

# Legislative Analysis

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## TEACHER TENURE, DEPLOYMENT, EVALUATION AND EFFECTIVENESS

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**House Bill 4625 as passed by the House**  
**Sponsor: Rep. Bill Rogers**

**House Bill 4627 as passed by the House**  
**Sponsor: Rep. Margaret O'Brien**

**House Bill 4626 as passed by the House**  
**Sponsor: Rep. Paul Scott**

**House Bill 4628 as passed by the House**  
**Sponsor: Rep. Ken Yonker**

**Committee: Education**  
**Second Analysis (6-15-11)**

**BRIEF SUMMARY:** The four bills aim to ensure that ineffective teachers improve their practice or be removed from the teaching profession in a more timely manner. The bills would, among other things, do the following:

- 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.
- Eliminate "reasonable and just cause" as the sole criterion for discharge and demotion and instead say that the discharge or demotion of a teacher on continuing tenure may be made only for "a reason that is not arbitrary and capricious."
- 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.

**FISCAL IMPACT:** The bills would have an indeterminate impact on both local school districts, intermediate districts and the State. Certain aspects of the bills like limiting the length of time a teacher's salary continues during a suspension, shortening the tenure appeal process, and prohibiting the use of seniority for a reduction in force, which would allow for the potential reduction of higher paid staff, could create savings for districts and intermediate districts. However, other aspects like revising teacher rating categories and teacher retention policies, requiring annual performance evaluations, and creating

additional student assessments necessary for use in evaluations could increase costs at both the district and state level.

### ***THE APPARENT PROBLEM:***

The practice of granting school tenure to school teachers began in Michigan in 1937 when the legislature authorized each school district to approve a system of tenure for their teachers. Later, in 1964, the legislature made the provisions of the Teachers' Tenure Act applicable to all school districts in Michigan. Like the tenure acts across the United States Michigan's law was put in place to ensure teachers a measure of job security; to protect them from arbitrary employment practices such as political patronage; and to advance academic freedom by protecting teachers who promoted open, but sometimes controversial, inquiry and ideas in their classrooms.

Continuing tenure--earned after a teacher teaches four years on probation-- provides statutory protection for a teacher who is discharged, demoted, or suspended without pay for more than three days. If a tenured teacher disagrees with an employer's decision about discharge, demotion, or unpaid suspension, then the teacher has a right of appeal to the Tenure Commission. The Tenure Commission comprises five volunteers appointed by the governor, each having a five-year term that begins in September, and includes a school board member, a school superintendent, two teachers, and a member of the general public. The commission is staffed by the Office of Administrative Law in the Michigan Department of Education. According to committee testimony, between 2002 and 2006, the tenure commission handled, on average, 20 cases a year. In the agency's latest audit, published in November 2002 (covering a 30 month period from 1999-2002), there were 26 teacher tenure appeals, an average of about 10 each year. Overall, the auditor general concluded that the agency was "effective and efficient in processing tenure appeals."

In 1993, Michigan's tenure law was overhauled. At that time, the legislature extended the probationary period from two to four years; increased the number of teacher evaluations to at least one every three years, and annually for novice probationary teachers (who also must have two classroom observations each year, as well as an individualized development plan); eliminated local school board hearings (assigning the responsibility to a state administrative law judge); instituted strict time requirements for filings during the appeal process; and limited the rights of tenured teachers whose services are terminated due to necessary reductions in personnel.

Although tenure originated to protect teachers from arbitrary discharge and unfair discrimination, critics say that the due process protections in the law have sometimes discouraged, delayed, and denied the discharge of ineffective teachers. According to committee testimony, teachers' tenure has been protected by the five-member Tenure Commission, despite evidence of theft, psychotic mental health lapses, travel reimbursement offenses, drug abuse, questionable judgment with teenagers experiencing family dysfunction, and the use of unreasonable force with misbehaving students. In all of these cases, either the Tenure Commission or the courts (and sometimes both), have

protected the errant teachers' livelihood, by citing the "reasonable and just cause" standards and "due process" protections of the tenure law.

Generally, teacher malfeasance triggers discharge from employment. And because the tenure process can extend several years (but more customarily lasts far less time), school administrators say they cannot afford to incur the legal costs of defending their challenged personnel decisions. In these instances, the school districts save money by offering teachers a severance payment, ensuring that they leave the school's employ without challenging their dismissal.

While teachers are discharged for malfeasance, they are far less apt to be disciplined or discharged for ineffectiveness as teachers. If a teacher's lackluster performance goes unnoticed or uncorrected during the classroom observations conducted during the four-year probationary teaching period, then tenure is earned. Afterwards, virtually any discipline greater than a three-day suspension can be challenged by the teacher under the tenure law. Consequently, school administrators say the cost and time of the tenure protection process dissuades them from removing mediocre teachers whose students get consistently poor results on achievement tests.

On April 27, 2011, Governor Rick Snyder delivered an Education Reform address in which he called for, among other educational reforms, a new emphasis on "performance-based teaching," beginning with comprehensive changes to "Michigan's antiquated tenure law." In response to his call for reform, legislation has been introduced to require school districts statewide to adopt performance evaluation systems that rate a teacher in one of four ways: highly effective, effective, minimally effective, or ineffective. To better ensure fairness, and acknowledging that teachers cannot teach effectively if they are assigned outside their field (an injustice experienced by an estimated 17 percent of all of Michigan's core secondary teachers and their students, according to research commissioned by the Education Trust), the legislation would end seniority, prohibit "bumping," and require mutual consent about job assignment, before a teacher is re-deployed by an administrator after downsizing. (If no job is available in 30 days, the teacher would be suspended.)

The legislation also would expand an administrator's disciplinary options to remove ineffective teachers, enabling them to return tenured teachers to probationary status, or to suspend them for up to 30 days. And the bills would speed up the tenure process, and suspend teachers' pay during due process proceedings. Further, the legislation eliminates seniority as the only criterion for valuing one educator's job over another. And finally, one bill makes certain subjects off limits during collective bargaining.

### ***THE CONTENT OF THE BILLS:***

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 (Substitute H-7, as amended)

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.

#### **Length of Probationary Period**

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

#### **Eliminate 60-day Notice**

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, and instead give the probationary teacher 15-days' notice.

### **Dismissal of Probationary Teacher**

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 annual year-end performance evaluations over a two-school year period, the controlling board would be required to dismiss the teacher from employment.

### **Successful Completion of Probationary Period**

House Bill 4625 specifies that a teacher shall not be considered to have successfully completed the probationary period unless the teacher had been rated as effective or better on the three most recent annual year-end performance evaluations, and had completed five full school years of employment in a probationary period.

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

### **Placement of Ineffective Tenured Teacher on Probation**

The bill specifies, in Section 1A of Article III, that if a teacher who is on continuing tenure is rated as ineffective on two consecutive annual year-end performance evaluations, 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 two consecutive annual year-end performance evaluations, 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.

House Bill 4625 also specifies that for a teacher who had continuing tenure but was subsequently 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 year-end 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 once.

### **Teacher Changing School Districts**

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.

### **Teacher Changing Position Within A District**

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 necessarily 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 an active 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.

### **Annual Performance Evaluations**

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 year-end 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.

Current law specifies that failure of a school district to comply the performance valuation requirement is conclusive evidence that the teacher's performance for that period is satisfactory. The bill would eliminate this provision.

### **Classroom Observations**

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.

The bill would eliminate provisions that say a collective bargaining agreement could provide for more performance evaluations or classroom observations than the annual evaluation and would eliminate a provision that says the act does not require a particular method for conducting a performance evaluation or classroom observation or for providing an individualized development plan. Under the bill, the controlling board of a school district would determine the format and number of the classroom observations in consultation with teachers and school administrators.

### **Maintaining Certification**

The bill requires that teachers on continuing tenure keep their certification and endorsements current. Specifically and under the bill, if a teacher on continuing tenure holds a particular teaching certificate, certificate endorsement, or grade level certification at the time tenure is achieved, and subsequently allows that designation to lapse or be nullified, then the controlling board may dismiss the teacher from employment if either of the following circumstances exist: the controlling board does not have available a teaching position for which the teacher currently holds a valid certificate, endorsement, or grade level certification; or, the position to which school officials want to assign the teacher is a position that requires a valid teaching certificate, endorsement, or grade level certification.

### **Appeal to Tenure Commission**

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 two. First, under current 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. Second, 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 (Substitute H-2, as amended)

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.

#### **Reasons for Discharge and Demotion**

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.

#### **Teacher Under Suspension**

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 calendar 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.)

#### **Definition of "Demote"**

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 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 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*.

#### **Leaves of Absence**

Currently under the law, the controlling board of a school district may, upon a written request from a teacher, grant a leave of absence for a period up to one year, subject to renewal at the will for the board with two provisions: provided that without request, a



leave of absence may be granted because of physical or mental disability for a period not to exceed one year, and provided further, that any teacher so placed on leave of absence shall have the right to a hearing on the unrequested leave. The law also specifies that no leave of absence serves to terminate continuing tenure that has been previously acquired under the act. House Bill 4626 would retain these provisions.

In addition, House Bill 4626 adds a new provision to specify that, as a condition of reinstating the teacher at the expiration of the leave of absence, a controlling board may require a teacher who has been on an unrequested leave due to physical or mental disability, to furnish verification acceptable to the controlling board of the teacher's ability to perform his or her essential job functions.

#### House Bill 4627 (Substitute H-3, as amended)

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.

#### **Policy for Placement of Teachers**

The bill would require that the board of a school district or intermediate school district that operates more than one building, adopt, implement, maintain, and comply with a policy for the placement of teachers when conducting a reduction in force or a recall from a reduction in force, or in hiring after a reduction in force. This policy would be required to be 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 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 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 school district 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.
- Provide that a teacher who was rated as either "effective" or "highly effective" on his or her most recent performance evaluation (under section 1249 of the Revised School Code) be exempt from the policy.

#### **Rating Categories for Teachers**

The bill specifies that if the performance evaluation system implemented by a school district 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.

### **Reduction in Force/Recalls Not Based on Seniority**

Under the bill, for teachers (not administrators), 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:

- The board of a school district 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 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 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. However, if a personnel decision involved two or more employees and all other factors distinguishing those employee from each other were equal, then length of service could be considered as a tie-breaker.

House Bill 4627 also specifies that if a collective bargaining agreement is in effect for employees of a school district 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 (Substitute H-3, as amended)

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.
- For public employees who are teachers, the policy regarding discharge or discipline of an employee (based on the arbitrary and capricious standard), or the impact of such a decision on an individual employee or the bargaining unit.
- The format, timing, 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.
- Decisions about the method of compensation, and decisions about how an employee performance evaluation is used to determine performance-based compensation.

## **BACKGROUND INFORMATION:**

The following is the section of the Revised School Code that currently governs teachers' performance evaluations. The new performance evaluation system--enacted as part of Michigan's unsuccessful 2010 application to win a multi-million dollar grant from the federal Department of Education's "Race to the Top" program--goes into effect September 1, 2011.

### **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.

## **ARGUMENTS:**

### ***For:***

This legislation helps to assure that more of Michigan's K-12 students will have effective teachers who prepare and guide them to productive post-secondary work and higher education. Proponents of the bills, responding to Governor Snyder's April 27, 2011, Education Reform Address in which he called for "Performance Based Teaching," and an overhaul of "Michigan's antiquated tenure system," offer six main arguments. They say, first, school districts will save time and money. They note that the bills will allow the administrators in school districts to remove teachers guilty of malfeasance more quickly, because the hearing process before the Tenure Commission is streamlined. As a result, legal costs will drop, because attorney consultations will not be needed for as many hours as is now the case, when disciplinary matters are challenged over prolonged periods of time before the Tenure Commission.

Second, proponents of the bills say they are transformational since they will--for the first-time in nearly five decades--introduce the requirement that all school districts adopt a four-tier performance evaluation system that prohibits "bumping" when the size of the teaching faculty is reduced. That system--based on classroom observations, and when necessary, individual development plans--will rank each teacher as "highly effective," "effective," "minimally effective," or "ineffective," and will eliminate any reliance on seniority, or length of service, as a factor when re-deploying the remaining staff. Today, the work rules that have been collectively bargained in many school districts follow the so-called LIFO rule: Last In, First Out. That is, in the event of downsizing, the most recently hired teachers are the first to be dismissed (regardless of their effectiveness), while the most veteran teachers are retained (also regardless of their effectiveness). Sometimes LIFO results in teachers being re-deployed to teach in grades or classrooms for which they are neither certified nor a good "fit"; or, to teach subjects about which they have neither certification nor expertise.

Third, those who favor the bills note that because teacher effectiveness, rather than seniority or length of service, will be the criterion that school administrators will be required to follow when making personnel decisions, and particularly when the teaching force is reduced, recalled, or rehired, student achievement can increase for those who heretofore were taught by teachers deployed outside their field of expertise. This change helps to ensure that the best teachers are retained at all times, and that those who remain in the classroom have demonstrated they get subject matter learning results for children, based on periodic assessments. To that end, House Bill 4627 specifies that "effectiveness" be measured by the performance evaluation system described in the Revised School Code, and that it be based on three factors: (1) *individual performance* (including, predominantly, evidence of student achievement and pedagogical skill); (2) *significant, relevant accomplishments and contributions* (including clear contributions above the normal expectations and a record of exceptional performance); and (3) *relevant special training* (other than the professional development or continuing education required by the employer or by state law), and then integration of that training into instruction in a meaningful way.

Fourth, proponents of the bills note that they increase the power and authority of administrators in their relationships with the teaching faculty in several ways, including more disciplinary discretion such as up to 15-day suspensions without pay, or having pay docked for up to 30 days (increased from three days now in the law) without appeal to the Tenure Commission; lengthening the probationary teaching period from four to five years; enabling principals to return a tenured teacher to probationary status; and changing the standard for dismissal by a school district from "just cause" to "not arbitrary and capricious." When applying a standard of "not arbitrary and capricious," the Tenure Commission's discretion would be limited; rather than judging fairness, they could reverse a school district's disciplinary decision only if district officials had operated in an arbitrary and capricious manner.

Fifth, those who favor these bills say they are policy tools for public school officials that help us to find and to keep the teachers we need. They argue that the core technology of schools is teaching and learning. Consequently, the instructional interaction around subject matter between a teacher and learner is lodged at the very center of the educational enterprise. As the Alliance for Excellent Education writes, summarizing recent research: *"Teachers make the greatest impact on students--what they learn, how they learn it, and what they do with it. Decades of research clearly demonstrate that a quality teacher, more than any other factor, enables students to overcome obstacles to learning like poverty and can even erase the achievement gap"* that exists between minority students and their white and Asian peers. The Alliance continues: *Teachers make the biggest impact on student learning. The most effective teachers produce student gains almost four times greater than least effective teachers. Students with three effective teachers in a row make gains almost three times higher than students with three ineffective teachers.* (Alliance for Education Fact Sheet, February 2006)

For Governor Snyder's address on education, see (especially Page 11):

[http://www.michigan.gov/documents/snyder/SpecialMessageonEducationReform\\_351586\\_7.pdf](http://www.michigan.gov/documents/snyder/SpecialMessageonEducationReform_351586_7.pdf)

Sixth, proponents argue that "highly effective" teachers need not fear these bills. They point out that House Bill 4625 has been amended to ensure that a highly effective probationary teacher can achieve tenure in three years, not five, by earning three consecutive annual year-end performance evaluations on which his or her work is rated "highly effective." Further, House Bill 4627 has also been amended to require that the policy a school district adopts after downsizing--the policy that must suspend a teacher's pay and dismiss the teacher after 30 days, absent a mutually consensual deployment--must exempt a teacher who is rated as either "effective" or "highly effective."

***Against:***

Opponents of these bills raise five arguments in opposition. First, opponents say changes to the tenure law proposed in House Bills 4625 and 4626 are an over-reaction to a half-dozen "outlier" cases--that is, cases of teachers demonstrating obvious unacceptable behavior, customarily short in duration--that the school districts were correct to punish,

but whose punishment the Tenure Commission and the courts judged too punitive, and therefore reversed or mitigated. Indeed, the written testimony from the superintendent-member of the Tenure Commission (a school administrator for 17 years and a chief labor negotiator for 24 years) describes several of those cases in detail. Her testimony highlights the small number of cases at hand, and she describes their details to reveal mitigating aspects of the cases that came to light during the due process proceedings--the facts that unfolded beyond the headlines. And, her testimony demonstrates the strategic and procedural errors school officials made in their filings before the commission and the courts that resulted in teachers being reinstated over the objections of their school employers.

Second, opponents of the bills question the legislation's "reasonableness," noting that the "reckless" changes in policy that are proposed will de-professionalize Michigan's single largest profession--one in which tens of thousands of teachers labor each day to guide student achievement, oftentimes in selfless ways. Opponents argue that while the bills dishonor teachers by questioning their commitment, knowledge and know-how, the legislation exaggerates the abilities of building principals and assumes they are more knowledgeable about subject matter learning than many educators believe is demonstrated by experience.

For example, the bills allow administrators to discharge probationary teachers with only 15 days' notice (eliminating the current 60-day notice requirement); allow administrators to suspend teachers' pay for up to 30 days without leave to appeal to the Tenure Commission (instead of 3 days); end a teacher's employment during downsizing if a mutually consensual job cannot be found in the district within 30 days; stop a suspended teacher's pay after 90 days, if the teacher appeals a disciplinary decision to the Tenure Commission (rather than continuing a teacher's pay throughout a contested suspension); extend teachers' probationary periods to five years (instead of four years) despite the fact that nearly half of all new teachers already leave the profession within five years (citing low pay and poor working conditions); and allow administrators to unilaterally return long-tenured teachers to probationary status (weakening the continuing tenure they earned after fulfilling probationary requirements).

In addition, the bills change the standard for dismissal by a school district from "just cause" to "not arbitrary and capricious." During committee testimony, school lawyers explained that when applying a standard of "just cause," the Tenure Commission has leeway to overturn a school district's disciplinary decision by exercising judgment as to whether the decision was fair and just. In contrast, when applying a standard of "arbitrary and capricious," the Tenure Commission's discretion would be limited; rather than judging fairness, they could reverse a school district's disciplinary decision only if district officials had operated in an arbitrary and capricious manner. This change overturns three decades of tenure case law, and has the effect of shifting the burden of proof for the alleged misbehavior from the employer to the employee. Opponents of the bills argue that it also invites the possibility of suspensions and dismissals because of school officials' discriminatory attitudes about race, gender, age, ethnicity, sexual orientation, and health status.

All of these changes designed to increase the discretion of principals will be enacted without increasing the qualifications for building administrators, and without requiring far greater knowledge and understanding--across *all* learning disciplines--for school principals. Administrators are not certified in Michigan. Some are promoted from the coaching or counseling ranks of the school workforce. Few of the school principals who are to be granted greater discretion--indeed, nearly unilateral authority--to deploy teachers can be expected to have comprehensive knowledge of the learning disciplines; of pedagogy; of subject-related professional development; or of summative and formative assessment systems. And, although they will have more authority to act, the bills do not increase their accountability to students, to the teaching faculty, or to parents.

Third, opponents of the bills say they are an attack on collective bargaining, because they limit the ways that teachers and their bargaining agents can offer their experience and expertise in the design and implementation of important aspects of their work that have an effect on their students' achievement. In particular, House Bill 4627 eliminates length of service, or seniority; no longer will the most experienced teachers have job security. And, House Bill 4628 would amend the Public Employment Relations Act to prohibit decisions about six new subjects during discussions at the collective bargaining table. Teachers would no longer have a say in teacher placement; personnel decisions during downsizing; their performance evaluation system or its impact; the discharge and discipline of members of their profession; the format, timing, or number of classroom observations; or the method of the performance evaluation, itself, and the manner in which it would be used to determine performance-based compensation.

Taken together, critics say that this disregard for teacher expertise and the additional constraints imposed on collective bargaining stand as yet another example of legislation that is part of a regional strategy (seen throughout the Midwest) to wage an assault on public sector unions, because those unions give workers a voice in collective bargaining. Opponents argue that these bills erode the dignity of public workers because they are designed to deprive public employees--in this instance, teachers--of a voice. In Michigan, teachers and school administrators have long demonstrated that educational problems deserve joint, systemic, solutions; that to achieve the common good in a collegial school community, both teachers and administrators must work together. Throughout the state, unionized teachers have made wage and benefit concessions, and helped local school administrators to downsize their school districts, privatize services, and to consolidate operations.

Fourth, opponents note that the bills do not acknowledge the fact that a significant number of Michigan core subject secondary teachers (grades 7-12) are deployed by their principals to teach subjects outside their major academic fields, or areas of subject certification. In research conducted over the past decade, Professor Richard Ingersoll of the University of Pennsylvania has discovered that the problem of out-of-field teaching is chronic, widespread, serious, and has been ignored for too long. It is a serious educational problem for the simple reason that teachers cannot teach--and students cannot learn--what teachers do not know. A teacher may be "highly qualified" when assigned to the proper classes but far less effective when not assigned properly. A teacher's deficit may not be



due to individual characteristics but due to institutional factors -- to the situation in which he or she is placed.

According to Ingersoll's research, summarized in the NGA Center for Best Practices issue brief entitled, "Out-of-Field Teaching: The Great Obstacle to Meeting the 'Highly Qualified' Teacher Challenge," the predominant reasons for out-of-field teacher deployments are neither teacher shortages nor union work rules (such as job protection based on seniority). Instead, Ingersoll concludes that out-of-field job assignments occur because of the way schools are organized and the ways schools are managed; essentially, teachers are not entrusted with the professional responsibility to say in what grade levels and subject matter they should be assigned to teach. Instead, says Ingersoll, out-of-field assignments occur because "*decisions about the selection and allocation of teachers to courses and programs are primarily the responsibility and prerogative of principals and other building-level administrators who attempt to offer a broad array of courses and programs with limited resources, limited time, a limited budget, and a limited teaching staff--problems that exist in all schools but may be magnified in those with more poor and minority students.*"

Fifth, opponents of the bills ask: How will the state develop and pay for the myriad assessments that will be needed at virtually every grade level, at the end of every course, and across *all* learning disciplines? In the short-term, school reformers plan to evaluate teachers based on their students' growth in a given year. In the long-term, school reformers plan to shift the focus from growth to student proficiency. To be fair to students and the teaching faculty, that kind of reform will require many more standardized tests than is now the practice. Today, student growth is measured in elementary grades in five learning disciplines: English language arts, writing, mathematics, science, and social studies. Federal law requires measurement in reading and math, only. And Michigan high school students take one Merit/ACT examination (generally in the 10th or 11th grade).

If all teachers are to be evaluated on their students' growth and proficiency, then new curricular standards and assessments must be developed and continuously updated in several foreign languages, the visual and performing arts, physical education, and special education--to name but a few of the subjects taught in school. And, more uniform curricula and end-of-course exams will be needed for each semester of high school. The potential continuing cost of this effort to measure and test all students, and then to develop performance-based evaluations for all teachers is unknown and as yet unexplored. It may well be beyond the ability of the state's taxpayers to support.

### ***POSITIONS:***

The Michigan Association of School Boards supports the bills. (5-10-11)

The Michigan Association of School Administrators & the Association of Intermediate School Administrators support the bills. (5-18-11)

The Council of Charter School Organizers supports the bills. (5-11-11)

The Grand Rapids Chamber of Commerce supports the bills. (5-11-11)

The law firm of Collins and Blake supports the bills. (5-11-11)

Flat Rock Community Schools supports the bills. (5-11-11)

Stockbridge Community Schools supports the bills. (5-18-11)

The Thune Law Firm supports the bills. (5-18-11)

Individual teachers, retired teachers, and student advocates testified in favor of the bills from Clarkston, West Bloomfield, Bloomfield Hills, Ann Arbor, Davidson, St. Clair, and Grand Blanc. (5-10-11, 5-11-11 & 5-18-11)

Individual teachers and student advocates testified in opposition to the bills from South Lyon, Bay City, Shelby Township, Orion, Milford, and Onsted. (5-11-11 & 5-18-11)

The Michigan Education Association opposes the bills. (5-11-11)

The Michigan Association of School Social Workers opposes the bills. (5-18-11)

The Michigan Association of School Psychologists opposes the bills. (5-18-11)

Macomb Intermediate School District is neutral on the bills. (5-18-11)

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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.