

SENATE BILL NO. 120

INTRODUCED BY B. BROWN, J. RICE, BLAYLOCK, J. JOHNSON

IN THE SENATE

JANUARY 17, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON EDUCATION & CULTURAL RESOURCES.

 FIRST READING.

FEBRUARY 12, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 13, 1991 PRINTING REPORT.

 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 14, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 40; NOES, 10.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 14, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON EDUCATION & CULTURAL RESOURCES.

FEBRUARY 15, 1991 FIRST READING.

MARCH 14, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 16, 1991 SECOND READING, CONCURRED IN.

MARCH 18, 1991 THIRD READING, CONCURRED IN.
AYES, 71; NOES, 27.

 RETURNED TO SENATE.

IN THE SENATE

MARCH 19, 1991 RECEIVED FROM HOUSE.

 SENT TO ENROLLING.

MARCH 22, 1991 REPORTED CORRECTLY ENROLLED.

MARCH 23, 1991 SIGNED BY PRESIDENT.

SIGNED BY SPEAKER.

MARCH 25, 1991

DELIVERED TO GOVERNOR.

MARCH 29, 1991

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

APRIL 4, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 5, 1991

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 8, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 9, 1991

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 10, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 (4) Cost incurred by the office of the county
2 superintendent shall be paid from the general fund budget of
3 the county in which the controversy is initiated."

4 **Section 2.** Section 20-4-206, MCA, is amended to read:

5 **"20-4-206.** Notification of nontenure teacher reelection
6 -- acceptance -- termination and statement of reason. (1)
7 The trustees shall provide written notice by May 1 to all
8 nontenure teachers who have been reelected. Any A nontenure
9 teacher who does not receive written notice of reelection or
10 termination shall--be is automatically reelected for the
11 ensuing school fiscal year. The provisions of this
12 subsection do not apply to cases in which a nontenure
13 teacher is terminated when the financial condition of the
14 school district requires a reduction in the number of
15 teachers employed and the reason for the termination is to
16 reduce the number of teachers employed.

17 (2) Any A nontenure teacher who receives notification
18 of his reelection for the ensuing school fiscal year shall
19 provide the trustees with his written acceptance of the
20 conditions of such reelection within 20 days after the
21 receipt of the notice of reelection. Failure to so notify
22 the trustees within 20 days may be considered nonacceptance
23 of the tendered position.

24 (3) When the trustees notify a nontenure teacher of
25 termination, the teacher may within 10 days after receipt of

1 such the notice make written request of the trustees for a
2 statement in writing of the reasons for termination of
3 employment. Within 10 days after receipt of the request, the
4 trustees shall furnish such-statement to the teacher a true
5 statement of reasons for termination that states what
6 undesirable qualities merit a refusal to enter into an
7 employment contract with the teacher for the ensuing school
8 fiscal year.

9 ~~{4}--The--provisions--of--this--section--shall--not--apply--to~~
10 ~~cases--in--which--a--nontenure--teacher--is--terminated--when--the~~
11 ~~financial--condition--of--the--school--district--requires--a~~
12 ~~reduction--in--the--number--of--teachers--employed--and--the--reason~~
13 ~~for--the--termination--is--to--reduce--the--number--of--teachers~~
14 ~~employed--"~~

15 **NEW SECTION. Section 3.** Abuse of discretion in
16 termination of nontenure teacher. (1) The trustees of a
17 district may not abuse their discretion when terminating a
18 nontenure teacher under the provisions of 20-4-206(3).

19 (2) For the purposes of this section, "abuse of
20 discretion" means:

- 21 (a) disregard of the evidence;
22 (b) basing a decision upon incompetent or insufficient
23 evidence;
24 (c) an exercise of discretion to an end or purpose that
25 is not justified by reason and evidence; or

1 (d) a clear error in law in the circumstances.

2 (3) If a nontenure teacher has reason to believe that
3 an abuse of discretion has occurred under the provisions of
4 this section or 20-4-206(3), the teacher may request in
5 writing within 10 days of receipt of the statement of
6 reasons that the county superintendent hold a hearing in
7 accordance with 20-3-210 to determine if the trustees abused
8 their discretion in the termination. A hearing must be
9 scheduled within 10 days and held within 30 days after
10 receipt of the request, except that the period may be
11 extended upon agreement between the trustees and the
12 teacher.

13 (4) If, after a hearing, the county superintendent
14 determines that the trustees abused their discretion, the
15 county superintendent shall order the trustees to:

16 (a) offer the teacher a contract for the ensuing school
17 fiscal year; and

18 (b) compensate the teacher at the contract amount for
19 any employment time lost during the appeal process.

20 NEW SECTION. **Section 4.** Codification instruction.

21 [Section 3] is intended to be codified as an integral part
22 of Title 20, and the provisions of Title 20 apply to
23 [section 3].

24 NEW SECTION. **Section 5.** Effective date. [This act] is
25 effective on passage and approval.

-End-

APPROVED BY COMM. ON EDUCATION
AND CULTURAL RESOURCES

SENATE BILL NO. 120

INTRODUCED BY B. BROWN, J. RICE, BLAYLOCK, J. JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT TRUSTEES OF A SCHOOL DISTRICT PROVIDE A NONTENURE TEACHER WITH A TRUE STATEMENT OF EMPLOYMENT-RELATED REASONS UPON TERMINATION; TO PROVIDE A NONTENURE TEACHER WITH A HEARING IF THERE IS REASON TO BELIEVE THAT TRUSTEES HAVE ABUSED THEIR DISCRETION; AMENDING SECTIONS 20-3-210 AND 20-4-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-3-210, MCA, is amended to read:

"20-3-210. Controversy appeals and hearings. (1) Except as provided under 20-3-211, the county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of

public instruction under the provisions for appeal of controversies in this title. Furthermore, he shall hear and decide all controversies arising under:

(a) section 20-5-304 or 20-5-311 relating to the approval of tuition applications; or

(b) sections 20-4-206(3) and [section 3] relating to abuse of discretion by the trustees of a district in the termination of a nontenure teacher; or

(c) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

(3) The decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

SECOND READING

1 (4) Cost incurred by the office of the county
 2 superintendent shall be paid from the general fund budget of
 3 the county in which the controversy is initiated."

4 **Section 2.** Section 20-4-206, MCA, is amended to read:

5 "20-4-206. Notification of nontenure teacher reelection
 6 -- acceptance -- termination and statement of reason. (1)
 7 The trustees shall provide written notice by May 1 to all
 8 nontenure teachers who have been reelected. Any A nontenure
 9 teacher who does not receive written notice of reelection or
 10 termination ~~shall--be~~ is automatically reelected for the
 11 ensuing school fiscal year. The provisions of this
 12 subsection do not apply to cases in which a nontenure
 13 teacher is terminated when the financial condition of the
 14 school district requires a reduction in the number of
 15 teachers employed and the reason for the termination is to
 16 reduce the number of teachers employed.

17 (2) Any A nontenure teacher who receives notification
 18 of his reelection for the ensuing school fiscal year shall
 19 provide the trustees with his written acceptance of the
 20 conditions of such reelection within 20 days after the
 21 receipt of the notice of reelection. Failure to so notify
 22 the trustees within 20 days may be considered nonacceptance
 23 of the tendered position.

24 (3) When the trustees notify a nontenure teacher of
 25 termination, the teacher may within 10 days after receipt of

1 such the notice make written request of the trustees for a
 2 statement in writing of the reasons for termination of
 3 employment. Within 10 days after receipt of the request, the
 4 trustees shall furnish ~~such-statement~~ to the teacher a true
 5 statement of reasons for termination that states what
 6 undesirable qualities merit a refusal to enter into an
 7 employment contract with the teacher for the ensuing school
 8 fiscal year.

9 ~~{4}--The--provisions--of--this--section--shall--not--apply--to~~
 10 ~~cases--in--which--a--nontenure--teacher--is--terminated--when--the~~
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 12 ~~reduction--in--the--number--of--teachers--employed--and--the--reason~~
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15 NEW SECTION. Section 3. Abuse of discretion in
 16 termination of nontenure teacher. (1) The trustees of a
 17 district may not abuse their discretion when terminating a
 18 nontenure teacher under the provisions of 20-4-206(3).

19 (2) For the purposes of this section, "abuse of
 20 discretion" means:

- 21 ~~{a}--disregard--of--the--evidence;~~
- 22 ~~{b}--basing--a--decision--upon--incompetent--or--insufficient~~
- 23 ~~evidence;~~
- 24 ~~{c} (A) an exercise of discretion to an end or purpose~~
- 25 ~~that is--not--justified--by--reason--and--evidence~~ LACKS ANY BASIS

1 IN FACT; or

2 ~~(d)~~(B) a clear error in law in the circumstances.

3 (3) If a nontenure teacher has reason to believe that
4 an abuse of discretion has occurred under the provisions of
5 this section or 20-4-206(3), the teacher may request in
6 writing within 10 days of receipt of the statement of
7 reasons that the county superintendent hold a hearing in
8 accordance with 20-3-210 to determine if the trustees abused
9 their discretion in the termination. A hearing must be
10 scheduled within 10 days and held within 30 days after
11 receipt of the request, except that the period may be
12 extended upon agreement between the trustees and the
13 teacher. THE BURDEN OF PROOF RESTS WITH THE TEACHER TO SHOW
14 AN ABUSE OF DISCRETION.

15 (4) If, after a hearing, the county superintendent
16 determines that the trustees abused their discretion, the
17 county superintendent shall order the trustees to:

18 (a) offer the teacher a contract for the ensuing school
19 fiscal year; and

20 (b) compensate the teacher at the contract amount for
21 any employment time lost during the appeal process.

22 NEW SECTION. Section 4. Codification instruction.
23 [Section 3] is intended to be codified as an integral part
24 of Title 20, and the provisions of Title 20 apply to
25 [section 3].

1 NEW SECTION. Section 5. Effective date. [This act] is
2 effective on passage and approval.

-End-

SENATE BILL NO. 120

INTRODUCED BY B. BROWN, J. RICE, BLAYLOCK, J. JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT TRUSTEES OF A SCHOOL DISTRICT PROVIDE A NONTENURE TEACHER WITH A TRUE STATEMENT OF EMPLOYMENT-RELATED REASONS UPON TERMINATION; TO PROVIDE A NONTENURE TEACHER WITH A HEARING IF THERE IS REASON TO BELIEVE THAT TRUSTEES HAVE ABUSED THEIR DISCRETION; AMENDING SECTIONS 20-3-210 AND 20-4-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-3-210, MCA, is amended to read:

"20-3-210. Controversy appeals and hearings. (1) Except as provided under 20-3-211, the county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of

public instruction under the provisions for appeal of controversies in this title. Furthermore, he shall hear and decide all controversies arising under:

(a) section 20-5-304 or 20-5-311 relating to the approval of tuition applications; or

(b) sections 20-4-206(3) and [section 3] relating to abuse of discretion by the trustees of a district in the termination of a nontenure teacher; or

(c) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

(3) The decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

THIRD READING



1 (4) Cost incurred by the office of the county
 2 superintendent shall be paid from the general fund budget of
 3 the county in which the controversy is initiated."

4 **Section 2.** Section 20-4-206, MCA, is amended to read:

5 "20-4-206. Notification of nontenure teacher reelection
 6 -- acceptance -- termination and statement of reason. (1)
 7 The trustees shall provide written notice by May 1 to all
 8 nontenure teachers who have been reelected. Any A nontenure
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 12 subsection do not apply to cases in which a nontenure
 13 teacher is terminated when the financial condition of the
 14 school district requires a reduction in the number of
 15 teachers employed and the reason for the termination is to
 16 reduce the number of teachers employed.

17 (2) Any A nontenure teacher who receives notification
 18 of his reelection for the ensuing school fiscal year shall
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 20 conditions of such reelection within 20 days after the
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 22 the trustees within 20 days may be considered nonacceptance
 23 of the tendered position.

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 25 termination, the teacher may within 10 days after receipt of

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 4 trustees shall furnish ~~such-statement~~ to the teacher a true
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 6 undesirable---qualities THOSE QUALITIES RELATING TO JOB
 7 PERFORMANCE THAT ARE LACKING AND merit a refusal to enter
 8 into an employment contract with the teacher for the ensuing
 9 school fiscal year.

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 17 termination of nontenure teacher. (1) The trustees of a
 18 district may not abuse their discretion when terminating a
 19 nontenure teacher under the provisions of 20-4-206(3).

20 (2) For the purposes of this section, "abuse of
 21 discretion" means:

- 22 ~~{a}--disregard--of--the--evidence;~~
- 23 ~~{b}--basing--a--decision--upon--incompetent--or--insufficient~~
- 24 ~~evidence;~~
- 25 ~~{c}(A)~~ an exercise of discretion to an end or purpose

1 that ~~is-not-justified-by-reason-and-evidence~~ LACKS ANY BASIS
 2 IN FACT; or

3 ~~(d)~~(B) a clear error in law in the circumstances.

4 (3) If a nontenure teacher has reason to believe that
 5 an abuse of discretion has occurred under the provisions of
 6 this section or 20-4-206(3), the teacher may request in
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 9 accordance with 20-3-210 to determine if the trustees abused
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 17 determines that the trustees abused their discretion, the
 18 county superintendent shall order the trustees to:

19 (a) offer the teacher a contract for the ensuing school
 20 fiscal year; and

21 (b) compensate the teacher at the contract amount for
 22 any employment time lost during the appeal process.

23 NEW SECTION. Section 4. Codification instruction.
 24 [Section 3] is intended to be codified as an integral part
 25 of Title 20, and the provisions of Title 20 apply to

1 [section 3].

2 NEW SECTION. Section 5. Effective date. [This act] is
 3 effective on passage and approval.

-End-

1 SENATE BILL NO. 120

2 INTRODUCED BY B. BROWN, J. RICE, BLAYLOCK, J. JOHNSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT
5 TRUSTEES OF A SCHOOL DISTRICT PROVIDE A NONTENURE TEACHER
6 WITH A TRUE STATEMENT OF EMPLOYMENT-RELATED REASONS UPON
7 TERMINATION; TO PROVIDE A NONTENURE TEACHER WITH A HEARING
8 IF THERE IS REASON TO BELIEVE THAT TRUSTEES HAVE ABUSED
9 THEIR DISCRETION; AMENDING SECTIONS 20-3-210 AND 20-4-206,
10 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:13 **Section 1.** Section 20-3-210, MCA, is amended to read:

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15 as provided under 20-3-211, the county superintendent shall
16 hear and decide all matters of controversy arising in his
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18 district in the county. When appeals are made under 20-4-204
19 relating to the termination of services of a tenure teacher
20 or under 20-4-207 relating to the dismissal of a teacher
21 under contract, the county superintendent may appoint a
22 qualified attorney at law to act as a legal adviser who
23 shall assist the superintendent in preparing findings of
24 fact and conclusions of law. Subsequently, either the
25 teacher or trustees may appeal to the superintendent of

1 public instruction under the provisions for appeal of
2 controversies in this title. Furthermore, he shall hear and
3 decide all controversies arising under:

4 (a) section 20-5-304 or 20-5-311 relating to the
5 approval of tuition applications; or

6 (b) sections 20-4-206(3) and [section 3] relating to
7 abuse of discretion by the trustees of a district in the
8 termination of a nontenure teacher; or

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10 procedure for resolving controversies is not expressly
11 prescribed.

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13 take testimony in order to determine the facts related to
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16 transcript of the hearing proceedings. The decision on the
17 matter of controversy which is made by the county
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21 appealed to the superintendent of public instruction, and if
22 it is appealed, the county superintendent shall supply a
23 transcript of the hearing and any other documents entered as
24 testimony at the hearing to the superintendent of public
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REFERENCE BILL

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16 **NEW SECTION. Section 3.** Abuse of discretion in
17 termination of nontenure teacher. (1) The trustees of a
18 district may not abuse their discretion when terminating a
19 nontenure teacher under the provisions of 20-4-206(3).

20 (2) For the purposes of this section, "abuse of
21 discretion" means:

- 22 (a) ~~disregard-of-the-evidence;~~
23 (b) ~~basing--a--decision--upon--incompetent--or--insufficient~~
24 ~~evidence;~~
25 (c) (A) an exercise of discretion to an end or purpose

1 that ~~is-not-justified-by-reason-and-evidence~~ LACKS ANY BASIS
 2 IN FACT; or
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 4 (3) If a nontenure teacher has reason to believe that
 5 an abuse of discretion has occurred under the provisions of
 6 this section or 20-4-206(3), the teacher may request in
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 22 any employment time lost during the appeal process.

23 NEW SECTION. Section 4. Codification instruction.
 24 [Section 3] is intended to be codified as an integral part
 25 of Title 20, and the provisions of Title 20 apply to

1 [section 3].

2 NEW SECTION. Section 5. Effective date. [This act] is
 3 effective on passage and approval.

-End-

GOVERNOR'S AMENDMENTS TO
SENATE BILL 120
(REFERENCE COPY, AS AMENDED)
MARCH 29, 1991

1. Title, line 6
Following: "OF"
Strike: "EMPLOYMENT-RELATED"
2. Title, line 8
Following: line 7
Strike: "IF THERE IS REASON TO BELIEVE THAT TRUSTEES HAVE ABUSED THEIR DISCRETION"
Insert: "IF THE NONTENURE TEACHER BELIEVES THE REASONS ARE NOT TRUE;"
3. Title, line 10
Following: "MCA"
Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

Insert: "AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY CLAUSE"
4. Page 2, line 6
Following: "(b)"
Strike: "Sections 20-4-206(3) and [section 3] relating to abuse of discretion by the trustees of a district in the termination of a nontenure teacher"
Insert: "Section 20-4-206(4)"
5. Page 3, line 11 through 16
Following: "year."
Strike: remainder of line 11 through line 16
6. Page 4, line 5
Following: "termination"
Strike: "that states those qualities relating to job performance that are lacking and merit a refusal to enter into an employment contract with the teacher for the ensuing school fiscal year"
7. Page 4, line 16 through Page 5, line 3
Following: line 15 on page 4
Strike: lines 16, page 4 through line 3, page 5
8. Page 5, lines 4 through 22
Following: line 3
Strike: lines 4 through 22
Insert: "(4) If a nontenured teacher believes the reasons provided by the trustees are not true, the teacher may request in writing within ten days of receipt of the statement of reasons that the county superintendent hold a hearing in accordance with 20-3-210 to determine whether the

reason is true. A hearing must be scheduled within 10 days and held within 45 days after receipt of the request, except that the period may be extended upon agreement between the trustees and the teacher. The burden of proof that the reason is not true rests with the teacher and such showing must be demonstrated by clear and convincing evidence.

(5) If, after a hearing, the county superintendent determines that the reason is not true, the county superintendent shall order the trustees to offer the teacher a contract for the ensuing school fiscal year.

(6) The provisions of this section do not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed."

9. Page 6, line 3
Following: "effective"
Strike: "on passage and approval"
Insert: "on October 1, 1991"

10. Page 6, line 4
Following: line 3
Insert: "NEW SECTION. Section 6. Applicability clause. This act does not apply to nontenured teachers who are considered temporary or substitute teachers."

SENATE BILL NO. 120

INTRODUCED BY B. BROWN, J. RICE, BLAYLOCK, J. JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT TRUSTEES OF A SCHOOL DISTRICT PROVIDE A NONTENURE TEACHER WITH A TRUE STATEMENT OF EMPLOYMENT-RELATED REASONS UPON TERMINATION; TO PROVIDE A NONTENURE TEACHER WITH A HEARING IF THERE IS REASON TO BELIEVE THAT TRUSTEES HAVE ABUSED THEIR DISCRETION IF THE NONTENURE TEACHER BELIEVES THE REASONS ARE NOT TRUE; AMENDING SECTIONS 20-3-210 AND 20-4-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-3-210, MCA, is amended to read:

"20-3-210. Controversy appeals and hearings. (1) Except as provided under 20-3-211, the county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of

fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. Furthermore, he shall hear and decide all controversies arising under:

(a) section 20-5-304 or 20-5-311 relating to the approval of tuition applications; or

(b) ~~sections 20-4-206(3) and (section 3) relating to abuse of discretion by the trustees of a district in the termination of a nontenure teacher~~ SECTION 20-4-206(4); or

(c) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

(3) The decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as



1 testimony at the hearing to the superintendent of public
2 instruction.

3 (4) Cost incurred by the office of the county
4 superintendent shall be paid from the general fund budget of
5 the county in which the controversy is initiated."

6 **Section 2.** Section 20-4-206, MCA, is amended to read:

7 **"20-4-206. Notification of nontenure teacher reelection**
8 **-- acceptance -- termination and statement of reason. (1)**
9 The trustees shall provide written notice by May 1 to all
10 nontenure teachers who have been reelected. Any A nontenure
11 teacher who does not receive written notice of reelection or
12 termination ~~shall be~~ is automatically reelected for the
13 ensuing school fiscal year. ~~The provisions of this~~
14 ~~subsection do not apply to cases in which a nontenure~~
15 ~~teacher is terminated when the financial condition of the~~
16 ~~school district requires a reduction in the number of~~
17 ~~teachers employed and the reason for the termination is to~~
18 ~~reduce the number of teachers employed.~~

19 (2) Any A nontenure teacher who receives notification
20 of his reelection for the ensuing school fiscal year shall
21 provide the trustees with his written acceptance of the
22 conditions of such reelection within 20 days after the
23 receipt of the notice of reelection. Failure to so notify
24 the trustees within 20 days may be considered nonacceptance
25 of the tendered position.

1 (3) When the trustees notify a nontenure teacher of
2 termination, the teacher may within 10 days after receipt of
3 such the notice make written request of the trustees for a
4 statement in writing of the reasons for termination of
5 employment. Within 10 days after receipt of the request, the
6 trustees shall furnish ~~such statement~~ to the teacher a true
7 statement of reasons for termination that states what
8 undesirable qualities ~~THOSE QUALITIES RELATING TO~~
9 ~~PERFORMANCE THAT ARE LACKING AND~~ merit a refusal to enter
10 into an employment contract with the teacher for the ensuing
11 school fiscal year.

12 (4) IF A NONTENURE TEACHER BELIEVES THE REASONS
13 PROVIDED BY THE TRUSTEES ARE NOT TRUE, THE TEACHER MAY
14 REQUEST IN WRITING WITHIN 10 DAYS OF RECEIPT OF THE
15 STATEMENT OF REASONS THAT THE COUNTY SUPERINTENDENT HOLD A
16 HEARING IN ACCORDANCE WITH 20-3-210 TO DETERMINE WHETHER THE
17 REASONS ARE TRUE. A HEARING MUST BE SCHEDULED WITHIN 10 DAYS
18 AND HELD WITHIN 45 DAYS AFTER RECEIPT OF THE REQUEST, EXCEPT
19 THAT THE PERIOD MAY BE EXTENDED UPON AGREEMENT BETWEEN THE
20 TRUSTEES AND THE TEACHER. THE BURDEN OF PROOF THAT THE
21 REASONS ARE NOT TRUE RESTS WITH THE TEACHER, AND THE SHOWING
22 MUST BE DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE.

23 (5) IF, AFTER A HEARING, THE COUNTY SUPERINTENDENT
24 DETERMINES THAT THE REASONS ARE NOT TRUE, THE COUNTY
25 SUPERINTENDENT SHALL ORDER THE TRUSTEES TO OFFER THE TEACHER

1 A CONTRACT FOR THE ENSUING SCHOOL FISCAL YEAR.
 2 (6) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO
 3 CASES IN WHICH A NONTENURE TEACHER IS TERMINATED WHEN THE
 4 FINANCIAL CONDITION OF THE SCHOOL DISTRICT REQUIRES A
 5 REDUCTION IN THE NUMBER OF TEACHERS EMPLOYED AND THE REASON
 6 FOR THE TERMINATION IS TO REDUCE THE NUMBER OF TEACHERS
 7 EMPLOYED.

8 {4}--The provisions of this section shall not apply to
 9 cases in which a nontenure teacher is terminated when the
 10 financial condition of the school district requires a
 11 reduction in the number of teachers employed and the reason
 12 for the termination is to reduce the number of teachers
 13 employed."

14 NEW SECTION:--Section 3. Abuse of discretion in
 15 termination of nontenure teacher. (1) The trustees of a
 16 district may not abuse their discretion when terminating a
 17 nontenure teacher under the provisions of 20-4-206(3):

18 {2}--For the purposes of this section, "abuse of
 19 discretion" means:

- 20 {a}--disregard of the evidence;
- 21 {b}--basing a decision upon incompetent or insufficient
 22 evidence;

23 {c} {A}--an exercise of discretion to an end or purpose
 24 that is not justified by reason and evidence BACKS ANY BASIS
 25 IN FACT; or

1 {d} {B}--a clear error in law in the circumstances;
 2 {3}--if a nontenure teacher has reason to believe that
 3 an abuse of discretion has occurred under the provisions of
 4 this section or 20-4-206(3); the teacher may request in
 5 writing within 10 days of receipt of the statement of
 6 reasons that the county superintendent hold a hearing in
 7 accordance with 20-3-210 to determine if the trustees abused
 8 their discretion in the termination. A hearing must be
 9 scheduled within 10 days and held within 30 days after
 10 receipt of the request, except that the period may be
 11 extended upon agreement between the trustees and the
 12 teacher. THE BURDEN OF PROOF RESTS WITH THE TEACHER TO SHOW
 13 AN ABUSE OF DISCRETION.

14 {4}--If, after a hearing, the county superintendent
 15 determines that the trustees abused their discretion, the
 16 county superintendent shall order the trustees to:

- 17 {a}--offer the teacher a contract for the ensuing school
 18 fiscal year; and
- 19 {b}--compensate the teacher at the contract amount for
 20 any employment time lost during the appeal process;

21 NEW SECTION:--Section 4. Codification instruction:
 22 {Section 3} is intended to be codified as an integral part
 23 of Title 20, and the provisions of Title 20 apply to
 24 {section 3}.

25 NEW SECTION. Section 3. Effective date. [This act] is

1 ~~effective on-passage-and-approval~~ OCTOBER 1, 1991.

2 NEW SECTION. SECTION 4. APPLICABILITY. [THIS ACT] DOES
3 NOT APPLY TO NONTENURE TEACHERS WHO ARE CONSIDERED TEMPORARY
4 OR SUBSTITUTE TEACHERS.

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