

HOUSE BILL 246

Introduced by Simon, et al.

1/19	Introduced
1/19	Referred to Education & Cultural Resources
1/19	First Reading
1/19	Fiscal Note Requested
1/25	Hearing
1/25	Fiscal Note Received
1/28	Fiscal Note Printed
1/29	Tabled in Committee

1 *House* BILL NO. *246*
2 INTRODUCED BY *Simon Bird*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE COUNTY
5 SUPERINTENDENT OF SCHOOLS WITH THE SUPERINTENDENT OF PUBLIC
6 INSTRUCTION FOR HEARING AND DECIDING CERTAIN SCHOOL
7 CONTROVERSIES; AMENDING SECTIONS 20-3-107, 20-3-201,
8 20-4-204, 20-4-206, 20-4-207, 20-4-208, 20-5-304, 20-5-311,
9 20-6-213, AND 20-6-320, MCA; REPEALING SECTIONS 20-3-210,
10 20-3-211, AND 20-3-212, MCA; AND PROVIDING AN EFFECTIVE
11 DATE."

12
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because
15 the bill requires the superintendent of public instruction
16 to make extensive revisions to the administrative rulemaking
17 allowed under the provisions of 20-3-107(4) with regard to
18 establishing a uniform method of hearing and determining
19 matters of controversy arising under Title 20. Under the
20 provisions of this bill, the superintendent of public
21 instruction replaces the county superintendent of schools as
22 the administrative body of record for certain school
23 controversies, and in that role, the superintendent of
24 public instruction is allowed to designate a hearing
25 examiner, who may hear and decide the controversy. It is the

1 intent of the legislature that the superintendent of public
2 instruction adopt rules regarding the method of designating
3 an impartial hearing examiner, the powers of a designated
4 hearing examiner, the notice and conduct of hearings, and
5 other provisions to guarantee due process. It is
6 contemplated that the superintendent of public instruction
7 may pattern the rules after the special education due
8 process procedural rules in the Administrative Rules of
9 Montana, 10.16.2401 through 10.16.2417.

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 20-3-107, MCA, is amended to read:

13 "**20-3-107. Controversy appeal appeals and hearings.** (1)

14 The superintendent of public instruction shall decide
15 matters of controversy when they are appealed from:

16 (a) a decision of a county superintendent rendered
17 under the provisions of ~~20-3-210~~ 20-6-320; or

18 (b) a decision of a county transportation committee
19 rendered under the provisions of 20-10-132.

20 (2) The superintendent of public instruction or a
21 hearing examiner designated by the superintendent of public
22 instruction shall hear and decide matters of controversy
23 arising from:

24 (a) a decision of the trustees of a district; or

25 (b) a decision relating to the approval of a tuition

1 application.

2 (3) The superintendent of public instruction shall make
3 his a decision on the basis of the transcript of the
4 fact-finding factfinding hearing conducted by the
5 superintendent of public instruction or the designated
6 hearing examiner, the county superintendent, or the county
7 transportation committee and on the basis of the documents
8 presented at the hearing. The superintendent of public
9 instruction may require, if he deems necessary, affidavits,
10 verified statements, or sworn testimony as to the facts in
11 issue. The decision of the superintendent of public
12 instruction shall be is final, subject to the proper legal
13 remedies in the state courts. Such proceedings shall be
14 commenced Proceedings in a state court must commence no
15 later than 60 days after the date of the decision of the
16 superintendent of public instruction.

17 (3)(4) In order to establish a uniform method of
18 hearing and determining matters of controversy arising under
19 this title, the superintendent of public instruction shall
20 prescribe and enforce rules of practice and regulations for
21 the conduct of hearings and the determination of appeals by
22 all school officials of the state.

23 (5) Controversy hearings under the provisions of
24 subsection (2) must be held in the county in which the
25 controversy arises. The county in which the hearing is held

1 is responsible for any administrative costs related to the
2 hearing, including necessary expenses incurred by a
3 designated hearing examiner. Each party to a controversy
4 shall pay that party's own expenses.

5 (6) Exhaustion of the administrative remedies under
6 this title is required prior to filing an action in district
7 court concerning a decision of the trustees of a district,
8 except when:

9 (a) a state agency other than the office of public
10 instruction has been granted primary jurisdiction over the
11 matter;

12 (b) the matter is governed by a specific statute that
13 provides otherwise; or

14 (c) the board of trustees has acted without
15 jurisdiction or in excess of its jurisdiction.

16 (4)(7) Whenever in a contested case the superintendent
17 of public instruction is disqualified from rendering a final
18 decision, he the superintendent of public instruction shall
19 appoint a hearing examiner as provided in 2-4-611 and the
20 decision of the hearing examiner constitutes the
21 superintendent's final order except as provided in this
22 subsection. Such The final order is subject to all the
23 provisions of Title 2, chapter 4, relating to final agency
24 decisions or orders, including judicial review under Title
25 2, chapter 4, part 7."

Section 2. Section 20-3-201, MCA, is amended to read:

"20-3-201. Election and qualifications. (1) A county superintendent must be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent must be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) A person is qualified to assume the office of county superintendent who:

(a) is a qualified elector;

(b) holds a valid teacher certificate issued by the superintendent of public instruction; and

(c) has at least 3 years of successful teaching experience.

(3) (a) When the office of county superintendent of schools is consolidated with another county office within the county, the officeholder must have the qualifications listed in subsection (2) or shall, with the approval of the governing body, contract for the full performance of the duties required of a county superintendent in 20-3-207 and 20-3-210 with:

(i) another county superintendent, with the approval of the governing body of that county;

(ii) a former county superintendent; or

(iii) a person who:

(A) is a qualified elector;

(B) holds a valid administrative certificate as provided in 20-4-106(1)(c);

(C) takes the oath of office in 20-1-202;

(D) is bonded in the manner provided for county officers in Title 2, chapter 9, part 7; and

(E) attends instructional training in the duties of a county superintendent as offered by the superintendent of public instruction.

(b) Whenever a governing body contracts with a person for performance of the duties required of a county superintendent under the provisions of subsection (3)(a)(iii), the contract must be for at least the duration of 1 school fiscal year.

(c) The superintendent of public instruction shall prescribe a contract form to be used."

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

"20-4-204. Termination of tenure teacher services.

(1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or

a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall, before May 1 of the current school fiscal year, notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

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

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a

regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

(5) The tenure teacher may appeal a decision to terminate to the county superintendent of public instruction 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.

(6) Subsequently, either the teacher or the trustees may appeal to the decision of the superintendent of public instruction under the provision for the appeal of controversies in this title to the state courts."

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

"20-4-206. Notification of nontenure teacher reelection -- acceptance -- termination and statement of reason. (1) The trustees shall provide written notice by May 1 to all nontenure teachers who have been reelected. A nontenure teacher who does not receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) A nontenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his a written acceptance of the

conditions of reelection within 20 days after the receipt of the notice of reelection. Failure to so notify the trustees within 20 days may be considered nonacceptance of the tendered position.

(3) When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of the notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the teacher a true statement of reasons for termination.

(4) If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher may request in writing within 10 days of receipt of the statement of reasons that the county-superintendent-hold-a hearing-in-accordance-with-20-3-210 superintendent of public instruction hold a hearing in accordance with 20-3-107 to determine whether the reasons are 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 reasons are not true rests with the teacher, and the showing must be demonstrated by clear and convincing evidence.

(5) If, after a hearing, the county superintendent of

public instruction determines that the reasons are not true, the county superintendent of public instruction 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."

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

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

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends

1 dismissal of a teacher shall give notice of the
2 recommendation in writing to each trustee of the district
3 and to the teacher.

4 (c) The notice must state the specific instances of
5 behavior or acts that led to the recommendation for
6 dismissal.

7 (3) (a) Whenever the trustees of any district receive a
8 recommendation for dismissal, the trustees shall notify the
9 teacher of his the teacher's right to a hearing before the
10 trustees either by certified letter or by personal
11 notification for which a signed receipt must be returned.
12 The teacher may in writing waive the right to a hearing.
13 Unless the teacher waives the right to a hearing, the
14 teacher and trustees shall agree on a hearing date not less
15 than 5 days or more than 20 days from the notice of intent
16 to recommend dismissal.

17 (b) The trustees shall conduct a hearing on the
18 recommendation and resolve at the conclusion of the hearing
19 to dismiss the teacher or to reject the recommendation for
20 dismissal.

21 ~~(4) With--the-exception-of-a-county-superintendent--a~~ A
22 person who recommends dismissal pursuant to subsection (2)
23 may suspend the teacher from active performance of duty with
24 pay pending the hearing date if the teacher's behavior or
25 acts that led to the recommendation for dismissal are

1 contrary to the welfare of the students or the effective
2 operation of the school district.

3 (5) Any teacher who has been dismissed may in writing
4 within 10 days appeal such the dismissal to the county
5 superintendent of public instruction. Following such the
6 appeal, a hearing must be scheduled within 10 days and held
7 within 30 days after the appeal, except that the period may
8 be extended upon agreement between the teacher and the
9 trustees. If the county superintendent of public
10 instruction, after a hearing, determines that the dismissal
11 by the trustees was made without good cause, he the
12 superintendent of public instruction shall order the
13 trustees to reinstate such the teacher and to compensate
14 such the teacher at his the teacher's contract amount for
15 the time lost during the pending of the appeal."

16 **Section 6.** Section 20-4-208, MCA, is amended to read:

17 "20-4-208. Transfer from administrative position. (1) A
18 tenure teacher serving in an administrative position may be
19 assigned to a teaching position with a reduction in salary
20 when the economic conditions of the district require a
21 reduction of administrative staff. The salary for the new
22 position must be the same as the salary that the teacher
23 would have received if the teacher had been continuously
24 employed in the new position rather than in the
25 administrative position.

(2) 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.

(3) 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.

(4) A tenure teacher who receives notice under subsection (3) 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.

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

(6) 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~~ to the state courts.

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

Section 7. Section 20-5-304, MCA, is amended to read:

"20-5-304. Distances, notification, and appeal for elementary tuition purposes. (1) In considering any approval of an application submitted under the provisions of 20-5-301 or 20-5-302, the approval agents shall determine mileage distances on the basis of the shortest practical route

1 between the child's residence and the school building, and
2 they shall determine the child's residence on the basis of
3 the provisions of 1-1-215.

4 (2) The county superintendent shall notify the parent
5 or guardian and the trustees of the districts involved in
6 the tuition application of the tuition agreement approval or
7 disapproval. If a tuition agreement is disapproved by any
8 approval agent, the parent may appeal such the disapproval
9 to the county--superintendent--and,--subsequently,--to--the
10 superintendent of public instruction under the provisions in
11 20-3-107 for the appeal hearing of controversies in this
12 title. The approval of any tuition agreement by the approval
13 agents or upon appeal ~~shall authorize~~ authorizes the child
14 named in such the agreement to enroll in and attend the
15 school named in such the agreement for the ensuing school
16 fiscal year.

17 (3) The rate of tuition and the budgeting and payment
18 procedure prescribed in 20-5-305 ~~shall be~~ is applicable to
19 any tuition application approved under the provisions of
20 this section."

21 **Section 8.** Section 20-5-311, MCA, is amended to read:

22 "20-5-311. High school tuition. (1) A child may be
23 enrolled in and attend a high school outside of the high
24 school district in which he the child resides when the high
25 school is located in Montana or in a county of another state

1 that is adjacent to the state of Montana. When a parent or
2 guardian of a child wishes to have his the child attend a
3 school under the provisions of this section, he the parent
4 or guardian shall apply to the county superintendent of the
5 county of his the parent's or guardian's residence before
6 July 1 of the school fiscal year for which he the parent or
7 guardian seeks approval, except in those cases when
8 substantial changes in circumstances occurred subsequently
9 to justify later application. The application must be made
10 on a tuition agreement form supplied by the county
11 superintendent. The trustees of the district of residence,
12 the trustees of the district in which the child wishes to
13 attend school, and the county superintendent are the
14 approval agents for tuition to another high school within
15 the county. The county superintendent of the county of
16 residence and the trustees of the district in which the
17 child wishes to attend school are the approval agents for
18 attendance outside the county.

19 (2) (a) The approval agents shall approve a tuition
20 application when a child lives closer to a high school of
21 another district than any high school located within ~~his~~ the
22 child's resident district or when, due to road or geographic
23 conditions, it is impractical to attend the high school
24 nearest his the residence. However, the approval agents are
25 not required to approve a tuition application for a student

1 seeking to attend a high school outside the state of Montana
2 or the resident district if the resident district provides
3 transportation. This exception does not apply when the child
4 resides in a county different from the county in which the
5 school he the child wishes to attend is located.

6 (b) The approval agents shall approve a tuition
7 application when a child, as a result of a court order or
8 placement by a state agency or parent in a group home
9 licensed by the state, is required to attend high school
10 outside the district of residence:

11 (i) but within the state of Montana or another state
12 that maintains a reciprocal tuition agreement under
13 20-5-314; or

14 (ii) in a state that does not have a reciprocal tuition
15 agreement pursuant to 20-5-314. The amount of daily tuition
16 may not be greater than the average daily cost per student
17 in the district of residence. The amount of annual tuition
18 may not be greater than the average annual cost per student
19 in the district of residence. The county superintendent
20 shall calculate the average annual and the average daily
21 cost per student. For purposes of this subsection (b), the
22 following do not apply:

23 (A) an order issued under Title 40, chapter 4, part 2;

24 (B) placement of a child with disabilities pursuant to
25 Title 20, chapter 7, part 4.

1 (c) In approving a tuition agreement under this
2 provision, unless the child is a child with disabilities,
3 the approval agents may require the child to attend the high
4 school closest to his the child's residence. The approval
5 agents may approve any other tuition application that
6 satisfies the geographic requirements of this section.

7 (3) The trustees of the district where the child wishes
8 to attend school shall approve or disapprove any tuition
9 application submitted to them under the provisions of this
10 section within 15 days after the receipt of the application.

11 (4) The county superintendent shall notify the parent
12 or guardian and the trustees of the district where the child
13 wishes to attend school of the tuition agreement approval or
14 disapproval. If a tuition agreement is disapproved by one or
15 more approval agents, the parent may appeal such the
16 disapproval to the ~~county-superintendent-and,--subsequently,~~
17 ~~to--the~~ superintendent of public instruction under the
18 provision in 20-3-107 for the ~~appeal~~ hearing of
19 controversies ~~in-this-title~~.

20 (5) The approval of any tuition agreement by all of the
21 applicable approval agents or upon appeal ~~shall--authorize~~
22 authorizes the child named in such the agreement to enroll
23 in and attend the school named in such the agreement for the
24 ensuing school fiscal year."

25 **Section 9.** Section 20-6-213, MCA, is amended to read:

"20-6-213. Transfer of territory from one elementary district to another. (1) A majority of the registered electors of an elementary district who reside in territory that is a part of an elementary district may petition the county superintendent to transfer the territory in which they reside to another elementary district if:

(a) the territory to be transferred is contiguous to the 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 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 \$100,000 unless the remaining territory of the district will contain 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 in writing the transfer; and

(e) the territory proposed to be transferred to another elementary 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 elementary district to which it is to be transferred;

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

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

(d) be accompanied by a \$50 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 considered 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 districts affected by the petition for the transfer of territory 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 20-3-107¹/₃, and any resident, taxpayer, or representative of the affected districts must, upon request, 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 elementary district.

(6) The decision of the county superintendent is final 30 days after its date unless it is appealed to the board of county commissioners by a resident, taxpayer, or representative of the elementary districts affected by the territory transfer.

(7) The decision of the board of county commissioners, after a hearing on the matter and consideration of the record from the county superintendent's hearing, is final 30 days after its date unless prior to that time it has been contested through the filing of a valid petition to submit the question to a vote of the people in the elementary district from which the land is to be transferred. In order

for a petition to be valid, the petition must be signed by 20% of the electors of the elementary district who are qualified to vote in elections for that district under 20-20-301. When a valid petition is submitted under this subsection, the question of whether the territory must be transferred to another district must be put before the voters at the next regular school election in the affected elementary district. The results of the vote must be the final decision on the petition for transfer of territory.

(8) Whenever a petition to transfer territory from one elementary district to another elementary district creates a joint elementary district or affects the boundary of an existing joint elementary district, the petition to transfer territory must be presented to the county superintendent of the county where the territory is located. The county superintendent shall notify any other county superintendents of counties with elementary districts affected by the petition, and the duties prescribed in this section for the county superintendent and the board of county commissioners must be performed jointly by the county officials."

Section 10. Section 20-6-320, MCA, is amended to read:

"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

1 superintendent to transfer the territory in which they
2 reside to another high school district if:

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

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

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

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

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

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

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

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

25 (c) state the number of high-school-age children

1 residing in the territory; and

2 (d) be accompanied by a \$50 nonrefundable filing fee.

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

8 (a) present the petition to the board of county
9 commissioners for certification that the criteria set forth
10 in subsection (1) have been met. The board shall, within 10
11 days of receiving the petition, return it to the county
12 superintendent with certification, signed by a majority of
13 the board, that the criteria have been met or with a
14 notation, signed by a majority of the board, that the
15 criteria have not been met. The board's certification is
16 binding on the county superintendent unless the county
17 superintendent believes that the certification is in error.
18 A dispute between the board and the county superintendent on
19 this issue must be decided by the superintendent of public
20 instruction and the decision of the superintendent of public
21 instruction on the matter is final.

22 (b) file the petition as certified by the board of
23 county commissioners.

24 (4) If the petition is certified or adjusted on appeal
25 to the superintendent of public instruction to meet the

1 criteria specified in subsection (1), the county
2 superintendent shall:

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

6 (b) give notice of the place, date, and time of the
7 hearing. The notices must be posted in the high school
8 districts affected by the petition for the territory
9 transfer in the manner prescribed in this title for school
10 elections, with at least one notice posted in the territory
11 to be transferred.

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

18 (6) Within 30 days after the hearing, the county
19 superintendent shall, after considering the testimony and
20 exhibits presented at the hearing, issue findings of fact,
21 conclusions of law, and an order. The county superintendent
22 shall grant or deny the requested transfer of territory. The
23 decision must be based on the effects that the transfer
24 would have on those residing in the territory proposed for
25 transfer as well as those residing in the remaining

1 territory of the high school district.

2 (7) The decision of the county superintendent is final
3 30 days after its date unless it is appealed pursuant to
4 20-3-107 to the superintendent of public instruction by a
5 resident, taxpayer, or representative of either high school
6 district affected by the petitioned territory transfer. The
7 decision of the superintendent of public instruction, after
8 consideration of the record from the county superintendent's
9 hearing, is final 30 days after its date. The final order of
10 the superintendent of public instruction is subject to
11 judicial review pursuant to the Montana Administrative
12 Procedure Act, Title 2, chapter 4.

13 (8) If a petition to transfer territory from one high
14 school district to another high school district would create
15 a joint high school district or affect the boundary of any
16 existing joint high school district, the petition must be
17 presented to the county superintendent of the county where
18 the territory proposed for transfer is located. The county
19 superintendent shall notify any other county superintendents
20 of counties with districts affected by the petition, and the
21 duties prescribed in this section for the county
22 superintendent must be performed jointly by such county
23 officials."

24 NEW SECTION. **Section 11. Repealer.** Sections 20-3-210,
25 20-3-211, and 20-3-212, MCA, are repealed.

LC 0156/01

1 NEW SECTION. **Section 12.** Effective date. [This act] is
2 effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0246, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act replacing the county superintendent of schools with the Superintendent of Public Instruction (OPI) for hearing and deciding certain school controversies.

ASSUMPTIONS:

1. FY92 represents a typical year for the number of school controversies to be decided by county superintendents on issues of employee dismissal, tuition disputes and territorial transfers.
2. There were approximately 35 school controversies appealed to county superintendents during FY92.
3. The average cost of conducting a hearing would be \$1,920 which includes a contract for services and travel, with a qualified hearing examiner and legal stenographer costs.
4. The cost of preparing a transcript of a hearing would be paid by the party which requests the appeal.
5. The OPI contract for hearings officer and legal stenographer services.
6. As per proposed language in 20-3-107(5), "The county in which the hearing is held is responsible for any administrative costs related to the hearing, including necessary expenses incurred by a designated hearing examiner. Each party to a controversy shall pay that party's own expenses."
7. Costs associated with the OPI requirement to make extensive revisions to the administrative rulemaking under the provisions of 20-3-107(4) and supervision of hearings examiners will be covered by the current operating budget.
8. The OPI will notify each county annually of possible costs so counties can properly prepare their annual budgets.

FISCAL IMPACT: No state impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties would be impacted substantially by the requirement to pay "any administrative costs related to the hearing." Statewide, this is estimated to be \$67,200 per year. Although some counties presently contract with other county superintendents for this service, most county superintendents hear school controversies themselves at no additional cost to the county.

David Lewis 1-23-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BRUCE SIMON, PRIMARY SPONSOR DATE

Fiscal Note for HB0246, as introduced

HB 246