

1 HOUSE BILL NO. 49

2 INTRODUCED BY COBB

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA TEACHER TENURE LAWS
 5 AND CONTESTED CASE PROCEDURES; PROVIDING TENURE TO A TEACHER OR SPECIALIST WHO
 6 COMPLETES A 180-WORKING DAY PROBATIONARY PERIOD ON THE EARLIER OF EITHER THE DATE OF
 7 THE OFFER AND ACCEPTANCE OF A CONTRACT FOR THE SECOND CONSECUTIVE YEAR OR
 8 EMPLOYMENT ON JUNE 30 OF THE YEAR FOLLOWING THE INITIAL DATE OF HIRE; PROVIDING THAT
 9 IF THE TEACHER OR SPECIALIST HAS NOT SATISFACTORILY COMPLETED A 180-WORKING DAY
 10 PROBATIONARY PERIOD BEFORE THE END OF THE INITIAL EMPLOYMENT CONTRACT, TENURE IS
 11 PROVIDED UPON THE SATISFACTORY COMPLETION OF THE 180-WORKING DAY PROBATIONARY
 12 PERIOD; CLARIFYING THAT A DISTRICT MAY TERMINATE EMPLOYMENT FOR GOOD CAUSE; DEFINING
 13 "GOOD CAUSE" AND "SAME SALARY"; PROVIDING THAT THE RIGHT TO THE SAME SALARY MAY BE
 14 WAIVED BY MUTUAL AGREEMENT; EXTENDING THE DEADLINE FOR NOTIFICATION OF REELECTION OF
 15 A TEACHER OR SPECIALIST; LIMITING APPEAL OF EMPLOYMENT TERMINATION TO FINAL AND BINDING
 16 ARBITRATION; ESTABLISHING A PROCEDURE FOR ARBITRATION NOT COVERED BY A COLLECTIVE
 17 BARGAINING AGREEMENT; LIMITING THE REMEDIES THAT MAY BE IMPOSED BY AN ARBITRATOR;
 18 REMOVING JURISDICTION OF A COUNTY SUPERINTENDENT TO DECIDE DISPUTES ARISING FROM A
 19 COLLECTIVE BARGAINING AGREEMENT; AMENDING SECTIONS 20-3-210, 20-4-203, 20-4-204,
 20 20-4-205, 20-4-208, AND 20-7-456, MCA; REPEALING SECTIONS 20-4-206 AND 20-4-207, MCA; AND
 21 PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION."

22

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

24

25 Section 1. Section 20-4-203, MCA, is amended to read:

26 "20-4-203. Teacher and specialist tenure -- definitions -- waiver. (1) (a) Except as provided in
 27 20-4-208 and subsection (1)(b) of this section, whenever a teacher has been elected by the offer and
 28 acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring
 29 teacher certification except as a district superintendent or specialist, the teacher is considered to be or
 30 specialist working in a position requiring teacher or specialist certification, except as a district

1 superintendent, is considered to be tenured upon satisfactorily completing a 180-working day probationary
 2 period and upon the earlier of:

3 (i) the date of the offer and acceptance of a contract for the second consecutive year; or

4 (ii) employment on June 30 of the year following the initial date of hire.

5 (b) If the teacher or specialist has not satisfactorily completed a 180-working day probationary
 6 period before the end of the initial employment contract, the teacher or specialist is considered to be
 7 tenured upon the satisfactory completion of the probationary period.

8 (2) Employment for less than 30-consecutive working days may not be counted as part of the
 9 minimum 180-day requirement.

10 (3) Prior to receiving tenure, the employment relationship between a board of trustees and a
 11 teacher or specialist may be terminated at any time by either party with or without good cause. A teacher
 12 or specialist terminated during the probationary period may not pursue an action against the school district
 13 under the provisions of Title 39, chapter 2, part 9. A school district may not be compelled to arbitrate a
 14 grievance under 27-5-115 over a teacher or specialist termination during the probationary period.

15 (4) Upon receiving tenure, a teacher or specialist is considered to be reelected from year to year
 16 thereafter as a tenure teacher or specialist at the same salary and in the same or a comparable position of
 17 employment as that provided by the ~~last-executed~~ last-executed contract with the teacher or specialist
 18 unless the trustees resolve by majority vote of their membership to terminate the services of the teacher
 19 or specialist in accordance with the provisions of 20-4-204.

20 ~~(2)~~(5) The tenure of a teacher or specialist with a district may not be impaired upon termination
 21 of services of the teacher or specialist if the following conditions exist:

22 (a) the tenure teacher or specialist is terminated because the financial condition of the district
 23 requires a reduction in the number of teachers or specialists employed; and

24 (b) continued employment rights are provided for in a collectively bargained contract of the district.

25 (6) Upon receiving tenure, the employment of a teacher or specialist may be terminated for good
 26 cause.

27 (7) The right to the same salary may be waived by mutual agreement between the district and the
 28 teacher or specialist or, if the teacher or specialist is a member of a bargaining unit, by the teacher's or
 29 specialist's exclusive representative.

30 (8) As used in this section, the following definitions apply:

1 (a) "Good cause" means reasonable, job-related grounds for dismissal that are based on failure to
2 satisfactorily perform job duties, disruption of a school district's operation, or any other legitimate business
3 reason.

4 (b) "Same salary" means the salary paid to a teacher or specialist for services provided during the
5 previous school year, excluding fringe benefits, extra duty, or an extended-year contract."

6

7 **Section 2.** Section 20-4-204, MCA, is amended to read:

8 **"20-4-204. Termination of tenure teacher or specialist services.** (1) (a) The following persons may
9 make a recommendation in writing to the trustees of the district for termination of the services of a tenure
10 teacher or specialist:

11 (i) a district superintendent;

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

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

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

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

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

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

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

28 (4) The trustees shall:

29 (a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the
30 board of trustees and in accordance with 2-3-203; and

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

3 (5) The tenure teacher or specialist may appeal a decision to terminate an employment contract
4 ~~to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist~~
5 ~~the superintendent in preparing findings of fact and conclusions of law~~ an arbitrator agreed upon by the
6 district and the teacher or specialist or, if the teacher or specialist is represented by a labor organization,
7 by the teacher's or specialist's exclusive representative. If a teacher or specialist is not a member of a
8 bargaining unit or if the exclusive representative has declined to represent the teacher or specialist, the
9 teacher or specialist or the district may request that the board of personnel appeals provide a list of
10 arbitrators from which the teacher or specialist and the district shall, after the toss of a coin to determine
11 the order of striking, alternately strike names from the list until one arbitrator is selected and appointed.
12 By mutual agreement between the parties, the county superintendent of schools may be appointed as the
13 arbitrator.

14 ~~(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public~~
15 ~~instruction under the provision for the appeal of controversies in this title.~~

16 (6) A request for arbitration must be made within 20 days from the date of termination unless an
17 alternative time period is provided by the terms of a collective bargaining agreement.

18 (7) The decision of the arbitrator is final and binding. Each party shall pay one-half of an
19 arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.

20 (8) An arbitrator may order a school district to reinstate a teacher or specialist who has been
21 terminated without good cause and to provide compensation, with interest, to a teacher or specialist for
22 lost wages and fringe benefits from the date of termination to the date that the teacher or specialist is
23 offered reinstatement to the same or a comparable position. Interim earnings, including the amount that
24 the teacher or specialist could have earned with reasonable diligence, must be deducted from the amount
25 awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent
26 by a teacher or specialist in searching for, obtaining, or relocating to new employment must be deducted
27 from interim earnings.

28 (9) Except as provided in this section, an arbitrator may not order a school district to provide
29 compensation for punitive damages, pain and suffering, emotional distress, compensatory damages,
30 attorney fees, or any other form of damages.

1 (10) Upon submission of the termination decision to an arbitrator, the teacher or specialist or the
 2 teacher's or specialist's exclusive representative may not file an action against the district for reinstatement
 3 or compensation of lost wages and fringe benefits.

4 (11) As used in this section, the following definitions apply:

5 (a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical
 6 insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

7 (b) "Lost wages" means the gross amount of wages that would have been reported to the internal
 8 revenue service on Form W-2 and includes any compensation deferred at the option of the employee."

9
 10 **Section 3.** Section 20-4-205, MCA, is amended to read:

11 **"20-4-205. Notification of tenure teacher or specialist reelection -- acceptance.** (1) The trustees
 12 shall provide written notice by ~~May 4~~ June 1 to all ~~tenure~~ tenure teachers or specialists who have been reelected.
 13 Any ~~tenure~~ tenure teacher or specialist who does not receive notice of reelection or termination ~~shall be~~ is
 14 automatically reelected for the ensuing school fiscal year.

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

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

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

28 (2) If a board policy or a collective bargaining agreement provides seniority rights for teachers or
 29 specialists, a district that assigns a tenure teacher or specialist serving in an administrative position to a
 30 teaching or specialist position shall recognize for ~~teacher~~ seniority purposes the tenure teacher's or

1 specialist's time of service in the administrative position.

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

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

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

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

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

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

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

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

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

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

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

25 ~~(8)(4) A tenure teacher who is transferred to a teaching position under this section must be offered~~
26 ~~the next comparable administrative position for which he is endorsed that becomes available in the district~~
27 ~~or specialist may appeal a decision pursuant to the arbitration procedure established in 20-4-204."~~

28

29 **Section 5.** Section 20-3-210, MCA, is amended to read:

30 **"20-3-210. Controversy appeals and hearings.** (1) Except for disputes arising under the terms of

1 a collective bargaining agreement or as provided under 20-3-211, 20-4-204, or 20-4-208, the county
 2 superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions
 3 of the trustees of a district in the county. Except as provided in subsection (2), exhaustion of administrative
 4 remedies under this chapter is required prior to filing an action in district court concerning a decision of the
 5 trustees. ~~When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher~~
 6 ~~or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may~~
 7 ~~appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing~~
 8 ~~findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the~~
 9 ~~superintendent of public instruction under the provisions for appeal of controversies in this title.~~ The county
 10 superintendent shall hear and decide all controversies arising under:

11 (a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or
 12 ~~(b) 20-4-206(4); or~~
 13 ~~(c)~~ (b) any other provision of this title for which a procedure for resolving controversies is not
 14 expressly prescribed.

15 (2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court
 16 concerning a decision of the trustees of a district in the following instances:

17 (a) a state agency has been granted primary jurisdiction over the matter;
 18 (b) the matter is governed by a specific statute; or
 19 (c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

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

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

28 (5) Cost incurred by the office of the county superintendent must be paid from the general fund
 29 budget of the county in which the controversy is initiated."
 30

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

2 **"20-7-456. Tenure of teachers or specialists employed by cooperatives.** (1) Teachers or specialists
3 who have tenure rights with a district and who are employed by a cooperative of which their district is a
4 member do not lose their tenure with the district.

5 (2) Nontenured teachers or specialists employed by a cooperative acquire tenure with a cooperative
6 in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 ~~through 20-4-207~~ and
7 20-4-205 are applicable to teachers or specialists employed by a cooperative.

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

10 (4) For the purposes of tenure of a teacher or specialist employed by a cooperative, cooperative
11 contract renewals may not be used to limit the teacher's or specialist's progress toward tenure status."

12

13 **NEW SECTION. Section 7. Repealer.** Sections 20-4-206 and 20-4-207, MCA, are repealed.

14

15 **NEW SECTION. Section 8. Saving clause.** [This act] does not affect rights and duties that
16 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
17 act].

18

19 **NEW SECTION. Section 9. Effective date -- applicability.** [This act] is effective July 1, 1997, and
20 applies retroactively, within the meaning of 1-2-109, to contracts offered for the 1997-98 school year.

21

-END-

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA TEACHER TENURE LAWS
 5 AND CONTESTED CASE PROCEDURES; PROVIDING TENURE TO A TEACHER OR SPECIALIST WHO
 6 COMPLETES A 180-WORKING DAY PROBATIONARY PERIOD ON THE EARLIER OF EITHER THE DATE OF
 7 THE OFFER AND ACCEPTANCE OF A CONTRACT FOR THE SECOND CONSECUTIVE YEAR OR
 8 EMPLOYMENT ON JUNE 30 OF THE YEAR FOLLOWING THE INITIAL DATE OF HIRE; PROVIDING THAT
 9 IF THE TEACHER OR SPECIALIST HAS NOT SATISFACTORILY COMPLETED A 180-WORKING DAY
 10 PROBATIONARY PERIOD BEFORE THE END OF THE INITIAL EMPLOYMENT CONTRACT, TENURE IS
 11 PROVIDED UPON THE SATISFACTORY COMPLETION OF THE 180-WORKING DAY PROBATIONARY
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 13 "GOOD CAUSE" AND "SAME SALARY"; PROVIDING THAT THE RIGHT TO THE SAME SALARY MAY BE
 14 WAIVED BY MUTUAL AGREEMENT; EXTENDING THE DEADLINE FOR NOTIFICATION OF REELECTION OF
 15 A TEACHER OR SPECIALIST; LIMITING APPEAL OF EMPLOYMENT TERMINATION TO FINAL AND BINDING
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 20 20-4-205, 20-4-208, AND 20-7-456, MCA; REPEALING SECTIONS 20-4-206 AND 20-4-207, MCA; AND
 21 PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION."

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

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26 "**20-4-203. Teacher and specialist tenure -- definitions -- waiver.** (1) (a) Except as provided in
 27 20-4-208 and subsection (1)(b) of this section, ~~whenever a teacher has been elected by the offer and~~
 28 ~~acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring~~
 29 ~~teacher certification except as a district superintendent or specialist, the teacher is considered to be or~~
 30 specialist working in a position requiring teacher or specialist certification, except as a district

1 superintendent, is considered to be tenured upon satisfactorily completing a 180-working day probationary
 2 period and upon the earlier of:

3 (i) the date of the offer and acceptance of a contract for the second consecutive year; or

4 (ii) employment on June 30 of the year following the initial date of hire.

5 (b) If the teacher or specialist has not satisfactorily completed a 180-working day probationary
 6 period before the end of the initial employment contract, the teacher or specialist is considered to be
 7 tenured upon the satisfactory completion of the probationary period.

8 (2) Employment for less than 30-consecutive working days may not be counted as part of the
 9 minimum 180-day requirement.

10 (3) Prior to receiving tenure, the employment relationship between a board of trustees and a
 11 teacher or specialist may be terminated at any time by either party with or without good cause. A teacher
 12 or specialist terminated during the probationary period may not pursue an action against the school district
 13 under the provisions of Title 39, chapter 2, part 9. A school district may not be compelled to arbitrate a
 14 grievance under 27-5-115 over a teacher or specialist termination during the probationary period.

15 (4) Upon receiving tenure, a teacher or specialist is considered to be reelected from year to year
 16 thereafter as a tenure teacher or specialist at the same salary and in the same or a comparable position of
 17 employment as that provided by the last-executed last-executed contract with the teacher or specialist
 18 unless the trustees resolve by majority vote of their membership to terminate the services of the teacher
 19 or specialist in accordance with the provisions of 20-4-204.

20 (2)(5) The tenure of a teacher or specialist with a district may not be impaired upon termination
 21 of services of the teacher or specialist if the following conditions exist:

22 (a) the tenure teacher or specialist is terminated because the financial condition of the district
 23 requires a reduction in the number of teachers or specialists employed; and

24 (b) continued employment rights are provided for in a collectively bargained contract of the district.

25 (6) Upon receiving tenure, the employment of a teacher or specialist may be terminated for good
 26 cause.

27 (7) The right to the same salary may be waived by mutual agreement between the district and the
 28 teacher or specialist or, if the teacher or specialist is a member of a bargaining unit, by the teacher's or
 29 specialist's exclusive representative.

30 (8) As used in this section, the following definitions apply:

1 (a) "Good cause" means reasonable, job-related grounds for dismissal that are based on failure to
2 satisfactorily perform job duties, disruption of a school district's operation, or any other legitimate business
3 reason.

4 (b) "Same salary" means the salary paid to a teacher or specialist for services provided during the
5 previous school year, excluding fringe benefits, extra duty, or an extended-year contract."

6
7 **Section 2.** Section 20-4-204, MCA, is amended to read:

8 **"20-4-204. Termination of tenure teacher or specialist services.** (1) (a) The following persons may
9 make a recommendation in writing to the trustees of the district for termination of the services of a tenure
10 teacher or specialist:

11 (i) a district superintendent;

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

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

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

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

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

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

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

28 (4) The trustees shall:

29 (a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the
30 board of trustees and in accordance with 2-3-203; and

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

3 (5) The tenure teacher or specialist may appeal a decision to terminate an employment contract
4 ~~to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist~~
5 ~~the superintendent in preparing findings of fact and conclusions of law~~ an arbitrator agreed upon by the
6 district and the teacher or specialist or, if the teacher or specialist is represented by a labor organization,
7 by the teacher's or specialist's exclusive representative. If a teacher or specialist is not a member of a
8 bargaining unit or if the exclusive representative has declined to represent the teacher or specialist, the
9 teacher or specialist or the district may request that the board of personnel appeals provide a list of
10 arbitrators from which the teacher or specialist and the district shall, after the toss of a coin to determine
11 the order of striking, alternately strike names from the list until one arbitrator is selected and appointed.
12 By mutual agreement between the parties, the county superintendent of schools may be appointed as the
13 arbitrator.

14 ~~(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public~~
15 ~~instruction under the provision for the appeal of controversies in this title.~~

16 (6) A request for arbitration must be made within 20 days from the date of termination unless an
17 alternative time period is provided by the terms of a collective bargaining agreement.

18 (7) The decision of the arbitrator is final and binding. Each party shall pay one-half of an
19 arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.

20 (8) An arbitrator may order a school district to reinstate a teacher or specialist who has been
21 terminated without good cause and to provide compensation, with interest, to a teacher or specialist for
22 lost wages and fringe benefits from the date of termination to the date that the teacher or specialist is
23 offered reinstatement to the same or a comparable position. Interim earnings, including the amount that
24 the teacher or specialist could have earned with reasonable diligence, must be deducted from the amount
25 awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent
26 by a teacher or specialist in searching for, obtaining, or relocating to new employment must be deducted
27 from interim earnings.

28 (9) Except as provided in this section, an arbitrator may not order a school district to provide
29 compensation for punitive damages, pain and suffering, emotional distress, compensatory damages,
30 attorney fees, or any other form of damages.

1 (10) Upon submission of the termination decision to an arbitrator, the teacher or specialist or the
 2 teacher's or specialist's exclusive representative may not file an action against the district for reinstatement
 3 or compensation of lost wages and fringe benefits.

4 (11) As used in this section, the following definitions apply:

5 (a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical
 6 insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

7 (b) "Lost wages" means the gross amount of wages that would have been reported to the internal
 8 revenue service on Form W-2 and includes any compensation deferred at the option of the employee."

9
 10 **Section 3.** Section 20-4-205, MCA, is amended to read:

11 **"20-4-205. Notification of ~~tenure~~ teacher or specialist reelection -- acceptance.** (1) The trustees
 12 shall provide written notice by ~~May 4~~ June 1 to all ~~tenure~~ teachers or specialists who have been reelected.
 13 Any ~~tenure~~ teacher or specialist who does not receive notice of reelection or termination ~~shall be~~ is
 14 automatically reelected for the ensuing school fiscal year.

15 (2) Any ~~tenure~~ teacher or specialist who receives notification of ~~his~~ reelection for the ensuing
 16 school fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of ~~such~~ the
 17 reelection within 20 days after the receipt of the notice of reelection, and failure to ~~so~~ notify the trustees
 18 within 20 days ~~shall constitute~~ constitutes conclusive evidence of ~~his~~ the teacher's or specialist's
 19 nonacceptance of the tendered position."
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21 **Section 4.** Section 20-4-208, MCA, is amended to read:

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

28 (2) If a board policy or a collective bargaining agreement provides seniority rights for teachers or
 29 specialists, a district that assigns a tenure teacher or specialist serving in an administrative position to a
 30 teaching or specialist position shall recognize for ~~teacher~~ seniority purposes the tenure teacher's or

1 specialist's time of service in the administrative position.

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

5 ~~(b) "reduction of administrative staff" is limited to reductions necessary because of declining~~
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7 ~~(4) When a tenure teacher serving in an administrative position is to be transferred under this~~
8 ~~section, the teacher must be notified prior to May 1 by certified letter or by personal notification for which~~
9 ~~a signed receipt must be obtained. The notification must include:~~

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

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13 ~~days of the notice, a hearing before the board of trustees. The board of trustees shall set the hearing not~~
14 ~~less than 10 days or more than 20 days from receipt of the request unless both parties agree to an~~
15 ~~extension. If a hearing is requested, the trustees shall:~~

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

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

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

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

25 ~~(8)(4) A tenure teacher who is transferred to a teaching position under this section must be offered~~
26 ~~the next comparable administrative position for which he is endorsed that becomes available in the district~~
27 ~~or specialist may appeal a decision pursuant to the arbitration procedure established in 20-4-204."~~

28
29 **Section 5.** Section 20-3-210, MCA, is amended to read:

30 **"20-3-210. Controversy appeals and hearings.** (1) Except for disputes arising under the terms of

1 a collective bargaining agreement or as provided under 20-3-211, 20-4-204, or 20-4-208, the county
 2 superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions
 3 of the trustees of a district in the county. Except as provided in subsection (2), exhaustion of administrative
 4 remedies under this chapter is required prior to filing an action in district court concerning a decision of the
 5 trustees. ~~When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher~~
 6 ~~or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may~~
 7 ~~appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing~~
 8 ~~findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the~~
 9 ~~superintendent of public instruction under the provisions for appeal of controversies in this title.~~ The county
 10 superintendent shall hear and decide all controversies arising under:

11 (a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or
 12 ~~(b) 20-4-206(4); or~~
 13 ~~(c)~~(b) any other provision of this title for which a procedure for resolving controversies is not
 14 expressly prescribed.

15 (2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court
 16 concerning a decision of the trustees of a district in the following instances:

17 (a) a state agency has been granted primary jurisdiction over the matter;
 18 (b) the matter is governed by a specific statute; or
 19 (c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

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

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

28 (5) Cost incurred by the office of the county superintendent must be paid from the general fund
 29 budget of the county in which the controversy is initiated."
 30

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

2 **"20-7-456. Tenure of teachers or specialists employed by cooperatives.** (1) Teachers or specialists
3 who have tenure rights with a district and who are employed by a cooperative of which their district is a
4 member do not lose their tenure with the district.

5 (2) Nontenured teachers or specialists employed by a cooperative acquire tenure with a cooperative
6 in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 ~~through 20-4-207~~ and
7 20-4-205 are applicable to teachers or specialists employed by a cooperative.

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

10 (4) For the purposes of tenure of a teacher or specialist employed by a cooperative, cooperative
11 contract renewals may not be used to limit the teacher's or specialist's progress toward tenure status."

12

13 NEW SECTION. Section 7. Repealer. Sections 20-4-206 and 20-4-207, MCA, are repealed.

14

15 NEW SECTION. Section 8. Saving clause. [This act] does not affect rights and duties that
16 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
17 act].

18

19 NEW SECTION. Section 9. Effective date -- applicability. [This act] is effective July 1, 1997, and
20 applies retroactively, within the meaning of 1-2-109, to contracts offered for the 1997-98 school year.

21

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0049, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising Montana teacher tenure laws and contested case procedures; providing tenure to a teacher or specialist who completes a 180-working day probationary period on the earlier of either the date of the offer and acceptance of a contract for the second consecutive year or employment on June 30 of the year following the initial date of hire; providing that if the teacher or specialist has not satisfactorily completed a 180-working day probationary period before the end of the initial employment contract, tenure is provided upon the satisfactory completion of the 180-working day probationary period; clarifying that a district may terminate employment for good cause; defining "good cause" and "same salary"; providing that the right to the same salary may be waived by mutual agreement; extending the deadline for notification of reelection of a teacher or specialist; limiting appeal of employment termination to final and binding arbitration; establishing a procedure for arbitration not covered by a collective bargaining agreement; limiting the remedies that may be imposed by an arbitrator; removing jurisdiction of a county superintendent to decide disputes arising from a collective bargaining agreement."

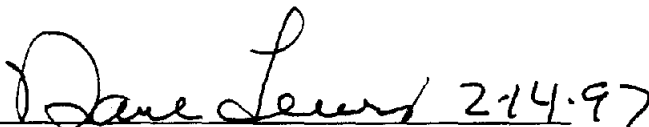
ASSUMPTIONS:

1. The cost of any arbitration will be paid by the district and the teacher or specialist.

FISCAL IMPACT: None

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The provision for termination disputes to go to binding arbitration may result in some increase in costs to school districts for arbitration. It is estimated that approximately 10 cases per year may require arbitration at a average cost of \$2000


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


JOHN COBB, PRIMARY SPONSOR DATE

Fiscal Note for HB0049, as introduced

HB49

1 HOUSE BILL NO. 49

2 INTRODUCED BY COBB, ELLIS, SIMPKINS, LAWSON, WALTERS, ROSE, MASOLO, PECK, REHBEIN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA TEACHER TENURE LAWS
5 AND CONTESTED CASE PROCEDURES; ~~PROVIDING TENURE TO A TEACHER OR SPECIALIST WHO~~
6 ~~COMPLETES A 180 WORKING DAY PROBATIONARY PERIOD ON THE EARLIER OF EITHER THE DATE OF~~
7 ~~THE OFFER AND ACCEPTANCE OF A CONTRACT FOR THE SECOND CONSECUTIVE YEAR OR~~
8 ~~EMPLOYMENT ON JUNE 30 OF THE YEAR FOLLOWING THE INITIAL DATE OF HIRE; PROVIDING THAT~~
9 ~~IF THE TEACHER OR SPECIALIST HAS NOT SATISFACTORILY COMPLETED A 180 WORKING DAY~~
10 ~~PROBATIONARY PERIOD BEFORE THE END OF THE INITIAL EMPLOYMENT CONTRACT, TENURE IS~~
11 ~~PROVIDED UPON THE SATISFACTORY COMPLETION OF THE 180 WORKING DAY PROBATIONARY~~
12 ~~PERIOD REMOVING JURISDICTION OF THE OFFICE OF PUBLIC INSTRUCTION TO HEAR APPEALS AND~~
13 ~~TO DECIDE DISPUTES ARISING FROM TERMINATION DECISIONS OF A SCHOOL DISTRICT NOT COVERED~~
14 ~~BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA; CLARIFYING~~
15 ~~THAT A DISTRICT MAY TERMINATE EMPLOYMENT OF A TENURE TEACHER FOR GOOD CAUSE;~~
16 ~~DEFINING "GOOD CAUSE" AND "SAME SALARY"; PROVIDING THAT THE RIGHT TO THE SAME SALARY~~
17 ~~MAY BE WAIVED BY MUTUAL AGREEMENT; EXTENDING THE DEADLINE FOR NOTIFICATION OF~~
18 ~~REELECTION OF A TEACHER OR SPECIALIST; LIMITING APPEAL OF EMPLOYMENT TERMINATION~~
19 ~~INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A COLLECTIVE BARGAINING~~
20 ~~AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA, TO FINAL AND BINDING ARBITRATION;~~
21 ~~ESTABLISHING A PROCEDURE FOR ARBITRATION NOT COVERED BY A COLLECTIVE BARGAINING~~
22 ~~AGREEMENT; LIMITING THE REMEDIES THAT MAY BE IMPOSED BY AN ARBITRATOR; REMOVING~~
23 ~~JURISDICTION OF A COUNTY SUPERINTENDENT TO DECIDE DISPUTES ARISING FROM A COLLECTIVE~~
24 ~~BARGAINING AGREEMENT; CLARIFYING THAT A DISTRICT MAY TERMINATE THE EMPLOYMENT OF A~~
25 ~~NONTENURE TEACHER AT THE CONCLUSION OF A SCHOOL FISCAL YEAR WITH OR WITHOUT CAUSE~~
26 ~~UPON PROPER NOTICE; CLARIFYING THAT A DISTRICT MAY DISMISS FOR GOOD CAUSE A TENURE OR~~
27 ~~NONTENURE TEACHER BEFORE THE EXPIRATION OF A CONTRACT; CLARIFYING THAT A DISTRICT MAY~~
28 ~~REDUCE THE SALARY OF A TEACHER SERVING IN AN ADMINISTRATIVE POSITION WHO IS ASSIGNED~~
29 ~~TO A TEACHING POSITION WHEN A DISTRICT REDUCES THE SIZE OF ITS ADMINISTRATIVE STAFF;~~
30 AMENDING SECTIONS 20-3-107, 20-3-210, 20-4-203, 20-4-204, 20-4-205, 20-4-206, 20-4-207, AND

1 20-4-208, AND 20-7-456, MCA; REPEALING SECTIONS 20-4-206 AND 20-4-207, MCA; AND PROVIDING
 2 AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION."

3

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

5

6 **SECTION 1. SECTION 20-3-107, MCA, IS AMENDED TO READ:**

7 **"20-3-107. Controversy appeal.** (1) The superintendent of public instruction shall decide matters
 8 of controversy when they are appealed from:

9 (a) a decision of a county superintendent rendered under the provisions of 20-3-210, except for
 10 a decision of a county superintendent or an arbitrator in a teacher termination case; or

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

12 (2) The superintendent of public instruction shall make ~~his~~ a decision on the basis of the transcript
 13 of the fact-finding hearing conducted by the county superintendent or county transportation committee and
 14 documents presented at the hearing. The superintendent of public instruction may require, if ~~he deems~~
 15 considered necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The
 16 decision of the superintendent of public instruction ~~shall be~~ is final, subject to the proper legal remedies in
 17 the state courts. ~~Such~~ The proceedings ~~shall~~ must be commenced no later than 60 days after the date of
 18 the decision of the superintendent of public instruction.

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

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

28

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

30 **"20-4-203. Teacher ~~and specialist~~ tenure ~~— definitions —~~ waiver.** (1) ~~(a)~~ Except as provided in

1 20-4-208 ~~and subsection (1)(b) of this section, whenever~~ WHENEVER a teacher ~~has been elected by the~~
 2 ~~offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position~~
 3 ~~requiring teacher certification except as a district superintendent or specialist, the teacher is considered to~~
 4 ~~be or specialist working in a position requiring teacher or specialist certification, except as a district~~
 5 ~~superintendent, is considered to be tenured upon satisfactorily completing a 180 working day probationary~~
 6 ~~period and upon the earlier of:~~

7 ~~(i) the date of the offer and acceptance of a contract for the second consecutive year; or~~

8 ~~(ii) employment on June 30 of the year following the initial date of hire.~~

9 ~~(b) If the teacher or specialist has not satisfactorily completed a 180 working day probationary~~
 10 ~~period before the end of the initial employment contract, the teacher or specialist is considered to be~~
 11 ~~tenured upon the satisfactory completion of the probationary period.~~

12 ~~(2) Employment for less than 30 consecutive working days may not be counted as part of the~~
 13 ~~minimum 180 day requirement.~~

14 ~~(3) Prior to receiving tenure, the employment relationship between a board of trustees and a~~
 15 ~~teacher or specialist may be terminated at any time by either party with or without good cause. A teacher~~
 16 ~~or specialist terminated during the probationary period may not pursue an action against the school district~~
 17 ~~under the provisions of Title 39, chapter 2, part 9. A school district may not be compelled to arbitrate a~~
 18 ~~grievance under 27-5-115 over a teacher or specialist termination during the probationary period.~~

19 ~~(4) Upon receiving tenure, a teacher or specialist is considered to be~~ HAS BEEN ELECTED BY THE
 20 OFFER AND ACCEPTANCE OF A CONTRACT FOR THE FOURTH CONSECUTIVE YEAR OF EMPLOYMENT
 21 BY A DISTRICT IN A POSITION REQUIRING TEACHER CERTIFICATION EXCEPT AS A DISTRICT
 22 SUPERINTENDENT OR SPECIALIST, THE TEACHER IS CONSIDERED TO BE reelected from year to year
 23 thereafter as a tenure teacher ~~or specialist~~ at the same salary and in the same or a comparable position of
 24 employment as that provided by the ~~last executed~~ last-executed contract with the teacher ~~or specialist~~
 25 unless the trustees resolve by majority vote of their membership to terminate the services of the teacher
 26 ~~or specialist~~ in accordance with the provisions of 20-4-204.

27 ~~(2)(5)(2)~~ (2) The tenure of a teacher ~~or specialist~~ with a district may not be impaired upon termination
 28 of services of the teacher ~~or specialist~~ if the following conditions exist:

29 (a) the tenure teacher ~~or specialist~~ is terminated because the financial condition of the district
 30 requires a reduction in the number of teachers ~~or specialists~~ employed; and

1 (b) continued employment rights are provided for in a collectively bargained contract of the district.

2 ~~(6)(3) Upon receiving tenure, the employment of a teacher or specialist may be terminated for good~~
3 ~~cause.~~

4 ~~(7) The right to the same salary may be waived by mutual agreement between the district and the~~
5 ~~teacher or specialist or, if the teacher or specialist is a member of a bargaining unit, by the teacher's or~~
6 ~~specialist's exclusive representative.~~

7 ~~(8) As used in this section, the following definitions apply:~~

8 ~~(a) "Good cause" means reasonable, job related grounds for dismissal that are based on failure to~~
9 ~~satisfactorily perform job duties, disruption of a school district's operation, or any other legitimate business~~
10 ~~reason.~~

11 ~~(b) "Same salary" means the salary paid to a teacher or specialist for services provided during the~~
12 ~~previous school year, excluding fringe benefits, extra duty, or an extended year contract."~~

13
14 **Section 3.** Section 20-4-204, MCA, is amended to read:

15 **"20-4-204. Termination of tenure teacher or specialist services.** (1) (a) The following persons may
16 make a recommendation in writing to the trustees of the district for termination of the services of a tenure
17 teacher ~~or specialist~~:

18 (i) a district superintendent;

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

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

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

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

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

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

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

5 (4) The trustees shall:

6 (a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the
7 board of trustees and in accordance with 2-3-203; and

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

10 (5) The tenure teacher ~~or specialist~~ may appeal a decision to terminate an employment contract
11 to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist
12 the superintendent in preparing findings of fact and conclusions of law THE COUNTY SUPERINTENDENT
13 IF THE TEACHER'S EMPLOYMENT IS NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT
14 PURSUANT TO TITLE 39, CHAPTER 31, WHO MAY APPOINT A QUALIFIED ATTORNEY AS A LEGAL
15 ADVISER WHO SHALL ASSIST THE SUPERINTENDENT IN PREPARING FINDINGS OF FACT AND
16 CONCLUSIONS OF LAW. IF THE EMPLOYMENT OF THE TEACHER IS COVERED BY A COLLECTIVE
17 BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, A TENURE TEACHER SHALL APPEAL
18 A DECISION TO TERMINATE AN EMPLOYMENT CONTRACT TO an arbitrator agreed upon by the district
19 and the teacher or specialist or, if the teacher or specialist is represented by a labor organization, by the
20 teacher's or specialist's exclusive representative. If a teacher or specialist is not a member of a bargaining
21 unit or if the exclusive representative has declined to represent the teacher or specialist, the teacher or
22 specialist or the district may request that the board of personnel appeals provide a list of arbitrators from
23 which the teacher or specialist and the district shall, after the toss of a coin to determine the order of
24 striking, alternately strike names from the list until one arbitrator is selected and appointed. By mutual
25 agreement between the parties, the county superintendent of schools may be appointed as the arbitrator.

26 (6) IN A TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS NOT COVERED BY A
27 COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, EITHER THE TEACHER
28 OR THE TRUSTEES MAY APPEAL TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE TEACHER
29 WAS EMPLOYED. THE PROCEEDINGS MUST BE COMMENCED NO LATER THAN 60 DAYS AFTER THE
30 DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT.

1 ~~(6)~~ Subsequently, either the teacher or the trustees may appeal to the superintendent of public
2 instruction under the provision for the appeal of controversies in this title.

3 ~~(6)~~(7) A IN A TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A
4 COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, A request for arbitration
5 must be made within 20 days from the date of termination unless an alternative time period is provided by
6 the terms of a collective bargaining agreement.

7 ~~(7)~~(8) The decision of the arbitrator is final and binding. Each party shall pay one-half of an
8 arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.

9 ~~(8)~~(9) An arbitrator may order a school district to reinstate a teacher or specialist who has been
10 terminated without good cause and to provide compensation, with interest, to a teacher or specialist for
11 lost wages and fringe benefits from the date of termination to the date that the teacher or specialist is
12 offered reinstatement to the same or a comparable position. Interim earnings, including the amount that
13 the teacher or specialist could have earned with reasonable diligence, must be deducted from the amount
14 awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent
15 by a teacher or specialist in searching for, obtaining, or relocating to new employment must be deducted
16 from interim earnings.

17 ~~(9)~~(10) Except as provided in this section, an arbitrator may not order a school district to provide
18 compensation for punitive damages, pain and suffering, emotional distress, compensatory damages,
19 attorney fees, or any other form of damages.

20 ~~(10)~~(11) Upon submission of the termination decision to an arbitrator, the teacher or specialist or
21 the teacher's or specialist's exclusive representative may not file an action against the district for
22 reinstatement or compensation of lost wages and fringe benefits.

23 ~~(11)~~(12) As used in this section, the following definitions apply:

24 (a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical
25 insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

26 (b) "Lost wages" means the gross amount of wages that would have been reported to the internal
27 revenue service on Form W-2 and includes any compensation deferred at the option of the employee."

28
29 **Section 4.** Section 20-4-205, MCA, is amended to read:

30 **"20-4-205. Notification of tenure teacher or specialist reelection -- acceptance.** (1) The trustees

1 shall provide written notice by ~~May 1~~ June 1 to all ~~tenure~~ teachers ~~or specialists~~ who have been reelected.
 2 Any ~~tenure~~ teacher ~~or specialist~~ who does not receive notice of reelection or termination ~~shall be~~ is
 3 automatically reelected for the ensuing school fiscal year.

4 (2) Any ~~tenure~~ teacher ~~or specialist~~ who receives notification of ~~his~~ reelection for the ensuing
 5 school fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of ~~such~~ the
 6 reelection within 20 days after the receipt of the notice of reelection, and failure to ~~so~~ notify the trustees
 7 within 20 days ~~shall constitute~~ constitutes conclusive evidence of ~~his~~ the teacher's or specialist's
 8 nonacceptance of the tendered position."
 9

10 **SECTION 5. SECTION 20-4-206, MCA, IS AMENDED TO READ:**

11 **"20-4-206. Notification of nontenure teacher reelection -- acceptance -- termination and statement**
 12 **of reason.** (1) The trustees shall provide written notice by ~~May~~ June 1 to all ~~nontenure teachers who have~~
 13 each nontenure teacher employed by the district regarding whether the nontenure teacher has been
 14 reelected for the ensuing school fiscal year. A ~~nontenure~~ teacher who does not receive written notice of
 15 reelection or termination is automatically reelected for the ensuing school fiscal year.

16 (2) A ~~nontenure~~ nontenure teacher who receives notification of ~~his~~ reelection for the ensuing school
 17 fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of reelection within 20
 18 days after the receipt of the notice of reelection. Failure to ~~so~~ notify the trustees within 20 days ~~may be~~
 19 ~~considered~~ constitutes conclusive evidence of the nontenure teacher's nonacceptance of the tendered
 20 position.

21 (3) Subject to the June 1 notice requirements in this section, the trustees may nonrenew the
 22 employment of a nontenure teacher at the conclusion of the school fiscal year with or without
 23 cause. ~~When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after~~
 24 ~~receipt of the notice make written request of the trustees for a statement in writing of the reasons for~~
 25 ~~termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the~~
 26 ~~teacher a true statement of reasons for termination.~~

27 (4) ~~If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher~~
 28 ~~may request in writing within 10 days of receipt of the statement of reasons that the county superintendent~~
 29 ~~hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A hearing must be~~
 30 ~~scheduled within 10 days and held within 45 days after receipt of the request, except that the period may~~

1 ~~be extended upon agreement between the trustees and the teacher. The burden of proof that the reasons~~
 2 ~~are not true rests with the teacher, and the showing must be demonstrated by clear and convincing~~
 3 ~~evidence.~~

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

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

10

11 **SECTION 6. SECTION 20-4-207, MCA, IS AMENDED TO READ:**

12 **"20-4-207. Dismissal of teacher under contract.** (1) The trustees of any district may dismiss a
 13 teacher before the expiration of ~~his~~ the teacher's employment contract for ~~immorality, unfitness,~~
 14 ~~incompetence, or violation of the adopted policies of such trustees~~ good cause.

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

17 (i) a district superintendent;

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

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

21 (b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice
 22 of the recommendation in writing to each trustee of the district and to the teacher.

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

25 (3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees
 26 shall notify the teacher of ~~his~~ the right to a hearing before the trustees either by certified letter or by
 27 personal notification for which a signed receipt must be returned. The teacher may in writing waive the
 28 right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on
 29 a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

30 (b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of

1 the hearing to dismiss the teacher or to reject the recommendation for dismissal.

2 (4) With the exception of a county superintendent, a person who recommends dismissal pursuant
3 to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing
4 date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the
5 welfare of the students or the effective operation of the school district.

6 (5) Any teacher who has been dismissed may in writing within 10 days appeal ~~such~~ the dismissal
7 ~~to the county superintendent. Following such appeal, a hearing must be scheduled within 10 days and held~~
8 ~~within 30 days after the appeal, except that the period may be extended upon agreement between the~~
9 ~~teacher and the trustees. If the county superintendent, after a hearing, determines that the dismissal by the~~
10 ~~trustees was made without good cause, he shall order the trustees to reinstate such teacher and to~~
11 ~~compensate such teacher at his contract amount for the time lost during the pending of the appeal~~ under
12 the guidelines set forth in 20-4-204. The teacher may appeal a decision to terminate an employment
13 contract to the county superintendent if the teacher's employment is not covered by a collective bargaining
14 agreement pursuant to Title 39, chapter 31. If the employment of the teacher is covered by a collective
15 bargaining agreement, a tenure teacher shall appeal a decision to terminate an employment contract to an
16 arbitrator."

17

18 **Section 7.** Section 20-4-208, MCA, is amended to read:

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

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

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

30 (a) "administrative position" means a position that the trustees of a district designate as

1 administrative or supervisory in nature, not including the position of district superintendent; and

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

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

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

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

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

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

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

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

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

22 ~~(8)(4) A tenure teacher who is transferred to a teaching position under this section must be offered~~
23 ~~the next comparable administrative position for which he is endorsed that becomes available in the district~~
24 ~~or specialist may appeal a decision pursuant to the arbitration procedure established in 20-4-204 WHO IS~~
25 TRANSFERRED TO A TEACHING POSITION UNDER THIS SECTION MUST BE OFFERED THE NEXT
26 COMPARABLE ADMINISTRATIVE POSITION FOR WHICH THE TENURE TEACHER IS ENDORSED THAT
27 BECOMES AVAILABLE IN THE DISTRICT."

28
29 **Section 8.** Section 20-3-210, MCA, is amended to read:

30 **"20-3-210. Controversy appeals and hearings.** (1) Except for disputes arising under the terms of

1 a collective bargaining agreement or as provided under 20-3-211, ~~20-4-204~~, or 20-4-208, the county
 2 superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions
 3 of the trustees of a district in the county. ONLY A COUNTY SUPERINTENDENT WHO POSSESSES THE
 4 QUALIFICATIONS OF 20-3-201(2) MAY HEAR CONTROVERSIES RELATED TO TEACHER TERMINATION.
 5 Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required
 6 prior to filing an action in district court concerning a decision of the trustees. ~~When appeals are made under~~
 7 ~~20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the~~
 8 ~~dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law~~
 9 ~~to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions~~
 10 ~~of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction~~
 11 ~~under the provisions for appeal of controversies in this title. WHEN APPEALS ARE MADE UNDER 20-4-204~~
 12 RELATING TO THE TERMINATION OF SERVICES OF A TENURE TEACHER OR UNDER 20-4-207 RELATING
 13 TO THE DISMISSAL OF A TEACHER UNDER CONTRACT, THE COUNTY SUPERINTENDENT MAY APPOINT
 14 A QUALIFIED ATTORNEY TO ACT AS A LEGAL ADVISER WHO SHALL ASSIST THE SUPERINTENDENT
 15 IN PREPARING FINDINGS OF FACT AND CONCLUSIONS OF LAW. SUBSEQUENTLY, EITHER THE
 16 TEACHER OR TRUSTEES MAY APPEAL TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE
 17 TEACHER WAS EMPLOYED. THE PROCEEDINGS MUST BE COMMENCED NOT LATER THAN 60 DAYS
 18 AFTER THE DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT. The county superintendent shall
 19 hear and decide all controversies arising under:

20 (a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or
 21 ~~(b) 20-4-206(4); or~~
 22 ~~(c)~~(b) any other provision of this title for which a procedure for resolving controversies is not
 23 expressly prescribed.

24 (2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court
 25 concerning a decision of the trustees of a district in the following instances:

26 (a) a state agency has been granted primary jurisdiction over the matter;
 27 (b) the matter is governed by a specific statute; or
 28 (c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

29 (3) The county superintendent shall hear the appeal and take testimony in order to determine the
 30 facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The

1 county superintendent shall prepare a written transcript of the hearing proceedings. The decision on the
 2 matter of controversy that is made by the county superintendent must be based upon the facts established
 3 at the hearing.

4 (4) ~~The~~ EXCEPT FOR TEACHER TERMINATION CASES, THE decision of the county superintendent
 5 may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent
 6 shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the
 7 superintendent of public instruction. IN TEACHER TERMINATION CASES, AN APPEAL MAY BE FILED WITH
 8 THE DISTRICT COURT OF THE COUNTY IN WHICH THE TEACHER WAS EMPLOYED NO LATER THAN 60
 9 DAYS AFTER THE DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT. IF AN APPEAL IS FILED,
 10 THE COUNTY SUPERINTENDENT SHALL PROVIDE A TRANSCRIPT OF THE HEARING AND ANY OTHER
 11 DOCUMENTS ENTERED AS TESTIMONY AT THE HEARING TO THE DISTRICT COURT.

12 (5) Cost incurred by the office of the county superintendent must be paid from the general fund
 13 budget of the county in which the controversy is initiated."
 14

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

16 ~~"20-7-456. Tenure of teachers or specialists employed by cooperatives. (1) Teachers or specialists~~
 17 ~~who have tenure rights with a district and who are employed by a cooperative of which their district is a~~
 18 ~~member do not lose their tenure with the district.~~

19 ~~(2) Nontenured teachers or specialists employed by a cooperative acquire tenure with a cooperative~~
 20 ~~in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 and~~
 21 ~~20-4-205 are applicable to teachers or specialists employed by a cooperative.~~

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

24 ~~(4) For the purposes of tenure of a teacher or specialist employed by a cooperative, cooperative~~
 25 ~~contract renewals may not be used to limit the teacher's or specialist's progress toward tenure status."~~

26
 27 ~~NEW SECTION. Section 7. Repealer. Sections 20-4-206 and 20-4-207, MCA, are repealed.~~

28
 29 NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that
 30 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this

1 act].

2

3 NEW SECTION. **Section 10. Effective date — applicability.** [This act] is effective July 1, 1997,
4 and applies retroactively, within the meaning of ~~1-2-109~~, to contracts offered for the ~~1997-98~~ school year.

5

-END-

1 HOUSE BILL NO. 49

2 INTRODUCED BY COBB, ELLIS, SIMPKINS, LAWSON, WALTERS, ROSE, MASOLO, PECK, REHBEIN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA TEACHER TENURE LAWS
5 AND CONTESTED CASE PROCEDURES; ~~PROVIDING TENURE TO A TEACHER OR SPECIALIST WHO~~
6 ~~COMPLETES A 180 WORKING DAY PROBATIONARY PERIOD ON THE EARLIER OF EITHER THE DATE OF~~
7 ~~THE OFFER AND ACCEPTANCE OF A CONTRACT FOR THE SECOND CONSECUTIVE YEAR OR~~
8 ~~EMPLOYMENT ON JUNE 30 OF THE YEAR FOLLOWING THE INITIAL DATE OF HIRE; PROVIDING THAT~~
9 ~~IF THE TEACHER OR SPECIALIST HAS NOT SATISFACTORILY COMPLETED A 180 WORKING DAY~~
10 ~~PROBATIONARY PERIOD BEFORE THE END OF THE INITIAL EMPLOYMENT CONTRACT, TENURE IS~~
11 ~~PROVIDED UPON THE SATISFACTORY COMPLETION OF THE 180 WORKING DAY PROBATIONARY~~
12 PERIOD REMOVING JURISDICTION OF THE OFFICE OF PUBLIC INSTRUCTION TO HEAR APPEALS AND
13 TO DECIDE DISPUTES ARISING FROM TERMINATION DECISIONS OF A SCHOOL DISTRICT NOT COVERED
14 BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA; CLARIFYING
15 THAT A DISTRICT MAY TERMINATE EMPLOYMENT OF A TENURE TEACHER FOR GOOD CAUSE;
16 DEFINING "GOOD CAUSE" AND "SAME SALARY"; PROVIDING THAT THE RIGHT TO THE SAME SALARY
17 MAY BE WAIVED BY MUTUAL AGREEMENT; EXTENDING THE DEADLINE FOR NOTIFICATION OF

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

APPROVED BY COM ON EDUCATION
AND CULTURAL RESOURCES

HOUSE BILL NO. 49

INTRODUCED BY COBB, ELLIS, SIMPKINS, LAWSON, WALTERS, ROSE, MASOLO, PECK, REHBEIN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA TEACHER TENURE LAWS AND CONTESTED CASE PROCEDURES; ~~PROVIDING TENURE TO A TEACHER OR SPECIALIST WHO COMPLETES A 180 WORKING DAY PROBATIONARY PERIOD ON THE EARLIER OF EITHER THE DATE OF THE OFFER AND ACCEPTANCE OF A CONTRACT FOR THE SECOND CONSECUTIVE YEAR OR EMPLOYMENT ON JUNE 30 OF THE YEAR FOLLOWING THE INITIAL DATE OF HIRE; PROVIDING THAT IF THE TEACHER OR SPECIALIST HAS NOT SATISFACTORILY COMPLETED A 180 WORKING DAY PROBATIONARY PERIOD BEFORE THE END OF THE INITIAL EMPLOYMENT CONTRACT, TENURE IS PROVIDED UPON THE SATISFACTORY COMPLETION OF THE 180 WORKING DAY PROBATIONARY PERIOD~~ REMOVING JURISDICTION OF THE OFFICE OF PUBLIC INSTRUCTION TO HEAR APPEALS AND TO DECIDE DISPUTES ARISING FROM TERMINATION DECISIONS OF A SCHOOL DISTRICT NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA; CLARIFYING THAT A DISTRICT MAY TERMINATE EMPLOYMENT OF A TENURE TEACHER FOR GOOD CAUSE; DEFINING "GOOD CAUSE" AND "SAME SALARY"; PROVIDING THAT THE RIGHT TO THE SAME SALARY MAY BE WAIVED BY MUTUAL AGREEMENT; EXTENDING THE DEADLINE FOR NOTIFICATION OF REELECTION OF A TEACHER OR SPECIALIST; LIMITING APPEAL OF EMPLOYMENT TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA, TO FINAL AND BINDING ARBITRATION; ESTABLISHING A PROCEDURE FOR ARBITRATION NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT; LIMITING THE REMEDIES THAT MAY BE IMPOSED BY AN ARBITRATOR; REMOVING JURISDICTION OF A COUNTY SUPERINTENDENT TO DECIDE DISPUTES ARISING FROM A COLLECTIVE BARGAINING AGREEMENT; CLARIFYING THAT A DISTRICT MAY TERMINATE THE EMPLOYMENT OF A NONTENURE TEACHER AT THE CONCLUSION OF A SCHOOL FISCAL YEAR WITH OR WITHOUT CAUSE UPON PROPER NOTICE; CLARIFYING THAT A DISTRICT MAY DISMISS FOR GOOD CAUSE A TENURE OR NONTENURE TEACHER BEFORE THE EXPIRATION OF A CONTRACT; CLARIFYING THAT A DISTRICT MAY REDUCE THE SALARY OF A TEACHER SERVING IN AN ADMINISTRATIVE POSITION WHO IS ASSIGNED TO A TEACHING POSITION WHEN A DISTRICT REDUCES THE SIZE OF ITS ADMINISTRATIVE STAFF; AMENDING SECTIONS 20-3-107, 20-3-210, 20-4-203, 20-4-204, 20-4-205, 20-4-206, 20-4-207, AND

1 20-4-208, AND ~~20-7-456~~, MCA; REPEALING SECTIONS ~~20-4-206 AND 20-4-207~~, MCA; AND PROVIDING
 2 AN EFFECTIVE DATE AND A ~~RETROACTIVE APPLICABILITY PROVISION.~~"

3

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

5

6 **SECTION 1. SECTION 20-3-107, MCA, IS AMENDED TO READ:**

7 "20-3-107. **Controversy appeal.** (1) The superintendent of public instruction shall decide matters
 8 of controversy when they are appealed from:

9 (a) a decision of a county superintendent rendered under the provisions of 20-3-210, except for
 10 a decision of a county superintendent or an arbitrator in a teacher termination case; or

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

12 (2) The superintendent of public instruction shall make ~~his~~ a decision on the basis of the transcript
 13 of the fact-finding hearing conducted by the county superintendent or county transportation committee and
 14 documents presented at the hearing. The superintendent of public instruction may require, if ~~he deems~~
 15 considered necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The
 16 decision of the superintendent of public instruction ~~shall be~~ is final, subject to the proper legal remedies in
 17 the state courts. ~~Such~~ The proceedings ~~shall~~ must be commenced no later than 60 days after the date of
 18 the decision of the superintendent of public instruction.

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

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

28

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

30 "20-4-203. **Teacher ~~and specialist~~ tenure ~~— definitions — waiver.~~** (1) ~~(a)~~ Except as provided in

1 ~~20-4-208 and subsection (1)(b) of this section, whenever~~ WHENEVER a teacher ~~has been elected by the~~
 2 ~~offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position~~
 3 ~~requiring teacher certification except as a district superintendent or specialist, the teacher is considered to~~
 4 ~~be or specialist working in a position requiring teacher or specialist certification, except as a district~~
 5 ~~superintendent, is considered to be tenured upon satisfactorily completing a 180-working day probationary~~
 6 ~~period and upon the earlier of:~~

7 ~~(i) the date of the offer and acceptance of a contract for the second consecutive year; or~~

8 ~~(ii) employment on June 30 of the year following the initial date of hire.~~

9 ~~(b) If the teacher or specialist has not satisfactorily completed a 180-working day probationary~~
 10 ~~period before the end of the initial employment contract, the teacher or specialist is considered to be~~
 11 ~~tenured upon the satisfactory completion of the probationary period.~~

12 ~~(2) Employment for less than 30 consecutive working days may not be counted as part of the~~
 13 ~~minimum 180-day requirement.~~

14 ~~(3) Prior to receiving tenure, the employment relationship between a board of trustees and a~~
 15 ~~teacher or specialist may be terminated at any time by either party with or without good cause. A teacher~~
 16 ~~or specialist terminated during the probationary period may not pursue an action against the school district~~
 17 ~~under the provisions of Title 39, chapter 2, part 9. A school district may not be compelled to arbitrate a~~
 18 ~~grievance under 27-5-115 over a teacher or specialist termination during the probationary period.~~

19 ~~(4) Upon receiving tenure, a teacher or specialist is considered to be~~ HAS BEEN ELECTED BY THE
 20 OFFER AND ACCEPTANCE OF A CONTRACT FOR THE FOURTH CONSECUTIVE YEAR OF EMPLOYMENT
 21 BY A DISTRICT IN A POSITION REQUIRING TEACHER CERTIFICATION EXCEPT AS A DISTRICT
 22 SUPERINTENDENT OR SPECIALIST, THE TEACHER IS CONSIDERED TO BE reelected from year to year
 23 ~~thereafter~~ as a tenure teacher ~~or specialist~~ at the same salary and in the same or a comparable position of
 24 employment as that provided by the ~~last-executed~~ last-executed contract with the teacher ~~or specialist~~
 25 unless the trustees resolve by majority vote of their membership to terminate the services of the teacher
 26 ~~or specialist~~ in accordance with the provisions of 20-4-204.

27 ~~(2)(5)(2)~~ The tenure of a teacher ~~or specialist~~ with a district may not be impaired upon termination
 28 of services of the teacher ~~or specialist~~ if the following conditions exist:

29 (a) the tenure teacher ~~or specialist~~ is terminated because the financial condition of the district
 30 requires a reduction in the number of teachers ~~or specialiste~~ employed; and

1 (b) continued employment rights are provided for in a collectively bargained contract of the district.

2 ~~(6)(3) Upon receiving tenure, the employment of a teacher or specialist may be terminated for good~~
3 ~~cause.~~

4 ~~(7) The right to the same salary may be waived by mutual agreement between the district and the~~
5 ~~teacher or specialist or, if the teacher or specialist is a member of a bargaining unit, by the teacher's or~~
6 ~~specialist's exclusive representative.~~

7 ~~(8) As used in this section, the following definitions apply:~~

8 ~~(a) "Good cause" means reasonable, job related grounds for dismissal that are based on failure to~~
9 ~~satisfactorily perform job duties, disruption of a school district's operation, or any other legitimate business~~
10 ~~reason.~~

11 ~~(b) "Same salary" means the salary paid to a teacher or specialist for services provided during the~~
12 ~~previous school year, excluding fringe benefits, extra duty, or an extended year contract."~~

13

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

15 **"20-4-204. Termination of tenure teacher or specialist services.** (1) (a) The following persons may
16 make a recommendation in writing to the trustees of the district for termination of the services of a tenure
17 teacher ~~or specialist~~:

18 (i) a district superintendent;

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

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

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

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

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

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

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

5 (4) The trustees shall:

6 (a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the
 7 board of trustees and in accordance with 2-3-203; and

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

10 (5) The tenure teacher ~~or specialist~~ may appeal a decision to terminate an employment contract
 11 to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist
 12 the superintendent in preparing findings of fact and conclusions of law THE COUNTY SUPERINTENDENT
 13 IF THE TEACHER'S EMPLOYMENT IS NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT
 14 PURSUANT TO TITLE 39, CHAPTER 31, WHO MAY APPOINT A QUALIFIED ATTORNEY AS A LEGAL
 15 ADVISER WHO SHALL ASSIST THE SUPERINTENDENT IN PREPARING FINDINGS OF FACT AND
 16 CONCLUSIONS OF LAW. IF THE EMPLOYMENT OF THE TEACHER IS COVERED BY A COLLECTIVE
 17 BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, A TENURE TEACHER SHALL APPEAL
 18 A DECISION TO TERMINATE AN EMPLOYMENT CONTRACT TO an arbitrator agreed upon by the district
 19 and the teacher or specialist or, if the teacher or specialist is represented by a labor organization, by the
 20 teacher's or specialist's exclusive representative. If a teacher or specialist is not a member of a bargaining
 21 unit or if the exclusive representative has declined to represent the teacher or specialist, the teacher or
 22 specialist or the district may request that the board of personnel appeals provide a list of arbitrators from
 23 which the teacher or specialist and the district shall, after the toss of a coin to determine the order of
 24 striking, alternately strike names from the list until one arbitrator is selected and appointed. By mutual
 25 agreement between the parties, the county superintendent of schools may be appointed as the arbitrator.

26 (6) IN A TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS NOT COVERED BY A
 27 COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, EITHER THE TEACHER
 28 OR THE TRUSTEES MAY APPEAL TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE TEACHER
 29 WAS EMPLOYED. THE PROCEEDINGS MUST BE COMMENCED NO LATER THAN 60 DAYS AFTER THE
 30 DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT.

1 ~~(6)~~ Subsequently, either the teacher or the trustees may appeal to the superintendent of public
2 instruction under the provision for the appeal of controversies in this title.

3 ~~(6)(7)~~ A IN A TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A
4 COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, A request for arbitration
5 must be made within 20 days from the date of termination unless an alternative time period is provided by
6 the terms of a collective bargaining agreement.

7 ~~(7)(8)~~ The decision of the arbitrator is final and binding. Each party shall pay one-half of an
8 arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.

9 ~~(8)(9)~~ An arbitrator may order a school district to reinstate a teacher or specialist who has been
10 terminated without good cause and to provide compensation, with interest, to a teacher or specialist for
11 lost wages and fringe benefits from the date of termination to the date that the teacher or specialist is
12 offered reinstatement to the same or a comparable position. Interim earnings, including the amount that
13 the teacher or specialist could have earned with reasonable diligence, must be deducted from the amount
14 awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent
15 by a teacher or specialist in searching for, obtaining, or relocating to new employment must be deducted
16 from interim earnings.

17 ~~(9)(10)~~ Except as provided in this section, an arbitrator may not order a school district to provide
18 compensation for punitive damages, pain and suffering, emotional distress, compensatory damages,
19 attorney fees, or any other form of damages.

20 ~~(10)(11)~~ Upon submission of the termination decision to an arbitrator, the teacher or specialist or
21 the teacher's or specialist's exclusive representative may not file an action against the district for
22 reinstatement or compensation of lost wages and fringe benefits.

23 ~~(11)(12)~~ As used in this section, the following definitions apply:

24 (a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical
25 insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

26 (b) "Lost wages" means the gross amount of wages that would have been reported to the internal
27 revenue service on Form W-2 and includes any compensation deferred at the option of the employee."

28
29 **Section 4.** Section 20-4-205, MCA, is amended to read:

30 **"20-4-205. Notification of tenure teacher or specialist reelection -- acceptance.** (1) The trustees

1 shall provide written notice by ~~May 1~~ June 1 to all ~~tenure~~ teachers ~~or specialists~~ who have been reelected.
 2 Any ~~tenure~~ teacher ~~or specialist~~ who does not receive notice of reelection or termination ~~shall be~~ is
 3 automatically reelected for the ensuing school fiscal year.

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

9

10 **SECTION 5. SECTION 20-4-206, MCA, IS AMENDED TO READ:**

11 **"20-4-206. Notification of nontenure teacher reelection -- acceptance -- termination and statement**
 12 **of reason.** (1) The trustees shall provide written notice by ~~May~~ June 1 to all ~~nontenure~~ teachers ~~who have~~
 13 each nontenure teacher employed by the district regarding whether the nontenure teacher has been
 14 reelected for the ensuing school fiscal year. A ~~nontenure~~ teacher who does not receive written notice of
 15 reelection or termination is automatically reelected for the ensuing school fiscal year.

16 (2) A ~~nontenure~~ nontenure teacher who receives notification of ~~his~~ reelection for the ensuing school
 17 fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of reelection within 20
 18 days after the receipt of the notice of reelection. Failure to ~~so~~ notify the trustees within 20 days ~~may be~~
 19 ~~considered~~ constitutes conclusive evidence of the nontenure teacher's nonacceptance of the tendered
 20 position.

21 (3) Subject to the June 1 notice requirements in this section, the trustees may nonrenew the
 22 employment of a nontenure teacher at the conclusion of the school fiscal year with or without
 23 cause. ~~When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after~~
 24 ~~receipt of the notice make written request of the trustees for a statement in writing of the reasons for~~
 25 ~~termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the~~
 26 ~~teacher a true statement of reasons for termination.~~

27 (4) ~~If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher~~
 28 ~~may request in writing within 10 days of receipt of the statement of reasons that the county superintendent~~
 29 ~~hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A hearing must be~~
 30 ~~scheduled within 10 days and held within 45 days after receipt of the request, except that the period may~~

1 ~~be extended upon agreement between the trustees and the teacher. The burden of proof that the reasons~~
 2 ~~are not true rests with the teacher, and the showing must be demonstrated by clear and convincing~~
 3 ~~evidence.~~

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

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

10
 11 **SECTION 6. SECTION 20-4-207, MCA, IS AMENDED TO READ:**

12 **"20-4-207. Dismissal of teacher under contract.** (1) The trustees of any district may dismiss a
 13 teacher before the expiration of ~~his~~ the teacher's employment contract for ~~immorality, unfitness,~~
 14 ~~incompetence, or violation of the adopted policies of such trustees~~ good cause.

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

17 (i) a district superintendent;

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

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

21 (b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice
 22 of the recommendation in writing to each trustee of the district and to the teacher.

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

25 (3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees
 26 shall notify the teacher of ~~his~~ the right to a hearing before the trustees either by certified letter or by
 27 personal notification for which a signed receipt must be returned. The teacher may in writing waive the
 28 right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on
 29 a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

30 (b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of

1 the hearing to dismiss the teacher or to reject the recommendation for dismissal.

2 (4) With the exception of a county superintendent, a person who recommends dismissal pursuant
3 to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing
4 date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the
5 welfare of the students or the effective operation of the school district.

6 (5) Any teacher who has been dismissed may in writing within 10 days appeal ~~such the~~ dismissal
7 ~~to the county superintendent. Following such appeal, a hearing must be scheduled within 10 days and held~~
8 ~~within 30 days after the appeal, except that the period may be extended upon agreement between the~~
9 ~~teacher and the trustees. If the county superintendent, after a hearing, determines that the dismissal by the~~
10 ~~trustees was made without good cause, he shall order the trustees to reinstate such teacher and to~~
11 ~~compensate such teacher at his contract amount for the time lost during the pending of the appeal under~~
12 the guidelines set forth in 20-4-204. The teacher may appeal a decision to terminate an employment
13 contract to the county superintendent if the teacher's employment is not covered by a collective bargaining
14 agreement pursuant to Title 39, chapter 31. If the employment of the teacher is covered by a collective
15 bargaining agreement, a ~~tenure~~ teacher shall appeal a decision to terminate an employment contract to an
16 arbitrator."

17

18 **Section 7.** Section 20-4-208, MCA, is amended to read:

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

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

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

30 ~~(a)~~ "administrative position" means a position that the trustees of a district designate as

1 administrative or supervisory in nature, not including the position of district superintendent; and

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

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

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

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

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

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

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

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

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

22 ~~(8)(4) A tenure teacher who is transferred to a teaching position under this section must be offered~~
23 ~~the next comparable administrative position for which he is endorsed that becomes available in the district~~
24 ~~or specialist may appeal a decision pursuant to the arbitration procedure established in 20-4-204 WHO IS~~
25 TRANSFERRED TO A TEACHING POSITION UNDER THIS SECTION MUST BE OFFERED THE NEXT
26 COMPARABLE ADMINISTRATIVE POSITION FOR WHICH THE TENURE TEACHER IS ENDORSED THAT
27 BECOMES AVAILABLE IN THE DISTRICT."

28

29 **Section 8.** Section 20-3-210, MCA, is amended to read:

30 **"20-3-210. Controversy appeals and hearings.** (1) Except for disputes arising under the terms of

1 a collective bargaining agreement or as provided under 20-3-211, ~~20-4-204~~, or 20-4-208, the county
 2 superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions
 3 of the trustees of a district in the county. ONLY A COUNTY SUPERINTENDENT WHO POSSESSES THE
 4 QUALIFICATIONS OF 20-3-201(2) MAY HEAR CONTROVERSIES RELATED TO TEACHER TERMINATION.
 5 Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required
 6 prior to filing an action in district court concerning a decision of the trustees. ~~When appeals are made under~~
 7 ~~20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the~~
 8 ~~dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law~~
 9 ~~to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions~~
 10 ~~of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction~~
 11 ~~under the provisions for appeal of controversies in this title. WHEN APPEALS ARE MADE UNDER 20-4-204~~
 12 RELATING TO THE TERMINATION OF SERVICES OF A TENURE TEACHER OR UNDER 20-4-207 RELATING
 13 TO THE DISMISSAL OF A TEACHER UNDER CONTRACT, THE COUNTY SUPERINTENDENT MAY APPOINT
 14 A QUALIFIED ATTORNEY TO ACT AS A LEGAL ADVISER WHO SHALL ASSIST THE SUPERINTENDENT
 15 IN PREPARING FINDINGS OF FACT AND CONCLUSIONS OF LAW. SUBSEQUENTLY, EITHER THE
 16 TEACHER OR TRUSTEES MAY APPEAL TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE
 17 TEACHER WAS EMPLOYED. THE PROCEEDINGS MUST BE COMMENCED NOT LATER THAN 60 DAYS
 18 AFTER THE DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT. The county superintendent shall
 19 hear and decide all controversies arising under:

20 (a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or
 21 ~~(b) 20-4-206(4); or~~
 22 ~~(c)~~(b) any other provision of this title for which a procedure for resolving controversies is not
 23 expressly prescribed.

24 (2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court
 25 concerning a decision of the trustees of a district in the following instances:

26 (a) a state agency has been granted primary jurisdiction over the matter;
 27 (b) the matter is governed by a specific statute; or
 28 (c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

29 (3) The county superintendent shall hear the appeal and take testimony in order to determine the
 30 facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The

1 county superintendent shall prepare a written transcript of the hearing proceedings. The decision on the
 2 matter of controversy that is made by the county superintendent must be based upon the facts established
 3 at the hearing.

4 (4) ~~The~~ EXCEPT FOR TEACHER TERMINATION CASES, THE decision of the county superintendent
 5 may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent
 6 shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the
 7 superintendent of public instruction. IN TEACHER TERMINATION CASES, AN APPEAL MAY BE FILED WITH
 8 THE DISTRICT COURT OF THE COUNTY IN WHICH THE TEACHER WAS EMPLOYED NO LATER THAN 60
 9 DAYS AFTER THE DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT. IF AN APPEAL IS FILED,
 10 THE COUNTY SUPERINTENDENT SHALL PROVIDE A TRANSCRIPT OF THE HEARING AND ANY OTHER
 11 DOCUMENTS ENTERED AS TESTIMONY AT THE HEARING TO THE DISTRICT COURT.

12 (5) Cost incurred by the office of the county superintendent must be paid from the general fund
 13 budget of the county in which the controversy is initiated."
 14

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

16 ~~"20-7-456. Tenure of teachers or specialists employed by cooperatives. (1) Teachers or specialists~~
 17 ~~who have tenure rights with a district and who are employed by a cooperative of which their district is a~~
 18 ~~member do not lose their tenure with the district.~~

19 ~~(2) Nontenured teachers or specialists employed by a cooperative acquire tenure with a cooperative~~
 20 ~~in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 and~~
 21 ~~20-4-205 are applicable to teachers or specialists employed by a cooperative.~~

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

24 ~~(4) For the purposes of tenure of a teacher or specialist employed by a cooperative, cooperative~~
 25 ~~contract renewals may not be used to limit the teacher's or specialist's progress toward tenure status."~~

26
 27 NEW SECTION. Section 7. Repealer. Sections 20-4-206 and 20-4-207, MCA, are repealed.

28
 29 NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that
 30 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this

1 act].

2

3 NEW SECTION. Section 10. Effective date -- applicability. [This act] is effective July 1, 1997,
4 and ~~applies retroactively, within the meaning of 1-2-109, to contracts offered for the 1997-98 school year.~~

5

-END-

1 20-4-208, ~~AND 20-7-456~~, MCA; ~~REPEALING SECTIONS 20-4-206 AND 20-4-207~~, MCA; AND PROVIDING
 2 AN EFFECTIVE DATE ~~AND A RETROACTIVE APPLICABILITY PROVISION.~~"

3

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

5

6 **SECTION 1. SECTION 20-3-107, MCA, IS AMENDED TO READ:**

7 **"20-3-107. Controversy appeal.** (1) The superintendent of public instruction shall decide matters
 8 of controversy when they are appealed from:

9 (a) a decision of a county superintendent rendered under the provisions of 20-3-210, except for
 10 a decision of a county superintendent or an arbitrator in a teacher termination case; or

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

12 (2) The superintendent of public instruction shall make ~~his~~ a decision on the basis of the transcript
 13 of the fact-finding hearing conducted by the county superintendent or county transportation committee and
 14 documents presented at the hearing. The superintendent of public instruction may require, if ~~he deems~~
 15 considered necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The
 16 decision of the superintendent of public instruction ~~shall be~~ is final, subject to the proper legal remedies in
 17 the state courts. ~~Such~~ The proceedings ~~shall~~ must be commenced no later than 60 days after the date of
 18 the decision of the superintendent of public instruction.

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

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

28

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

30 **"20-4-203. Teacher ~~and specialist~~ tenure ~~— definitions — waiver.~~** (1) ~~(a)~~ Except as provided in

HOUSE BILL NO. 49

INTRODUCED BY ELLIS, COBB, SIMPKINS, LAWSON, WALTERS, ROSE, MASOLO, PECK, REHBEIN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA TEACHER TENURE LAWS AND CONTESTED CASE PROCEDURES; ~~PROVIDING TENURE TO A TEACHER OR SPECIALIST WHO COMPLETES A 180 WORKING DAY PROBATIONARY PERIOD ON THE EARLIER OF EITHER THE DATE OF THE OFFER AND ACCEPTANCE OF A CONTRACT FOR THE SECOND CONSECUTIVE YEAR OR EMPLOYMENT ON JUNE 30 OF THE YEAR FOLLOWING THE INITIAL DATE OF HIRE; PROVIDING THAT IF THE TEACHER OR SPECIALIST HAS NOT SATISFACTORILY COMPLETED A 180 WORKING DAY PROBATIONARY PERIOD BEFORE THE END OF THE INITIAL EMPLOYMENT CONTRACT, TENURE IS PROVIDED UPON THE SATISFACTORY COMPLETION OF THE 180 WORKING DAY PROBATIONARY PERIOD~~ REMOVING JURISDICTION OF THE OFFICE OF PUBLIC INSTRUCTION TO HEAR APPEALS AND TO DECIDE DISPUTES ARISING FROM TERMINATION DECISIONS OF A SCHOOL DISTRICT NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA; CLARIFYING THAT A DISTRICT MAY TERMINATE EMPLOYMENT OF A TENURE TEACHER FOR GOOD CAUSE; DEFINING "GOOD CAUSE" AND "SAME SALARY"; PROVIDING THAT THE RIGHT TO THE SAME SALARY MAY BE WAIVED BY MUTUAL AGREEMENT; EXTENDING THE DEADLINE FOR NOTIFICATION OF REELECTION OF A TEACHER OR SPECIALIST; LIMITING APPEAL OF EMPLOYMENT TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA, TO FINAL AND BINDING ARBITRATION; ESTABLISHING A PROCEDURE FOR ARBITRATION NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT; LIMITING THE REMEDIES THAT MAY BE IMPOSED BY AN ARBITRATOR; REMOVING JURISDICTION OF A COUNTY SUPERINTENDENT TO DECIDE DISPUTES ARISING FROM A COLLECTIVE BARGAINING AGREEMENT; CLARIFYING THAT A DISTRICT MAY TERMINATE THE EMPLOYMENT OF A NONTENURE TEACHER AT THE CONCLUSION OF A SCHOOL FISCAL YEAR WITH OR WITHOUT CAUSE UPON PROPER NOTICE; CLARIFYING THAT A DISTRICT MAY DISMISS FOR GOOD CAUSE A TENURE OR NONTENURE TEACHER BEFORE THE EXPIRATION OF A CONTRACT; CLARIFYING THAT A DISTRICT MAY REDUCE THE SALARY OF A TEACHER SERVING IN AN ADMINISTRATIVE POSITION WHO IS ASSIGNED TO A TEACHING POSITION WHEN A DISTRICT REDUCES THE SIZE OF ITS ADMINISTRATIVE STAFF; AMENDING SECTIONS 20-3-107, 20-3-210, 20-4-203, 20-4-204, 20-4-205, 20-4-206, 20-4-207, AND

1 20-4-208 ~~and subsection (1)(b) of this section, whenever~~ WHENEVER a teacher ~~has been elected by the~~
 2 ~~offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position~~
 3 ~~requiring teacher certification except as a district superintendent or specialist, the teacher is considered to~~
 4 ~~be or specialist working in a position requiring teacher or specialist certification, except as a district~~
 5 ~~superintendent, is considered to be tenured upon satisfactorily completing a 180-working day probationary~~
 6 ~~period and upon the earlier of:~~

7 ~~(i) the date of the offer and acceptance of a contract for the second consecutive year; or~~

8 ~~(ii) employment on June 30 of the year following the initial date of hire.~~

9 ~~(b) If the teacher or specialist has not satisfactorily completed a 180-working day probationary~~
 10 ~~period before the end of the initial employment contract, the teacher or specialist is considered to be~~
 11 ~~tenured upon the satisfactory completion of the probationary period.~~

12 ~~(2) Employment for less than 30 consecutive working days may not be counted as part of the~~
 13 ~~minimum 180-day requirement.~~

14 ~~(3) Prior to receiving tenure, the employment relationship between a board of trustees and a~~
 15 ~~teacher or specialist may be terminated at any time by either party with or without good cause. A teacher~~
 16 ~~or specialist terminated during the probationary period may not pursue an action against the school district~~
 17 ~~under the provisions of Title 39, chapter 2, part 9. A school district may not be compelled to arbitrate a~~
 18 ~~grievance under 27-5-115 over a teacher or specialist termination during the probationary period.~~

19 ~~(4) Upon receiving tenure, a teacher or specialist is considered to be~~ HAS BEEN ELECTED BY THE
 20 OFFER AND ACCEPTANCE OF A CONTRACT FOR THE FOURTH CONSECUTIVE YEAR OF EMPLOYMENT
 21 BY A DISTRICT IN A POSITION REQUIRING TEACHER CERTIFICATION EXCEPT AS A DISTRICT
 22 SUPERINTENDENT OR SPECIALIST, THE TEACHER IS CONSIDERED TO BE reelected from year to year
 23 ~~thereafter~~ as a tenure teacher ~~or specialist~~ at the same salary and in the same or a comparable position of
 24 employment as that provided by the ~~last executed~~ last-executed contract with the teacher ~~or specialist~~
 25 unless the trustees resolve by majority vote of their membership to terminate the services of the teacher
 26 ~~or specialist~~ in accordance with the provisions of 20-4-204.

27 ~~(2)(5)(2)~~ (2) The tenure of a teacher ~~or specialist~~ with a district may not be impaired upon termination
 28 of services of the teacher ~~or specialist~~ if the following conditions exist:

29 (a) the tenure teacher ~~or specialist~~ is terminated because the financial condition of the district
 30 requires a reduction in the number of teachers ~~or specialists~~ employed; and

1 (b) continued employment rights are provided for in a collectively bargained contract of the district.

2 ~~(6)(3) Upon receiving tenure, the employment of a teacher or specialist may be terminated for good~~
3 ~~cause.~~

4 ~~(7) The right to the same salary may be waived by mutual agreement between the district and the~~
5 ~~teacher or specialist or, if the teacher or specialist is a member of a bargaining unit, by the teacher's or~~
6 ~~specialist's exclusive representative.~~

7 ~~(8) As used in this section, the following definitions apply:~~

8 ~~(a) "Good cause" means reasonable, job related grounds for dismissal that are based on failure to~~
9 ~~satisfactorily perform job duties, disruption of a school district's operation, or any other legitimate business~~
10 ~~reason.~~

11 ~~(b) "Same salary" means the salary paid to a teacher or specialist for services provided during the~~
12 ~~previous school year, excluding fringe benefits, extra duty, or an extended-year contract."~~

13

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

15 **"20-4-204. Termination of tenure teacher or specialist services.** (1) (a) The following persons may
16 make a recommendation in writing to the trustees of the district for termination of the services of a tenure
17 teacher ~~or specialist~~:

18 (i) a district superintendent;

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

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

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

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

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

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

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

5 (4) The trustees shall:

6 (a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the
 7 board of trustees and in accordance with 2-3-203; and

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

10 (5) The tenure teacher ~~or specialist~~ may appeal a decision to terminate an employment contract
 11 to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist
 12 the superintendent in preparing findings of fact and conclusions of law THE COUNTY SUPERINTENDENT
 13 IF THE TEACHER'S EMPLOYMENT IS NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT
 14 PURSUANT TO TITLE 39, CHAPTER 31, WHO MAY APPOINT A QUALIFIED ATTORNEY AS A LEGAL
 15 ADVISER WHO SHALL ASSIST THE SUPERINTENDENT IN PREPARING FINDINGS OF FACT AND
 16 CONCLUSIONS OF LAW. IF THE EMPLOYMENT OF THE TEACHER IS COVERED BY A COLLECTIVE
 17 BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, A TENURE TEACHER SHALL APPEAL
 18 A DECISION TO TERMINATE AN EMPLOYMENT CONTRACT TO an arbitrator agreed upon by the district
 19 and the teacher or specialist or, if the teacher or specialist is represented by a labor organization, by the
 20 teacher's or specialist's exclusive representative. If a teacher or specialist is not a member of a bargaining
 21 unit or if the exclusive representative has declined to represent the teacher or specialist, the teacher or
 22 specialist or the district may request that the board of personnel appeals provide a list of arbitrators from
 23 which the teacher or specialist and the district shall, after the toss of a coin to determine the order of
 24 striking, alternately strike names from the list until one arbitrator is selected and appointed. By mutual
 25 agreement between the parties, the county superintendent of schools may be appointed as the arbitrator.

26 (6) IN A TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS NOT COVERED BY A
 27 COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, EITHER THE TEACHER
 28 OR THE TRUSTEES MAY APPEAL TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE TEACHER
 29 WAS EMPLOYED. THE PROCEEDINGS MUST BE COMMENCED NO LATER THAN 60 DAYS AFTER THE
 30 DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT.

1 ~~(6)~~ Subsequently, either the teacher or the trustees may appeal to the superintendent of public
2 instruction under the provision for the appeal of controversies in this title.

3 ~~(6)~~(7) A IN A TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A
4 COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, A request for arbitration
5 must be made within 20 days from the date of termination unless an alternative time period is provided by
6 the terms of a collective bargaining agreement.

7 ~~(7)~~(8) The decision of the arbitrator is final and binding. Each party shall pay one-half of an
8 arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.

9 ~~(8)~~(9) An arbitrator may order a school district to reinstate a teacher or specialist who has been
10 terminated without good cause and to provide compensation, with interest, to a teacher or specialist for
11 lost wages and fringe benefits from the date of termination to the date that the teacher or specialist is
12 offered reinstatement to the same or a comparable position. Interim earnings, including the amount that
13 the teacher or specialist could have earned with reasonable diligence, must be deducted from the amount
14 awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent
15 by a teacher or specialist in searching for, obtaining, or relocating to new employment must be deducted
16 from interim earnings.

17 ~~(9)~~(10) Except as provided in this section, an arbitrator may not order a school district to provide
18 compensation for punitive damages, pain and suffering, emotional distress, compensatory damages,
19 attorney fees, or any other form of damages.

20 ~~(10)~~(11) Upon submission of the termination decision to an arbitrator, the teacher or specialist or
21 the teacher's or specialist's exclusive representative may not file an action against the district for
22 reinstatement or compensation of lost wages and fringe benefits.

23 ~~(11)~~(12) As used in this section, the following definitions apply:

24 (a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical
25 insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

26 (b) "Lost wages" means the gross amount of wages that would have been reported to the internal
27 revenue service on Form W-2 and includes any compensation deferred at the option of the employee."

28
29 **Section 4.** Section 20-4-205, MCA, is amended to read:

30 **"20-4-205. Notification of ~~tenure~~ teacher or specialist reelection -- acceptance.** (1) The trustees

1 shall provide written notice by ~~May 1~~ June 1 to all ~~tenure~~ teachers ~~or specialists~~ who have been reelected.
 2 Any ~~tenure~~ teacher ~~or specialist~~ who does not receive notice of reelection or termination ~~shall be~~ is
 3 automatically reelected for the ensuing school fiscal year.

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

9

10 **SECTION 5. SECTION 20-4-206, MCA, IS AMENDED TO READ:**

11 "20-4-206. Notification of nontenure teacher reelection -- acceptance -- termination ~~and statement~~
 12 ~~of reason.~~ (1) The trustees shall provide written notice by ~~May~~ June 1 to ~~all nontenure~~ teachers who have
 13 each nontenure teacher employed by the district regarding whether the nontenure teacher has been
 14 reelected for the ensuing school fiscal year. A ~~nontenure~~ teacher who does not receive written notice of
 15 reelection or termination is automatically reelected for the ensuing school fiscal year.

16 (2) A ~~nontenure~~ nontenure teacher who receives notification of ~~his~~ reelection for the ensuing school
 17 fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of reelection within 20
 18 days after the receipt of the notice of reelection. Failure to ~~so~~ notify the trustees within 20 days ~~may be~~
 19 ~~considered~~ constitutes conclusive evidence of the nontenure teacher's nonacceptance of the tendered
 20 position.

21 (3) Subject to the June 1 notice requirements in this section, the trustees may nonrenew the
 22 employment of a nontenure teacher at the conclusion of the school fiscal year with or without
 23 cause. ~~When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after~~
 24 ~~receipt of the notice make written request of the trustees for a statement in writing of the reasons for~~
 25 ~~termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the~~
 26 ~~teacher a true statement of reasons for termination.~~

27 (4) ~~If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher~~
 28 ~~may request in writing within 10 days of receipt of the statement of reasons that the county superintendent~~
 29 ~~hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A hearing must be~~
 30 ~~scheduled within 10 days and held within 45 days after receipt of the request, except that the period may~~

1 ~~be extended upon agreement between the trustees and the teacher. The burden of proof that the reasons~~
 2 ~~are not true rests with the teacher, and the showing must be demonstrated by clear and convincing~~
 3 ~~evidence.~~

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

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

10
 11 **SECTION 6. SECTION 20-4-207, MCA, IS AMENDED TO READ:**

12 **"20-4-207. Dismissal of teacher under contract.** (1) The trustees of any district may dismiss a
 13 teacher before the expiration of ~~his~~ the teacher's employment contract for ~~immorality, unfitness,~~
 14 ~~incompetence, or violation of the adopted policies of such trustees~~ good cause.

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

17 (i) a district superintendent;

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

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

21 (b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice
 22 of the recommendation in writing to each trustee of the district and to the teacher.

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

25 (3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees
 26 shall notify the teacher of ~~his~~ the right to a hearing before the trustees either by certified letter or by
 27 personal notification for which a signed receipt must be returned. The teacher may in writing waive the
 28 right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on
 29 a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

30 (b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of

1 the hearing to dismiss the teacher or to reject the recommendation for dismissal.

2 (4) With the exception of a county superintendent, a person who recommends dismissal pursuant
3 to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing
4 date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the
5 welfare of the students or the effective operation of the school district.

6 (5) Any teacher who has been dismissed may in writing within 10 days appeal ~~such~~ the dismissal
7 ~~to the county superintendent. Following such appeal, a hearing must be scheduled within 10 days and held~~
8 ~~within 30 days after the appeal, except that the period may be extended upon agreement between the~~
9 ~~teacher and the trustees. If the county superintendent, after a hearing, determines that the dismissal by the~~
10 ~~trustees was made without good cause, he shall order the trustees to reinstate such teacher and to~~
11 ~~compensate such teacher at his contract amount for the time lost during the pendency of the appeal~~ under
12 the guidelines set forth in 20-4-204. The teacher may appeal a decision to terminate an employment
13 contract to the county superintendent if the teacher's employment is not covered by a collective bargaining
14 agreement pursuant to Title 39, chapter 31. If the employment of the teacher is covered by a collective
15 bargaining agreement, a ~~tenure~~ teacher shall appeal a decision to terminate an employment contract to an
16 arbitrator."

17

18 **Section 7.** Section 20-4-208, MCA, is amended to read:

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

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

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

30 ~~(a)~~ "administrative position" means a position that the trustees of a district designate as

1 administrative or supervisory in nature, not including the position of district superintendent; and

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

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

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

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

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

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

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

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

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

22 ~~(8)(4) A tenure teacher who is transferred to a teaching position under this section must be offered~~
23 ~~the next comparable administrative position for which he is endorsed that becomes available in the district~~
24 ~~or specialist may appeal a decision pursuant to the arbitration procedure established in 20-4-204 WHO IS~~
25 ~~TRANSFERRED TO A TEACHING POSITION UNDER THIS SECTION MUST BE OFFERED THE NEXT~~
26 ~~COMPARABLE ADMINISTRATIVE POSITION FOR WHICH THE TENURE TEACHER IS ENDORSED THAT~~
27 ~~BECOMES AVAILABLE IN THE DISTRICT.~~

28

29 **Section 8.** Section 20-3-210, MCA, is amended to read:

30 **"20-3-210. Controversy appeals and hearings.** (1) Except for disputes arising under the terms of

1 county superintendent shall prepare a written transcript of the hearing proceedings. The decision on the
 2 matter of controversy that is made by the county superintendent must be based upon the facts established
 3 at the hearing.

4 (4) ~~The~~ EXCEPT FOR TEACHER TERMINATION CASES, THE decision of the county superintendent
 5 may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent
 6 shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the
 7 superintendent of public instruction. IN TEACHER TERMINATION CASES, AN APPEAL MAY BE FILED WITH
 8 THE DISTRICT COURT OF THE COUNTY IN WHICH THE TEACHER WAS EMPLOYED NO LATER THAN 60
 9 DAYS AFTER THE DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT. IF AN APPEAL IS FILED,
 10 THE COUNTY SUPERINTENDENT SHALL PROVIDE A TRANSCRIPT OF THE HEARING AND ANY OTHER
 11 DOCUMENTS ENTERED AS TESTIMONY AT THE HEARING TO THE DISTRICT COURT.

12 (5) Cost incurred by the office of the county superintendent must be paid from the general fund
 13 budget of the county in which the controversy is initiated."
 14

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

16 ~~"20-7-456. Tenure of teachers or specialists employed by cooperatives. (1) Teachers or specialists~~
 17 ~~who have tenure rights with a district and who are employed by a cooperative of which their district is a~~
 18 ~~member do not lose their tenure with the district.~~

19 ~~(2) Nontenured teachers or specialists employed by a cooperative acquire tenure with a cooperative~~
 20 ~~in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 and~~
 21 ~~20-4-205 are applicable to teachers or specialists employed by a cooperative.~~

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

24 ~~(4) For the purposes of tenure of a teacher or specialist employed by a cooperative, cooperative~~
 25 ~~contract renewals may not be used to limit the teacher's or specialist's progress toward tenure status."~~

26
 27 ~~NEW SECTION. Section 7. Repealer. Sections 20-4-206 and 20-4-207, MCA, are repealed.~~

28
 29 NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that
 30 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this

1 a collective bargaining agreement or as provided under 20-3-211, ~~20-4-204~~, or 20-4-208, the county
 2 superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions
 3 of the trustees of a district in the county. ONLY A COUNTY SUPERINTENDENT WHO POSSESSES THE
 4 QUALIFICATIONS OF 20-3-201(2) MAY HEAR CONTROVERSIES RELATED TO TEACHER TERMINATION.
 5 Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required
 6 prior to filing an action in district court concerning a decision of the trustees. ~~When appeals are made under~~
 7 ~~20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the~~
 8 ~~dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law~~
 9 ~~to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions~~
 10 ~~of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction~~
 11 ~~under the provisions for appeal of controversies in this title. WHEN APPEALS ARE MADE UNDER 20-4-204~~
 12 RELATING TO THE TERMINATION OF SERVICES OF A TENURE TEACHER OR UNDER 20-4-207 RELATING
 13 TO THE DISMISSAL OF A TEACHER UNDER CONTRACT, THE COUNTY SUPERINTENDENT MAY APPOINT
 14 A QUALIFIED ATTORNEY TO ACT AS A LEGAL ADVISER WHO SHALL ASSIST THE SUPERINTENDENT
 15 IN PREPARING FINDINGS OF FACT AND CONCLUSIONS OF LAW. SUBSEQUENTLY, EITHER THE
 16 TEACHER OR TRUSTEES MAY APPEAL TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE
 17 TEACHER WAS EMPLOYED. THE PROCEEDINGS MUST BE COMMENCED NOT LATER THAN 60 DAYS
 18 AFTER THE DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT. The county superintendent shall
 19 hear and decide all controversies arising under:

20 (a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or

21 ~~(b) 20-4-206(4); or~~

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

24 (2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court
 25 concerning a decision of the trustees of a district in the following instances:

26 (a) a state agency has been granted primary jurisdiction over the matter;

27 (b) the matter is governed by a specific statute; or

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

29 (3) The county superintendent shall hear the appeal and take testimony in order to determine the
 30 facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The

1 act].

2

3 NEW SECTION. Section 10. Effective date — applicability. [This act] is effective July 1, 1997,
4 and ~~applies retroactively, within the meaning of 1-2-109, to contracts offered for the 1997-98 school year.~~

5

-END-