



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4625 (as enacted)
House Bill 4626 (as enacted)
House Bills 4627 and 4628 (as enacted)
Sponsor: Representative Bill 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

PUBLIC ACT 101 of 2011
PUBLIC ACT 100 of 2011
PUBLIC ACTS 102 & 103 of 2011

Date Completed: 9-27-11

CONTENT

House Bill 4625 amended the teachers' tenure law to do the following:

- Specify that a probationary teacher rated as effective or highly effective is not subject to displacement by a tenured teacher solely because the other teacher is on continuing tenure.
- Increase the probationary period from four full school years to five, except for a teacher who has been 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 will be discontinued.
- Allow a probationary teacher to be dismissed at any time.
- Require a controlling board to determine the number and format of classroom observations for probationary teachers and teachers on continuing tenure.
- Shorten deadlines in the tenure hearing process.

The bill also repealed a section that required a laid-off tenured teacher to be hired for the first vacancy in the school district for which he or she was

qualified, for three years after the lay-off.

House Bill 4626 amended the teachers' tenure law to:

- Allow a teacher on continuing tenure to be dismissed or demoted for a reason that is not arbitrary and capricious, rather than for reasonable and just cause.
- Revise the definition of "demote".
- Allow a controlling board to place a suspended teacher's salary in escrow if criminal charges have been filed.
- 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.

House Bill 4627 amended the Revised School Code to specify provisions that must apply to personnel decisions concerning teachers when a school district or intermediate school district (ISD) conducts a staffing or program reduction or otherwise makes a personnel determination resulting in the elimination of a position, conducts a recall from a reduction, or hires after a reduction. Under these provisions:

- A school board may not adopt a policy providing that length of service or tenure status is the primary or determining factor when eliminating a position.
- A board must ensure that a district bases decisions on retaining effective teachers, measured by the evaluation system required under the Code.
- Individual performance must be the major factor in decision-making.
- Length of service or tenure status may not be a factor unless all of the factors concerning two or more employees are equal.

In addition, the bill does the following:

- Establishes requirements for the teacher evaluation system, including an annual year-end evaluation and a mid-year progress report, beginning with the 2013-2014 school year.
- Requires a teacher to be dismissed if he or she is rated as ineffective on three consecutive year-end evaluations.
- Establishes requirements for the evaluation of school administrators.
- Allows a nonprobationary teacher who is rated as ineffective on a year-end evaluation to request a review of the rating by the district superintendent.
- Requires the dismissal of an administrator who is rated as ineffective on three consecutive year-end evaluations, if the same evaluation tool and system are used in the three evaluations.
- Specifies classroom observation requirements.
- Requires teachers' and administrators' year-end evaluations to be based at least 25% on student growth and assessment data in 2013-2014, 40% in 2014-2015, and 50% beginning in 2015-2016.
- Exempts a district from the teacher and administrator evaluation requirements for a public school if the district is already using a performance evaluation system that meets certain criteria, or if it adopts an evaluation system that is identical to that of an exempt school.

- Creates the Governor's Council on Educator Effectiveness.
- Requires the Council, by April 30, 2012, to submit a report that recommends a student growth and assessment tool, State evaluation tools for teachers and administrators, and parameters for effectiveness rating categories.
- Specifies a legislative intent to enact legislation to put in place a statewide performance evaluation system taking into account the Council's recommendations.
- Requires notification to parents if pupils are assigned to teachers whose last two year-end ratings were ineffective, beginning in 2015-2016.

House Bill 4628 amended the public employment relations Act to prohibit decisions about the following subjects from being included in collective bargaining between a public school employer and a representative of its employees:

- Teacher placement.
- Policies for personnel decisions made when an employer eliminates a position, or recalls or hires after a position has been eliminated.
- An employer's performance evaluation system.
- A policy for discharging or disciplining employees subject to the tenure law, and the discharge or discipline of an individual employee.
- Classroom observation.
- A performance-based method of compensation.
- Parental notification of ineffective teachers.

All of the bills took effect on July 19, 2011, and were tie-barred to each other.

House Bill 4625

Probationary Teachers

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

The bill increased the probationary period to five full school years, except as provided below for a teacher rated highly effective on three consecutive year-end evaluations. A teacher under contract but not on continuing tenure as of the bill's effective date will be in a probationary period during his or her first four, rather than two, full school years of employment, subject to the same exception.

Previously, at least 60 days before the end of each school year, the controlling board had to give a probationary teacher a definite written statement as to whether his or her work was satisfactory. Failure to do so was considered conclusive evidence that the teacher's work was satisfactory. A probationary teacher or a teacher not on continuing contract had to 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 would be discontinued.

The bill, instead, requires a controlling board to give a probationary teacher a statement as to whether his or her work has 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 must 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 will be discontinued.

The bill provides that a teacher who is in a probationary period may be dismissed from his or her employment by the controlling board at any time.

(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.)

Displacement. Under the bill, a probationary teacher who is rated as effective or highly effective on his or her most recent annual year-end performance evaluation is not subject to being displaced by a teacher on continuing tenure solely because the other teacher has continuing tenure.

Performance Evaluations. The bill requires the controlling board of a probationary teacher's employing school district to 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. Previously, the tenure law required these actions to be taken if the teacher was employed by a school district for at least one full school year.

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

(Section 1249 requires the board of a school district, ISD, or public school academy to adopt and implement for all teachers and administrators a performance evaluation system. House Bill 4627 amended this section, as described below.)

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

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

Continuing Tenure

Employment. Under the teachers' tenure law, after 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 is considered to be on continuing tenure, and continuing tenure is held only as provided in the tenure law.

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

The bill requires a district to provide a teacher with an individualized development plan (IDP) if the teacher has received a rating of ineffective or minimally effective (rather than a less-than-satisfactory evaluation). The plan must require the teacher to make progress toward individual development goals within a specified time period, not to exceed 180 days.

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

Laid-Off Teacher. Previously, for three years after a tenured teacher's services were terminated because of a necessary reduction in personnel, the teacher had to be appointed to the first vacancy in the district for which he or she was certificated and qualified. The bill repealed the section containing this requirement (MCL 38.105).

Appeal to Tenure Commission

The tenure law prescribes procedure for filing charges against a teacher on continuing tenure. The teacher may protest the decision of a controlling board to proceed upon the charges, by filing a claim of appeal with the Tenure Commission. An administrative hearing then must be held.

Previously, the hearing date had to be within 60 days after the controlling board's answer to the claim of appeal was served, unless the Commission granted a delay for good cause, and the hearing had to be concluded

within 90 days after the claim of appeal was filed. Under the bill, the hearing date must be within 45 days after service of the board's answer, and the hearing must be concluded within 75 days after the claim of appeal was filed.

House Bill 4626

Arbitrary & Capricious Standard; "Demote"

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

The tenure law previously defined "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 defines "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.

As before, the term does not include discontinuance of salary under provisions allowing the suspension of a teacher against whom charges have been filed. Also, under the bill, the term does not include a necessary reduction in personnel, including a reduction in workweeks or workdays, or the discontinuance or reduction of performance-based compensation paid pursuant to Section 1250 of the Revised School Code.

(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.)

Suspension

When charges are filed against a teacher, the tenure law allows the controlling board to suspend the teacher from active performance of duty. The teacher's salary must continue during the suspension.

House Bill 4627

Personnel Decisions - Teachers

The bill added Section 1248 to the Revised School Code, as described below.

For teachers, as defined in the teachers' tenure law, all of the following provisions apply to policies regarding personnel decisions when a school district or ISD conducts a staffing or program reduction or any other personnel determination resulting in the elimination of a position, or hires or conducts a recall from a staffing or program reduction or any other personnel determination resulting in the elimination of a position. (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 may not adopt, implement, maintain, or comply with a policy that provides that length of service or tenure status is the primary or determining factor in personnel decisions when taking any of the actions described above.

The board must ensure that the district or ISD adopts, implements, maintains, and complies with a policy providing that all such personnel decisions are based on retaining effective teachers. The policy must ensure that a teacher who has been rated as ineffective under the performance evaluation system under Section 1249 is not given any preference that would result in the teacher's being retained over a teacher who is evaluated as minimally effective, effective, or highly effective. Effectiveness must be measured by the performance evaluation system under Section 1249.

The personnel decisions must be based on individual performance; significant, relevant accomplishments and contributions; and relevant special training. Individual performance must be the majority factor in the decision, and must consist of at least the following:

- Evidence of student growth, which must be the predominant factor in assessing an employee's individual performance.
- The teacher's demonstrated pedagogical skills.

Under the bill, the controlling board may place the teacher's salary in an escrow account during the suspension, if criminal charges have been filed against the teacher. Before doing so, the controlling board must give the teacher notice of the charges, an explanation of the employer's evidence, and an opportunity for the teacher to respond, in writing or in person. Health or life insurance benefits, or both, may be continued during the suspension at the option of the controlling board.

If the administrative law judge issues a preliminary decision and order to reinstate the teacher or for payment of salary lost by the teacher during the suspension, the controlling board must release the escrowed money to the teacher to the extent necessary to effectuate the order.

If the teacher fails to timely contest the decision to proceed upon the charges or if the administrative law judge issues a preliminary decision and order discharging or demoting the teacher, the controlling board will be entitled to the money in the escrow account.

(The tenure law requires an administrative law judge, within 60 days after a case is submitted for decision, to serve on each party a preliminary decision and order. The preliminary decision and order must grant, deny, or modify the discharge or demotion specified in the charges.)

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 for up to one year because of physical or mental disability.

Under the bill, an unrequested leave of absence is subject to renewal at the will of the controlling board. As a condition of reinstating the teacher when the leave expires, the controlling board may require the teacher to furnish verification acceptable to the board of the teacher's ability to perform his or her essential job functions.

- The teacher's management of the classroom, manner and efficacy of disciplining pupils, rapport with parents and other teachers, and ability to withstand the strain of teaching.
- The teacher's attendance and disciplinary record, if any.

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

If a collective bargaining agreement was in effect for employees of a district on the bill's effective date and prevents compliance with these requirements, the requirements will not apply to that district until the agreement expires.

If a teacher brings an action against a school district or ISD based on Section 1248, his or her sole and exclusive remedy will be an order of reinstatement beginning 30 days after a court decision. The remedy may not include lost wages, lost benefits, or any other economic damages.

Performance Evaluation System

The bill amended Section 1249 of the Code, as described below.

Teacher Effectiveness Rating. The performance evaluation system required by Section 1249 must evaluate the person's job performance at least annually, using multiple rating categories that take into account data on student growth as a significant factor. The system must use 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.

Under the bill, if the performance evaluation system implemented by a school district, ISD, or public school academy (PSA) does not already include the rating of teachers as highly effective, effective, minimally effective, and ineffective, then the district or PSA must revise the system within 60 days

after the bill's effective date, to ensure that it rates teachers in that manner.

Teacher Evaluation & Progress Report. Under the bill, beginning with the 2013-2014 school year, the board of a school district, ISD, or PSA must ensure that the performance evaluation system for teachers meets all of the following requirements.

The system must include at least an annual year-end evaluation for all teachers. Student growth and assessment data must be the basis of at least 25% of the annual year-end evaluation for the 2013-2014 school year, at least 40% for the 2014-2015 school year, and at least 50% beginning with the 2015-2016 school year. All student growth and assessment data must be measured using the student growth assessment tool required in legislation based on recommendations of the Governor's Council on Educator Effectiveness.

If student growth and assessment data are available for a teacher for at least three school years, the annual year-end evaluation must be based on those data for the most recent three-consecutive-school-year period. Otherwise, the evaluation must be based on all student growth and assessment data available for the teacher.

The annual year-end evaluation must include specific performance goals that will assist in improving effectiveness for the next school year. The goals must be developed by the school administrator or his or her designee conducting the evaluation, in consultation with the teacher. The evaluation also must include any recommended training identified by the school administrator or designee, in consultation with the teacher, that will assist him or her in meeting the goals. For a teacher who is in the first year of probation or who received a rating of minimally effective or ineffective on his or her last evaluation, the school administrator or designee, in consultation with the teacher, must develop an IDP that includes these goals and training and is designed to assist the teacher to improve his or her effectiveness.

Also, the performance evaluation system must include an additional mid-year progress report for a teacher who is in the

first year of probation or who received a rating of minimally effective or ineffective on his or her most recent annual evaluation. The mid-year progress report must be used as a supplemental tool to gauge the teacher's improvement from the preceding school year and to assist the teacher to improve. The mid-year progress report must be based at least in part on student achievement and be aligned with the teacher's IDP, and may not take the place of an annual year-end evaluation. The progress report also must include specific performance goals for the remainder of the school year that are developed by the school administrator conducting the evaluation or his or her designee. The administrator or designee, in consultation with the teacher, must develop a written improvement plan that includes these goals and training and that is designed to assist the teacher to improve his or her rating.

In addition, the performance evaluation system must include classroom observations to assist in the evaluations. A classroom observation must include a review of the teacher's lesson plan and the State curriculum standard being used in the lesson, and a review of pupil engagement in the lesson. An observation need not be for an entire class period. Unless a teacher has received a rating of effective or highly effective on his or her two most recent annual year-end evaluations, there must be multiple classroom observations of the teacher each school year.

For the purpose of conducting annual year-end evaluations, a school district, ISD, or PSA must adopt and implement the State evaluation tool for teachers required by legislation based on recommendations of the Governor's Council on Educator Effectiveness. If a district or PSA has a local evaluation tool for teachers that is consistent with the State tool, however, the district or PSA may use the local tool.

The performance evaluation system must assign an effectiveness rating to each teacher of highly effective, effective, minimally effective, or ineffective, based on his or her score on the annual year-end evaluation.

As part of the performance evaluation system, a school district, ISD, or PSA is

encouraged to assign a mentor or coach to each teacher who is in the first year of probation or who received a rating of minimally effective or ineffective on his or her last annual evaluation.

The performance evaluation system may allow for exemption of student growth data for a particular pupil for a school year upon the recommendation of the school administrator conducting the annual year-end evaluation or his or her designee, and approval of the school district superintendent, the intermediate superintendent, or the chief administrator of the PSA, or that person's designee.

The performance evaluation system must provide that, if a teacher who is not in a probationary period prescribed by the teachers' tenure law, is rated as ineffective on an annual year-end evaluation, he or she may request a review of the evaluation and the rating by the school district superintendent, intermediate superintendent, or PSA chief administrator. The request must be submitted in writing within 20 days after the teacher is informed of the rating. Upon receiving the request, the superintendent or chief administrator must review the evaluation and rating and may make any modifications as appropriate based on his or her review. The performance evaluation system may not allow for a review more than twice in a three-school-year period.

Evaluation of Administrators. The bill requires the board of a school district, ISD, or PSA, beginning with the 2013-2014 school year, to ensure that the performance evaluation system for building-level school administrators and for central office-level school administrators who are regularly involved in instructional matters, meets all of the requirements described below.

The performance evaluation system must include at least an annual year-end evaluation by the district or ISD superintendent or his or her designee, or the chief administrator of the PSA. A superintendent or chief administrator must be evaluated by the board of the district or board of directors of the PSA.

Student growth and assessment data must be the basis of at least 25% of the annual

year-end evaluation for the 2013-2014 school year, at least 40% for the 2014-2015 school year, and at least 50% beginning with the 2015-2016 school year. The data to be used for the administrator year-end evaluation are the aggregate student growth and assessment data used in teacher evaluations in each school in which the administrator works as an administrator or, for a central office-level administrator, for the entire school district or ISD.

The portion of the evaluation that is not based on student growth and assessment data must be based on the following for each school in which the administrator works as an administrator or, for a central office-level administrator, for the entire district or ISD:

- The administrator's, or his or her designee's (if the designee conducts teacher evaluations), training and proficiency in using the teacher evaluation tool, including a random sampling of his or her teacher evaluations.
- The progress made by the school or school district in meeting the goals set forth in its school improvement plan or plans.
- Pupil attendance in the school or school district.
- Student, parent, and teacher feedback, and other information considered pertinent by the superintendent or other school administrator conducting the evaluation or the board or board of directors.

The district, ISD, or PSA must adopt and implement the State evaluation tool for school administrators required by legislation based on recommendations of the Governor's Council on Educator Effectiveness. A district, ISD, or PSA may use a local evaluation tool for school administrators, however, if it is consistent with the State tool.

The performance evaluation system must assign an effectiveness rating to each school administrator of highly effective, effective, minimally effective, or ineffective, based on his or her score on the evaluation tool.

The evaluation system must ensure that if a school administrator is rated as minimally

effective or ineffective, the person conducting the evaluation will develop and require the administrator to implement an improvement plan to correct the deficiencies. The plan must recommend professional development opportunities and other measures designed to improve the administrator's rating on his or her next annual year-end evaluation.

Mandatory Dismissal. The performance evaluation systems for teachers and administrators must provide that, if a teacher or administrator is rated as ineffective on three consecutive annual year-end evaluations, the school district, ISD, or PSA will dismiss the teacher or administrator from his or her employment. These provisions do not affect the ability of a school district, ISD, or PSA to dismiss an ineffective teacher or administrator regardless of whether he or she is rated as ineffective on three consecutive annual year-end evaluations.

The requirement to dismiss an administrator applies only if the three evaluations are conducted using the same evaluation tool and under the same performance evaluation system.

Biennial Evaluations. The performance evaluation systems for teachers and administrators must provide that, if a teacher or administrator is rated as highly effective on three consecutive annual year-end evaluations, the school district, ISD, or PSA may choose to conduct a year-end evaluation biennially instead of annually. If a teacher or administrator is not rated as highly effective on one of those biennial evaluations, however, he or she must again be evaluated annually.

Governor's Council. The bill creates the Governor's Council on Educator Effectiveness as a temporary commission. The Council is to consist of the following voting members:

- Three members appointed by the Governor.
- One member appointed by the Senate Majority Leader.
- One member appointed by the Speaker of the House of Representatives.

In addition, the Superintendent of Public Instruction or his or her designee must serve as a nonvoting member.

The appointed members, as well as the Superintendent's designee if one is appointed, must have expertise in one or more of the following areas: psychometrics, measurement, performance-based educator evaluation models, educator effectiveness, or development of educator evaluation frameworks in other states. By October 31, 2011, the Council must contract with one or more additional experts in those areas, as it considers necessary.

The Governor must appoint an advisory committee for the Council to provide input on its recommendations. The advisory committee must consist of public school teachers, public school administrators, and parents of public school pupils.

The Governor's office must provide staffing and support for the Council.

By April 30, 2012, the Council must submit a report to the State Board of Education, the Governor, and the Legislature. The report must identify and recommend all of the following, and include recommendations on evaluation processes and other matters related to the purposes of Section 1249:

- A student growth and assessment tool.
- A State evaluation tool for teachers.
- A State evaluation tool for school administrators.
- Parameters for the effectiveness rating categories for teachers and administrators.
- A process for evaluating and approving local evaluation tools for teachers and administrators.

The Council's report also must recommend changes to be made in the requirements for a professional education teaching certificate that will ensure that a teacher is not required to complete additional postsecondary credit hours beyond those required for a provisional teaching certificate.

The recommended student growth and assessment tool must be a value-added model that takes into account student achievement and assessment data, and is

based on an assessment tool that has been determined to be reliable and valid for the purposes of measuring value-added data. The tool also must meet the following:

- Measure student growth in the core subject areas of math, science, English language arts, and social science, as well as other subject areas.
- Comply with all current State and Federal law for students with a disability.
- Have at least a pre- and post-test.
- Be able to be used for pupils of all achievement levels.

The recommended State evaluation tool for teachers may include, in addition to the student growth and assessment tool, instructional leadership abilities, teacher and pupil attendance, professional contributions, training, progress report achievement, school improvement plan progress, peer input, and pupil and parent feedback. The Council must ensure that the tool will allow all special education teachers to be rated. The Council also must seek input from school districts, ISDs, and PSAs that already have developed and implemented successful, effective performance evaluation systems.

The recommended State evaluation tool for school administrators may include, in addition to the student growth and assessment tool, teacher and pupil attendance, graduation rates, professional contributions, training, progress report achievement, school improvement plan progress, peer input, and pupil and parent feedback.

The bill states the following: "It is the intent of the legislature to review the report submitted by the governor's council on educator effectiveness...and to enact appropriate legislation to put into place a statewide performance evaluation system taking into consideration the recommendations contained in the report."

Exemptions from Evaluation Requirements. If all of the following provisions apply for a public school operated by a school district, ISD, or PSA, the district or PSA is not required to comply with the new performance evaluation requirements for that school.

As of the bill's effective date, the district or PSA must already have implemented and be currently using for that school a performance evaluation system that meets all of the following requirements:

- The most significant portion of a teacher's or school administrator's evaluation is based on student growth and assessment data, which may include value-added measures.
- The system uses research-based measures to determine student growth, which may be measured by standards-based, nationally normed assessments.
- The system determines professional competence through multiple direct observations of classroom practices and professional practices throughout the school year.
- Teacher effectiveness and ratings, as measured by student achievement and growth data, are factored into teacher retention, promotion, and termination decisions.
- Teacher and administrator performance evaluation results are used to inform teacher professional development for the next year.
- The system ensures that teachers and administrators are evaluated at least annually.

The school district, ISD, or PSA must notify the Governor's Council on Educator Effectiveness by November 1, 2011, that it is exempt under these provisions.

In addition, if a school district, ISD, or PSA begins operating a new public school, or implements a new performance evaluation system for a public school it operates, after the bill's effective date, the district or PSA is not required to comply with the new performance evaluation requirements for that school if the evaluation system adopted and implemented for that school is identical to the evaluation system of a public school that is exempt as described above.

In either case, the school district, ISD, or PSA must post a description of the evaluation system on its website.

Notice of Ineffective Teacher

The bill added Section 1249a to provide that, beginning in 2015-2016, if a pupil is

assigned to be taught by a teacher who has been rated as ineffective on his or her two most recent annual year-end evaluations under Section 1249, the board of the school district, ISD, or PSA where the pupil is enrolled must give his or her parent or legal guardian written notification that the pupil has been assigned to that teacher. The notification must identify the teacher and be delivered by July 15 immediately before the beginning of the school year.

House Bill 4628

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 include decisions about the subjects described below, as well as the impact of those decisions on an individual employee or the bargaining unit.

The additional prohibited subjects include any decision made by the public school employer regarding the placement of teachers.

The prohibited subjects also include decisions about the development, content, standards, procedures, adoption, and implementation of the following:

- 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.
- The employer's performance evaluation system adopted under Section 1249 of the Code, and decisions concerning the content of a performance evaluation of an employee under those provisions of law.

For public employees whose employment is regulated by the teachers' tenure law, newly prohibited subjects of bargaining 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 those employees, a public school employer may not adopt, implement, or maintain a policy for employee discharge or discipline that includes a standard that is different from the arbitrary and capricious standard under the tenure law (under House Bill 4626).

Prohibited subjects of bargaining also include decisions about the format, timing, or number of classroom observations conducted under the tenure law, and decisions concerning the classroom observation of an individual employee.

In addition, prohibited subjects of bargaining 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 is used to determine performance-based compensation under that section, and decisions concerning the performance-based compensation of an individual employee.

Further, prohibited subjects of bargaining include decisions about the development, format, content, and procedures of the notification to parents and legal guardians of pupils taught by a teacher who has been rated as ineffective, as required under Section 1249a of the Code.

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

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

The Governor's Office will see increased staff and resource costs from the requirement to staff the new Governor's Council on Educator Effectiveness. In addition, the requirement for the Council to contract with experts on the design and implementation of educator evaluations will result in increased State costs.

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 (including a mid-year progress report) and additional probationary teacher evaluations, effectiveness ratings, and reducing or replenishing workforce based on effectiveness and not length of service, likely will result in some additional costs to ensure that local policies comply with the requirements in the bills. In addition, the requirements to ensure that, by 2013-2014, the evaluation systems for teachers and administrators include all of the specified items in the legislation, along with the requirement that school boards adopt and implement the State evaluation tools required by legislation based on recommendations of the Governor's Council on Educator Effectiveness, or similar evaluation tools, likely will result in some additional compliance costs.

The overall shift in requiring districts and intermediate districts to fill (or reduce) positions based on effectiveness ratings and not seniority or tenure may result in some hiring and cost changes, if the effectiveness ratings are found to be significantly different than the seniority or tenure levels. However, if effectiveness ratings are found to be fairly similar to seniority or tenure levels (i.e., if senior teachers who are likely at the higher end of the pay scale are rated effective), then there will not be any significant fiscal impact from this requirement since senior or tenured teachers who are effective probably will retain jobs in a workforce reduction or fill positions when rehiring is done, as often found in current practice, if all other factors are equal.

The bills also allow a suspended teacher's salary to be escrowed if criminal charges are

filed, which may provide for some potential savings if implemented at the local level.

It is unknown how many teachers on continuing tenure will 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, the mandatory dismissal of a teacher rated ineffective on three consecutive annual year-end evaluations, and allowing for probationary teachers to be dismissed at any time, may provide some procedural cost relief for districts and intermediate districts. However, there may be some additional local procedural costs from the provision that allows a nonprobationary teacher who is rated ineffective to request a review of the evaluation and rating by the superintendent.

Fiscal Analyst: Kathryn Summers

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