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BILL ANALYSIS

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House Bill 4625 (Substitute H-7 as passed by the House)
House Bill 4626 (Substitute H-2 as passed by the House)
House Bill 4627 (Substitute H-3 as passed by the House)
House Bill 4628 (Substitute H-3 as passed by the House)

Sponsor: Representative William Rogers (H.B. 4625)
Representative Paul Scott (H.B. 4626)
Representative Margaret O'Brien (H.B. 4627)
Representative Ken Yonker (H.B. 4628)

House Committee: Education
Senate Committee: Education

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CONTENT

House Bill 4625 (H-7) would amend the teachers' tenure law to do the following:

- Increase the probationary period from four full school years to five.
- Reduce the probationary period to three years for a teacher who was rated as highly effective on three consecutive year-end evaluations.
- Require a probationary teacher to be notified at least 15 days, rather than 60, before the end of a school year that his or her services would be discontinued.
- Allow a probationary teacher to be dismissed at any time.
- Require a probationary teacher to be dismissed if he or she were rated as ineffective on two annual evaluations over a two-year period.
- Provide for an additional probationary period for a teacher on continuing tenure who was rated as ineffective or minimally effective on two consecutive year-end evaluations.
- Require a teacher serving an additional probationary period to be dismissed unless he or she were rated as effective or better on two consecutive year-end evaluations during that period.

- Allow the dismissal of a teacher on continuing tenure if he or she held a particular certificate, endorsement, or certification and allowed it to lapse, under certain circumstances.
- Require a controlling board to determine the number and format of classroom observations for probationary teachers and teachers on continuing tenure.

House Bill 4626 (H-2) would amend the teachers' tenure law to:

- Allow a teacher on continuing tenure to be dismissed for a reason that was not arbitrary and capricious, rather than for reasonable and just cause.
- Create a rebuttable presumption that a teacher was ineffective if he or she had been rated as ineffective on two consecutive evaluations.
- Limit the time a suspended teacher's salary would be continued after charges were filed under the tenure law.
- Require a teacher to verify his or her ability to perform essential job functions after being placed on unrequested leave for physical or mental disability.
- Revise the definition of "demote".

House Bill 4627 (H-3) would amend the Revised School Code to require the board of a school district or intermediate school district (ISD) to adopt a policy for placement of teachers when conducting a reduction in force or recall from a reduction, or in hiring after a reduction in force. Regarding this policy, the bill would:

- Require the policy to authorize the principal to select teachers who had demonstrated effectiveness and qualifications.
- Require the policy to provide for unpaid leave if a teacher could not be assigned within 30 days.
- Require the policy to exempt a teacher who was rated as effective or highly effective on his or her most recent evaluation.

The bill also would establish provisions that would apply to personnel decisions concerning teachers when a district conducted a reduction in force or a recall from a reduction, or in hiring after a reduction in force. Under these provisions:

- A school board could not adopt a policy providing that length of service was the primary or determining factor when eliminating a position.
- A board would have to ensure that a district based decisions on effectiveness, measured by the performance evaluation system required under the Code.
- Individual performance would have to be the major factor in decision-making, and individual performance would consist of evidence of increased student achievement and demonstrated pedagogical skills.
- Length of service could not be a factor unless all of the factors concerning two or more employees were equal.

The bill's requirements would not until a district's collective bargaining agreement expired, if the agreement prevented compliance.

House Bill 4628 (H-3) would amend the public employment relations Act to prohibit certain subjects from being included in collective bargaining between a public school employer and a representative of its employees. These subjects would include the following:

- Policies governing teacher placement or personnel decisions (as required under House Bill 4627(H-3)).
- An employer's performance evaluation system.
- Decisions about a policy for discharging or disciplining teachers subject to the tenure law, and the discharge or discipline of an individual teacher.
- Classroom evaluation decisions.
- A performance-based method of compensation.

All of the bills are tie-barred to each other.

House Bill 4625 (H-7)

Probationary Teachers

Probationary Period; Dismissal. Under the teachers' tenure law, a teacher typically is in a probationary period during his or her first four full school years of employment.

The bill would increase the probationary period to five full school years. A teacher under contract but not on continuing tenure as of the bill's effective date would be in a probationary period during his or her first four full school years of employment.

Currently, at least 60 days before the end of each school year, the controlling board must give a probationary teacher a definite written statement as to whether his or her work has been satisfactory. Failure to do so must be considered conclusive evidence that the teacher's work is satisfactory. A probationary teacher or a teacher not on continuing contract must be employed for the next year unless notified in writing at least 60 days before the end of the school year that his or her services will be discontinued.

The bill, instead, would require a controlling board to give a probationary teacher a statement as to whether his or her work had been effective, before the end of the school

year. Subject to the following provision, a probationary teacher or a teacher not on a continuing contract would have to be employed for the next year unless given written notice at least 15 days before the end of the school year that his or her services would be discontinued.

A teacher who was in a probationary period could be dismissed from his or her employment by the controlling board at any time.

If a teacher who was in a probationary period were rated as ineffective on two annual year-end performance evaluations over a two-school-year period under Section 1249 of the Revised School Code, the controlling board would have to dismiss the teacher from employment.

(The tenure law defines "controlling board" as all boards having management or control over public school districts and public educational institutions other than public school academies.

Section 1249 of the Revised School Code requires the board of a school district or ISD to adopt and implement for all teachers and administrators a performance evaluation system that evaluates the person's job performance at least annually, using multiple rating categories that take into account data on student growth as a significant factor, and uses the evaluations to inform decisions regarding effectiveness; promotion, retention, and development; whether to grant tenure or full certification; and removing ineffective tenured and untenured teachers and administrators.)

Performance Evaluations. Currently, if a probationary teacher is employed by a school district for at least one full school year, the controlling board of the teacher's employing school district must ensure that the teacher is provided with an individualized development plan, and that the teacher is provided with at least an annual year-end performance evaluation during his or her probationary period. The bill would delete the requirement that the teacher be employed for at least one full school year in order for these actions to be taken. In addition to the annual year-end evaluation, the teacher would have to be provided with one other performance evaluation during the probationary period.

Currently, the year-end evaluation must be based on at least two classroom observations held at least 60 days apart, unless the teacher and the administration agree to a shorter interval. The bill would require that the year-end evaluation be based on classroom observations. The bill would require the controlling board to determine the format and number of the classroom observations in consultation with teachers and school administrators. A performance evaluation would have to be conducted according to Section 1249 of the Revised School Code.

Rating. Under the bill, except as provided below, a teacher could not be considered to have successfully completed the probationary period unless he or she had been rated as effective or better on his or her three most recent annual year-end performance evaluations under Section 1249, and had completed five full school years of employment in a probationary period.

If a teacher had been rated as highly effective on three consecutive year-end evaluations and had completed at least three full school years of employment in a probationary period, he or she would have to be considered to have successfully completed the probationary period.

Tenured Teacher; Additional Probationary Period. For a teacher who had continuing tenure and was placed in an additional probationary period (as provided below), the teacher could not be considered to have successfully completed the additional period unless he or she had been rated as effective or better on his or her two most recent annual year-end performance evaluations under Section 1249.

The controlling board would have to dismiss the teacher from employment if the teacher failed to achieve a rating as effective or better on two consecutive annual year-end performance evaluations during his or her additional probationary period.

The teacher's additional probationary period could not exceed five full school years of employment. The controlling board would have to dismiss the teacher from employment if he or she did not successfully complete the additional probationary period by the end of the five-year period.

A controlling board could not place the teacher in an additional probationary period more than once.

Continuing Tenure

Employment. The teachers' tenure law provides that, after the satisfactory completion of the probationary period, a teacher must be employed continuously by the controlling board under which the probation was completed and may not be dismissed or demoted except as specified in the law. Under the bill, the teacher would be considered to be on continuing tenure, and the provision regarding employment, dismissal, and demotion would be subject to provisions for an additional probationary period and for dismissal of a teacher whose certificate, endorsement, or certification was allowed to lapse or nullified.

Additional Probationary Period. If a teacher on continuing tenure were rated as ineffective on two consecutive annual year-end performance evaluations under Section 1249 of the Revised School Code, the controlling board would have to require the teacher to serve an additional probationary period. If a teacher on continuing tenure were rated as minimally effective on two consecutive annual year-end performance evaluations, the controlling board could require the teacher to serve an additional probationary period.

In either case, the teacher would be a probationary teacher during that additional period for all purposes under the tenure law and could not be considered to be on continuing tenure for any purpose during that period.

Evaluations. The tenure law requires the controlling board of a school district employing a teacher on continuing tenure to ensure that he or she is provided with a performance evaluation at least once every three years, and requires the evaluation to be based on at least two classroom observations. Under the bill, the teacher would have to be provided with an annual year-end performance evaluation in accordance with Section 1249 of the Revised School Code, based on multiple classroom observations.

Currently, if a teacher has received a less-than-satisfactory evaluation, the district

must provide him or her with an individualized development plan. The bill would require this if the teacher received a rating of ineffective. The plan would have to require the teacher to make progress toward individual development goals within a specified time period, not to exceed 180 days.

The controlling board would have to determine the format and number of the classroom observations in consultation with teachers and school administrators.

Currently, a district's failure to comply with the requirement to perform evaluations with respect to a teacher in a particular three-year period is conclusive evidence that the teacher's performance for that period was satisfactory. The bill would delete this provision.

Dismissal

Under the bill, if a teacher on continuing tenure held a particular teaching certificate, endorsement on the teaching certificate, or grade level certification included in the teaching certificate at the time he or she achieved continuing tenure, and subsequently allowed it to lapse or nullified it, the controlling board could dismiss the teacher from employment under either of the following circumstances:

- The board did not have available a teaching position for which the teacher held a valid teaching certificate, endorsement, or grade level certification.
- The position to which the officials of the board wanted to assign the teacher required a valid teaching certificate, endorsement, or grade level certification that the teacher had allowed to lapse or had nullified.

House Bill 4626 (H-2)

Definition of "Demote"

The teachers' tenure law defines "demote" as to reduce compensation for a particular school year by more than an amount equivalent to three days' compensation or to transfer to a position with a lower salary. The bill would define "demote" as to suspend without pay for 15 or more consecutive days or reduce compensation for a particular school year by more than an

amount equivalent to 30 days' compensation, or to transfer to a position with a lower salary.

Currently, the term does not include discontinuance of salary under provisions allowing the suspension of a teacher against whom charges have been filed. Under the bill, the term also would not include a necessary reduction in personnel, including a reduction in workweeks or workdays.

Arbitrary & Capricious Standard; Ineffective Teacher

Currently, except as otherwise provided, a teacher on continuing tenure may be discharged or dismissed only for reasonable and just cause. Under the bill, instead, a teacher on continuing tenure could be discharged or dismissed only for a reason that was not arbitrary and capricious.

There would be a rebuttable presumption that a teacher whose job performance had been rated as ineffective on two consecutive performance evaluations under Section 1249 of the Revised School Code was an ineffective teacher.

Suspension

The tenure law prescribes procedures for filing charges against a teacher, and allows the controlling board to suspend the teacher from active performance of duty when charges are filed. The teacher's salary must continue during the suspension, unless the teacher is convicted of a felony or of a misdemeanor that is a listed offense (as defined in the Sex Offender Registration Act).

Under the bill, the teacher's salary would have to continue until the expiration of 90 calendar days after the teacher's claim of appeal was filed with the tenure commission or until the conclusion of a hearing, whichever was earlier.

Leave of Absence

The tenure law authorizes a controlling board to place a teacher on a leave of absence upon the teacher's request. A board also may place a teacher on an unrequested leave of absence because of physical or mental disability.

Under the bill, in the case of a teacher who was on an unrequested leave of absence, as a condition of reinstating the teacher when the leave of absence expired, the controlling board could require the teacher to furnish verification acceptable to the board of the teacher's ability to perform his or her essential job functions.

House Bill 4627 (H-3)

District Policy

The bill would require the board of a school district or ISD that operates more than one school building to ensure that the district or ISD adopted, implemented, maintained, and complied with a policy for placement of teachers when conducting a reduction in force or a recall from a reduction in force, or in hiring after a reduction of force. The policy would have to be based on the mutual consent of the teacher and the school principal.

The policy would have to ensure both of the following:

- That a school principal had the authority to select teachers for his or her school who had demonstrated effectiveness and had appropriate qualifications.
- That the placement of a teacher in a school was made only with the mutual consent of the teacher and the principal.

The policy would have to provide that if a teacher were unable to obtain an assignment by mutual consent within the district within 30 days, the teacher would be placed on unpaid leave until he or she was able to obtain an assignment by mutual consent within the district. If the teacher were able to do so, the district would have to reinstate his or her salary and benefits at the level where they would have been if the teacher had not been placed on unpaid leave.

The policy also would have to provide that a teacher who was rated as effective or highly effective on his or her most recent performance evaluation under Section 1249 would be exempt from the policy.

If the performance evaluation system under that section did not already include the rating of teachers as highly effective, effective, minimally effective, and

ineffective, the school district or ISD would have to revise the system within 60 days after the bill's effective date, to ensure that it rated teachers in that manner.

If a collective bargaining agreement were in effect for employees of a school district or ISD on the bill's effective date and prevented compliance with the requirement to adopt and implement a policy as described above, the requirement would not apply to that district until the agreement expired.

Personnel Decisions

For teachers, as defined in the teachers' tenure law, all of the following provisions would apply to policies regarding personnel decisions when a school district or ISD conducted a reduction in force or a recall from a reduction in force or in hiring after a reduction in force. (The teachers' tenure law defines "teacher" as a certificated individual employed for a full school year by any board of education or controlling board.)

The board of a school district or ISD could not adopt, implement, maintain, or comply with a policy that provided that length of service was the primary or determining factor in personnel decisions when conducting a reduction in force or any other personnel determination resulting in the elimination of a position, or a recall from a reduction in force or any other personnel determination resulting in the elimination of a position, or in hiring after a reduction in force or any other personnel determination resulting in the elimination of a position.

The board of a school district or ISD would have to ensure that the district adopted, implemented, maintained, and complied with a policy that provided that all such personnel decisions were based on effectiveness. Effectiveness would have to be measured by the performance evaluation system under Section 1249. The personnel decisions would have to be based on the factors described below.

Individual performance would have to be the majority factor in making the decision, and would have to consist of the following:

- Evidence of increased student achievement, which would have to be

the predominant factor in assessing an employee's individual performance.

- 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.

The factors also would include significant, relevant accomplishments and contributions, based on whether the individual contributed 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.

In addition, the factors would include relevant special training, based on completion of relevant training other than the professional development or continuing education required by the employer or by State law, and integration of that training into instruction in a meaningful way.

Length of service could not be a factor in the personnel decisions described above. If a personnel decision involved two or more employees and all other factors distinguishing them from each other were equal, however, then length of service could be considered as a tie-breaker.

If a collective bargaining agreement were in effect for employees of a district on the bill's effective date and prevented compliance with the bill's requirement regarding personnel decisions, the requirement would not apply to that district until the agreement expired.

House Bill 4628 (H-3)

The public employment relations Act prohibits collective bargaining between a public school employer and a bargaining representative of its employees from including any of the subjects identified in the Act. Under the bill, prohibited subjects of bargaining also would include decisions about the subjects described below, as well as the impact of those decisions on an individual employee or the bargaining unit.

The prohibited subjects would include decisions about the development, content,

standards, procedures, adoption, and implementation of the following:

- The employer's policy for placement of teachers required under Section 1247 of the Revised School Code, any decision made by the employer pursuant to that policy.
- The employer's 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 or any other personnel determination resulting in the elimination of a position as provided in Section 1248 of the Revised School Code, and any decision made by the employer pursuant to those policies.
- A performance evaluation system including the employer's system adopted under Section 1249 of the Revised School Code, and decisions concerning the content of a performance evaluation of an employee.

(Sections 1247 and 1248 of the Revised School Code are the sections that House Bill 4627 (H-2) would add.)

For public employees who are teachers as defined in the teachers' tenure law, prohibited subjects of bargaining would include decisions about the development, content, standards, procedures, adoption, and implementation of a policy regarding employee discharge or discipline, and decisions about the discharge or discipline of an individual employee. Also, for public employees who are teachers, a public school employer could not adopt, implement, or maintain a policy for employee discharge or discipline that included a standard that was different from the arbitrary and capricious standard provided under the teachers' tenure law (under House Bill 4626 (H-2)).

Prohibited subjects of bargaining also would include decisions about the format, timing, or number of classroom observations conducted under the teachers' tenure law (under House Bill 4625 (H-7)), and decisions concerning the classroom observation of an individual employee.

In addition, prohibited subjects of bargaining would include decisions about the development, content, standards, procedures, adoption, and implementation of the method of compensation required under

Section 1250 of the Revised School Code, decisions about how an employee performance evaluation was used to determine performance-based compensation under that section, and decisions concerning the performance-based compensation of an individual employee.

(Section 1250 requires school districts and ISDs to implement a method of compensation for teachers and administrators that includes job performance and accomplishments as a significant factor in determining compensation.)

MCL 38.81-38.83a (H.B. 4625)
MCL 38.74 et al. (H.B. 4626)
Proposed MCL 380.1247 & 380.1248 (H.B. 4627)
MCL 423.215 (H.B. 4628)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

State: The fiscal impact on the State is indeterminate, and would depend upon whether this package of bills resulted in more or fewer hearings brought before the Teacher Tenure Commission. In addition, the State would see increased costs due to reformatting the Michigan Online Educator Certification System to incorporate certification changes that would occur because of changes in probationary status.

Local: The fiscal impact on school districts and intermediate districts under this package of bills is indeterminate.

The requirements to adopt and implement policies for annual teacher evaluations and additional probationary teacher evaluations, effectiveness ratings, and reducing or replenishing workforce based on effectiveness and not length of service, likely would result in some additional costs to ensure that local policies complied with the requirements in the bills.

The overall shift in requiring districts and intermediate districts to fill (or reduce) positions based on effectiveness ratings and not seniority could result in some hiring and cost changes, if the effectiveness ratings were found to be significantly different than the seniority levels. However, if effectiveness ratings were found to be fairly similar to seniority levels (i.e., if senior teachers who are likely at the higher end of

the pay scale are rated effective), then there would not be any significant fiscal impact from this requirement since senior teachers who are effective probably would retain jobs in a workforce reduction or fill positions when rehiring was done, as often found in current practice.

The bills also would provide for a longer period during which a demoted teacher's salary can be suspended, under certain conditions, which could provide for some potential savings if implemented at the local level. It is unknown how many teachers on continuing tenure would face discharge or demotion due to the change from "reasonable and just cause" to "a reason that is not arbitrary and capricious".

The shortened tenure appeal process and the mandatory dismissal of ineffective probationary teachers, and allowing for probationary teachers to be dismissed at any time, could provide some procedural cost relief for districts and intermediate districts. Also, the requirement that a teacher (who was not rated effective or highly effective) be placed on unpaid leave until obtaining a mutually agreeable assignment could produce local savings if or when this situation was encountered.

Fiscal Analyst: Kathryn Summers

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.