensus on the following recommendations for changes in Montana K-12 education:
  - < Building a quality education on the foundation of the Montana Accreditation Standards.
  - < Providing greater flexibility in the school calendar to expand learning opportunities and professional development.
  - < Studying the regionalization of education services.
  - < Eliminating barriers to voluntary consolidation of school districts, both statutory and financial.
  - < Supporting a statewide school district employee insurance pool with state incentives for participation.
  - < Supporting restoring the position of Gifted and Talented Specialist and funding professional development and other outreach services.

- < Supporting the phase-in of increased state support for Special Education services.
- < Providing adequate funding to cover the costs of operating and maintaining quality public elementary and secondary schools.
  
- < Modernizing revenue and taxation to promote equalization for taxpayers and schools to balance the benefits and burden.
- < Supporting state funding to expand kindergarten services [supported by majority consensus with dissenting Commissioners].
- < Supporting state funding for *Indian Education for All* curriculum, policies, and rules.
- < Supporting state facilitated public/private partnerships for local summer programs and extended school programs [supported by majority consensus with a dissenting Commissioner].
- < Recognizing the importance of an adequate infrastructure [physical plant and equipment] as a key component of a quality education.
  
- The School Renewal Commission worked together to comprehensively examine Montana's K-12 education system. The Commission's goal was to offer viable recommendations that would help the Children of Montana receive an effective, understandable, adequately funded, sustainable, and efficient education. (School Renewal Commission, 2004)

### **Implications for the Future – Some Thoughts on Where We Go From Here ...**

- Has Montana fully addressed its decision on the Equal Protection clause of the 14<sup>th</sup> amendment (education clause)?
- Has Montana fully addressed decisions on Equity - Both in expenditure per student and also equitable distribution of tax base per student?
- Defining "quality" using "educationally relevant" factors.
- Determine the investment necessary to meet the definition.
- Establish a funding system that includes provision for future inflation.
- Establish a sustainable revenue stream that meets the needs of the system.
- Understand the implications developing a new system will have on the lives of Montanans and on current allocation of revenue in other areas of need in our state.
- Use what we have learned to develop solutions by working together.
- Provide our Montana communities and schools with a message of "hope" while we work diligently to develop solutions!

*The experts assembled today at this Education Forum will provide us with a sense of where we need to move to meet the challenges facing education funding in Montana.*

*The challenge ahead will be solved through an understanding of past actions and the fortitude of*

*legislators, leaders, and policy makers to move forward in the best interest of the children in Montana!*

## **Resources/Materials Cited ...**

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- Montana School Accreditation Standards and Procedures Manual. Montana Board of Public Education and Office of Public Instruction, June 2001.
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- “The Proceedings of the Montana K-12 Public School Renewal Commission”, a paper prepared by Dori Burns Nielson, November 29, 2004.