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House BILL NO. 198

INTRODUCED BY ~~Sen. James C. ...~~ BENEDICT Rehbein ...
~~Regan Sliter ...~~ ... Denny ...

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO NONTENURED TEACHERS; PROVIDING A NONTENURED TEACHER WITH THE RIGHT TO A STATEMENT OF TRUE REASONS FOR TERMINATION AND AN OPPORTUNITY TO REBUT THE STATEMENT OF REASONS SUPPLIED BY THE DISTRICT; REQUIRING THE DISTRICT TO INCLUDE THE NONTENURED TEACHER'S REBUTTAL STATEMENT WITH ANY WRITTEN INFORMATION RELATING TO THE NONTENURED TEACHER'S PERFORMANCE AS A TEACHER IN THE DISTRICT THAT IS SUPPLIED BY THE DISTRICT TO A THIRD PARTY; PROVIDING THAT THE NONRENEWAL OF A NONTENURED TEACHER IS NOT A CONTROVERSY SUBJECT TO REVIEW BY THE COUNTY SUPERINTENDENT OR THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AMENDING SECTIONS 20-3-210 AND 20-4-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 20-3-210, MCA, is amended to read:

"20-3-210. Controversy appeals and hearings. (1) Except as provided under 20-3-211, the county superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county. Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required prior to filing an action in district court concerning a decision of the trustees. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. The county superintendent shall hear and decide all controversies arising under:

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

1 expressly prescribed.

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

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

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

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

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

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

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

17

18 **Section 2.** Section 20-4-206, MCA, is amended to read:

19 **"20-4-206. Notification of ~~nontenure~~ nontenured teacher reelection -- acceptance -- termination**
20 **and statement of reason -- rebuttal.** (1) The trustees shall provide written notice by May 1 to ~~all~~ each
21 ~~nontenure teachers who have~~ nontenured teacher employed by the district regarding whether the
22 nontenured teacher has been reelected for the ensuing school fiscal year. A ~~nontenure~~ nontenured teacher
23 who does not receive written notice of reelection or termination is automatically reelected for the ensuing
24 school fiscal year.

25 (2) A ~~nontenure~~ nontenured teacher who receives notification of ~~his~~ reelection for the ensuing
26 school fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of reelection
27 within 20 days after the receipt of the notice of reelection. Failure to ~~so~~ notify the trustees within 20 days
28 ~~may be considered~~ is conclusive evidence of the nontenured teacher's nonacceptance of the tendered
29 position.

30 (3) The trustees may terminate the employment of a nontenured teacher at the conclusion of the

1 ~~school fiscal year with or without cause.~~ When the trustees notify a ~~nontenure~~ nontenured teacher of
 2 termination, the teacher may within 10 days after receipt of the notice make written request of the trustees
 3 for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the
 4 request, the trustees shall furnish to the teacher a true statement of reasons for termination.

5 (4) If a ~~nontenure~~ nontenured teacher believes the reasons provided by the trustees are not true,
 6 the teacher may ~~request in writing within 10 days of receipt of the statement of reasons that the county~~
 7 ~~superintendent hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A~~
 8 ~~hearing must be scheduled within 10 days and held within 45 days after receipt of the request, except that~~
 9 ~~the period may be extended upon agreement between the trustees and the teacher. The burden of proof~~
 10 ~~that the reasons are not true rests with the teacher, and the showing must be demonstrated by clear and~~
 11 ~~convincing evidence.~~

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

15 (6) ~~The provisions of this section do not apply to cases in which a nontenure teacher is terminated~~
 16 ~~when the financial condition of the school district requires a reduction in the number of teachers employed~~
 17 ~~and the reason for the termination is to reduce the number of teachers employed, within 30 days after~~
 18 ~~receipt of the trustees' termination statement, submit a written statement rebutting the reasons provided~~
 19 ~~by the trustees. If the nontenured teacher submits a rebuttal statement within 30 days, the trustees shall~~
 20 ~~include the statement with any written information relating to the nontenured teacher's performance as a~~
 21 ~~teacher in the district that is supplied by the district to a third party."~~

22
 23 **NEW SECTION. Section 3. Effective date -- applicability.** [This act] is effective on passage and
 24 approval and applies to contracts entered into on or after the [effective date of this act].

25 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0198, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An act revising laws related to nontenured teachers; providing a nontenured teacher with the right to a statement of true reasons for termination and an opportunity to rebut the statement of reasons supplied by the district; requiring the district to include the nontenured teacher's rebuttal statement with any written information relating to the nontenured teacher's performance as a teacher in the district that is supplied by the district to a third party; providing that the nonrenewal of a nontenured teacher is not a controversy subject to review by the county superintendent or the superintendent of public instruction.

ASSUMPTIONS:

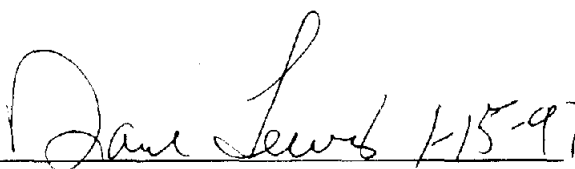
1. HB 198 provides that the renewal of a nontenured teacher is not a controversy subject to review by the county superintendent or the superintendent of public instruction.
2. In 1995, the Office of Public Instruction issued 2 decisions that dealt with non-tenured teachers. In 1996, none of the decisions issued by OPI dealt with non-tenured teachers. OPI anticipates the issuance of one decision related to a non-tenured teacher in 1997. On average, OPI issues one decision per year that deals with non-tenured teachers.
3. Removing the right to a hearing on whether the reasons given for terminating a nontenured teacher are true would reduce appeals by one appeal per year and would reduce about 40 attorney hours and 10 staff support hours.
4. HB 198 would result in a small reduction in OPI's workload. The reduction is not significant enough to reduce FTE at the Office of Public Instruction.

FISCAL IMPACT: None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Any appeals of cases related to non-tenured teachers will go directly to the district court if the issues cannot be resolved between the teachers and the school board. Teachers and districts are more likely to incur legal costs under this bill. Actions in district court are likely to increase by one appeal per year.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

TECHNICAL NOTES:



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



ALVIN ELLIS, PRIMARY SPONSOR DATE

Fiscal Note for HB0198, as introduced

HB 198