

SENATE BILL NO. 330

INTRODUCED BY NATHE
BY REQUEST OF THE BOARD OF PUBLIC EDUCATION

IN THE SENATE

FEBRUARY 8, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
	FIRST READING.
FEBRUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 22, 1993	PRINTING REPORT.
	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 23, 1993	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 24, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
	FIRST READING.
MARCH 15, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 95; NOES, 2.
MARCH 31, 1993	RETURNED TO SENATE.

IN THE SENATE

MARCH 31, 1993	RECEIVED FROM HOUSE.
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 in this state; or

2 (i) failure to report as required in [section 4].

3 (2) The board may initiate proceedings under this

4 section if a request for the suspension or revocation of the

5 teacher, administrator, or specialist certificate of any

6 person is made to it by:

7 (a) the trustees of a district as to a teacher,

8 administrator, or specialist employed by that school or

9 school district within the 12 months immediately preceding

10 receipt of the request by the board of public education; or

11 (b) the superintendent of public instruction.

12 (3) (a) If the employment relationship between a school

13 district and a teacher or specialist is terminated or not

14 renewed because the trustees have reason to believe that the

15 teacher or specialist engaged in conduct described in

16 subsection (1)(e) or (1)(f), the trustees shall make a

17 written report to the superintendent of public instruction

18 describing the circumstances of the termination or

19 nonrenewal of the employment relationship.

20 (b) The superintendent shall review the report and may

21 conduct further investigation. If he is satisfied that

22 sufficient grounds exist, he may request action by the board

23 of public education under subsection (2)(b). The request

24 must be brought within 1 year after discovery of the events

25 that gave rise to the report.

1 (c) The trustees and the superintendent shall ensure

2 the confidentiality of the report.

3 (d) The trustees and the superintendent and their

4 agents and employees are immune from suit for actions taken

5 in good faith under this section with respect to the report.

6 (4) The board shall give a 30-day written notification

7 to any person when the board intends to consider the

8 suspension or revocation of his certificate. The board shall

9 conduct an investigation of the reasons for the suspension

10 or revocation charge and then, if the investigation warrants

11 further action, conduct a hearing in the manner provided by

12 board policies. At the hearing the board shall afford the

13 person an opportunity to defend himself and his

14 qualifications against the charge.

15 (5) After a hearing, the board may suspend or revoke

16 the person's teacher or specialist certificate, except that

17 in the case of a first violation under subsection (1)(g),

18 the maximum penalty is a 2-year suspension of the person's

19 certificate.

20 (6) Whenever the superintendent of public instruction

21 denies the issuance or the renewal of a teacher or

22 specialist certificate, the applicant may appeal the denial

23 to the board of public education. The board shall hear the

24 appeal in the same manner provided in this section for

25 suspension or revocation and in accordance with the policies

1 ~~of-the-board. The decision of the board shall be final~~

2 (3) The board has jurisdiction to act on a request to
 3 suspend or revoke a teacher, administrator, or specialist
 4 certificate made prior to the expiration of the
 5 certificate."

6 NEW SECTION. Section 2. Hearing. (1) The board of
 7 public education shall give 30 days' written notice to a
 8 person if the board intends to consider a request to suspend
 9 or revoke the person's teacher, administrator, or specialist
 10 certificate. The board shall investigate the reasons for the
 11 request to suspend or revoke the teacher, administrator, or
 12 specialist certificate and, if there are reasonable grounds
 13 to believe that a basis exists for the request to suspend or
 14 revoke the certificate, conduct a hearing in the manner
 15 provided by board policies. At the hearing, the board shall
 16 provide the person an opportunity to defend against the
 17 charge.

18 (2) Except for a first violation under 20-4-110(1)(g),
 19 for which the maximum penalty is a 2-year suspension, the
 20 board may, after a hearing, suspend or revoke the person's
 21 teacher, administrator, or specialist certificate or place a
 22 written reprimand in the person's certification file.

23 NEW SECTION. Section 3. Appeal of denial of
 24 certificate. If the superintendent of public instruction
 25 denies the issuance or the renewal of a teacher,

1 administrator, or specialist certificate, the applicant may
 2 appeal the denial to the board of public education. The
 3 board shall hear the appeal in accordance with board
 4 policies pursuant to [section 2]. A decision of the board is
 5 final.

6 NEW SECTION. Section 4. Duty to report and
 7 investigate. (1) When a school teacher, administrator,
 8 school official, or other employee of a school district
 9 knows or has reasonable cause to suspect that a teacher,
 10 administrator, or specialist is engaged in conduct described
 11 in 20-4-110(1)(e) or (1)(f), the employee shall report the
 12 matter promptly to the school administrator or school
 13 superintendent and the trustees of the district employing
 14 the teacher, administrator, or specialist.

15 (2) Upon receiving a report from anyone that a teacher,
 16 administrator, or specialist has engaged in conduct
 17 described in 20-4-110(1)(e) or (1)(f), the school
 18 administrator or school superintendent and the school
 19 district trustees shall promptly conduct an investigation
 20 into the circumstances of the alleged conduct.

21 (3) If the school administrator, school superintendent,
 22 or trustees have reasonable grounds to believe that the
 23 teacher, administrator, or specialist has engaged in conduct
 24 described in 20-4-110(1)(e) or (1)(f), the school
 25 administrator, school superintendent, or trustees shall

1 report in writing to the superintendent of public
2 instruction describing the circumstances giving rise to the
3 belief that the teacher, administrator, or specialist has
4 engaged in the conduct. If the school or school district
5 does not have an administrator, the chairperson of the
6 trustees shall file the written report required by this
7 subsection.

8 (4) If the investigation by the school administrator,
9 school superintendent, or trustees does not provide
10 sufficient evidence that there are reasonable grounds to
11 believe that the teacher, administrator, or specialist has
12 engaged in conduct described in 20-4-110(1)(e) or (1)(f) and
13 the school administrator, school superintendent, or trustees
14 conclude that there is no more than a suspicion that the
15 conduct occurred, there is no duty to file a written report
16 with or to request action by the superintendent of public
17 instruction.

18 (5) The written report must be filed with the
19 superintendent of public instruction within 30 days after
20 the school administrator, school superintendent, or trustees
21 have reason to believe that the teacher, administrator, or
22 specialist has engaged in conduct prohibited by
23 20-4-110(1)(e) or (1)(f).

24 (6) The report to the superintendent of public
25 instruction must:

1 (a) set forth the basis for the belief that the conduct
2 of the teacher, administrator, or specialist violated
3 20-4-110(1)(e) or (1)(f); and

4 (b) include copies of all investigative materials or
5 other evidence available to the school or school district
6 that is relevant to the matters alleged or that could lead
7 to the discovery of relevant evidence.

8 NEW SECTION. Section 5. Investigative authority of
9 superintendent of public instruction. (1) The superintendent
10 of public instruction has access to all material considered
11 by or available to the school or school district that may be
12 relevant to an allegation that a teacher, administrator, or
13 specialist has engaged in conduct described in
14 20-4-110(1)(e) or (1)(f) or that may lead to the discovery
15 of relevant evidence.

16 (2) The superintendent of public instruction may
17 conduct an independent investigation to determine whether
18 there are reasonable grounds to believe that the teacher,
19 administrator, or specialist has engaged in conduct that is
20 the basis for the suspension or revocation of a teacher,
21 administrator, or specialist certificate under 20-4-110.

22 (3) The superintendent of public instruction shall
23 review a report submitted pursuant to [section 4] and any
24 supporting evidence included in that report and may further
25 investigate any basis for the suspension or revocation of a

teacher, administrator, or specialist certificate. If the superintendent of public instruction is satisfied that sufficient grounds exist to suspend or revoke a teacher, administrator, or specialist certificate, the superintendent of public instruction may request action by the board of public education under 20-4-110(2). The request must be brought within 1 year after discovery of the events giving rise to the report.

NEW SECTION. Section 6. Access to criminal justice information. (1) Either the trustees of a school district or the superintendent of public instruction may apply to a district court pursuant to 44-5-302 to review confidential criminal justice information that is relevant to the investigation of grounds for suspension or revocation of a teacher, administrator, or specialist certificate under 20-4-110.

(2) The district court shall provide the trustees or the superintendent of public instruction access to any confidential criminal justice information that is relevant to an investigation into possible grounds for suspension or revocation of a teacher, administrator, or specialist certificate. The court shall issue a protective order to protect the confidentiality of the information released.

NEW SECTION. Section 7. Confidentiality to be maintained. (1) Throughout any investigation into

allegations that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f), the school district trustees, the superintendent of public instruction, and the board of public education shall protect the confidentiality of the individuals involved and shall ensure the confidentiality of any report made, submitted, or obtained pursuant to either [section 4 or 5].

(2) Once an investigation has been concluded, the records pertaining to the investigation must be sealed by the entity in possession of the records. The records may be released only with written consent of the party or parties to whom they pertain or by order of the district court.

NEW SECTION. Section 8. Immunity. The trustees and the school superintendent and their agents and employees are immune from suit for actions taken in good faith under [sections 2 through 5].

NEW SECTION. Section 9. Penalty for failure to report. (1) A person or school official who is required by law to report that there is reasonable cause to believe that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f) and who fails to report or prevents another person from reporting is liable for civil damages proximately caused by the failure to report.

(2) A person or school official who is required by law

1 to report that there is reasonable cause to believe that a
2 teacher, administrator, or specialist has engaged in conduct
3 described in 20-4-110(1)(e) or (1)(f) and who purposely or
4 knowingly fails to make a report or purposely or knowingly
5 prevents another person from reporting is guilty of a
6 misdemeanor.

7 (3) The failure of a school trustee to report as
8 required in [section 4] constitutes official misconduct
9 within the meaning of 2-16-603.

10 NEW SECTION. Section 10. Codification instruction.
11 [Sections 2 through 9] are intended to be codified as an
12 integral part of Title 20, chapter 4, part 1, and the
13 provisions of Title 20, chapter 4, part 1, apply to
14 [sections 2 through 9].

15 NEW SECTION. Section 11. Effective date. [This act] is
16 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 SB0330, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act revising and clarifying the law concerning suspension and revocation of teacher, administrator, or specialist certificates; granting the Board of Public Education jurisdiction to act on any request for suspension or revocation of a certificate that is made prior to the expiration of the certificate; granting the superintendent of public instruction investigative authority into matters that may serve as the basis for a request to suspend or revoke the certificate of a teacher, administrator, or specialist; requiring school trustees, educational professionals, and school employees to report and investigate allegations of immoral conduct relating to the teaching profession and convictions of crimes involving moral turpitude; providing immunity to persons who report; providing a penalty for failing to report.

ASSUMPTIONS:**OFFICE OF PUBLIC INSTRUCTION**

1. The anticipated annual workload to conduct the investigations authorized in Section 5 of the proposed law will require 80 attorney hours/case for 6 cases at \$53 per hour (\$25,440), plus 40 investigator hours/cases for 12 cases at \$40/hour (\$19,200), and per diem and travel for 12 investigator trips (\$3,000), for a total of \$47,640.
2. One-half of the cases investigated will go to hearing before the Board of Public Education. It is estimated that of the 6 additional cases, 3 will be contested and 3 will be uncontested.
3. The executive budget included a budget modification for "Certification Denial/Revocation Investigations" of \$47,640 in both fiscal 1994 and fiscal 1995 for costs of contracting with an impartial third-party to investigate complaints and requests from districts for the revocation-suspension of certificates. The budget modification was approved contingent on legislation to generate the revenues needed to fund the budget modification.
4. Current level funding for the teacher certification function at the Office of Public Instruction is \$151,411 in fiscal 1994 and \$151,873 in fiscal 1995.
5. Senate Bill 330 does not contain any additional funding for the investigative authority granted to the Superintendent of Public Instruction provided in this bill.

FISCAL IMPACT:**Office of Public Instruction**

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Expenditures:						
Teacher Certification	199,051	199,051	0	199,513	199,513	

(continued)

David Lewis 2-12-93

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

Dennis Nathe

DENNIS NATHE, PRIMARY SPONSOR DATE

Fiscal Note for SB0330, as introduced

SB 330

Expenditures:
Board of Public Education

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Operating	11,700	22,800	11,100	11,700	22,800	11,100

Net Impact: The Board of Public Education will have an additional general fund need of \$22,200 for the 1995 biennium.

Long-Range effects of proposed legislation:

The Board of Public Education anticipates yearly increases in cases due to this legislation.

APPROVED BY COMM. ON EDUCATION
AND CULTURAL RESOURCES

SENATE BILL NO. 330

INTRODUCED BY NATHE

BY REQUEST OF THE BOARD OF PUBLIC EDUCATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE LAW CONCERNING SUSPENSION AND REVOCATION OF TEACHER, ADMINISTRATOR, OR SPECIALIST CERTIFICATES; ~~GRANTING--THE BOARD-OF-PUBLIC-EDUCATION-JURISDICTION-TO-ACT-ON-ANY-REQUEST FOR--SUSPENSION--OR-REVOCATION-OF-A-CERTIFICATE-THAT-IS-MADE PRIOR-TO-THE-EXPIRATION-OF--THE--CERTIFICATE;--GRANTING--THE SUPERINTENDENT-OF-PUBLIC-INSTRUCTION-INVESTIGATIVE-AUTHORITY INTO--MATTERS--THAT--MAY-SERVE-AS-THE-BASIS-FOR-A-REQUEST-TO SUSPEND--OR---REVOKE---THE---CERTIFICATE---OF---A---TEACHER, ADMINISTRATOR,--OR--SPECIALIST;--REQUIRING--SCHOOL-TRUSTEES, EDUCATION-PROFESSIONALS,--AND-SCHOOL-EMPLOYEES-TO-REPORT--AND INVESTIGATE--ALLEGATIONS--OF-IMMORAL-CONDUCT-RELATING-TO-THE TEACHING-PROFESSION--AND--CONVICTIONS--OF--CRIMES--INVOLVING MORAL--TURPITUDE;--PROVIDING-IMMUNITY-TO-PERSONS-WHO-REPORT, PROVIDING A PENALTY FOR FAILING TO REPORT; AMENDING SECTION 20-4-110, MCA; AND PROVIDING AN EFFECTIVE DATE."~~

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

Section 1. Section 20-4-110, MCA, is amended to read:

"20-4-110. Suspension, revocation, and denial of certificate ---appeals. (1) The board of public education

may suspend or revoke the teacher, administrator, or specialist certificate of any person for ~~any--of~~ the following reasons:

(a) making any statement of material fact in the application applying for a certificate which that the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher, administrator, or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher, administrator, or specialist and the trustees of a school or school district without good cause or the written consent of the trustees; or OR

(h) denial, revocation, suspension, or surrender of a teacher, administrator, or specialist certificate in another state for any reason constituting grounds for similar action

1 in this state, or,

2 ~~{i}--failure-to-report-as-required-in-{section-4}.~~

3 (2) The board may initiate proceedings under this
4 section if a request for the suspension or revocation of the
5 teacher, administrator, or specialist certificate of any
6 person is made to it by:

7 (a) the trustees of a district as to a teacher,
8 administrator, or specialist employed by that school or
9 school district within the 12 months immediately preceding
10 receipt of the request by the board of public education; or

11 (b) the superintendent of public instruction.

12 ~~{3}--{a}--if-the-employment-relationship-between-a-school~~
13 ~~district--and--a--teacher-or-specialist-is-terminated-or-not~~
14 ~~renewed-because-the-trustees-have-reason-to-believe-that-the~~
15 ~~teacher--or--specialist--engaged--in--conduct--described--in~~
16 ~~subsection-{1}{e}-or--{1}{f},--the--trustees--shall--make--a~~
17 ~~written--report--to-the-superintendent-of-public-instruction~~
18 ~~describing--the--circumstances---of---the---termination---or~~
19 ~~nonrenewal-of-the-employment-relationship.~~

20 ~~{b}--The--superintendent-shall-review-the-report-and-may~~
21 ~~conduct-further--investigation;--if--he--is--satisfied--that~~
22 ~~sufficient-grounds-exist,--he-may-request-action-by-the-board~~
23 ~~of--public--education--under--subsection-{2}{b}.~~ The request
24 must be brought within 1 year after discovery of the events
25 that gave rise to the report.

1 ~~{c}--The--trustees--and--the-superintendent-shall-ensure~~
2 ~~the-confidentiality-of-the-report.~~

3 ~~{d}--The--trustees--and--the-superintendent--and--their~~
4 ~~agents-and-employees-are-immune-from-suit-for-actions--taken~~
5 ~~in-good-faith-under-this-section-with-respect-to-the-report.~~

6 ~~{4}--The--board-shall-give-a-30-day-written-notification~~
7 ~~to-any--person--when--the--board--intends--to--consider--the~~
8 ~~suspension-or-revocation-of-his-certificate.~~ The board shall
9 conduct an investigation of the reasons for the suspension
10 or revocation charge and then, if the investigation warrants
11 further action, conduct a hearing in the manner provided by
12 board policies. At the hearing the board shall afford the
13 person an opportunity to defend himself and his
14 qualifications against the charge.

15 ~~{5}--After--a--hearing,--the-board-may-suspend-or-revoke~~
16 ~~the-person's-teacher-or-specialist-certificate,--except--that~~
17 ~~in--the--case--of--a--first-violation-under-subsection-{1}{g},~~
18 ~~the-maximum-penalty-is-a-2-year-suspension-of--the--person's~~
19 ~~certificate.~~

20 ~~{6}--Whenever--the--superintendent-of-public-instruction~~
21 ~~denies--the--issuance--or--the--renewal--of--a--teacher--or~~
22 ~~specialist--certificate,--the-applicant-may-appeal-the-denial~~
23 ~~to-the-board-of-public-education.~~ The board shall hear the
24 appeal in the same manner provided in this section for
25 suspension or revocation and in accordance with the policies

~~of-the-board-The-decision-of-the-board-shall-be-final~~

~~(3)--The-board-has-jurisdiction-to-act-on-a-request-to suspend--or--revoke--a-teacher, administrator, or specialist certificate-made-prior-to-the-expiration-of-the-certificate-~~

(3) (A) IF THE EMPLOYMENT RELATIONSHIP BETWEEN A SCHOOL DISTRICT AND A TEACHER, ADMINISTRATOR, OR SPECIALIST IS TERMINATED OR NOT RENEWED OR IF A TEACHER, ADMINISTRATOR, OR SPECIALIST RESIGNS TO PREVENT TERMINATION OR NONRENEWAL BECAUSE THE TRUSTEES HAVE REASON TO BELIEVE THAT THE TEACHER, ADMINISTRATOR, OR SPECIALIST ENGAGED IN CONDUCT DESCRIBED IN SUBSECTION (1)(E) OR (1)(F), THE TRUSTEES SHALL MAKE A WRITTEN REPORT TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION DESCRIBING THE CIRCUMSTANCES OF THE TERMINATION, NONRENEWAL, OR RESIGNATION.

(B) THE SUPERINTENDENT SHALL REVIEW THE REPORT AND MAY CONDUCT FURTHER INVESTIGATION. IF THE SUPERINTENDENT IS SATISFIED THAT SUFFICIENT GROUNDS EXIST, THE SUPERINTENDENT MAY REQUEST ACTION BY THE BOARD OF PUBLIC EDUCATION UNDER SUBSECTION (1). THE REQUEST MUST BE BROUGHT WITHIN 1 YEAR AFTER DISCOVERY OF THE EVENTS THAT GAVE RISE TO THE REPORT.

(C) THE TRUSTEES AND THE SUPERINTENDENT SHALL ENSURE THE CONFIDENTIALITY OF THE REPORT.

(D) THE TRUSTEES AND THE SUPERINTENDENT AND THEIR AGENTS AND EMPLOYEES ARE IMMUNE FROM SUIT FOR ACTIONS TAKEN IN GOOD FAITH UNDER THIS SECTION WITH RESPECT TO THE REPORT.

(4) THE BOARD SHALL GIVE A 30-DAY WRITTEN NOTIFICATION TO ANY PERSON WHEN THE BOARD INTENDS TO CONSIDER THE SUSPENSION OR REVOCATION OF A CERTIFICATE. THE BOARD SHALL CONDUCT AN INVESTIGATION OF THE REASONS FOR THE SUSPENSION OR REVOCATION CHARGE AND THEN, IF THE INVESTIGATION WARRANTS FURTHER ACTION, CONDUCT A HEARING IN THE MANNER PROVIDED BY BOARD POLICIES. AT THE HEARING, THE BOARD SHALL AFFORD THE PERSON AN OPPORTUNITY FOR DEFENSE AGAINST THE CHARGE.

(5) AFTER A HEARING, THE BOARD MAY SUSPEND OR REVOKE THE PERSON'S TEACHER OR SPECIALIST CERTIFICATE, EXCEPT THAT IN THE CASE OF A FIRST VIOLATION UNDER SUBSECTION (1)(G), THE MAXIMUM PENALTY IS A 2-YEAR SUSPENSION OF THE PERSON'S CERTIFICATE.

(6) WHENEVER THE SUPERINTENDENT OF PUBLIC INSTRUCTION DENIES THE ISSUANCE OR THE RENEWAL OF A TEACHER OR SPECIALIST CERTIFICATE, THE APPLICANT MAY APPEAL THE DENIAL TO THE BOARD OF PUBLIC EDUCATION. THE BOARD SHALL HEAR THE APPEAL IN THE SAME MANNER PROVIDED IN THIS SECTION FOR SUSPENSION OR REVOCATION AND IN ACCORDANCE WITH THE POLICIES OF THE BOARD. THE DECISION OF THE BOARD IS FINAL."

~~NEW-SECTION--Section 2--Hearing--(1)--The-board--of--public--education--shall--give--30-days--written-notice--to--a person-if-the-board-intends-to-consider-a-request-to-suspend or-revoke-the-person's-teacher, administrator, or specialist certificate--The-board-shall-investigate-the-reasons-for-the~~

request-to-suspend-or-revoke-the-teacher, administrator, or specialist certificate and, if there are reasonable grounds to believe that a basis exists for the request to suspend or revoke the certificate, conduct a hearing in the manner provided by board policies. At the hearing, the board shall provide the person an opportunity to defend against the charge.

(2) Except for a first violation under 20-4-110(1)(g), for which the maximum penalty is a 2-year suspension, the board may, after a hearing, suspend or revoke the person's teacher, administrator, or specialist certificate or place a written reprimand in the person's certification file.

NEW SECTION. Section 3. Appeal of denial of certificate. If the superintendent of public instruction denies the issuance or the renewal of a teacher, administrator, or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in accordance with board policies pursuant to section 2. A decision of the board is final.

NEW SECTION. Section 4. Duty to report and investigate. (1) When a school teacher, administrator, school official, or other employee of a school district knows or has reasonable cause to suspect that a teacher, administrator, or specialist is engaged in conduct described

in 20-4-110(1)(e) or (1)(f), the employee shall report the matter promptly to the school administrator or school superintendent and the trustees of the district employing the teacher, administrator, or specialist.

(2) Upon receiving a report from anyone that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f), the school administrator or school superintendent and the school district trustees shall promptly conduct an investigation into the circumstances of the alleged conduct.

(3) If the school administrator, school superintendent, or trustees have reasonable grounds to believe that the teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f), the school administrator, school superintendent, or trustees shall report in writing to the superintendent of public instruction describing the circumstances giving rise to the belief that the teacher, administrator, or specialist has engaged in the conduct. If the school or school district does not have an administrator, the chairperson of the trustees shall file the written report required by this subsection.

(4) If the investigation by the school administrator, school superintendent, or trustees does not provide sufficient evidence that there are reasonable grounds to

1 believe-that-the-teacher, administrator, or--specialist--has
 2 engaged-in-conduct-described-in-20-4-110(1)(e)-or-(1)(f)-and
 3 the-school-administrator, school-superintendent, or-trustees
 4 conclude--that--there--is--no-more-than-a-suspicion-that-the
 5 conduct-occurred, there-is-no-duty-to-file-a-written--report
 6 with--or--to--request-action-by-the-superintendent-of-public
 7 instruction;

8 (5)--The--written--report--must--be---filed---with---the
 9 superintendent--of--public--instruction-within-30-days-after
 10 the-school-administrator, school-superintendent, or-trustees
 11 have-reason-to-believe-that-the-teacher, administrator, or
 12 specialist---has---engaged---in---conduct---prohibited---by
 13 20-4-110(1)(e)-or-(1)(f);

14 (6)--The--report--to--the---superintendent---of---public
 15 instruction-must;

16 (a)--set-forth-the-basis-for-the-belief-that-the-conduct
 17 of---the--teacher, administrator, or--specialist--violated
 18 20-4-110(1)(e)-or-(1)(f);-and

19 (b)--include-copies-of-all--investigative--materials--or
 20 other--evidence--available--to-the-school-or-school-district
 21 that-is-relevant-to-the-matters-alleged-or-that--could--lead
 22 to-the-discovery-of-relevant-evidence;

23 NEW SECTION. Section 2. Investigative authority of
 24 superintendent of public instruction. (1) The superintendent
 25 of public instruction has access to all material considered

1 by or available to the school or school district that may be
 2 relevant to an allegation that a teacher, administrator, or
 3 specialist has engaged in conduct described in
 4 20-4-110(1)(e) or (1)(f) or that may lead to the discovery
 5 of relevant evidence.

6 (2)--The---superintendent---of--public--instruction--may
 7 conduct-an-independent-investigation--to--determine--whether
 8 there--are--reasonable--grounds-to-believe-that-the-teacher,
 9 administrator, or-specialist-has-engaged-in-conduct-that--is
 10 the--basis--for--the--suspension-or-revocation-of-a-teacher,
 11 administrator, or-specialist-certificate-under-20-4-110;

12 (3)(2) The superintendent of public instruction shall
 13 review a report submitted pursuant to {section-4} 20-4-110
 14 and any supporting evidence included in that report and may
 15 further investigate any basis for the suspension or
 16 revocation of a teacher, administrator, or specialist
 17 certificate. If the superintendent of public instruction is
 18 satisfied that sufficient grounds exist to suspend or revoke
 19 a teacher, administrator, or specialist certificate, the
 20 superintendent of public instruction may request action by
 21 the board of public education under 20-4-110(2). The request
 22 must be brought within 1 year after discovery of the events
 23 giving rise to the report.

24 NEW SECTION. Section 3. Access to criminal justice
 25 information. (1) Either the trustees of a school district or

the superintendent of public instruction may apply to a district court pursuant to 44-5-302 to review confidential criminal justice information that is relevant to the investigation of grounds for suspension or revocation of a teacher, administrator, or specialist certificate under 20-4-110.

(2) The district court shall provide the trustees or the superintendent of public instruction access to any confidential criminal justice information that is relevant to an investigation into possible grounds for suspension or revocation of a teacher, administrator, or specialist certificate. The court shall issue a protective order to protect the confidentiality of the information released.

NEW SECTION. Section 7. Confidentiality-----to-----be-- maintained.-----{1}---Throughout---any---investigation---into allegations that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f), the school district trustees, the superintendent of public instruction, and the board of public education shall protect the confidentiality of the individuals involved and shall ensure the confidentiality of any report made, submitted, or obtained pursuant to either {section 4 or 5}.

{2}--Once--an--investigation--has--been--concluded,--the records--pertaining--to--the--investigation--must--be--sealed--by the entity in possession of the records. The records may be

released only with written consent of the party or parties to whom they pertain or by order of the district court.

NEW SECTION. Section 8. Immunity. The trustees and the school superintendent and their agents and employees are immune from suit for actions taken in good faith under {sections 2 through 5}.

NEW SECTION. Section 4. Penalty for failure to report.
{1}--A person or school official who is required by law to report that there is reasonable cause to believe that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f) and who fails to report or prevents another person from reporting is liable for civil damages proximately caused by the failure to report.

{2}--A person or school official who is required by law to report that there is reasonable cause to believe that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f) and who purposely or knowingly fails to make a report or purposely or knowingly prevents another person from reporting is guilty of a misdemeanor.

{3} The failure of a school trustee to report as required in {section 4} 20-4-110 constitutes official misconduct within the meaning of 2-16-603.

NEW SECTION. Section 5. Codification instruction.

1 [Sections 2 through 9 4] are intended to be codified as an
2 integral part of Title 20, chapter 4, part 1, and the
3 provisions of Title 20, chapter 4, part 1, apply to
4 [sections 2 through 9 4].

5 NEW SECTION. **Section 6.** Effective date. [This act] is
6 effective July 1, 1993.

-End-

SENATE BILL NO. 330

INTRODUCED BY NATHE

BY REQUEST OF THE BOARD OF PUBLIC EDUCATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE LAW CONCERNING SUSPENSION AND REVOCATION OF TEACHER, ADMINISTRATOR, OR SPECIALIST CERTIFICATES; GRANTING--THE BOARD-OF-PUBLIC-EDUCATION-JURISDICTION-TO-ACT-ON-ANY-REQUEST FOR--SUSPENSION--OR-REVOCATION-OF-A-CERTIFICATE-THAT-IS-MADE PRIOR-TO-THE-EXPIRATION-OF--THE--CERTIFICATE;--GRANTING--THE SUPERINTENDENT-OF-PUBLIC-INSTRUCTION-INVESTIGATIVE-AUTHORITY INTO--MATTERS--THAT--MAY-SERVE-AS-THE-BASIS-FOR-A-REQUEST-TO SUSPEND--OR---REVOKE---THE---CERTIFICATE---OF---A---TEACHER, ADMINISTRATOR,--OR--SPECIALIST;--REQUIRING--SCHOOL-TRUSTEES, EDUCATION-PROFESSIONALS,--AND-SCHOOL-EMPLOYEES-TO-REPORT--AND INVESTIGATE--ALLEGATIONS--OF-IMMORAL-CONDUCT-RELATING-TO-THE TEACHING-PROFESSION--AND--CONVICTIONS--OF--CRIMES--INVOLVING MORAL--TURPITUDE;--PROVIDING-IMMUNITY-TO-PERSONS-WHO-REPORT; PROVIDING A PENALTY FOR FAILING TO REPORT; AMENDING SECTION 20-4-110, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 20-4-110, MCA, is amended to read:

"20-4-110. Suspension, revocation, and denial of certificate ---appeals. (1) The board of public education

may suspend or revoke the teacher, administrator, or specialist certificate of any person for any--of the following reasons:

(a) making any statement of material fact in the application applying for a certificate which that the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher, administrator, or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher, administrator, or specialist and the trustees of a school or school district without good cause or the written consent of the trustees; or OR

(h) denial, revocation, suspension, or surrender of a teacher, administrator, or specialist certificate in another state for any reason constituting grounds for similar action

1 in this state; ~~or.~~

2 ~~{1}--failure-to-report-as-required-in-{section-4};~~

3 (2) The board may initiate proceedings under this
4 section if a request for the suspension or revocation of the
5 teacher, administrator, or specialist certificate of any
6 person is made to it by:

7 (a) the trustees of a district as to a teacher,
8 administrator, or specialist employed by that school or
9 school district within the 12 months immediately preceding
10 receipt of the request by the board of public education; or

11 (b) the superintendent of public instruction.

12 ~~{3}--(a)--If-the-employment-relationship-between-a-school~~
13 ~~district--and--a--teacher-or-specialist-is-terminated-or-not~~
14 ~~renewed-because-the-trustees-have-reason-to-believe-that-the~~
15 ~~teacher--or--specialist--engaged--in--conduct--described--in~~
16 ~~subsection-(1)(e)-or--(1)(f);--the--trustees--shall--make--a~~
17 ~~written--report--to-the-superintendent-of-public-instruction~~
18 ~~describing--the--circumstances---of---the---termination---or~~
19 ~~nonrenewal-of-the-employment-relationship;~~

20 ~~{b}--The--superintendent-shall-review-the-report-and-any~~
21 ~~supporting-evidence-included-in-the-report-and-may--conduct~~
22 ~~further--investigation---if--he-is-satisfied-that-sufficient~~
23 ~~grounds-exist;--he-may-request-action-by-the-board-of--public~~
24 ~~education--under--subsection--(2)(b).--The--request--must-be~~
25 ~~brought-within-1-year-after-discovery--of--the--events--that~~

1 gave-rise-to-the-report;

2 ~~{c}--The--trustees--and--the-superintendent-shall-ensure~~
3 ~~the-confidentiality-of-the-report;~~

4 ~~{d}--The--trustees--and--the--superintendent--and--their~~
5 ~~agents-and-employees-are-immune-from-suit-for-actions--taken~~
6 ~~in-good-faith-under-this-section-with-respect-to-the-report;~~

7 ~~{4}--The--board-shall-give-a-30-day-written-notification~~
8 ~~to-any--person--when--the--board--intends--to--consider--the~~
9 ~~suspension-or-revocation-of-his-certificate--The-board-shall~~
10 ~~conduct--an--investigation-of-the-reasons-for-the-suspension~~
11 ~~or-revocation-charge-and-then;--if-the-investigation-warrants~~
12 ~~further-action;--conduct-a-hearing-in-the-manner-provided--by~~
13 ~~board--policies;--At--the-hearing-the-board-shall-afford-the~~
14 ~~person--an---opportunity---to---defend---himself---and---his~~
15 ~~qualifications-against-the-charge;~~

16 ~~{5}--After--a--hearing;--the-board-may-suspend-or-revoke~~
17 ~~the-person's-teacher-or-specialist-certificate;--except--that~~
18 ~~in--the--case--of-a-first-violation-under-subsection-(1)(g);~~
19 ~~the-maximum-penalty-is-a-2-year-suspension-of--the--person's~~
20 ~~certificate;~~

21 ~~{6}--Whenever--the--superintendent-of-public-instruction~~
22 ~~denies--the--issuance--or--the--renewal--of--a--teacher---or~~
23 ~~specialist--certificate--the-applicant-may-appeal-the-denial~~
24 ~~to-the-board-of-public-education;--The-board-shall--hear--the~~
25 ~~appeal--in--the--same--manner--provided--in-this-section-for~~

~~suspension or revocation and in accordance with the policies of the board. The decision of the board shall be final~~

~~(3) The board has jurisdiction to act on a request to suspend or revoke a teacher, administrator or specialist certificate made prior to the expiration of the certificate.~~

(3) (A) IF THE EMPLOYMENT RELATIONSHIP BETWEEN A SCHOOL DISTRICT AND A TEACHER, ADMINISTRATOR, OR SPECIALIST IS TERMINATED OR NOT RENEWED OR IF A TEACHER, ADMINISTRATOR, OR SPECIALIST RESIGNS TO PREVENT TERMINATION OR NONRENEWAL BECAUSE THE TRUSTEES HAVE REASON TO BELIEVE THAT THE TEACHER, ADMINISTRATOR, OR SPECIALIST ENGAGED IN CONDUCT DESCRIBED IN SUBSECTION (1)(E) OR (1)(F), THE TRUSTEES SHALL MAKE A WRITTEN REPORT TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION DESCRIBING THE CIRCUMSTANCES OF THE TERMINATION, NONRENEWAL, OR RESIGNATION.

(B) THE SUPERINTENDENT SHALL REVIEW THE REPORT AND ANY SUPPORTING EVIDENCE INCLUDED IN THE REPORT AND MAY CONDUCT FURTHER INVESTIGATION. IF THE SUPERINTENDENT IS SATISFIED THAT SUFFICIENT GROUNDS EXIST, THE SUPERINTENDENT MAY REQUEST ACTION BY THE BOARD OF PUBLIC EDUCATION UNDER SUBSECTION (1). THE REQUEST MUST BE BROUGHT WITHIN 1 YEAR AFTER DISCOVERY OF THE EVENTS THAT GAVE RISE TO THE REPORT.

(C) THE TRUSTEES AND THE SUPERINTENDENT SHALL ENSURE THE CONFIDENTIALITY OF THE REPORT.

(D) THE TRUSTEES AND THE SUPERINTENDENT AND THEIR

AGENTS AND EMPLOYEES ARE IMMUNE FROM SUIT FOR ACTIONS TAKEN IN GOOD FAITH UNDER THIS SECTION WITH RESPECT TO THE REPORT.

(4) THE BOARD SHALL GIVE A 30-DAY WRITTEN NOTIFICATION TO ANY PERSON WHEN THE BOARD INTENDS TO CONSIDER THE SUSPENSION OR REVOCATION OF A CERTIFICATE. THE BOARD SHALL CONDUCT AN INVESTIGATION OF THE REASONS FOR THE SUSPENSION OR REVOCATION CHARGE AND THEN, IF THE INVESTIGATION WARRANTS FURTHER ACTION, CONDUCT A HEARING IN THE MANNER PROVIDED BY BOARD POLICIES. AT THE HEARING, THE BOARD SHALL AFFORD THE PERSON AN OPPORTUNITY FOR DEFENSE AGAINST THE CHARGE.

(5) AFTER A HEARING, THE BOARD MAY SUSPEND OR REVOKE THE PERSON'S TEACHER OR SPECIALIST CERTIFICATE, EXCEPT THAT IN THE CASE OF A FIRST VIOLATION UNDER SUBSECTION (1)(G), THE MAXIMUM PENALTY IS A 2-YEAR SUSPENSION OF THE PERSON'S CERTIFICATE.

(6) WHENEVER THE SUPERINTENDENT OF PUBLIC INSTRUCTION DENIES THE ISSUANCE OR THE RENEWAL OF A TEACHER OR SPECIALIST CERTIFICATE, THE APPLICANT MAY APPEAL THE DENIAL TO THE BOARD OF PUBLIC EDUCATION. THE BOARD SHALL HEAR THE APPEAL IN THE SAME MANNER PROVIDED IN THIS SECTION FOR SUSPENSION OR REVOCATION AND IN ACCORDANCE WITH THE POLICIES OF THE BOARD. THE DECISION OF THE BOARD IS FINAL."

~~NEW SECTION. Section 2. Hearing. (1) The board of public education shall give 30 days' written notice to a person if the board intends to consider a request to suspend~~

or-revoke-the-person's-teacher, administrator, or specialist certificate. The board shall investigate the reasons for the request to suspend or revoke the teacher, administrator, or specialist certificate and, if there are reasonable grounds to believe that a basis exists for the request to suspend or revoke the certificate, conduct a hearing in the manner provided by board policies. At the hearing, the board shall provide the person an opportunity to defend against the charge.

(2) Except for a first violation under 20-4-110(1)(g), for which the maximum penalty is a 2-year suspension, the board may, after a hearing, suspend or revoke the person's teacher, administrator, or specialist certificate or place a written reprimand in the person's certification file.

NEW SECTION. Section 3. Appeal of denial of certificate. If the superintendent of public instruction denies the issuance or the renewal of a teacher, administrator, or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in accordance with board policies pursuant to section 2. A decision of the board is final.

NEW SECTION. Section 4. Duty to report and investigate. (1) When a school teacher, administrator, school official, or other employee of a school district

knows or has reasonable cause to suspect that a teacher, administrator, or specialist is engaged in conduct described in 20-4-110(1)(e) or (1)(f), the employee shall report the matter promptly to the school administrator or school superintendent and the trustees of the district employing the teacher, administrator, or specialist.

(2) Upon receiving a report from anyone that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f), the school administrator or school superintendent and the school district trustees shall promptly conduct an investigation into the circumstances of the alleged conduct.

(3) If the school administrator, school superintendent, or trustees have reasonable grounds to believe that the teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f), the school administrator, school superintendent, or trustees shall report in writing to the superintendent of public instruction describing the circumstances giving rise to the belief that the teacher, administrator, or specialist has engaged in the conduct. If the school or school district does not have an administrator, the chairperson of the trustees shall file the written report required by this subsection.

(4) If the investigation by the school administrator

1 school---superintendent,---or---trustees---does---not---provide
 2 sufficient-evidence-that-there---are---reasonable---grounds---to
 3 believe---that---the-teacher, administrator, or specialist has
 4 engaged-in-conduct-described-in-20-4-110(1)(e)-or-(1)(f)-and
 5 the-school-administrator, school-superintendent, or trustees
 6 conclude-that-there-is-no-more-than---a---suspicion---that---the
 7 conduct---occurred, there-is-no-duty-to-file-a-written-report
 8 with-or-to-request-action-by-the---superintendent---of---public
 9 instruction.

10 (5)---The---written---report---must---be---filed---with---the
 11 superintendent-of-public-instruction-within---30---days---after
 12 the-school-administrator, school-superintendent, or trustees
 13 have---reason---to-believe-that-the-teacher, administrator, or
 14 specialist---has---engaged---in---conduct---prohibited---by
 15 20-4-110(1)(e)-or-(1)(f),

16 (6)---The---report---to---the---superintendent---of---public
 17 instruction-must:

18 (a)---set-forth-the-basis-for-the-belief-that-the-conduct
 19 of---the---teacher, administrator, or specialist---violated
 20 20-4-110(1)(e)-or-(1)(f), and

21 (b)---include---copies---of---all-investigative-materials-or
 22 other-evidence-available-to-the-school-or-school-district
 23 that---is---relevant-to-the-matters-alleged-or-that-could-lead
 24 to-the-discovery-of-relevant-evidence.

25 NEW SECTION. Section 2. Investigative authority of

1 ACCESS TO MATERIALS -- superintendent of public instruction.
 2 (1) The superintendent of public instruction has access to
 3 all material considered by or available to the school or
 4 school district that may be relevant to an allegation that a
 5 teacher, administrator, or specialist has engaged in conduct
 6 described in 20-4-110(1)(e) or (1)(f) or that may lead to
 7 the discovery of relevant evidence.

8 (2)---The---superintendent---of---public---instruction---may
 9 conduct-an-independent-investigation---to---determine---whether
 10 there---are---reasonable---grounds-to-believe-that-the-teacher,
 11 administrator, or specialist has engaged in conduct that is
 12 the-basis---for---the---suspension-or-revocation-of-a-teacher,
 13 administrator, or specialist certificate under 20-4-110.

14 (3)(2)---The-superintendent-of-public-instruction-shall
 15 review--a--report-submitted-pursuant-to-(section-4) 20-4-110
 16 and-any-supporting-evidence-included-in-that-report-and--may
 17 further---investigate---any-basis---for---the---suspension--or
 18 revocation--of--a--teacher, administrator, or specialist
 19 certificate--if-the-superintendent-of-public-instruction-is
 20 satisfied-that-sufficient-grounds-exist-to-suspend-or-revoke
 21 a-teacher, administrator, or specialist certificate--the
 22 superintendent--of--public-instruction-may-request-action-by
 23 the-board-of-public-education-under-20-4-110(2). The request
 24 must-be-brought-within-1-year-after-discovery-of-the-events
 25 giving-rise-to-the-report.

NEW SECTION. Section 3. Access to criminal justice information. (1) Either the trustees of a school district or the superintendent of public instruction may apply to a district court pursuant to 44-5-302 to review confidential criminal justice information that is relevant to the investigation of grounds for suspension or revocation of a teacher, administrator, or specialist certificate under 20-4-110.

(2) The district court shall provide the trustees or the superintendent of public instruction access to any confidential criminal justice information that is relevant to an investigation into possible grounds for suspension or revocation of a teacher, administrator, or specialist certificate. The court shall issue a protective order to protect the confidentiality of the information released.

NEW-SECTION. Section 7. Confidentiality----to-----be-- maintained----{1}---Throughout---any---investigation---into allegations--that--a--teacher,--administrator,--or--specialist--has engaged--in--conduct--described--in--20-4-110{1}{e}--or--{1}{f}, the--school--district--trustees,--the--superintendent--of--public instruction,--and--the--board--of--public--education--shall--protect the--confidentiality--of--the--individuals--involved--and--shall ensure--the--confidentiality--of--any--report--made,--submitted,--or obtained--pursuant--to--either--{section-4-or-5}.

{2}--Once--an--investigation--has--been--concluded,--the

records--pertaining--to--the--investigation--must--be--sealed--by the--entity--in--possession--of--the--records. The--records--may--be released--only--with--written--consent--of--the--party--or--parties to--whom--they--pertain--or--by--order--of--the--district--court.

NEW-SECTION. Section 8. immunity. The trustees and the school superintendent and their agents and employees are immune from suit for actions taken in good faith under {sections-2-through-5}.

NEW SECTION. Section 4. Penalty for failure to report. {1} A person or school official who is required by law to report that there is reasonable cause to believe that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110{1}{e} or {1}{f} and who fails to report or prevents another person from reporting is liable for civil damages proximately caused by the failure to report.

{2} A person or school official who is required by law to report that there is reasonable cause to believe that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110{1}{e} or {1}{f} and who purposely or knowingly fails to make a report or purposely or knowingly prevents another person from reporting is guilty of a misdemeanor.

{3} The failure of a school trustee to report as required in {section-4} 20-4-110 constitutes official

1 misconduct within the meaning of 2-16-603.

2 NEW SECTION. **Section 5.** Codification instruction.

3 [Sections 2 through 9 4] are intended to be codified as an
4 integral part of Title 20, chapter 4, part 1, and the
5 provisions of Title 20, chapter 4, part 1, apply to
6 [sections 2 through 9 4].

7 NEW SECTION. **Section 6.** Effective date. [This act] is
8 effective July 1, 1993.

-End-

SENATE BILL NO. 330

INTRODUCED BY NATHE

BY REQUEST OF THE BOARD OF PUBLIC EDUCATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE LAW CONCERNING SUSPENSION AND REVOCATION OF TEACHER, ADMINISTRATOR, OR SPECIALIST CERTIFICATES; GRANTING--THE BOARD-OF-PUBLIC-EDUCATION-JURISDICTION-TO-ACT-ON-ANY-REQUEST FOR--SUSPENSION--OR-REVOCATION-OF-A-CERTIFICATE-THAT-IS-MADE PRIOR-TO-THE-EXPIRATION-OF--THE--CERTIFICATE,--GRANTING--THE SUPERINTENDENT-OF-PUBLIC-INSTRUCTION-INVESTIGATIVE-AUTHORITY INTO--MATTERS--THAT--MAY-SERVE-AS-THE-BASIS-FOR-A-REQUEST-TO SUSPEND--OR---REVOKE---THE---CERTIFICATE---OF---A---TEACHER, ADMINISTRATOR,--OR--SPECIALIST,--REQUIRING--SCHOOL-TRUSTEES, EDUCATION-PROFESSIONALS,--AND-SCHOOL-EMPLOYEES-TO-REPORT--AND INVESTIGATE--ALLEGATIONS--OF-IMMORAL-CONDUCT-RELATING-TO-THE TEACHING-PROFESSION--AND--CONVICTIONS--OF--CRIMES--INVOLVING MORAL--TURPITUDE,--PROVIDING-IMMUNITY-TO-PERSONS-WHO-REPORT, PROVIDING A PENALTY FOR FAILING TO REPORT; AMENDING SECTION 20-4-110, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 20-4-110, MCA, is amended to read:

"20-4-110. Suspension, revocation, and denial of certificate ---appeals. (1) The board of public education

may suspend or revoke the teacher, administrator, or specialist certificate of any person for any--of the following reasons:

(a) making any statement of material fact in the application applying for a certificate which that the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher, administrator, or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

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(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher, administrator, or specialist and the trustees of a school or school district without good cause or the written consent of the trustees; or OR

(h) denial, revocation, suspension, or surrender of a teacher, administrator, or specialist certificate in another state for any reason constituting grounds for similar action

1 in this state, ~~or.~~

2 ~~{i}--failure-to-report-as-required-in-{section-4}--~~

3 (2) The board may initiate proceedings under this
4 section if a request for the suspension or revocation of the
5 teacher, administrator, or specialist certificate of any
6 person is made to it by:

7 (a) the trustees of a district as to a teacher,
8 administrator, or specialist employed by that school or
9 school district within the 12 months immediately preceding
10 receipt of the request by the board of public education; or

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12 ~~{3}--{a}-If-the-employment-relationship-between-a-school~~
13 ~~district--and--a--teacher-or-specialist-is-terminated-or-not~~
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(D) THE TRUSTEES AND THE SUPERINTENDENT AND THEIR

AGENTS AND EMPLOYEES ARE IMMUNE FROM SUIT FOR ACTIONS TAKEN IN GOOD FAITH UNDER THIS SECTION WITH RESPECT TO THE REPORT.

(4) THE BOARD SHALL GIVE A 30-DAY WRITTEN NOTIFICATION TO ANY PERSON WHEN THE BOARD INTENDS TO CONSIDER THE SUSPENSION OR REVOCATION OF A CERTIFICATE. THE BOARD SHALL CONDUCT AN INVESTIGATION OF THE REASONS FOR THE SUSPENSION OR REVOCATION CHARGE AND THEN, IF THE INVESTIGATION WARRANTS FURTHER ACTION, CONDUCT A HEARING IN THE MANNER PROVIDED BY BOARD POLICIES. AT THE HEARING, THE BOARD SHALL AFFORD THE PERSON AN OPPORTUNITY FOR DEFENSE AGAINST THE CHARGE.

(5) AFTER A HEARING, THE BOARD MAY SUSPEND OR REVOKE THE PERSON'S TEACHER OR SPECIALIST CERTIFICATE, EXCEPT THAT IN THE CASE OF A FIRST VIOLATION UNDER SUBSECTION (1)(G), THE MAXIMUM PENALTY IS A 2-YEAR SUSPENSION OF THE PERSON'S CERTIFICATE.

(6) WHENEVER THE SUPERINTENDENT OF PUBLIC INSTRUCTION DENIES THE ISSUANCE OR THE RENEWAL OF A TEACHER OR SPECIALIST CERTIFICATE, THE APPLICANT MAY APPEAL THE DENIAL TO THE BOARD OF PUBLIC EDUCATION. THE BOARD SHALL HEAR THE APPEAL IN THE SAME MANNER PROVIDED IN THIS SECTION FOR SUSPENSION OR REVOCATION AND IN ACCORDANCE WITH THE POLICIES OF THE BOARD. THE DECISION OF THE BOARD IS FINAL."

~~NEW SECTION: Section 2--Hearing:--(1) The board of public education shall give 30 days written notice to a person if the board intends to consider a request to suspend~~

or-revoke-the-person's-teacher, administrator, or specialist certificate. The board shall investigate the reasons for the request to suspend or revoke the teacher, administrator, or specialist certificate and, if there are reasonable grounds to believe that a basis exists for the request to suspend or revoke the certificate, conduct a hearing in the manner provided by board policies. At the hearing, the board shall provide the person an opportunity to defend against the charge.

{2}--Except for a first violation under 20-4-110(1)(g), for which the maximum penalty is a 2-year suspension, the board may, after a hearing, suspend or revoke the person's teacher, administrator, or specialist certificate or place a written reprimand in the person's certification file.

NEW SECTION.--Section 3.--Appeal----of----denial----of-- certificate. If the superintendent of public instruction denies the issuance or the renewal of a teacher, administrator, or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in accordance with board policies pursuant to {section 2}. A decision of the board is final.

NEW SECTION.--Section 4.--Duty----to----report----and-- investigator--(1)--When a school teacher, administrator, school official, or other employee of a school district

knows or has reasonable cause to suspect that a teacher, administrator, or specialist is engaged in conduct described in 20-4-110(1)(e) or (1)(f), the employee shall report the matter promptly to the school administrator or school superintendent and the trustees of the district employing the teacher, administrator, or specialist.

{2}--Upon receiving a report from anyone that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f), the school administrator or school superintendent and the school district trustees shall promptly conduct an investigation into the circumstances of the alleged conduct.

{3}--If the school administrator, school superintendent, or trustees have reasonable grounds to believe that the teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f), the school administrator, school superintendent, or trustees shall report in writing to the superintendent of public instruction describing the circumstances giving rise to the belief that the teacher, administrator, or specialist has engaged in the conduct. If the school or school district does not have an administrator, the chairperson of the trustees shall file the written report required by this subsection.

{4}--If the investigation by the school administrator

1 school---superintendent,---or---trustees---does---not---provide
 2 sufficient-evidence-that-there---are---reasonable---grounds---to
 3 believe---that---the-teacher, administrator, or specialist has
 4 engaged-in-conduct-described-in-20-4-110(1)(e)-or-(1)(f)-and
 5 the-school-administrator, school-superintendent, or trustees
 6 conclude-that-there-is-no-more-than-a-suspicion---that---the
 7 conduct---occurred, there-is-no-duty-to-file-a-written-report
 8 with-or-to-request-action-by-the---superintendent---of---public
 9 instruction;

10 {5}---The---written---report---must---be---filed---with---the
 11 superintendent-of-public-instruction-within---30---days---after
 12 the-school-administrator, school-superintendent, or trustees
 13 have---reason---to-believe-that-the-teacher, administrator, or
 14 specialist---has---engaged---in---conduct---prohibited---by
 15 20-4-110(1)(e)-or-(1)(f);

16 {6}---The---report---to---the---superintendent---of---public
 17 instruction-must:

18 {a}---set-forth-the-basis-for-the-belief-that-the-conduct
 19 of-the-teacher, administrator, or specialist---violated
 20 20-4-110(1)(e)-or-(1)(f); and

21 {b}---include---copies---of---all-investigative-materials-or
 22 other-evidence-available-to-the-school---or---school---district
 23 that---is---relevant-to-the-matters-alleged-or-that-could-lead
 24 to-the-discovery-of-relevant-evidence;

25 NEW SECTION. Section 2. Investigative authority of

1 ACCESS TO MATERIALS -- superintendent of public instruction.
 2 {1} The superintendent of public instruction has access to
 3 all material considered by or available to the school or
 4 school district that may be relevant to an allegation that a
 5 teacher, administrator, or specialist has engaged in conduct
 6 described in 20-4-110(1)(e) or (1)(f) or that may lead to
 7 the discovery of relevant evidence.

8 {2}---The---superintendent---of---public---instruction---may
 9 conduct-an-independent-investigation---to---determine---whether
 10 there---are---reasonable---grounds-to-believe-that-the-teacher,
 11 administrator, or specialist has engaged in conduct that is
 12 the---basis---for---the---suspension-or-revocation-of-a-teacher,
 13 administrator, or specialist certificate under 20-4-110;

14 {3}{2}---The-superintendent-of-public-instruction-shall
 15 review-a-report-submitted-pursuant-to-{section-4} 20-4-110
 16 and-any-supporting-evidence-included-in-that-report-and-may
 17 further---investigate---any-basis---for---the---suspension-or
 18 revocation---of---a-teacher, administrator, or specialist
 19 certificate. If the superintendent of public instruction is
 20 satisfied that sufficient grounds exist to suspend or revoke
 21 a teacher, administrator, or specialist certificate, the
 22 superintendent of public instruction may request action by
 23 the board of public education under 20-4-110(2). The request
 24 must be brought within 1 year after discovery of the events
 25 giving rise to the report;

1 NEW SECTION. Section 3. Access to criminal justice
 2 information. (1) Either the trustees of a school district or
 3 the superintendent of public instruction may apply to a
 4 district court pursuant to 44-5-302 to review confidential
 5 criminal justice information that is relevant to the
 6 investigation of grounds for suspension or revocation of a
 7 teacher, administrator, or specialist certificate under
 8 20-4-110.

9 (2) The district court shall provide the trustees or
 10 the superintendent of public instruction access to any
 11 confidential criminal justice information that is relevant
 12 to an investigation into possible grounds for suspension or
 13 revocation of a teacher, administrator, or specialist
 14 certificate. The court shall issue a protective order to
 15 protect the confidentiality of the information released.

16 NEW SECTION. Section 7. Confidentiality-----to-----be--
 17 maintained:----(1)---Throughout---any---investigation---into
 18 allegations---that---a---teacher, administrator, or specialist has
 19 engaged in conduct described in 20-4-110(1)(e) or (1)(f),
 20 the---school---district trustees, the superintendent of public
 21 instruction, and the board of public education shall protect
 22 the confidentiality of the individuals involved and shall
 23 ensure the confidentiality of any report made, submitted, or
 24 obtained pursuant to either {section 4 or 5}.

25 (2)---Once---an---investigation---has---been---concluded,---the

1 records---pertaining---to---the investigation must be sealed by
 2 the entity in possession of the records. The records may be
 3 released---only---with written consent of the party or parties
 4 to whom they pertain or by order of the district court.

5 NEW SECTION. Section 8. Immunity. The trustees and the--
 6 school superintendent and their--agents--and--employees--are
 7 immune--from--suit--for--actions--taken--in good faith under
 8 {sections 2 through 5}.

9 NEW SECTION. Section 4. Penalty for failure to report.
 10 (1) A person or school official who is required by law to
 11 report that there is reasonable cause to believe that a
 12 teacher, administrator, or specialist has engaged in conduct
 13 described in 20-4-110(1)(e) or (1)(f) and who fails to
 14 report or prevents another person from reporting is liable
 15 for civil damages proximately caused by the failure to
 16 report.

17 (2) A person or school official who is required by law
 18 to report that there is reasonable cause to believe that a
 19 teacher, administrator, or specialist has engaged in conduct
 20 described in 20-4-110(1)(e) or (1)(f) and who purposely or
 21 knowingly fails to make a report or purposely or knowingly
 22 prevents another person from reporting is guilty of a
 23 misdemeanor.

24 (3) The failure of a school trustee to report as
 25 required in {section 4} 20-4-110 constitutes official

1 misconduct within the meaning of 2-16-603.

2 NEW SECTION. **Section 5.** Codification instruction.

3 [Sections 2 through 9 4] are intended to be codified as an
4 integral part of Title 20, chapter 4, part 1, and the
5 provisions of Title 20, chapter 4, part 1, apply to
6 [sections 2 through 9 4].

7 NEW SECTION. **Section 6.** Effective date. [This act] is
8 effective July 1, 1993.

-End-