EXHIBIT 2
DATE 3/21/2011
SB 315

Senate Bill 315 – Reasonable Reform of Tenure Teacher Termination Procedures

Issue	Current Law	Senate Bill 315, Introduced Version	Senate Bill 315, Sponsor's Amendments
Years to earn tenure	3 years	No change	No Change
Reasons for termination of a tenure teacher	***"good cause"*** – no definition of what the term means in the school code, which creates confusion over what the term means. Typically interpreted to mean the more complicated "just cause" standard for termination and varies from case to case.	***"good cause"*** as provided by the Wrongful Discharge Act. The same standard of job protection that applies in the private sector for all other workers other than teachers.	***"good cause"*** as provided by the Wrongful Discharge Act. The same standard of job protection that applies in the private sector for all other workers other than teachers.
Teacher's right to due process before being terminated	1. Superintendent has to provide a written recommendation, which "must state clearly and explicitly the specific reason or reasons" for termination. 2. Teacher has a right to a full hearing before the board, between 10 and 20 days of the letter of recommendation. 3. Hearing is usually in closed session unless the teacher waives the right of privacy.	1. No change. Teacher continues to enjoy the full right of due process under current law. 2. That dues process remains higher and more detailed than in virtually any other profession. 3. Opponents claim SB 315 as introduced will turn school board meetings into courtroom-like proceedings. Although we disagree with this claim, the sponsor's amendments address this concern.	1. No change. Teacher continues to enjoy the full right of due process under current law. 2. That dues process remains higher and more detailed than in virtually any other profession. 3. Would bring school board hearing procedures on teacher termination back to current law.
Teacher's right to appeal a termination	1. Teacher appeals to an arbitrator in most cases or the county superintendent if a collective bargaining agreement does not exist. 2. Arbitrator can completely ignore the findings of fact and the board of trustees' decision and make a new decision of his/her own. This is called "de novo" appeal.	Senate Bill 315 requires that the arbitrator review the board's decision and can overturn it only if the Board's decision is clearly wrong, based on 7 different specified grounds in the bill. There is nothing in SB 315 that protects a bad decision of a school board. This is the same standard of appeal that applies to the board of public education, OPI, etc.	No Change on the right of appeal, but the arbitrator's decision is now subject to an appellate review consistent with the review of other administrative decisions (e.g. Board of Public Education, OPI, state agencies, etc.) See the section on protection afforded an arbitrator's decision below for details.
Protection afforded an arbitrator's decision.	An arbitrator's decision is "final and binding", no matter how wrong. The arbitrator's decision is virtually above the law.	An arbitrator's decision can be overturned if the arbitrator failed to properly review the board of trustees' decision under the 7 part test above.	An arbitrator's decision can be overturned on the same grounds as provided by the Montana Administrative Procedures Act. This is the key element of the sponsor's amendments, in that it brings greater

			accountability to arbitrators' decisions by making them subject to appeal under the same standard that applies to most administrative agency decisions under current law.
Right of a teacher to reinstatement as a remedy.	An arbitrator or county superintendent can find that a teacher engaged in wrongdoing, but can still order the school board to reinstate the teacher. This undermines local control and requires boards to reinstate teachers even when they have engaged in immoral conduct that violates community norms and values.	No Change	Proposes to remove reinstatement as a remedy and replaces the remedy of reinstatement with the same money damage remedies afforded private sector employees who are terminated in violation of the Wrongful Discharge Act.
Application of the bill to County Superintendent Proceedings	County superintendents currently hear appeals in cases where no collective bargaining agreement exists. Hearings before the county superintendent are very rare.	The bill as introduced would have changed the appeal process for cases before county superintendents.	The proposed amendments of the sponsor remove county superintendents from this bill and bring them back to current law. No change to hearing procedures before county superintendents.

In Summary:

1. SB 315, both as introduced and with proposed amendments of the sponsor, provides tenure teachers the same or greater due process afforded any private sector worker in Montana under the Wrongful Discharge Act.
2. The choice of the committee between the original bill and the bill as it would be amended as proposed by the sponsor is based primarily on:
    a. Where the evidentiary hearing takes place.
        i. As introduced, SB 315 would provide a tenure teacher a right to an evidentiary hearing before the school board.
        ii. With the sponsor's proposed amendments, SB 315 would provide a tenure teacher a right to an evidentiary hearing before the arbitrator or county superintendent.
    b. Whether an arbitrator can order a school board to reinstate a teacher once terminated by the board.
        i. As introduced, reinstatement remains a remedy available to the arbitrator. If the committee goes with the original version of SB 315, reinstatement as a remedy should be removed from the law.
        ii. With the sponsor's proposed amendments, reinstatement as a remedy is removed in favor of the money damages remedy afforded any private sector worker in Montana under the Wrongful Discharge Act.

Both as introduced and with proposed amendments, the bill is constitutional and affords a tenure teacher substantial due process rights before he/she can be terminated that more than satisfies the court rulings on due process that has to be provided before a tenure public employee can be terminated.