

SENATE BILL NO. 120  
INTRODUCED BY B. GLASER

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF TRUSTEES OR A JOINT BOARD OF TRUSTEES OF A SCHOOL DISTRICT TO CONTRACT WITH A PRIVATE ENTITY THAT EMPLOYS PERSONNEL REQUIRED BY A SCHOOL DISTRICT, INCLUDING TEACHERS, SPECIALISTS, AND ADMINISTRATORS; DEFINING A SCHOOL DISTRICT "EMPLOYEE"; CLARIFYING THAT ACTIVE MEMBERSHIP IN THE TEACHERS' RETIREMENT SYSTEM IS REQUIRED FOR AN EMPLOYEE OF THE DISTRICT; AMENDING SECTIONS 7-11-104, 19-20-302, 20-1-101, 20-3-324, 20-3-362, AND 20-4-401, 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 7-11-104, MCA, is amended to read:

**"7-11-104. Authorization to create interlocal agreements -- issuance of bonds for joint construction -- hiring of or contracting for teacher, specialist, or superintendent, or other required personnel.** One or more public agencies may contract with any one or more other public agencies or a private entity to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service, including the issuance of bonds for the joint construction of a facility under 20-9-404, the hiring of or contracting with a teacher or specialist under 20-4-201 ~~or~~, a superintendent under 20-4-401, or any other personnel required by the school district, or the hiring of or contracting with any other professional person licensed under Title 37, that any of the public agencies entering into the contract is authorized by law to perform. The contract must be authorized and approved by the governing body of each party to the contract. The contract must outline fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties."

**Section 2.** Section 19-20-302, MCA, is amended to read:

**"19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

- (a) ~~a person~~ an employee who is a teacher, principal, or district superintendent as defined in 20-1-101;
- (b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit

of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) a person who is an administrative officer or a member of the instructional staff of the board of public education; and

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction.

(2) A person elected to the office of county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.

(e) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(f) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-804.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom."

**Section 3.** Section 20-1-101, MCA, is amended to read:

**"20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university-Bozeman.

(2) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9,

subsection (2), of the Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) (a) "Employee" means a person employed by a district.

(b) The term does not include a person who contracts with a private entity that employs personnel required by the district, including teachers, specialists, and administrators.

~~(8)~~(9) "K-12 career and vocational/technical education" means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

~~(9)~~(10) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

~~(10)~~(11) "Pupil" means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

~~(11)~~(12) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(12) (13) "Regents" means the board of regents of higher education.

(13) (14) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

(14) (15) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

(15) (16) "State university" means Montana state university-Bozeman.

(16) (17) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

(17) (18) "System" means the Montana university system.

(18) (19) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. ~~This definition of a teacher~~ The term includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

(19) (20) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(20) (21) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

(21) (22) "Trustees" means the governing board of a district.

(22) (23) "University" means the university of Montana-Missoula.

(23) (24) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents."

**Section 4.** Section 20-3-324, MCA, is amended to read:

**"20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) (a) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district; or

(b) contract with a private entity that employs personnel required by a school district to obtain the services of any personnel, including teachers, specialists, and administrators;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a

postsecondary institution; and

(27) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

**Section 5.** Section 20-3-362, MCA, is amended to read:

**"20-3-362. Powers of joint board of trustees.** (1) When a joint board of trustees is formed as provided by 20-3-361, it ~~shall have the power to~~ may:

(a) jointly employ a district superintendent under the provisions of 20-4-401;

(b) jointly employ teachers and specialists under the provisions of 20-4-201;

(c) contract with a private entity that employs personnel required by a school district to obtain the services of any personnel, including teachers, specialists, and administrators;

~~(e)(d)~~ open a junior high school under the provisions of 20-6-505 if the trustees of a county high school and the trustees of an elementary district have formed a joint board of trustees;

~~(d)(e)~~ prescribe and administer joint administrative policy;

~~(e)(f)~~ jointly provide any program or service authorized under 20-3-324, including any joint provision of special education services as provided in 20-7-457; and

~~(f)(g)~~ prorate all items of joint expense among the school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of any district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees ~~shall~~ may not ~~have the power to~~ transact business that is not specifically related to the joint administration of the districts."

**Section 6.** Section 20-4-401, MCA, is amended to read:

**"20-4-401. Appointment and dismissal of district superintendent or county high school principal.**

(1) The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent or may contract with a private entity that employs administrative personnel required by a district. The trustees of a county high school shall employ and appoint a district superintendent or may contract with a private entity that employs administrative personnel required by a district, except that they may employ and appoint or contract with a private



entity that employs administrative personnel for a person who is a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent or contract with a private entity that employs administrative personnel required by a district.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, the joint board shall jointly employ and appoint a district superintendent or may contract with a private entity that employs administrative personnel required by a district. During the term of contract of the jointly appointed district superintendent, neither district may separately employ and appoint a district superintendent or county high school principal.

(3) School districts other than those provided in subsection (2) that form a joint board of trustees or the boards of trustees of two or more districts may jointly employ and appoint a district superintendent, as allowed in 20-3-362, contract with a private entity that employs administrative personnel required by the districts, or may enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a district superintendent.

(4) The written contract of employment of a district superintendent or a county high school principal must be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the presiding officer of the trustees or joint board of trustees and the clerks of the districts in the name of the districts and by the district superintendent or the county high school principal. The contract must be for a term of not more than 3 years, and after the second successive contract, the contract is considered to be renewed for a further term of 1 year from year to year unless the trustees, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of the existing contract. The trustees shall take the termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate the superintendent's or principal's services at the expiration of the superintendent's or principal's current contract not later than February 1 of the last year of the contract.

(5) Whenever a joint board of trustees or the boards of trustees of two or more districts employs a person as the district superintendent under subsection (2) or (3), the districts shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies the person to hold the position becomes invalid, the trustees of the district or the joint board of trustees shall discharge the person as the district superintendent

or county high school principal regardless of the unexpired term of the contract. The trustees may not compensate the superintendent or principal under the terms of the contract for any services rendered subsequent to the date of the invalidation of the teacher certificate.

(7) A district superintendent or county high school principal may not engage in any work or activity that the trustees consider to be in conflict with the duties and employment as the district superintendent or county high school principal."

NEW SECTION. **Section 7. Effective date -- applicability.** [This act] is effective on passage and approval and applies to contracts entered into on or after [the effective date of this act].

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