

SENATE BILL NO. 506
INTRODUCED BY B. STORY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO SCHOOLS; REVISING NEPOTISM LAWS APPLICABLE TO SCHOOL DISTRICTS; CLARIFYING THAT THE PRESIDING OFFICER MAY CLOSE A MEETING TO DISCUSS LITIGATION STRATEGY; CLARIFYING WHEN A TRUSTEE ELECTION IS NOT REQUIRED TO BE HELD; ALLOWING SCHOOL BOARDS TO MEET WITH OTHER SCHOOL BOARDS, EDUCATIONAL AGENCIES, AND COOPERATIVES TO COLLABORATE AND COOPERATE ON EDUCATIONAL ISSUES; CLARIFYING THE COMPULSORY ATTENDANCE AGE; ALLOWING SCHOOL DISTRICTS TO DETERMINE WHEN REMOVAL FROM EXTRACURRICULAR ACTIVITIES IS APPROPRIATE; ALLOWING SCHOOL ADMINISTRATORS TO EXCLUDE A STUDENT FROM GRADUATION UNDER CERTAIN CIRCUMSTANCES; CLARIFYING THE SUSPENSION OF STUDENTS FROM SCHOOL; ELIMINATING THE REQUIREMENT THAT ELEMENTARY SCHOOL DISTRICTS BEAR THE COST OF ELECTIONS ON BEHALF OF COMMUNITY COLLEGE DISTRICTS; AMENDING SECTIONS 2-2-302, 2-3-203, 20-1-101, 20-3-313, 20-3-322, 20-5-101, 20-5-201, 20-5-202, 20-15-203, AND 20-15-208, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-2-302, MCA, is amended to read:

"2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions -- publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of 2-2-303 and this section do not apply to:

- (a) a sheriff in the appointment of a person as a cook or an attendant;
- (b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being initially appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;
- (c) a school district in the employment of a person as a substitute teacher who is not employed as a

substitute teacher for more than ~~30~~ 35 consecutive school days as defined by the trustees in 20-1-302;

(d) the renewal of an employment contract or employment of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office or who was initially hired in compliance with subsection (2)(b);

(e) the employment of election judges;

(f) the employment of pages or temporary session staff by the legislature; or

(g) county commissioners of a county with a population of less than 10,000 if all the commissioners, with the exception of any commissioner who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a commissioner.

(3) Prior to the appointment of a person referred to in subsection (2)(b) or (2)(g), written notice of the time and place for the intended action must be published at least 15 days prior to the intended action in a newspaper of general circulation in the county in which the school district is located or the county office or position is located."

Section 2. Section 2-3-203, MCA, is amended to read:

"2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), the presiding officer may close a meeting ~~may be closed~~ to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section."

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) "Accreditation standards" means the body of administrative rules governing standards such as:

- (a) school leadership;
- (b) educational opportunity;
- (c) academic requirements;
- (d) program area standards;
- (e) content and performance standards;
- (f) school facilities and records;
- (g) student assessment; and
- (h) general provisions.

(2) "Aggregate hours" means the hours of pupil instruction for which a school course or program is offered or for which a pupil is enrolled.

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

(4) "At-risk student" means any student who is affected by environmental conditions that negatively impact the student's educational performance or threaten a student's likelihood of promotion or graduation.

(5) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils physically attending or receiving educational services at an offsite instructional setting from the public schools of a district.

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

(7) "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.

(8) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

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

(10) "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.

(11) (a) "Educational program" means a set of educational offerings designed to meet the program area standards contained in the accreditation standards.

(b) The term does not include an educational program or programs used in 20-4-121 and 20-25-803.

(12) "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.

(13) (a) "Minimum aggregate hours" means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between classes.

(b) The term does not include lunch time and periods of unstructured recess.

(14) "Offsite instructional setting" means an instructional setting at a location, separate from a main school site, where a school district provides for the delivery of instruction to a student who is enrolled in the district.

(15) "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.

(16) "Pupil" means a child who is 6 years of age or older but is not yet 19 years of age 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 who 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.

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

(18) "Qualified and effective teacher or administrator" means an educator who is licensed and endorsed in the areas in which the educator teaches, specializes, or serves in an administrative capacity as established by the board of public education.

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

(20) "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.

(21) "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.

(22) "State university" means Montana state university-Bozeman.

(23) "Student with limited English proficiency" means any student:

(a) (i) who was not born in the United States or whose native language is a language other than English;
(ii) who is an American Indian and who comes from an environment in which a language other than English has had a significant impact on the individual's level of English proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment in which a language other than English is dominant; and

(b) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the student:

(i) the ability to meet the state's proficiency assessments;

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

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

(25) "System" means the Montana university system.

(26) "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 includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

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

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

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

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

(31) "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 20-3-313, MCA, is amended to read:

"20-3-313. Election by acclamation -- notice. (1) If the number of candidates filing for a position or filing a declaration of intent to be a write-in candidate under 13-10-211 is equal to the number of positions to be elected ~~and there is no other reason for the election~~, the trustees may give notice that ~~an~~ a trustee election will not be held. Notice must be given no later than 25 days before the election.

(2) If ~~an~~ a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and issue a certificate of election to the candidate."

Section 5. Section 20-3-322, MCA, is amended to read:

"20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

- (a) an organization meeting, as prescribed by 20-3-321;
- (b) a final budget meeting, as prescribed by 20-9-131; and
- (c) in first-class elementary districts, not less than one regular meeting each month; or
- (d) in any other district, regular meetings at least quarterly.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency or as provided in this section, meetings must

be conducted in school buildings or, upon the unanimous vote of the trustees, in a publicly accessible building located within the district. This section does not prohibit a school board from meeting outside the boundaries of the school district in order to meet with other school boards, educational agencies, or cooperatives for the purposes of collaboration or cooperation on educational issues.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of subsection (3), "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district."

Section 6. Section 20-5-101, MCA, is amended to read:

"20-5-101. Admittance of child to school. (1) The trustees shall assign and admit a child to a school in the district when the child is:

(a) 6 years of age or older but is not yet 19 years of age on or before September 10 of the year in which the child is to enroll ~~but is not yet 19 years of age~~;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section.

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), to a school in the district regardless of residence. The trustees may not require an out-of-district attendance agreement or tuition for a homeless child.

(5) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title."

Section 7. Section 20-5-201, MCA, is amended to read:

"20-5-201. Duties and sanctions. (1) A pupil ~~shall~~:

(a) shall comply with the policies of the trustees and the rules of the school that the pupil attends;

(b) shall pursue the required course of instruction;

(c) shall submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) ~~be~~ is subject to the control and authority of the teachers, principal, and district superintendent while the pupil is in school or on school premises, on the way to and from school, or during intermission or recess.

(2) A pupil who continually and willfully disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, or book belonging to the district, or harms or threatens to harm another person or the person's property is liable for punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property, the pupil's parent or guardian is liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of any damage.

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities as defined in and in accordance with district policy. The trustees may not take action under this subsection until the incident or infraction causing the consideration has been investigated and the trustees have determined that the high school pupil was involved in the incident or infraction. This subsection does not prohibit a school administrator from taking reasonable action without consideration by the board of trustees, including disciplinary action to protect the health, welfare, and safety of the students, district employees, trustees, or visitors or to prevent disruption of the educational functions of the district. Actions may include excluding a pupil from participating in graduation exercises in circumstances in which there is insufficient time to hold a meeting of the board of trustees.

(4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is responsible for the cost of school materials or the loss or damage of school property until the pupil or the pupil's parent or guardian satisfies the obligation.

(b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil and the pupil's parent or guardian pursuant to subsection (4)(a) shall:

(i) upon receiving notice that the pupil has transferred to another school district in the state, notify the pupil's parent or guardian in writing that the school district to which the pupil has transferred will be requested to withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

(ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

(iii) at the same time, notify the school district of any financial obligation of the pupil and request the withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

(iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school district to which the pupil has transferred; and

(v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the school district's decision to request that another school district withhold a pupil's grades, diploma, or transcripts.

(c) Upon receiving notice that a school district has requested the withholding of the grades, diploma, or transcripts of a pupil under this subsection (4), a school district to which the pupil has transferred shall withhold the grades, diploma, or transcripts of the pupil until it receives notice, from the district that initiated the decision, that the decision has been rescinded under the terms of subsection (4)(a)."

Section 8. Section 20-5-202, MCA, is amended to read:

"20-5-202. Suspension and expulsion. (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in ~~suspending the suspension of~~ a pupil and in defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is a disciplinary action available only to the trustees. A student may be suspended from school for an initial period not to exceed 10 school days. Upon a finding by the school administrator that immediate return to school by a student would be detrimental to the health, welfare, or safety of others or would be disruptive to the educational process, a student may be suspended for an additional 10 days if the student is granted an informal hearing with the school administrator prior to the extended suspension.

(2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in

accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting."

Section 9. Section 20-15-203, MCA, is amended to read:

"20-15-203. Call of community college district organization election -- proposition statement. (1)

A petition for the organization of a community college district must be presented to the board of regents. The board of regents shall examine the petition to determine if the petition satisfies the petitioning and community college district organizational requirements.

(2) If the board of regents determine that the petition satisfies the requirements, the board of regents shall order the elementary districts encompassed by the proposed community college district to conduct an election on the community college district organization proposition. The election must be held on the next regular school election day, except that an election required by a petition received by the board of regents less than 60 days before the regular school election day must be held at the regular school election in the following school fiscal year.

(3) At the expense of the board of regents, the board of regents shall cause the proposition to be printed and distributed for the polling places in the component elementary districts.

~~the election the~~ The proposition must be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of (elementary districts must be listed by county), State of Montana, a community college district for the offering of 13th- and 14th-year courses, to be known as the Community College District of, Montana, under the provisions of the laws authorizing community college districts in Montana, as requested in the petition filed with the Board of Regents at Helena, Montana, on the day of, 20...?

FOR organization.

[] AGAINST organization."

Section 10. Section 20-15-208, MCA, is amended to read:

"20-15-208. Conduct of election. The election for the organization of the community college district and the election of trustees for ~~such~~ the community college district ~~shall~~ must be conducted, in accordance with the school election laws, by the trustees of the elementary districts ordered to call ~~such~~ the election. ~~The cost of~~ All costs incidental to conducting ~~such an~~ election shall for the organization of a community college district and the initial election of trustees for the community college district must be borne by the ~~districts~~ board of regents, including one-half of the compensation of the judges for the election. However, if the election for the organization of a community college district and initial election of trustees for the community college district is the only election conducted, the board of regents shall compensate the elementary districts for the total cost of the election."

NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 2007.

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