

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING COLLECTIVE BARGAINING LAWS  
5 PERTAINING TO PUBLIC EMPLOYEES; PROVIDING THAT A DECISION TO NOT RENEW A NONTENURED  
6 TEACHER'S CONTRACT WITHOUT CAUSE IS NOT SUBJECT TO ARBITRATION UNLESS PROVIDED FOR  
7 IN THE COLLECTIVE BARGAINING AGREEMENT; CLARIFYING THAT ANY LAY PERSON AUTHORIZED BY  
8 A PARTY MAY APPEAR IN A PROCEEDING BEFORE THE BOARD OF PERSONNEL APPEALS IF LAY  
9 REPRESENTATION IS PERMITTED; PROVIDING THAT EMPLOYEES MAY PETITION TO HAVE AGENCY  
10 SHOP FEE PROVISIONS EXCLUDED FROM THEIR COLLECTIVE BARGAINING AGREEMENT; PROVIDING  
11 THAT CERTAIN ELECTIONS ON COLLECTIVE BARGAINING ISSUES MAY NOT BE DELAYED BY THE  
12 FILING OF AN UNFAIR LABOR PRACTICE CHARGE; PROHIBITING THE FILING OF UNFAIR LABOR  
13 PRACTICE CHARGES AGAINST THE LEGISLATURE; REQUIRING AN ELECTION OF REMEDIES IN  
14 COLLECTIVE BARGAINING AGREEMENTS PROVIDING FOR FINAL AND BINDING ARBITRATION;  
15 CLARIFYING PROCEDURES FOR MEDIATION REGARDING COLLECTIVE BARGAINING DISPUTES;  
16 PROVIDING THAT AGENCY SHOP FEE PROVISIONS TERMINATE UPON THE EXPIRATION OF A  
17 COLLECTIVE BARGAINING AGREEMENT; PERMITTING A PUBLIC EMPLOYER TO WITHHOLD A WAGE  
18 INCREASE IN AN EXPIRED COLLECTIVE BARGAINING AGREEMENT UNTIL A NEW AGREEMENT IS  
19 RATIFIED; AND AMENDING SECTIONS 20-4-206, 39-31-105, 39-31-207, 39-31-208, 39-31-304, 39-31-305,  
20 39-31-306, 39-31-307, 39-31-401, AND 39-31-405, MCA."

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23  
24 **Section 1.** Section 20-4-206, MCA, is amended to read:

25 **"20-4-206. Notification of nontenure teacher reelection -- acceptance -- termination.** (1) The  
26 trustees shall provide written notice by June 1 to each nontenure teacher employed by the district regarding  
27 whether the nontenure teacher has been reelected for the ensuing school fiscal year. A teacher who does not  
28 receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

29 (2) A nontenure teacher who receives notification of reelection for the ensuing school fiscal year shall  
30 provide the trustees with written acceptance of the conditions of reelection within 20 days after the receipt of the

1 notice of reelection. Failure to notify the trustees within 20 days constitutes conclusive evidence of the nontenure  
2 teacher's nonacceptance of the tendered position.

3 (3) Subject to the June 1 notice requirements in this section, the trustees may ~~nonrenew~~ choose to not  
4 renew the employment of a nontenure teacher at the conclusion of the school fiscal year ~~with or~~ without cause.

5 (4) If the employment of the nontenure teacher is covered by a collective bargaining agreement pursuant  
6 to Title 39, chapter 31, the exclusive representative and the nontenure teacher may appeal a decision to not  
7 renew the employment contract to an arbitrator agreed upon by the trustees and the exclusive representative if  
8 the contractual grievance procedure expressly authorizes the arbitration of such disputes. If authorized, an  
9 arbitrator may consider alleged procedural violations, but may not require the trustees to establish good cause  
10 for their decision."

11  
12 **Section 2.** Section 39-31-105, MCA, is amended to read:

13 **"39-31-105. Administrative procedure act applicable -- representation by lay person -- conduct**  
14 **of hearing.** (1) All hearings and appeals must be in accordance with the appropriate provisions of the Montana  
15 Administrative Procedure Act. Hearings and appeals may be conducted by telephone or by videoconference, with  
16 the consent of the necessary parties.

17 (2) If the board allows lay person representation, then any lay person representative authorized by a  
18 party to the proceedings may appear in a proceeding before the board or before an agent of the board.

19 (3) For the purposes of this section "lay person" means a person who is not a licensed attorney."

20  
21 **Section 3.** Section 39-31-207, MCA, is amended to read:

22 **"39-31-207. Petition on representation or authorization question -- investigation by board --**  
23 **hearing.** (1) The board or an agent of the board shall investigate ~~the~~ a petition on a representation or  
24 authorization question and, if it has reasonable cause to believe that a question of representation or authorization  
25 exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with ~~such~~ any rules  
26 ~~as may be~~ prescribed by the board, a petition has been filed:

27 (a) by an employee or group of employees or any labor organization acting in their behalf alleging that  
28 30% of the employees:

29 (i) wish to be represented for collective bargaining by a labor organization as exclusive representative;

30 or

1 (ii) assert that the labor organization ~~which~~ that has been certified or is currently being recognized by the  
 2 public employer as bargaining representative is no longer the representative of the majority of employees in the  
 3 unit; or

4 (iii) assert that the majority of the employees wish to withdraw the authority of the labor organization  
 5 representing the employees and the employer to enter into and enforce an agency shop fee provision in the  
 6 collective bargaining agreement; or

7 (b) by the public employer alleging that one or more labor organizations have presented to it a claim to  
 8 be recognized as the exclusive representative in an appropriate unit.

9 (2) In this hearing, the board is not bound by common law and statutory rules of evidence."  
 10

11 **Section 4.** Section 39-31-208, MCA, is amended to read:

12 **"39-31-208. Representation or authorization election at direction of board.** (1) If the board or an  
 13 agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it  
 14 shall direct an election by secret ballot to determine whether and by which labor organization the employees  
 15 desire to be represented or whether they desire to have no labor organization represent them and shall certify  
 16 the results ~~thereof~~ of the election.

17 (2) Only those labor organizations ~~which~~ that have been designated by more than 10% of the employees  
 18 in the unit found to be appropriate ~~shall~~ may be placed on the ballot.

19 (3) The board or an agent of the board shall determine who is eligible to vote in the election and shall  
 20 establish rules governing the election.

21 (4) Unless the majority vote is for no representation by a labor organization and in any election ~~where~~  
 22 in which none of the choices for a representative on the ballot receives a majority, a runoff election ~~shall~~ must  
 23 be conducted, with the ballot providing for selection between the two choices receiving the largest and the second  
 24 largest number of valid votes cast in the election.

25 (5) A labor organization ~~which~~ that receives the majority of the votes cast in an election ~~shall~~ must be  
 26 certified by the board as the exclusive representative.

27 (6) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a  
 28 question as to whether the majority of employees wish to withdraw the authority of the union and the employer  
 29 to enter into and enforce an agency shop fee provision in their collective bargaining agreement, it shall direct an  
 30 election by secret ballot to determine whether the provision should be deauthorized and shall certify the results

1 of the election.

2 (7) A representation or authorization election may not be delayed by the filing of an unfair labor practice  
 3 charge, but the results of an election may be challenged by a party by filing an objection within 5 working days  
 4 after the date of the election. The outcome of an election may not be stayed unless the objecting party  
 5 demonstrates that it is more likely than not that the objecting party will prevail in its challenge."

6

7 **Section 5.** Section 39-31-304, MCA, is amended to read:

8 **"39-31-304. Negotiable items for school districts.** Nothing in this chapter ~~shall require~~ requires or  
 9 ~~allow~~ boards of trustees of school districts to bargain collectively upon any matter other than matters specified  
 10 in 39-31-305(2)."

11

12 **Section 6.** Section 39-31-305, MCA, is amended to read:

13 **"39-31-305. Duty to bargain collectively -- good faith.** (1) The public employer and the exclusive  
 14 representative, through appropriate officials or their representatives, have the authority and the duty to bargain  
 15 collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2).

16 (2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation  
 17 of the public employer or the public employer's designated representatives and the representatives of the  
 18 exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours,  
 19 fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising  
 20 under an agreement and the execution of a written contract incorporating any agreement reached. The obligation  
 21 does not compel either party to agree to a proposal or require the making of a concession, and an appeal tribunal  
 22 may not judge the reasonableness of a party's proposals.

23 (3) For purposes of state government only, the requirement of negotiating in good faith may be met by  
 24 the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution.  
 25 The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to  
 26 negotiate in good faith. An act or omission of the legislature does not constitute the basis for an unfair labor  
 27 practice charge.

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

29 (a) "Evergreen clause" means a provision in a contract that provides for the automatic extension of  
 30 certain terms of the contract for specified periods beyond the primary term unless either party specifically elects

- 1 to renegotiate the terms of the contract by giving the required notice prior to the contract's termination date.
- 2 (b) (i) "Other conditions of employment" includes provisions addressing contract duration, discipline and  
 3 discharge, drug and alcohol testing, evaluation, grievance and arbitration, layoff and recall procedures,  
 4 management rights, no-strike, nondiscrimination, promotions and transfers, safety and health, seniority,  
 5 subcontracting, union security, work assignments, work schedules, and work rules.
- 6 (ii) The term does not include provisions addressing budget adoption, election of remedies, evergreen  
 7 clauses, decisions on hiring or reduction in force, interest arbitration, job descriptions, job qualifications,  
 8 maintenance of standards, nonunit employees, parity pay, personnel policies, union recognition, waivers of  
 9 statutory rights, or any provision removed from bargaining by another statute."

- 10
- 11 **Section 7.** Section 39-31-306, MCA, is amended to read:
- 12 **"39-31-306. Collective bargaining agreements.** (1) An agreement reached by the public employer and  
 13 the exclusive representative must be ~~reduced to~~ in writing and must be executed by both parties.
- 14 (2) Except as provided in subsection (5), an agreement may contain a grievance procedure culminating  
 15 in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.
- 16 (3) An agreement between the public employer and a labor organization must be valid and enforced  
 17 under its terms when entered into in accordance with the provisions of this chapter and signed by the chief  
 18 executive officer of the state or political subdivision or commissioner of higher education or by a representative.  
 19 A publication of the agreement is not required to make it effective.
- 20 (4) The procedure for the making of an agreement between the state or political subdivision and a labor  
 21 organization provided by this chapter is the exclusive method of making a valid agreement for public employees  
 22 represented by a labor organization.
- 23 (5) An agreement to which a school district is a party must contain a grievance procedure culminating  
 24 in final and binding arbitration of unresolved and disputed interpretations of agreements. ~~The~~ In any agreement  
 25 in which a public employer and an exclusive representative have adopted a grievance procedure culminating in  
 26 final and binding arbitration, the aggrieved party may have the grievance or disputed interpretation of the  
 27 agreement resolved either by final and binding arbitration or by any other available legal method and forum, but  
 28 not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative  
 29 waive any right to pursue against the ~~school~~ public employer an action or complaint that ~~seeks the same remedy~~  
 30 arises from the same set of facts. If a grievant or the exclusive representative files a complaint or other action

1 against the ~~school~~ public employer, arbitration ~~seeking the same remedy~~ arising from the same set of facts may  
 2 not be filed or pursued under this section."

3

4 **Section 8.** Section 39-31-307, MCA, is amended to read:

5 **"39-31-307. Mediation of disputes.** If, after a reasonable period of negotiation over the terms of an  
 6 agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective  
 7 bargaining agreement exists between the public employer and a labor organization, the parties shall request  
 8 mediation. Mediation must be conducted in accordance with the provisions of 26-1-813."

9

10 **Section 9.** Section 39-31-401, MCA, is amended to read:

11 **"39-31-401. Unfair labor practices of public employer.** It is an unfair labor practice for a public  
 12 employer to:

13 (1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

14 (2) dominate, interfere, or assist in the formation or administration of any labor organization. However,  
 15 subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees  
 16 to confer with the employer during working hours without loss of time or pay.

17 (3) discriminate in regard to ~~hire~~ hiring or tenure of employment or any term or condition of employment  
 18 in order to encourage or discourage membership in any labor organization. However, nothing in this chapter or  
 19 in any other statute of this state precludes a public employer from making an agreement with an exclusive  
 20 representative to require, as a condition of employment, that an employee who is not or does not become a union  
 21 member must have an ~~amount equal to the union initiation fee and monthly dues~~ agency shop fee determined  
 22 in accordance with applicable law deducted from the employee's wages in the same manner as checkoff of union  
 23 dues. An agency shop fee provision terminates upon the expiration of a collective bargaining agreement.

24 (4) discharge or otherwise discriminate against an employee because the employee has signed or filed  
 25 an affidavit, petition, or complaint or given any information or testimony under this chapter; or

26 (5) refuse to bargain collectively in good faith with an exclusive representative. However, a public  
 27 employer may withhold a wage increase authorized in an expired collective bargaining agreement until a new  
 28 agreement has been ratified."

29

30 **Section 10.** Section 39-31-405, MCA, is amended to read:

