

REVISE TEACHER TENURE

House Bill 4625

Sponsor: Rep. William Rogers

House Bill 4626

Sponsor: Rep. Paul Scott

House Bill 4627

Sponsor: Rep. Margaret O'Brien

House Bill 4628

Sponsor: Rep Ken Yonker

Committee: Education

Complete to 5-10-11

A PRELIMINARY SUMMARY OF HOUSE BILLS 4625-4628 AS INTRODUCED 5-10-11

The four bills would revise Michigan's Teacher Tenure Law, the Revised School Code, and the Public Employment Relations Act to set new standards with the aim of ensuring more effective teaching. The following changes to the law are among those that are proposed:

- Require each school district's performance evaluation system to rate teachers as "highly effective," "effective," "minimally effective," or "ineffective."
- Modify the number and consequences of probationary periods.
- Revise tenure hearing procedures.
- Establish the permissible grounds for the discharge or demotion of teachers on continuing tenure.
- Limit the length of time a teacher's salary continues during a suspension.
- Make "effectiveness" (rather than seniority) the determining factor when a workforce reduction is necessary.
- Establish and require a mutual consent policy for teacher placement.
- Add six additional subjects that would be prohibited from collective bargaining, including (1) placement of teachers; (2) personnel decisions when conducting a reduction in force, a recall, or when hiring; (3) performance evaluation systems; (4) the discharge or discipline of employees; (5) the format or number of classroom observations conducted during performance evaluations; and (6) the method of performance-based compensation.

All of the bills are tie-barred to each other so that none could go into effect unless the others were also enacted into law. A detailed description of each bill follows.

House Bill 4625

House Bill 4625 would amend several sections of the Teacher Tenure Law (MCL 38.81 et al) to set standards for achieving and retaining teacher tenure; and to revise the tenure hearing procedures.

Currently under the law, a teacher is in a probationary period during the first four full school years of employment. House Bill 4625 would extend the length of the probationary period to five years. And, the act specifies that a teacher who was under contract but not on continuing tenure as of the effective date of the bill would be considered to have been in a probationary period during the first two full school years of employment. House Bill 4625 would extend the length of the probationary period for teachers under contract but not on continuing tenure as of the effective date of bill from two years to four years

Under current law, a probationary teacher must receive a definite written statement as to whether or not his or her work has been satisfactory at least 60 days before the close of each school year. House Bill 4625 would eliminate the 60-day notice. Under the law, failure to submit a written statement is considered evidence that the teacher's work is satisfactory. House Bill 4625 would eliminate this provision. Currently the law states that a probationary teacher or a teacher not on continuing contract will be employed for the ensuing year unless notified in writing at least 60 days before the close of the school year, that his or her services will be discontinued. House Bill 4625 would eliminate the 60-day notice.

House Bill 4625 specifies that a teacher who is in a probationary period may be dismissed from employment by the controlling board at any time.

The bill also specifies that if a teacher who is in a probationary period is rated as ineffective on two performance evaluations during the same school year, the controlling board would be required to dismiss the teacher from employment.

Now under the law, the controlling board of a probationary teacher must ensure that the teacher is provided with an individualized development plan, and at least an annual year-end performance evaluation each year of the probationary period. The evaluation must involve at least two classroom observations held at least 60 days apart, unless mutually agreed upon by the teacher and administration. House Bill 4625 would modify this provision to eliminate the requirement that there be two classroom observations, and that they be held at least 60 days apart.

The law now specifies that the subsection concerning performance evaluations need not prevent a collective bargaining agreement between the controlling board and the teacher's bargaining representative from providing for more performance evaluations or classroom observations in addition to those required. Further, the law specifies that failure of a school district to comply with this requirement in a particular school year stands as conclusive evidence that that an individual teacher's performance for that school year is

satisfactory. House Bill 4625 would eliminate both of these provisions. Instead, the bill would require the controlling board to determine the format and number of the classroom observations, and specify that a performance evaluation shall be conducted in accord with section 1249 of the Revised School Code. (Section 1249 is attached in ***Background Information*** on the last page of the summary.)

House Bill 4625 specifies that a teacher shall not be considered to have successfully completed the probationary period unless the teacher has been rated as effective or better on the three most recent performance evaluations.

House Bill 4625 also specifies that for a teacher who had continuing tenure and was placed in an additional probationary period, all of the following would apply:

- The teacher would not be considered to have successfully completed the additional probationary period unless the teacher had been rated as effective or better on the two most recent performance evaluations.
- The teacher would be dismissed from employment, if the teacher failed to achieve a rating as effective or better on two consecutive performance evaluations during the additional probationary period.
- A teacher's additional probationary period could not exceed five full school years, and the teacher would be dismissed if he or she did not successfully complete the new probationary period within that five-year time period.
- A controlling board could not place the teacher in an additional probationary period more than two times.

Under current law, after the satisfactory completion of the probationary period, a teacher is employed continuously by a controlling board, and cannot be dismissed or demoted except as specified in the tenure law. House Bill 4625 would modify this provision to specify that after the satisfactory completion of the probationary period, a teacher is considered to be on continuing tenure under this act, subject to Section 1A of Article III (see below). Now under the law, if a tenured classroom teacher who takes another educational position in the district (including, but not limited to, a superintendent, assistant superintendent, principal, department head, or director of curriculum), the teacher's tenure does not necessary follow to the new position, but the tenure in the classroom continues. House Bill 4625 would retain this provision.

Under the law, if a board does not re-employ the teacher in the non-teaching position, the teacher is continuously employed as an active classroom teacher. Further, failure of a board to re-employ a teacher is not considered to be a demotion, and the salary in the position to which the teacher is assigned is the same as if the teacher had been continuously employed in the newly assigned position. House Bill 4625 would modify this provision to eliminate the phrase "*in the newly assigned position,*" and insert, instead, "*as a classroom teacher.*" Further, now under the law, the failure of a board to provide in a non-classroom teacher's contract the promise that the salary will continue when the board fails to re-employ the teacher in the non-classroom position is considered to

constitute the teacher's employment on continuing contract. House Bill 4625 would eliminate this provision.

House Bill 4625 specifies, in Section 1A of Article III, that if a teacher who is on continuing tenure is rated as ineffective on a performance evaluation, then the controlling board must require the teacher to serve an additional probationary period.

Further, if a teacher who is on continuing tenure is rated as minimally effective on a performance evaluation, then the board may require the teacher to serve an additional probationary period.

The bill also specifies that a teacher who is placed in an additional probationary period in the instances described above, is a probationary teacher during that additional probationary period for all purposes under the act, and shall not be considered to be on continuing tenure during that time.

Under the bill, a controlling board would be prohibited from placing a teacher in an additional probationary period more than two times. If a teacher met the standard for being placed in an additional probationary period more than twice, then the teacher would be dismissed from employment.

Now under the law, a teacher on continuing tenure who is employed by another board need not be subject to another probationary period of more than two years, and may at the option of the controlling board be placed immediately on continuing tenure. House Bill 4625 would retain this provision, except if the teacher had been placed in an additional probationary period by an earlier school district.

Under current law, a teacher on continuing tenure must have a performance evaluation at least once every three years. House Bill 4625 would eliminate this requirement, and instead require an annual performance evaluation. Now under the law, if a teacher receives less than a satisfactory performance evaluation, the school district provides the teacher with an individualized development plan. House Bill 4625 would retain this provision, but modify it so that a plan would be developed when a teacher received a rating of "ineffective." The bill also specifies that the individual development plan must require the teacher to make progress toward individual development goals within a specified time period, not to exceed 180 days.

The act currently requires that a teacher's performance evaluation be based on, but not be limited to, at least two classroom observations, if the teacher has an individualized development plan. House Bill 4625 would modify this provision to eliminate "at least two" classroom observations, and insert, instead, "multiple" classroom observations, and also require that the performance evaluation include all factors required under Section 1249 of the Revised School Code. Further, House Bill 4625 would require that the controlling board of a school district determine the format and number of the classroom observations in consultation with teachers and school administrators.

At present, the law specifies that failure of a school district to comply with this subsection, with respect to a teacher in a three-year period is conclusive evidence that the teacher's performance for that period is satisfactory. House Bill 4625 would eliminate this provision.

Now under the law, a teacher with continuing tenure may contest a controlling board's decision to proceed upon the charges against the teacher by filing a claim of appeal with the tenure commission within 20 days of receiving the board's decision. House Bill 4625 would retain this provision. Then an administrative law judge issues to both parties a notice of hearing, fixing the time and place. That hearing takes place not less than 10 days after the date the notice is furnished, and not more than 60 days after service of the board's answer, unless the tenure commission grants a delay for good cause, shown by either the teacher or the controlling board. House Bill 4625 would retain these provisions.

The tenure law describes in some detail the manner in which the administrative hearing and the tenure commission review must be conducted. (See Article IV, Section 4.) House Bill 4625 would retain all of these procedures, but modify three. First, under current law, the hearing can be public or private, at the option of the teacher. Under the bill, the hearing can be public or private at the option of the administrative law judge. Second, now under the law, a hearing must be concluded not later than 90 days after the teacher's claim of appeal is filed with the tenure commission. Under the bill, the hearing would have to be concluded not later than 60 days after the claim of appeal is filed. Third, currently if exceptions are filed, the tenure commission, after review of the record and the exceptions, may adopt, modify, or reverse the preliminary decision and order. In contrast, under the bill the tenure commission may adopt or reverse (not modify) the preliminary decision and order, if exceptions are filed.

House Bill 4626

House Bill 4626 would amend several sections of the Teacher Tenure Act (MCL 38.72 et al.) to revise the permissible grounds for the discharge or demotion of a teacher on continuing tenure, change the definition of "demote," and limit the length of time a teacher's salary continues during a suspension. A more detailed description of the bill follows.

Currently, discharge or demotion of a teacher on continuing tenure may be made only for reasonable and just cause. House Bill 4626 would eliminate "reasonable and just cause" and insert, instead, discharge or demotion of a teacher on continuing tenure may be made only for *a reason that is not arbitrary and capricious*.

The bill also specifies that there is a rebuttable presumption that a teacher whose job performance has been rated as ineffective on two consecutive performance evaluations under Section 1249 of the Revised School Code, is an ineffective teacher.

Currently if a teacher is suspended, the teacher's salary continues during the suspension. Instead, House Bill 4626 specifies that a suspended teacher's salary will continue during the suspension until the expiration of 90 days after the teacher's claim of appeal is filed with the tenure commission, or until the conclusion of the hearing conducted under Section 4(5), whichever is earlier. (Currently, a governing board can discontinue a teacher's salary upon conviction of a crime; this provision would be retained in House Bill 4626.)

Current law defines "demote" to mean to reduce compensation for a particular school year by more than an amount equivalent to three days' compensation or to transfer to a position carrying a lower salary. House Bill 4626 would change the definition so that the term "demote" would mean to *suspend without pay for 20 or more consecutive days or reduce compensation for a particular school year by more than an amount equivalent to 40 days' compensation or to transfer to a position carrying a lower salary*. The bill continues: However, demote does not include discontinuance of salary under Section 3 of Article IV *or a necessary reduction in personnel, including, but not limited to, a reduction in workweeks or workdays*.

House Bill 4627

House Bill 4627 would amend the Revised School Code (MCL 380.1 et al) to add two new sections which would make "effectiveness" the determining factor when a reduction in the number of teachers is required, and also establish and require a mutual consent policy for teacher placement. A more detailed explanation of the bill follows.

The bill would require that the board of a school district, intermediate school district, or charter school adopt, implement, maintain, and comply with a policy for the placement of teacher that is based on mutual consent of the teacher and the school principal. This policy would have to meet all of the following:

- Ensure that a school principal has the authority to select teachers for a school who have demonstrated effectiveness and who have appropriate qualifications.
- Ensure that the placement of a teacher in a school is made only with the mutual consent of the teacher and the school principal.
- Provide, in its policy, that if a teacher is unable to obtain an assignment by mutual consent within the school district or charter school within 30 days, the teacher would be placed on unpaid leave. If the teacher obtained an assignment by mutual consent while placed on unpaid leave, the district or charter school would reinstate the teacher's salary and benefits at the level at which they would have been if the teacher had not been placed on the unpaid leave.

House Bill 4627 specifies that if the performance evaluation system implemented by a school district or charter school does not already include the rating of teachers as "highly effective," "effective," "minimally effective," and "ineffective," then they would be required to revise their evaluation systems within 60 days after this legislation goes into effect.

If a collective bargaining agreement is in effect, and if it prevents compliance with this requirement, then the requirement to revise the performance evaluation system would not apply until after the expiration of that collective bargaining agreement.

The bill would define "school principal" to mean the chief administrator in charge of the daily operations of a school.

Under the bill, all of the following would apply to policies regarding personnel decisions when conducting a reduction in force, or a recall from a reduction in force, or in hiring after a reduction in force by a school district or charter school:

- The board of a school district or charter school would be prohibited from adopting, implementing, maintaining, or complying with a policy that provides that length of service (customarily called "seniority") is the primary or determining factor in personnel decisions when conducting a reduction in force or recall of workers.
- The board of a school district or charter school would be required to ensure that its policies for personnel decisions concerning a reduction in force or a recall of workers are based on effectiveness. The bill specifies that for teachers and administrators, effectiveness must be measured by the performance evaluation system under Section 1249 of the code, and be based on the following factors:

(1) *Individual performance* shall be the majority factor in making the decision, and shall consist of the following:

(a) evidence of increased student achievement, which shall be the predominant factor in assessing an employee's individual performance; and

(b) demonstrated pedagogical skills, including at least planning, delivering rigorous content, checking for and building higher-level understanding, differentiating, and managing a classroom; and consistent preparation to maximize instructional time.

(2) *Significant, relevant accomplishments and contributions.* Under the bill, this factor must be based on whether the individual contributes to the overall performance of the school by making clear, significant, relevant contributions above the normal expectations for an individual in his or her peer group, and having demonstrated a record of exceptional performance.

(3) *Relevant special training.* Under the bill, this factor must be based on completion of relevant training other than the professional development or continuing education that is required by the employer or by state law, and integration of that training into instruction in a meaningful way.

The board would be required to ensure that its policies for personnel decisions did not include length of service (seniority) as a factor.

House Bill 4627 also specifies that if a collective bargaining agreement is in effect for employees of a school district or charter school when this legislation goes into effect, and if that collective bargaining agreement prevents compliance, then this section would not apply until after the expiration of the collectively bargaining agreement.

House Bill 4628

House Bill 4628 would amend the Public Employment Relations Act (MCL 423.215) to specify additional prohibited subjects of bargaining for public school employees.

Currently under the law, public school employees are prohibited from bargaining about nine separate items, including (1) who is or will be the policyholder of an employee group insurance benefit; (2) the starting day for the school years and the amount of student contact time; (3) the composition of school improvement committees; (4) the decision of whether or not to provide or allow inter-district or intra-district open enrollment opportunities; (5) the decision to act as an authorizing body or grant a contract to operate charter schools; (6) the decision of whether or not to contract with a third party for non-instructional support services; (7) the use of volunteers in providing services at schools; (8) decisions concerning use of experimental or pilot programs; and (9) any compensation or additional work assignment intended to reimburse an employee for or allow an employee to recover any monetary penalty under the act. House Bill 4628 would retain all of these subjects as those that would remain prohibited under collective bargaining.

In addition, House Bill 4628 would *add six additional subjects that would be prohibited from collective bargaining*, including decisions about the development, content, standards, procedures, adoption, and implementation of the following:

- The public school employer's policy for placement of teachers.
- The public school employer's policies regarding personnel decisions when conducting a reduction in force, or a recall or hiring of workers.
- The performance evaluation system, including decisions concerning the content of a performance evaluation of an employee, or the impact of those decisions on an individual employee or the bargaining unit.
- The policy regarding discharge or discipline of an employee, or the impact of such a decision on an individual employee or the bargaining unit.
- The format or number of classroom observations conducted for the purpose of performance evaluations, or the impact of those decisions on an individual employee or bargaining unit.
- The method of performance-based compensation, and decisions about how an employee performance evaluation is used to determine performance-based compensation.

FISCAL IMPACT:

A fiscal analysis is in process.

BACKGROUND INFORMATION:

The following is the section of the Revised School Code that currently governs performance evaluations.

THE REVISED SCHOOL CODE (EXCERPT) Act 451 of 1976

380.1249 Performance evaluation system; effect of collective bargaining agreement; evaluations for school principals.

Sec. 1249. (1) Not later than September 1, 2011, and subject to subsection (2), with the involvement of teachers and school administrators, the board of a school district or intermediate school district or board of directors of a public school academy shall adopt and implement for all teachers and school administrators a rigorous, transparent, and fair performance evaluation system that does all of the following:

(a) Evaluates the teacher's or school administrator's job performance at least annually while providing timely and constructive feedback.

(b) Establishes clear approaches to measuring student growth and provides teachers and school administrators with relevant data on student growth.

(c) Evaluates a teacher's or school administrator's job performance, using multiple rating categories that take into account data on student growth as a significant factor. For these purposes, student growth shall be measured by national, state, or local assessments and other objective criteria.

(d) Uses the evaluations, at a minimum, to inform decisions regarding all of the following:

(i) The effectiveness of teachers and school administrators, ensuring that they are given ample opportunities for improvement.

(ii) Promotion, retention, and development of teachers and school administrators, including providing relevant coaching, instruction support, or professional development.

(iii) Whether to grant tenure or full certification, or both, to teachers and school administrators using rigorous standards and streamlined, transparent, and fair procedures.

(iv) Removing ineffective tenured and untenured teachers and school administrators after they have had ample opportunities to improve, and ensuring that these decisions are made using rigorous standards and streamlined, transparent, and fair procedures.

(2) If a collective bargaining agreement is in effect for teachers or school administrators of a school district, public school academy, or intermediate school district as of January 4, 2010, and if that collective bargaining agreement prevents compliance with subsection (1), then subsection (1) does not apply to that school district, public school academy, or intermediate school district until after the expiration of that collective bargaining agreement.

(3) A school district, intermediate school district, or public school academy shall continue to conduct the evaluations for school principals that are currently required by the department through the 2010-2011 school year. At the end of the 2010-2011 school year, a school district, intermediate school district, or public school academy shall report the most recently completed or determined "effectiveness label" from that evaluation for each principal who is in place for 2010-2011, in a form and manner prescribed by the department.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.