

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By CHAIRMAN DARYL TOEWS, on February 8, 1995, at
1:04 p.m.

ROLL CALL

Members Present:

Sen. Daryl Toews, Chairman (R)
Sen. John R. Hertel, Vice Chairman (R)
Sen. C.A. Casey Emerson (R)
Sen. Delwyn Gage (R)
Sen. Loren Jenkins (R)
Sen. Kenneth "Ken" Mesaros (R)
Sen. Steve Doherty (D)
Sen. Gary Forrester (D)
Sen. Barry "Spook" Stang (D)
Sen. Mignon Waterman (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: Eddye McClure, Legislative Council
Janice Soft, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 291, SB 280
Executive Action: HB 99, SB 172

HEARING ON SB 291

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, Cut Bank, said SB 291 gives school districts flexibility when there are large fluctuations in tax bases or non-mill revenue (oil, gas, coal). Salaries account for between 65-85 percent of a school's budget and the rest of the budget covers fixed expenditures; therefore, there is not much room for budget adjustment. SB 291 says tenure teachers would be reelected from year to year in the same or comparable position as that provided by the last executed contract. SEN. GAGE pointed out that SB 291 gives the districts the right to hold the line on

salaries. He said some people feel a salary increase is somewhat tied to tenure and the courts have indicated that it is a property right, but his legal counsel said it was statutory and not constitutional.

Proponents' Testimony:

Robert Anderson, Montana School Boards Association (MSBA), said two years ago MSBA passed a resolution which said they supported legislation which would allow school districts to reduce tenure teachers' salary through collective bargaining. He explained school budgets have been cut 4.5 percent. Many schools had difficulty in compensating for those lost revenues. HB 667 and HB 22 capped school funding and made schools more reliant on local property taxes. **Mr. Anderson** said the legislature often criticizes schools for not holding the line on spending and on budgets. He also commented the emphasis during the 1995 legislature is placed upon returning local control to trustees and to reduce numbers of unfunded mandates.

Mr. Anderson contended **SB 291** addresses an unfunded mandate and deals with local control. Tenure teachers' salaries cannot be reduced, even at the collective bargaining table, though it is possible to reduce the wages of county, city and state employees. He said one class of public employees has been created who may not have salaries reduced.

Mr. Anderson reiterated salaries make up about 75-80 percent of a school's budget. If the legislature intends to give local districts freedom with their budgets, **SB 291** should be supported. He reminded the committee even though Montana teachers' salaries rank 42nd in the nation, other salaries in Montana also rank about 40th in the nation in terms of per capita income. He urged DO PASS for **SB 291**.

Hank Adams, Trustee, Arlee School District, said he looked at **SB 291** through the eyes of his school district, explaining the state recently gave the Arlee District a mandate to build a library or lose accreditation. The District had no choice but to build the building. **Mr. Adams** stated about 90% of his district's budget goes for salaries, which allows for very little budget flexibility. The Arlee District financed creatively, which included a private gift of \$100,000; thus the District was able to build the library. **Mr. Adams** encouraged both political parties to work together for the good of our schools and urged a DO PASS for **SB 291**.

Opponents' Testimony:

Eric Feaver, Montana Education Association (MEA), rose in opposition of **SB 291** because it affects all teachers who become tenured after July 1, 1995, and grandfathers all current tenure teachers. He said if **SB 291** is passed, a dual class structure will be present within tenure itself, explaining teachers who are

tenure before July 1, 1995, will enjoy same salary protection and those who achieve tenure status after July 1, 1995, will not.

Mr. Feaver anticipated dispute over the meaning and an impact in collective bargaining because of the potential dual salary structure. He alluded to testimony which said school districts need to "hold the line", but the truth of the matter is nothing in the tenure statute guaranteeing salary increases. **Mr. Feaver** contended "same salary" is holding the line; if "same salary" is removed from tenure statute, why have tenure at all? He further commented the only benefit for a tenure teacher would be the annual renewal of his/her contract, employment in the same or comparable position and the right of due process. He suggested abolishing tenure so salary bargaining could be done locally, either up or down.

Mr. Feaver referred to testimony which called tenure an unfunded mandate, as though it were something new. He declared tenure was enacted by the legislature in 1912. He urged DO NOT PASS on SB 291.

Terry Minow, Montana Federation of Teachers (MFT), read her written testimony. EXHIBIT 1

Questions From Committee Members and Responses:

SEN. MIGNON WATERMAN asked about the disparity between teachers' salaries ranking 42nd nationally and ranking between 16-20 in the nation for effort toward providing funding for school systems.

Bob Anderson said the ratio determines the effort of per capita income toward providing public education.

SEN. BARRY "SPOOK" STANG asked about contract clauses which state there will be a penalty if the teacher breaks the contract. He also wanted to know if it was state law or board policy. **Bob Anderson** said oftentimes school districts try to write such language into teacher contracts because breaking the contract can cause the district hardship.

SEN. STANG wondered what would happen if boards allowed teachers to negotiate salaries up or down. Would the contracts be finalized by the time school began in the fall? **Mr. Anderson** reminded **SEN. STANG** SB 291 addressed the fact that salaries cannot be lowered unless it is bargained at the table.

SEN. STANG compared teachers, who would be penalized for giving two weeks' notice, to plumbers, who can ethically give two weeks (or less) notice, i.e. if it is August 15 and the bargaining agreement still has not been settled; if the teacher does not know if ultimately the salary will increase, stay the same or decrease; if a job offer came for higher pay and the teacher accepted it -- would it be right for the teacher to be penalized? Also, **SEN. STANG** wondered if many teachers and school districts would find themselves in the above position. **Bob Anderson**

replied it would be no less for a city, state or county employee in the same circumstances.

SEN. STANG asked if there was such a glut of teachers on the market that the afore-mentioned situation would not be a concern. **Mr. Anderson** said school districts must give notice of rehire by May 1, so if the teacher signs, he/she has a job for the following school year. **SEN. STANG** contended if the teacher signs the notice of rehire on May 1, the salary could be unknown. **Bob Anderson** said he was not sure how many jobs were guaranteed an increase or same salary through collective bargaining.

SEN. STANG said there were several school districts in his district (SD 36) who had not settled their bargaining agreements and finally the teachers went on strike. He asked if the ability to bargain locally would cause more strikes. **Mr. Anderson** said teachers have the right to strike.

SEN. STEVE DOHERTY asked what reason there was to treat teachers differently from other public employees. **Eric Feaver** said there were none, except the legislature making tenure a law in 1912.

SEN. DOHERTY referred to **Ms. Minow's** testimony where she said no self-respecting bargaining unit will bargain salaries down; yet school boards have testified they would like to have the flexibility to do so. **SEN. DOHERTY** asked if the passage of **SB 291** could cause more teacher strikes in Montana. **Mr. Feaver** nodded in agreement.

SEN. DOHERTY remarked since tenure dates back to 1912 and collective bargaining to the 1970's, why is it now in the 1990's that districts want the flexibility to bargain down. **Bob Anderson** said for many years, educational funding continually increased and there seemed to be plenty of money. Currently, the trend is to reduce school funding which puts schools and trustees in tough situations, i.e. if teachers asked for salary decreases in order to receive benefit increases, the request could not now be granted.

SEN. JOHN HERTEL asked for clarification of the dual salary schedule mentioned in the testimony. **Eric Feaver** said until all teachers who achieved tenure before July 1, 1995, leave the profession, their salaries must stay the same or increase. All teachers who achieve tenure after July 1, 1995, may have their salaries reduced.

Closing by Sponsor:

SEN. GAGE said if the teachers who achieved tenure prior to July 1, 1995, were not grandfathered in, there would be numerous court battles. He agreed with **Eric Feaver** regarding tenure abolishment but decided against including it in **SB 291**. **SEN. GAGE** opined if one were to talk to the school board trustees, he would find the majority of the trustees would say salary schedules are not

negotiable. The concept of SB 291 is no teacher would lose a job because there would be enough money to keep all teachers.

EXECUTIVE ACTION ON HOUSE BILL 99

Eddye McClure distributed copies of amendments and explained them. EXHIBIT 2

Motion/Vote: SEN. MIGNON WATERMAN MOVED THE AMENDMENTS BE ADDED TO HB 99. Motion CARRIED by UNANIMOUS voice vote.

Motion/Vote: SEN. LOREN JENKINS MOVED HB 99 AS AMENDED BE CONCURRED IN. Motion CARRIED by UNANIMOUS voice vote.

SEN. MIGNON WATERMAN will carry HB 99.

HEARING ON SB 280

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, Big Timber, said SB 280 deals with the legislature, instead of the courts, clarifying "same salary" provision.

Proponents' Testimony:

Bill Adamo, Director, Business Services, Livingston Schools, read his written testimony. EXHIBIT 3

Michael Keedy, Montana School Boards Association (MSBA), commended SEN. GROSFIELD for SB 280. He voiced support for SB 280, but reminded the committee the passing of SB 291 would make SB 280 unnecessary. Mr. Keedy said a decision by the State Superintendent of Public Instruction in March, 1994, precipitated SB 280, a decision which arose because of extended contracts of three public school teachers in Glendive. Mr. Keedy said these teachers were teaching the 180-day school year but also had an extended contract which expanded their non-teaching duties (librarian, drivers ed instructors, audio-visual, etc.). MSBA opines the legislature clarify and definitively describe what is meant by "same salary" and that is what SB 280 does, treating "same salary" in terms of number of contracted days in a teachers contract for teaching duties and PIR days. Mr. Keedy urged the committee's favorable consideration of SB 280.

Don Waldron, Montana Rural Education Association (MREA), said his Board of Directors has discussed SB 280 thoroughly, and wanted to be sure 187 days does not rule out people who will work one year and not the next, nor principals who will work 240 days this year because of a remodeling project but next year their work year

will be 210 days. **Mr. Waldron** said because he was assured that was included in **SB 280**, he gave support for **SB 280**.

{Tape: 1; Side: B; Approx. Counter: ; Comments: .}

Opponents' Testimony:

Eric Feaver, **Montana Education Association (MEA)**, said **SB 280** does not clarify the law and if **SB 280** passes, there will be much litigation. **Mr. Feaver** said MEA agrees with portions of the intent of **SB 280**, as far as they understand it, though there is some ambiguity. MEA agrees: (1) School districts should be able to adjust salaries of teachers who were earning extra pay from extracurricular activities but who are no longer performing these duties; (2) School districts should be able to adjust salaries of teachers who earned extra income for an extra-duty year, but are no longer performing an extra-duty year; (3) School districts should be able to adjust salaries of teachers who are reduced from full-time to part-time without going through the termination process.

Mr. Feaver said MEA disagrees with **SB 280** if it permits school districts to reduce full-time teachers to part-time for no specific reason, but believes there is precedent for providing reasons for reducing teachers. **Mr. Feaver** distributed copies of **20-4-208 (EXHIBIT 4)**, explaining it was already in statute since 1993. He said **SB 280** does not concur with **20-4-208**, so it would be possible to create another standard for tenure -- we now have teacher tenure and **SB 280** could create administrative tenure. Also, **20-4-208** provides recall rights to administrative positions for tenured administrators who were returned to the classroom. It was **Mr. Feaver's** contention **SB 280** would invite districts to reduce tenure teachers to part-time positions for no reason, except to terminate them.

Mr. Feaver stated MEA also disagreed with the 187-day limit in **SB 280**, believing it could give trustees in over 70 school districts the authority to unilaterally reduce teachers' pay to 187 days.

Mr. Feaver announced that because MEA liked **SEN. GROSFIELD'S** approach to **SB 280**, it would offer amendments (**Mr. Feaver** admitted they had been rejected by **SEN. GROSFIELD**) which he would like to distribute. (**EXHIBIT 5**). **Mr. Feaver** explained the amendments would allow MEA to leave **SB 280** with items with which they concur, i.e. conforming **SB 280** to **20-4-208**. He asked for the committee's support of the amendments and if they would not, he asked for DO NOT PASS on **SB 280**.

Terry Minow, **Montana Federation of Teachers (MFT)**, expressed opposition for **SB 280**, explaining MFT did not have a problem with reducing salaries of teachers who go to half-time or end extra duties. However, MFT did have a problem with reducing salaries, by legislation without negotiations, of teachers who currently

work more than the state-required number of school days and the unilateral reduction of full-time teachers to part-time. **Ms. Minow** asked the committee to consider amending **SB 280** which would address the first problem without causing the second.

Questions From Committee Members and Responses:

SEN. WATERMAN commented she had served on the Helena school board and she remembered teachers who taught summer school were issued a summer working agreement which was outside the bounds of the regular contract. **Eric Feaver** concurred. **Jack Copps** concurred also the summer agreement was separate; thus, outside the regular contract.

SEN. WATERMAN wondered if **SB 280** restricted the length of a regular contract to 187 days, even in those districts whose usual contract length was 190 days. **Michael Keedy** said it was not the intent of **SB 280**. **SEN. WATERMAN** maintained local control was being usurped by **SB 280**. **Mr. Keedy** said the intent of **SB 280** was to define "same salary" in terms of daily rate of pay, multiplied by statutorily sanctioned school year length.

SEN. WATERMAN commented **SB 232** eliminated the 187-day requirement, which is the opposite of **SB 280**. She opined local control was being restricted. **Mr. Keedy** said the law is taken where it is found, i.e. current legislation refers to a 180-day school year.

SEN. GAGE posed a hypothetical situation where teachers received \$100/day for 187 days. Then, at the end, the majority worked three more days for \$150/day. Would the ensuing contract of 187 days be based on \$150/day? **SEN. GROSFIELD** said it was not the intent of **SB 280**.

SEN. DOHERTY asked which portion of **Eric Feaver's** amendments were objectionable. **SEN. GROSFIELD** said he understood **Mr. Feaver's** amendments to be replacement language for subsection (3) in the original **SB 280**. The concept of **SB 280** is to tie it to the school year but not force districts down to 187 days, i.e. some schools have a school year of 190 days which makes it three days longer than the state-funded 187 days. In those situations, the county pays the entire cost for those three extra days. **Mr. Adamo** said page 2, line 2 of **SB 280** addressed the issue brought up in the last sentence of the first paragraph of **Mr. Feaver's** amendments. There is no good definition of "economic conditions", except bankruptcy.

SEN. WATERMAN said she was very concerned about limiting local control and asked **Mr. Feaver** what would be wrong with keeping the first paragraph but discarding the remainder of his amendments. **Mr. Feaver** replied it would allow school districts to reduce a full-time teacher to less than full-time for no reason. He said the language was basically the same as that in current statute for administrators.

SEN. DOHERTY asked if it was the intent of **SB 280** to reduce teachers from full-time to part-time for no reason. **SEN. GROSFIELD** said it was not the intent to reduce for no reason, but at times there is a reason to do so, i.e. economic problems, smaller number of students, lower tax base, etc.

SEN. GAGE asked for the definition of a regular school year. **Mr. Feaver** answered whatever the school district does under its own volition and state law. **SEN. GAGE** commented "same salary" would be whatever was received the previous year without stipends, extra duty pay, etc. **Mr. Feaver** concurred.

Closing by Sponsor:

SEN. GROSFIELD commented that after working with **SB 280**, he realized the whole tenure law is very tricky. He reminded the committee MEA supports many of the concepts in **SB 280** and urged the committee to consider the above when dealing with **SB 280**.

EXECUTIVE ACTION ON SENATE BILL 118

Eddye McClure explained the amendments changed the applicability date as suggested by **Kathy Fabiano, OPI**.

Motion: **SEN. BARRY "SPOOK" STANG** MOVED THE ADOPTION OF THE AMENDMENTS FOR **SB 118**.

Discussion: **SEN. HERTEL** reminded the committee that **OPI** could not get their computers ready for the 1995 date.

Vote: Motion to adopt the amendments **CARRIED** by **UNANIMOUS** voice vote.

SEN. TOEWS asked if revenue estimate and budget authority could mean it would not be necessary to reappropriate, i.e. spend beyond the budget if the caps were not exceeded. **SEN. HERTEL** deferred to **Lynda Brannon** who said it would not be possible, except for a budget amendment whose requirements would be required to be very specific and approved by **OPI**.

SEN. STANG asked if this would be an unfunded mandate and would there be a contingent voidness (if it is not funded and the bill is void) put on it.

SEN. GAGE asked if the title of **SB 118** was appropriate in that the title does not include everything in the bill. He referred to another decision in which the Supreme Court threw a bill out because the title did not include everything in the bill.

SEN. DOHERTY said contingent voidness was only when there was reduction in revenue.

It was decided to delay further action on SB 118 until the questions raised during the discussion could be answered.

EXECUTIVE ACTION ON SENATE BILL 172

SEN. DOHERTY explained the amendments address the vague language, "failure to meet educational expectations", in SB 172, and replaces it with "reasonably meet written educational standards...". EXHIBIT 6

Motion: SEN. STEVE DOHERTY MOVED TO ADOPT THE AMENDMENTS FOR SB 172.

Discussion: SEN. JENKINS wondered why "unfitness" (line 13) and "incompetence" (line 14) was not removed since both are almost impossible to prove. He contended "reasonable" was vague and should be removed. SEN. DOHERTY concurred.

Vote: Motion to adopt the amendments by SEN. DOHERTY CARRIED by UNANIMOUS voice vote.

Motion: SEN. LOREN JENKINS MOVED TO DELETE "UNFITNESS" FROM LINE 13 AND "INCOMPETENCE" FROM LINE 14 IN SEN. DOHERTY'S AMENDMENTS.

Discussion: SEN. WATERMAN expressed reluctance to remove the above words because there are situations where it is necessary to terminate a teacher.

SEN. LOREN JENKINS withdrew his motion.

Motion: SEN. DELWYN GAGE MOVED DO PASS ON SB 172 AS AMENDED.

Discussion: SEN. WATERMAN opined SB 172 should be in the tenure law statute for dismissing a teacher at the end of the year. If a teacher continues to fail to meet the educational standards, dismissal could take place in the middle of the year, and she expressed concern over that.

Vote: Motion to DO PASS SB 172 AS AMENDED FAILED 6-4 on a roll call vote.

Motion/Vote: SEN. GARY FORRESTER MOVED TO TABLE SB 172. Motion PASSED on a voice vote, with SEN. JOHN HERTEL, SEN. LOREN JENKINS, SEN. CASEY EMERSON, and SEN. DARYL TOEWS voting "No."

ADJOURNMENT

Adjournment: The meeting adjourned at 2:50 p.m.



SEN. DARYL TOEWS, Chairman



JANICE SOFT, Secretary

DT/jes

EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL

DATE _____

2/8/95

[illegible]


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CS-09

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1995

MR. PRESIDENT:

We, your committee on Education and Cultural Resources having had under consideration HB 99 (third reading copy -- blue), respectfully report that HB 99 be amended as follows and as so amended be concurred in.

Signed: 
Senator Daryl Toews, Chair

That such amendments read:

1. Page 1, lines 18 and 19.

Following: "skills"

Strike: "; (b)"

Insert: "and who"

2. Page 1, line 20.

Following: ";"

Insert: "or"

3. Page 1, line 21.

Strike: "(c)"

Insert: "(b) (i)"

4. Page 1, line 25.

Strike: "(d)"

Insert: "(ii)"

5. Page 1, line 29.


Strike: "(e)"


Insert: "(iii)"

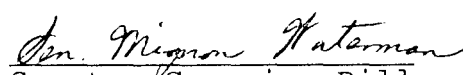
Strike: "through (3) (d)"

Insert: "or (3) (b)"

-END-

 Amd. Coord.

 Sec. of Senate


Senator Carrying Bill

331521SC.SPV

DATE 2/5/95 BILL NO. 56 172 NUMBER _____
MOTION: Pass 56 172 as amended

SEN:1995
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SENATE EDUCATION

EXHIBIT NO. 1

DATE 2/8/95

BILL NO. SB 291

Mr. Chairman, members of the committee. My name is Terry Minow. I represent the Montana Federation of Teachers. I appear today in opposition to SB 291.

Mr. Chairman, this bill will remove salary protection from tenured teachers. It opens up a whole new possibility for contract negotiations, that is, reduction of salaries. I'm not particularly worried about how this will affect our local teacher unions. I think they will be able to maintain their strength, and withstand efforts to reduce salaries. I do think the bill sends a message to teachers in the state, and I don't think its a positive message.

As you've heard before, teacher salaries in Montana, relative to the rest of the nation, have dropped from 41st to ~~42nd~~ 43rd in the last two years. Equalization, especially the equalizing down of school spending, has resulted in minimal increases in Montana teacher salaries, increases that have not kept up with inflation. The cut in the state's share of school spending has also resulted in increased class size in many schools, and a number of cuts that have made it more difficult for teachers to do their jobs.

In my district, my children go to school in the Boulder Grade School which is a fire hazard, with electrical extension cords running across walls, classes taking place in hallways and on the school stage, no place for children to be tested, no place for parent conferences or Individual Education Plans. This Fall, for the second time, the voters turned down a mill levy for a school renovation by a handful of votes.

When I go home to Boulder, I can't tell those classroom teachers that we've done anything to increase school funding here in Helena. I can't tell them that there's state help for building a new school. Instead, I can tell them that this legislature is considering a number of bills, bills like this one, that will make their economic status even more uncertain. Once again, I don't think that's a positive message to send our dedicated classroom teachers.

Thank you, Mr. Chairman and members of the committee, for your attention.

Mr. Chairman, members of the committee. My name is Terry Minow. I represent the Montana Federation of Teachers. I appear today in opposition to SB 200.

We, too, are concerned with portions of this bill. We don't have a problem with reducing salaries of teachers who go to half time, or teachers who end extra duty. We do have a problem with reducing salaries, by legislation and without negotiations, of teachers who work more than the state required number of school days; ^{country} ~~a~~ ^{& a mandated} reduction

We would urge you to consider amending the bill to address the first problem, ^{not} ~~reduction~~ ^{full-time} without causing the second.
teachers &
part time

Thank you, Mr. Chairman.

Amendments to House Bill No. 99
Third Reading Copy

Requested by Representative Fuchs
For the Senate Committee on Education and Cultural Resources

Prepared by Eddye McClure
February 7, 1995

1. Page 1, lines 18 and 19.
Following: "skills"
Strike: "; (b)"
Insert: "and who"

2. Page 1, line 20.
Following: ";"
Insert: "or"

3. Page 1, line 21.
Strike: "(c)"
Insert: "(b)(i)"

4. Page 1, line 25.
Strike: "(d)"
Insert: "(ii)"

5. Page 1, line 29.
Strike: "(e)"
Insert: "(iii)"
Strike: "through (3)(d)"
Insert: "or (3)(b)"

A Position Paper
on
SB 280
by Bill Adamo
Director, Business Services
Livingston Schools 222-0861

1. Under the teacher tenure law (MCA 20-4-203) whenever a teacher has entered into his or hers fourth consecutive teaching contract with the same employer, the teacher is considered to be reelected from year to year thereafter as a "tenure" teacher at the *same salary*.
2. One of many problems with the law is that "same salary" lacks definition and as a result inexperienced hearings officers, the state superintendent of schools, arbiters, district courts, and even the supreme court have been asked to define what lacks clarity.
3. Lack of a clear "same salary" definition fosters an atmosphere of threatened litigation. This fear of litigation forces many public school districts to capitulate rather than litigate a position that is not only in the best interest of the district but *fair*.
4. The question is does "same salary" protection apply to a standard contract (for the Livingston School District it is 187 days), or does it apply to a daily rate, or does it apply to gross pay received by a tenured teacher in a given year, or some combination of those three?
5. School districts are constrained from making even minor (temporarily) alterations to tenured teachers contracts without potentially creating continual salary liability.
6. By virtue of the state equalization formula that helps fund public schools for 180 pupil-instruction days and 7 pupil-instruction-related days (teacher in-service days) most school districts in the state contract with tenure teachers for 187 total days.

7. However, there are many student and district needs that exceed the standard teaching 187 day contract. Meeting those needs, in most cases, requires the payment of salary or stipends to teachers to perform those duties. These needs are typically for a fixed period of time or to accomplish a specific task rather than, as MCA 20-4-230 defines same salary protection, "*thereafter*".
8. Some examples of needs that may be for a fixed period or for a specific task include: a teacher contracted to work an addition two weeks after the school year to help develop curriculum; or a district may choose to experiment with year round school that requires an extended (greater than 187 days) for a whole group of teachers; or a teacher paid a stipend to perform department head duties; or a vocational agriculture teacher offered a four week extended contract to work with students during the summer.
9. Many of these needs are funded from non-continuing funding sources rather than sources that are "*thereafter*". In Livingston, the district is painfully aware that the public's willingness to support public education is **not** "*thereafter*". Voted school district operating levies are not permitted to be on the basis of "*thereafter*".
10. This legislation is a "local control" issue in that districts need the authority, at a local level, to prioritize the funding of extra programs. For example, districts should "at will" be able to make such program changes as replacing an extended teaching contract of a Spanish language teacher with an extended teaching contract of a French language teacher.
11. If any of these administrative hearings or court rulings result in decisions that are unfavorable to public school districts, they can have the effect of sizable unfunded mandates.
12. This legislative proposal does not eliminate "same salary" protection for tenure teacher. It simply defines it and limits it to a standard 187 days.
13. The opposition may argue that there are some districts in the state that annually contract with tenure teachers for a longer than standard (187 days) contract should not be penalized. My question is why should Billings teachers who under contract for 190

days have any more "same salary" rights under the law than any other teacher in the state?

14. The opposition may argue that these teachers, who are on extended teaching contracts, are not smart enough to realize that the extended portion of their contract may be in jeopardy from year to year and, as a result, not to depend on the extra income. However, I contend that they *are* smart enough. Whatever happened to the concept of individuals being responsible for themselves?
15. The opposition may claim that this legislation is taking away salary of tenure teachers but this legislation should have just the opposite effect. If districts realizes that it is not "*thereafter*" bound to extra pay for tenure teachers, it (the district) would probably be more willing to offer teachers extra duty (for pay) opportunities. What district, in their right mind, would offer any form of extra pay to a tenure teacher if they knew it would be "*thereafter*".
16. However, there is nothing in this legislation that precludes districts on their own volition or through collective bargaining contracts, to extend "same salary" rights greater than the minimum proposed.
17. Finally, the current statue encourages districts like Livingston to pull teachers out of the classroom and replace them with noncertificated substitutes in order to find the time to develop curriculum. This being preferable to exposing the district to a "*thereafter*" salary obligation. Educational delivery systems throughout the state suffer with this statue as written.

20-4-208. Transfer from administrative position. (1) A tenure teacher serving in an administrative position may be assigned to a teaching position with a reduction in salary when the economic conditions of the district require a reduction of administrative staff. The salary for the new position must be the same as the salary that the teacher would have received if the teacher had been continuously employed in the new position rather than in the administrative position.

(2) If a board policy or a collective bargaining agreement provides seniority rights for teachers, a district that assigns a tenure teacher serving in an administrative position to a teaching position shall recognize for teacher seniority purposes the tenure teacher's time of service in the administrative position.

(3) As used in this section, the term:

(a) "administrative position" means a position that the trustees of a district designate as administrative or supervisory in nature, not including the position of district superintendent; and

(b) "reduction of administrative staff" is limited to reductions necessary because of declining enrollment or financial exigency.

(4) When a tenure teacher serving in an administrative position is to be transferred under this section, the teacher must be notified prior to May 1 by certified letter or by personal notification for which a signed receipt must be obtained. The notification must include:

(a) a statement of the reason or reasons for the reduction of administrative staff; and

(b) a printed copy of this section for the teacher's information.

(5) A tenure teacher who receives notice under subsection (4) may request in writing, within 10 days of the notice, a hearing before the board of trustees. The board of trustees shall set the hearing not less than 10 days or more than 20 days from receipt of the request unless both parties agree to an extension. If a hearing is requested, the trustees shall:

(a) conduct the hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1); and

(b) resolve at the end of the hearing to uphold the transfer or to reject the transfer and return the teacher to the administrative position.

(6) A tenure teacher may appeal a decision under this section to the county superintendent as provided in 20-3-210. The county superintendent shall conduct a hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1).

(7) The teacher or the trustees may appeal the determination of the county superintendent to the superintendent of public instruction as provided in 20-3-107.

(8) A tenure teacher who is transferred to a teaching position under this section must be offered the next comparable administrative position for which he is endorsed that becomes available in the district.

History: En. Sec. 2, Ch. 204, L. 1991; amd. Sec. 1, Ch. 114, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 114 inserted (2) providing for recognition of the seniority of a tenured teacher assigned to a teaching position after serving in an administrative position; and made minor changes in style.

Repealer: Section 2, Ch. 114, L. 1993, repealed sec. 4, Ch. 204, L. 1991, which provided that the 1991 act, amending 20-4-203 and enacting 20-4-208, did not apply to a person who was employed in an administrative position before October 1, 1991. Repealer effective.

(3) For the purpose of subsection (1), "same salary" means the gross salary under the last executed contract with the teacher, excluding benefits, stipends for extended contracts beyond the regular school year and for nonteaching duties.

The contracted salary of a teacher may only be reduced when the economic condition of the district requires the reduction in the number of teachers. Reduction in the number of teachers is limited to reductions necessary because of decline enrollment or financial exigency. Whenever the contracted hours of pay for a teacher are reduced, the daily rate of pay may be reduced proportionately.

A tenure teacher who is reduced under this section must be offered the next comparable teaching position for which he is endorsed that becomes available in the district.

SENATE EDUCATION

EXHIBIT NO. 6

DATE 2/8/95

BILL NO. SB 172

Amendments to Senate Bill No. 172
First Reading Copy

Requested by Senator Doherty
For the Senate Committee on Education and Cultural Resources

Prepared by Eddye McClure
February 7, 1995

1. Title, lines 5 and 6.

Following: "FOR" on line 5

Insert: "CONTINUED"

Following: "TO" on line 6

Strike: remainder of line 6 through "OF THE"

Insert: "REASONABLY MEET WRITTEN EDUCATIONAL STANDARDS
ESTABLISHED BY THE"

2. Page 1, line 14.

Following: "incompetence,"

Strike: "failure to meet the educational expectations of the
district"

Insert: "continued failure to reasonably meet written educational
standards established by the district"

DATE 2-8-95

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: SB 291- SB 280

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Don Waldron	MREA	SB 280 SB 291	✓	
Eric Deaver	MEA	SB 280 SB 291		X
Terry Minnow	MFT	280 291		X
Michael Keady	MSBA	280 291	X	
Bob Anderson	MSBA	280 291	X	
Ronan Fugère	MAEMSP MAESP	291		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY