

HOUSE JOINT RESOLUTION NO. 41 School District Territory Transfers

Study Plan

Prepared for the Education and Local Government Interim Committee
by
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This paper presents a plan for conducting an interim legislative study of territory transfers between school districts in Montana. The study was requested by House Joint Resolution No. 41 (HJR 41) and is assigned to the Education and Local Government Interim Committee.

The study plan consists of several parts as follows:

Part One provides background information on the issues that led to the request for the study.

Part Two explains the general purpose and requirements for the study requested by HJR 41.

Part Three suggests a general approach for conducting the study of territory transfers between school districts.

Part Four presents a tentative work schedule for the completion of the study.

PART ONE: BACKGROUND

Hayes v. Lame Deer

In 1994, individuals residing in both Rosebud and Big Horn Counties petitioned their respective County Superintendents requesting a territory transfer from the Lame Deer High School District back to the Colstrip and Hardin High School Districts. The Lame Deer District had been created the year before with land from both Colstrip and Hardin. Both County Superintendents granted the respondents' request to transfer the territory. The Lame Deer High School District appealed the decision to the Superintendent of Public Instruction who reversed the County Superintendents' decisions. The respondents then appealed the State Superintendent's decision to their respective District Courts, who affirmed the County Superintendents' decisions. Lame Deer High School appealed the decisions to the Montana Supreme Court, which consolidated the cases, and issued a decision on December 19, 2000, that reversed the decisions of the District Courts.

The Supreme Court held that the current law granting County Superintendents the power to

transfer territory from one school district to another is an unconstitutional delegation of legislative power because the statute is too broad and lacks specific criteria to be considered when deciding to grant or deny a petition for transfer. The Legislature may delegate its legislative function to an administrative agency, but it must provide clear and ascertainable limits, objective criteria, or clear and definitive legislative standards to control the exercise of discretion and decision making authority of the agency.

The statute at issue in the Lame Deer was 20-6-320, MCA. The statute currently reads as follows:

20-6-320. Transfer of territory from one high school district to another. (1)

A majority of registered electors of a high school district who reside in territory that is a part of a high school district may petition the county superintendent to transfer the territory in which they reside to another high school district if:

(a) the territory to be transferred is contiguous to the high school district to which it is to be attached;

(b) the territory to be transferred is not located within 3 miles, over the shortest practical route, of an operating school of the high school district from which it is to be detached;

(c) the transfer of the territory will not reduce the taxable value of the district to less than \$300,000 unless the remaining territory of the high school district contains not less than 50,000 acres of nontaxable Indian land;

(d) the board of trustees of the school district that would receive the territory has approved the proposed transfer in writing; and

(e) the territory proposed to be transferred to another high school district has not been included in a petition filed under this section in the previous 3 years.

(2) The petition must be addressed to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the high school district to which it is to be transferred;

(b) state the reasons why the transfer is requested;

(c) state the number of high-school-age children residing in the territory; and

(d) be accompanied by a \$100 nonrefundable filing fee.

(3) A petition that meets the criteria specified in subsection (1) and that contains all the information required by subsection (2) is a valid petition. On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) file the petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices must be posted in the high school districts affected by the petition for the territory transfer in the manner prescribed in this title for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(4) The county superintendent shall conduct the hearing as scheduled in accordance with the rules of procedure adopted by the superintendent of public instruction pursuant to 20-3-107(3), and any resident, taxpayer, or representative of either affected high school district must be heard.

(5) Within 30 days after the hearing, the county superintendent shall, after

considering the testimony and exhibits presented at the hearing, issue findings of fact, conclusions of law, and an order. **The county superintendent shall grant or deny the requested transfer of territory. The decision must be based on the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the high school district.**

(6) The decision of the county superintendent is final 30 days after its date unless it is appealed to the district court by a resident, taxpayer, or representative of either high school district affected by the petitioned territory transfer.

(7) If a petition to transfer territory from one high school district to another high school district would create a joint high school district or affect the boundary of any existing joint high school district, the petition must be presented to the county superintendent of the county where the territory proposed for transfer is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents is an even number, the county superintendents shall jointly appoint a county superintendent from an unaffected county to join them in conducting the hearing required by subsection (4) and in issuing the decision required by subsection (5). The decision issued under subsection (5) must be made by a majority of the county superintendents.

(8) A petition seeking to transfer high school territory out of or into a K-12 district must be accompanied by a petition to transfer the same territory as elementary territory in accordance with 20-6-213. In the case of a proposed transfer out of or into a K-12 district, a high school petition that is not accompanied by an elementary petition is invalid for the purpose of subsection (3).

In the Lame Deer decision, the Montana Supreme Court discussed two subsections:

- ? subsection (1), *in italics above*, on what procedurally constitutes a valid petition for transfer consideration; and
- ? subsection (6)[now (5) through amendment], **in bold above**, on how the superintendent makes a transfer decision once the outlined procedures have been met.

With regard to subsection (1), the Court stated:

"The legislature has established a number of conditions which must be satisfied before a petition may be considered by a county superintendent of schools. **Satisfaction of these conditions, however, does not require granting of a petition.**"

While the court did not suggest changes to what was viewed as the "procedural" conditions that must be met for consideration of any transfer, interested parties in the 2001 legislative session did propose amendments to the following particular conditions for the reasons stated:

- (a) require all or at least two-thirds of the registered electors who reside on or own taxable real property within the territory proposed for transfer to sign the transfer petition. This would prevent electors from a proposing transfer of property that they neither reside on nor own.
- (b) require that the territory proposed for transfer must include taxable real property that is contiguous to the district to which it is to be attached. This would prevent the transfer of "public" lands, as was the case in Carbon County where a petitioner was allowed to

include land owned by the Department of Fish, Wildlife, and Parks in the transfer.

- (c) limit the loss of taxable value as a result of a transfer. If a district's taxable value has already declined by a certain percentage over 5 years, a transfer that further reduces value by more than a certain percentage could not be granted without board approval. Current language specifying minimum taxable value is too low for most districts.

With regard to subsection (5), the opinion of a majority of the Court was as follows:

- (1) "The statute's only directive on whether to grant or deny a petition is that 'the decision must be based on the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the high school district.'"
- (2) "While the statute sets forth some criteria, the satisfaction of these conditions does not limit a county superintendent's discretion in granting or denying a petition once the procedural requirements have been met."
- (3) "The legislature has provided no criteria for balancing the effects felt by the parties involved in a school district territory transfer."

Justice James Nelson, in a concurring opinion, stated:

- (1) The subsection "completely fails to provide any objective legislative standard, policy, instruction, criteria, or requirement as to what sort of effects are to guide the county superintendent in exercising his or her power to grant the petition to transfer or to deny the petition."
- (2) "There is no legislative direction as to what 'effects' the county superintendent, at a minimum, is to consider. For example, is he or she to consider the effect of the transfer on educational opportunity and quality; on property taxes; on taxable valuation; on fiscal stability and bonding capacity; on student transportation; on plant capacity; on class size; on student, teacher, and staff morale; on sports and extracurricular activities; on local control; on racial, cultural, social, economic and demographic diversity or homogeneity; on district geography and on the communities and infrastructure of the transferring and receiving districts? Is he or she to consider all or the above, some of the above, none of the above? Is he or she to consider other 'effects' instead of or in addition to the above?"
- (3) The "statute fails to provide any legislative direction as to how, substantively, the county superintendent is to evaluate the types of 'effects' that transfer might implicate. Which 'effects' are important; which are less important; under what criteria are competing 'effects' to be balanced; and are there certain 'effects' that must exist - or may not exist - before a transfer petition can be granted or denied?"
- (4) "The statute does not set out who - the petitioners or the opponents of transfer - bears the burden of proof of the 'effects'. The statute simply provides that a majority of the resident electors in territory that is part of a district may petition to transfer the territory

in which they reside to another district. Aside from there being no definition as to what constitutes 'territory'- i.e. is it some percent of the total territory in the district or can it be one family's lot or farm" - the statute fails to specify whether this 'majority' has any obligation to actually offer evidence or prove any 'effects'."

- (5) "The statute does not articulate a standard of proof. Are the 'effects' - assuming some obligation of proof - to be demonstrated by a preponderance of the evidence, by clear and convincing evidence; or by some other standard?"

Senate Bill No. 111

Prior to the convening of the 2001 Legislature, Senator Alvin Ellis, Jr. requested that a bill be drafted to require that both school districts involved in a territory transfer approve the transfer before the petition could be submitted to the County Superintendent. This approach had been tried in previous legislative sessions but had always failed because opponents claimed that a transfer would never take place because the district from which the territory was to be removed would never consent to the transfer. When the Supreme Court issued its decision in the Lame Deer case in December 2000, Senator Ellis requested that his bill draft be changed to address the issues raised in the Court's decision. The result was Senate Bill No. 111.

Basically, Senate Bill No. 111 would have required a County Superintendent to approve a transfer of territory if both school districts approved the transfer in writing. If the district that would transfer territory did not approve, the County Superintendent would hold a hearing on the petition. In making the final decision, the County Superintendent was required to weigh the beneficial and the harmful effects that the transfer would have on the educational benefits for those residing in the territory proposed for transfer and on those remaining in the district. The County Superintendent was to determine whether the educational benefits outweighed any educational harm by considering the economic effects on each district, the effect on students, and the social and cultural effects on each district.

Many of the opponents to the bill expressed concerns that the bill was still too vague and did not provide sufficient guidance to the County Superintendents in making a final decision. After a rewrite of the bill in the Senate, amendments were proposed in the House Education Committee to clarify the remaining questions. but the amendments were not approved. Because the bill attempted to address a constitutional problem with the current statute, the House Education Committee decided it might be appropriate to rerefer the bill to the House Judiciary Committee. While the Judiciary Committee was well-equipped to deal with the law and constitutional questions, the Committee's general unfamiliarity with school law and the duties of County Superintendents and school district trustees, coupled with the time constraints of a legislative session, resulted in frustration and confusion in dealing with the issue and with lobbyists' requests for changes. Senate Bill No. 111 was eventually tabled in the House Judiciary Committee.

PART TWO: PURPOSE AND STUDY REQUIREMENTS

In response to the Lame Deer decision and to the failure of Senate Bill No. 111, Representative Joan Andersen requested a study resolution to review the laws governing school district territory

transfers with the idea of developing a procedure that addressed the constitutional issues raised by the Montana Supreme Court as well as the issues raised by the opponents to Senate Bill No. 111. House Joint Resolution No. 41 ranked seventh in the interim study poll conducted following the adjournment of the 2001 legislative session. The study was assigned to the Education and Local Government Interim Committee.

The title of HJR 41 mandates a broad study of "the laws governing school boundary transfers". However, in addition to this broad mandate, HJR 41 also lists specific issues that the study must address:

- (1) the procedure for asking for a transfer of territory;
- (2) the requirements to be met before a transfer can be considered;
- (3) the role of the boards of trustees involved in a territory transfer;
- (4) the role of the County Superintendent in a territory transfer;
- (5) the criteria to be used in deciding if a territory transfer should take place; and
- (6) an appeals process.

Because the Lame Deer decision has left school districts and voters without a procedure for transferring territory from one school district to another school district, a major objective of the HJR 41 study is to develop legislation for consideration by the 58th Legislature.

PART THREE: STUDY APPROACH

Phase One

The first phase of the study will involve gathering and analyzing data relevant to the study. During this first phase and throughout the other phases, the Committee will seek the assistance of school districts, county superintendents, and other interested persons or groups in providing information, analyses, and expertise.

In gathering and analyzing data, the Committee will ask the following questions:

1. Who should be allowed to request a transfer of territory from one school district to another school district?
2. What procedure must be followed in seeking a transfer?
3. What requirements must be met before a transfer can be considered?
4. What should be the role of the boards of trustees involved in the transfer?
5. Who should make the decision as to whether a transfer should take place?
6. What criteria should be used in approving a transfer?
7. In light of the Lame Deer decision, do the criteria pass constitutional muster?
8. Should there be an appeals process for an adverse decision? If yes, what should that process be?

9. How do neighboring states address the issue of territory transfers between school districts?

Phase Two

The second phase of the study will involve the development of options based on the information gathered and analyzed in Phase One. To assist the Committee, staff will develop the options identified by Committee members and others as well as options that staff believes deserve consideration. The Committee will discuss and select those options it wishes to pursue further. Staff will perform any additional research, as necessary, and, if requested, draft legislation to implement each selected option. During this second phase, staff will continue to meet with all of the interested stakeholders to elicit their input on the options being proposed by the Committee.

Phase Three

The final phase of the study will be the formulation of findings, conclusions, and recommendations. The Committee may request that legislation be drafted to implement one or more of the options identified in Phase Two of the study. Staff will prepare a final report of the Committee's work. The report will provide a detailed account of the Committee's work and will include its findings, conclusions, and recommendations. The final report will be presented to the 58th Legislature.

PART FOUR: WORK SCHEDULE

At its August 1st meeting, the Education and Local Government Committee decided to have the full Committee conduct the study in HJR 41, rather than appoint a subcommittee. Therefore, a portion of each meeting of the Committee will be devoted to HJR 41. The resolution requires that "all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002."