

HOUSE BILL NO. 396

Introduced: 01/19/83

Referred to Committee on Education & Cultural Resources:

01/19/83

Hearing: 1/28/83

Died in Committee

1 *House* BILL NO. *396*
 2 INTRODUCED BY *J. Jensen, J. Arnold, Williams*
 3 *Ream, Marko, Blaylock, Nisbet*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE THE
 5 DISTINCTION BETWEEN TENURE AND NONTENURE TEACHERS; TO
 6 PROVIDE THAT ANY TEACHER HIRED UNDER CONTRACT BY A DISTRICT
 7 SHALL BE REELECTED FROM YEAR TO YEAR UNLESS THE TRUSTEES
 8 VOTE TO TERMINATE THE SERVICES OF THE TEACHER FOR SPECIFIC
 9 REASONS; TO ALLOW A TEACHER TO APPEAL A TERMINATION DECISION
 10 TO FINAL AND BINDING ARBITRATION; AMENDING SECTIONS
 11 20-3-210, 20-4-203 THROUGH 20-4-205, 20-4-207, AND 20-7-456,
 12 MCA; AND REPEALING SECTION 20-4-206, MCA."
 13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 Section 1. Section 20-3-210, MCA, is amended to read:
 16 "20-3-210. Controversy appeals and hearings. (1)
 17 Except as provided under 20-3-211, the county superintendent
 18 shall hear and decide all matters of controversy arising in
 19 his county as a result of decisions of the trustees of a
 20 district in the county. When appeals are made under ~~20-4-204~~
 21 ~~relating to the termination of services of a tenure teacher~~
 22 ~~or under 20-4-207~~ relating to the dismissal of a teacher
 23 under contract, the county superintendent may appoint a
 24 qualified attorney at law to act as a legal adviser who
 25 shall assist the superintendent in preparing findings of

1 fact and conclusions of law. Subsequently, either the
 2 teacher or trustees may appeal to the superintendent of
 3 public instruction under the provisions for appeal of
 4 controversies in this title. Furthermore, he shall hear and
 5 decide all controversies arising under:
 6 (a) section 20-5-304 or 20-5-311 relating to the
 7 approval of tuition applications; or
 8 (b) any other provision of this title for which a
 9 procedure for resolving controversies is not expressly
 10 prescribed.
 11 (2) The county superintendent shall hear the appeal
 12 and take testimony in order to determine the facts related
 13 to the controversy and may administer oaths to the witnesses
 14 that testify at the hearing. He shall prepare a written
 15 transcript of the hearing proceedings. The decision on the
 16 matter of controversy which is made by the county
 17 superintendent shall be based upon the facts established at
 18 such hearing.
 19 (3) The decision of the county superintendent may be
 20 appealed to the superintendent of public instruction, and if
 21 it is appealed, the county superintendent shall supply a
 22 transcript of the hearing and any other documents entered as
 23 testimony at the hearing to the superintendent of public
 24 instruction.
 25 (4) Cost incurred by the office of the county

1 superintendent shall be paid from the general fund budget of
2 the county in which the controversy is initiated."

3 Section 2. Section 20-4-203, MCA, is amended to read:

4 "20-4-203. Teacher tenure ~~reelection~~. Whenever a
5 teacher has been elected by the offer and acceptance of a
6 contract for the ~~fourth consecutive~~ 1 year of employment by
7 a district in a position requiring teacher certification
8 except as a district superintendent ~~or--specialist~~, the
9 teacher shall be deemed to be reelected from year to year
10 thereafter ~~as a tenure teacher~~ at the same ~~or greater~~ salary
11 and in the same or a comparable position of employment as
12 that provided by the last executed contract with such
13 teachers, unless:

14 (1) the trustees resolve by majority vote of their
15 membership to terminate the services of the teacher ~~at the~~
16 ~~end of the term of the contract~~ in accordance with the
17 provisions of 20-4-204 ~~or~~

18 ~~(2) the teacher will attain the age of 65 years before~~
19 ~~the ensuing September 1 and the trustees have notified the~~
20 ~~teacher in writing by April 1 that his services will not be~~
21 ~~needed in the ensuing school fiscal year, except that the~~
22 ~~trustees may continue to employ such a teacher from year to~~
23 ~~year until the school fiscal year following his 70th~~
24 ~~birthday."~~

25 Section 3. Section 20-4-204, MCA, is amended to read:

1 "20-4-204. Termination of tenure teacher services. ~~(1)~~
2 ~~The trustees of a district may terminate the services of a~~
3 ~~teacher under the provisions of 20-4-203 at the end of the~~
4 ~~contract term for one or more of the following reasons only:~~

5 ~~(a) unfitness;~~

6 ~~(b) incompetency;~~

7 ~~(c) violation of the adopted policies of the trustees;~~

8 ~~or~~

9 ~~(d) whenever the financial condition of the school~~
10 ~~district requires a reduction in the number of teachers~~
11 ~~employed and the reason for the termination is to reduce the~~
12 ~~number of teachers employed.~~

13 ~~(1)(2)~~ Whenever the trustees of any district resolve
14 to terminate the services of a tenure teacher under the
15 provisions of 20-4-203 ~~(1)~~ ~~subsection 1~~, they shall, before
16 April 1 May 1, notify such the teacher of such the
17 termination in writing by certified or registered letter or
18 by personal notification for which a signed receipt is
19 returned. Such notification shall include a printed copy of
20 this section for the teacher's information.

21 ~~(2)(3)~~ Any tenure teacher who receives a notice of
22 termination may request, in writing 10 days after the
23 receipt of such notice, a written statement declaring
24 clearly and explicitly the specific reason or reasons for
25 the termination of his services, and the trustees shall

supply such statement within 10 days after the request.

~~{3}~~{4} Within 10 days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within 10 days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the tenure teacher may appeal their decision to the county superintendent who may appoint a qualified attorney-at-law as legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Final and binding arbitration on the following grounds only:

(a) that the trustees' decision was procured by corruption or fraud;

(b) that the trustees' decision to terminate the services of the teacher was not supported by the evidence;
or

(c) that the trustees were guilty of misconduct or committed gross error in refusing, on cause shown, to postpone the hearing or in refusing to hear pertinent evidence, or otherwise acted improperly in a manner by which the teacher's rights were prejudiced.

~~{4}~~ Subsequently, either the teacher or the trustees

~~may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title.~~

{5} Any teacher who elects to appeal the trustees' decision to final and binding arbitration shall submit to the board of personnel appeals, provided for in 2-15-1705, a request for a list of five arbitrators. Such a request must be made within 10 days after the teacher receives notification of the trustees' affirmation of the decision to terminate the teacher's employment as provided for in subsection {4}. The request must contain the name and address of the presiding officer of the board of trustees and the name and address of the teacher. The board of personnel appeals shall send the list of arbitrators to both the named presiding officer and the teacher. Within 5 days after receiving the list, the presiding officer and the teacher shall each strike a name from the list in alternate order, until only one name remains. The name remaining will be that of the arbitrator selected to hear the appeal.

{6} The parties shall notify the selected arbitrator of the dispute and the need for arbitration. The arbitrator shall conduct a hearing, receive and consider all evidence pertinent to the issues presented, and render a decision based thereon. Subject to the provisions of Title 27, chapter 5, part 1, the decision of the arbitrator is final and binding.

~~(7) The parties shall share the costs and fees of arbitration equally, except that if one party requests a transcript and the other does not, the requesting party shall bear the expense of the transcript exclusively."~~

Section 4. Section 20-4-205, MCA, is amended to read:

"20-4-205. Notification of ~~tenure~~ teacher reelection -- acceptance. (1) The trustees shall provide written notice by ~~April 1~~ May 1 to all tenure teachers who have been reelected. Any tenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year.

(2) Any ~~tenure~~ teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such reelection within 20 days after the receipt of the notice of reelection, and failure to so notify the trustees within 20 days shall constitute conclusive evidence of his nonacceptance of the tendered position."

Section 5. Section 20-4-207, MCA, is amended to read:

"20-4-207. Dismissal of teacher under contract. (1) The trustees of any district may dismiss a teacher before the expiration of his employment contract for ~~inactivity~~ inactivity, unfitness, incompetence, or violation of the adopted policies of such trustees.

(2) Any teacher who has been dismissed may in writing within 10 days appeal such dismissal to the county superintendent. Following such appeal a hearing shall be held within 10 days. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal."

Section 6. Section 20-7-456, MCA, is amended to read:

"20-7-456. ~~Tenure~~ Reelection of teachers employed by cooperatives. ~~(1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.~~

~~(2) Non-tenured teachers~~ Teachers employed by a cooperative ~~acquire tenure and must be reelected to employment~~ with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204, 20-4-205, and through 20-4-207 are applicable to teachers employed by a cooperative.

~~(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.~~

~~(4) For the purposes of tenure of a teacher employed~~

1 by--a--cooperative--special--education--cooperative--contract
2 renewals--may--not--be--used--to--limit--the--teacher's--progress
3 toward--tenure--status."

4 NEW SECTION. Section 7. Repealer. Section 20-4-206,
5 MCA, is repealed.

-End-