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**TEACHER TENURE CHANGES**

House Bill 4112 as enrolled  
Sponsor: Rep. Jessie Dalman

House Bill 4209 as enrolled  
Sponsor: Rep. Richard Bandstra

Second Analysis (7-26-93)  
House Committee: Education  
Senate Committee: Education

***THE APPARENT PROBLEM:***

Critics of the teachers' tenure act say that the process required to dismiss an incompetent public school teacher with tenure is much too time-consuming and expensive and is full of obstacles. It involves, for example, duplicative hearings at the local and state level, as well as potential appeals to circuit court and the state court of appeals. It can take more than four years and cost tens of thousands of dollars to dismiss a teacher. While the system should protect the rights of employees, it should not unduly hamper efforts to get bad teachers out of the classroom. The process needs to be streamlined and made less cumbersome. At the same time, some people believe that extending probationary periods for new teachers and requiring regular evaluations for all teachers would lead to better teachers and better teaching in the schools, which would in turn reduce the need for hearings on teacher dismissals.

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

The bills would amend the teachers' tenure act (MCL 38.71 et al.). House Bill 4112 would lengthen teacher probationary periods, require regular performance evaluations of new and tenured teachers, and limit teacher recall rights. House Bill 4209 would provide a new procedure for determining whether a tenured teacher could be demoted or dismissed, notably eliminating the hearing at the local school board level and beginning the process with a hearing before an administrative law judge. Following is a brief summary of the two bills.

House Bill 4112. The bill would:

-- extend the probationary period for teachers from two years to four years and require that teachers

be provided during the probationary period with individualized professional development plans and with at least annual, end-of-year performance evaluations. An evaluation would be based on at least two classroom observations at least 60 days apart, unless the teacher and administration agree to a shorter interval. A collective bargaining agreement could call for more evaluations or observations. (Currently, there is a two-year probationary period, which can be extended for an additional year.)

-- allow a two-year probationary period for a teacher who was under contract but not on continuing tenure as of the bill's effective date (with an additional year possible), and stipulate that a teacher on continuing tenure when the bill took effect would remain on continuing tenure despite not having served for at least four full school years of employment.

-- require school boards to ensure that a teacher on continuing tenure had a performance evaluation at least once every three years and to provide an individualized development plan for a teacher with a less-than-satisfactory evaluation. An evaluation would be based on at least two classroom observations. A bargaining agreement could provide for more evaluations and observations.

-- specify that a teacher in a program operated by a consortium of school districts who had been on continuing tenure in a participating district would be considered on continuing tenure only in that district. A teacher in such a program not tenured in a participating district who satisfactorily completed a probationary period would be tenured only in the school district that was the fiscal agent for the consortium. However, a teacher could instead

House Bills 4112 and 4209 (7-26-93)

become tenured in another participating district under a written agreement between the teacher and the district.

-- specify that a teacher who satisfactorily completed the probationary period as an adult education teacher be considered on continuing tenure only for adult education and not for elementary or secondary education. Similarly, a teacher who completed the probationary period as an elementary or secondary teacher would not be considered to be on tenure for adult education.

-- increase the maximum probationary period for a tenured teacher who was employed by a new school board from one year to two years. (However, if when the bill took effect a teacher was under contract to a new school board but was not on continuing tenure, the probationary period could not exceed one year.)

-- amend the provision that specifies that a teacher on permanent tenure whose services are terminated due to necessary personnel reductions be appointed to the first vacancy in the district for which he or she is certified and qualified so that it applies only for a period of three years after the effective date of the termination of the teacher's services. Currently, the "recall" right has no time limit. (However, a teacher so terminated prior to the effective date of the bill would retain the recall right for three years after the bill took effect rather than 3 years after termination.)

-- expand the definition of "teacher" in the act so that the term would apply not only to certificated teachers but also to vocational education teachers working toward certification and individuals employed for a full school year under a section of the School Code that permits the hiring of non-certificated, non-endorsed teachers for courses in computer science, foreign languages, mathematics, biology, chemistry, engineering, physics, robotics, and combinations of those subjects in grades 9 through 12. However, the term "teacher" would apply to those individuals for purposes of serving the probationary period and would not apply for the purpose of continuing tenure until they became certificated. The term "teacher" would not include a person whose certificate had expired or had been suspended or revoked. The term "certificated" refers to a person holding a valid certificate. The bill would deem a person to be holding a valid certificate in cases where the teacher education

college provided written evidence that he or she met certification requirements but the state board of education had not yet confirmed or rejected his or her application for a teaching certificate.

House Bill 4209. The bill would amend the teachers' tenure act to provide a new procedure for deciding whether a tenured teacher could be demoted or dismissed. The bill would require that the initial hearing be conducted by an administrative law judge in accordance with the Administrative Procedures Act, with subsequent appeals to the state teacher tenure commission, which would be limited to a review of the record of the hearing and exceptions to the record, and then to the state court of appeals. Currently, the act requires the local board to provide a hearing and render a decision on charges. That decision can be appealed to the tenure commission, which holds a new hearing of its own. (The commission uses administrative law judges as part of this process.) The appeal of the commission's decision currently is to the circuit court. The new procedure would apply to charges filed after the bill's effective date. The bill would take effect October 1, 1993.

Under the bill, the required written charges against a teacher would have to specify a proposed outcome of either discharge or a specific demotion. (The term "demotion" would be newly defined in the bill as a reduction of more than three days' compensation; lesser actions apparently would not be subject to this process.) The school board would have to decide whether or not to proceed on the charges, or to proceed on modified charges, no later than 10 days after the charges were filed. A decision to proceed would have to be made by majority vote and reduced to writing. No later than 5 days after a decision to proceed, the board would have to notify the teacher of the decision and furnish the teacher a written statement of the charges, along with a statement of the teacher's rights. The board could then suspend the accused teacher until one of the following occurred: the teacher failed to contest the board's decision to proceed; the administrative law judge issued a preliminary decision to discharge or demote the teacher; or a final decision was issued by the teacher tenure commission to reinstate the teacher. The teacher's salary would continue during the suspension. (However, if the teacher was convicted of a felony, the school board could discontinue the teacher's salary effective on the date of conviction.) If the tenure commission reversed an administrative

law judge's preliminary decision to discharge a teacher, it could order an award of back pay.

A teacher could contest the school board's decision to proceed on charges by filing a claim of appeal with the tenure commission and serving a copy on the school board not later than 20 days after the board's decision to proceed. The board would file its answer with the tenure commission and serve a copy on the teacher not later than 10 days after service of the claim of appeal. If a teacher did not contest the board's decision in the time and manner specified, he or she would be considered to have waived any right to contest the discharge or demotion.

The administrative law judge would furnish each party without delay a notice of the date and place of the hearing. (The bill would require the judge to be a licensed attorney employed by the Department of Education, and would prohibit a judge who conducted such hearings from advising the tenure commission or otherwise participating in a tenure commission review of an administrative law judge's preliminary decision and order.) The date of the hearing would be at least 10 days after the notice was furnished and could be no more than 60 days after the service of the school board's answer. (A delay could be granted by the tenure commission for good cause shown by the teacher or school board.) The hearing would be conducted in accordance with Chapter 4 of the Administrative Procedures Act (which deals with contested cases) and rules promulgated by the tenure commission. The hearing could be public or private at the option of the teacher. It would have to be held at a convenient place in the appropriate county or, if the parties agreed, at the tenure commission offices in Lansing. The law judge's travel expenses outside of Lansing would be borne equally by the local school board and the tenure commission.

Both the teacher and school board could be represented by counsel, and testimony at the hearing would be on oath or affirmation. A stenographer would make a full record of the hearing, with the cost borne by the school board and tenure commission. The administrative law judge could subpoena witnesses and documentary evidence on his or her own motion and would have to do so at the request of the school board or teacher.

The hearing would have to be concluded not later than 90 days after the teacher's claim of appeal had been filed with the tenure commission. The law judge would have to make the necessary orders to ensure that the case was submitted for decision not later than 50 days after the hearing was concluded. Not later than 60 days after submission of the case for decision, the judge would have to serve a preliminary decision and order in writing upon each party or the party's attorney and the tenure commission.

Not later than 20 days after the preliminary decision and order, a party could file with the tenure commission a statement of exceptions to the preliminary decision and order or to any part of the record or proceedings, along with a written brief in support of the exceptions. If no exceptions were filed in time, the preliminary decision would become the tenure commission's final decision and order. If exceptions had been filed, a party could file a statement of cross-exceptions or a statement in support of the preliminary decision with the tenure commission not later than 10 days after being served with the other party's exceptions and briefs. A matter that was not included in a statement of exceptions or cross-exceptions would be considered waived and could not be heard before the tenured commission or on appeal to the court of appeals.

If exceptions were filed, the tenure commission, after review of the record and the exceptions, could adopt, modify, or reverse the preliminary decision and order. The tenure commission could not hear any additional evidence and its review would be limited to consideration of the issues raised in the exceptions based solely on the evidence contained in the record from the hearing. The tenure commission would have to issue its final decision and order not later than 60 days after the exceptions were filed. After giving a party notice and an opportunity to comply, the tenure commission could dismiss an appeal or deny a discharge or demotion for lack of progress or for repeated failure to comply with the required procedures or rules. A party aggrieved by a final decision and order of the tenure commission could appeal to the court of appeals within 20 days of the commission's decision.

#### ***FISCAL IMPLICATIONS:***

The Department of Education has said that House Bill 4209 would require a "substantial increase" in the department's budget to provide for the

additional workload from the hearings by administrative law judges. No specific information is available. The department also says the bill "would greatly reduce local school districts' expenses in tenure proceedings." (Analysis dated 2-16-93) The department has said House Bill 4112 would have no revenue or budgetary implications to the state. Local units would have to provide annual evaluations and individualized development plans for teachers. The cost of this, the department suggests, would potentially be offset by fewer tenure hearings in the future. (Analysis dated 2-16-93)

### **ARGUMENTS:**

#### **For:**

The bills aim at improving public education by improving the quality of teaching in the schools. One bill would make it easier to dismiss bad teachers, which is occasionally necessary, by reducing the number of steps in the process. The other would extend probationary periods and require teacher evaluations and professional development, to make sure that the teachers who get tenure are deserving and that tenured teachers are regularly monitored and offered opportunities to improve.

House Bill 4209 would eliminate the local school board hearing on teacher dismissals, which would save local districts money. Currently, the results of the local hearing can be appealed to the state teacher tenure commission, which holds a "de novo" hearing. This means, essentially, the case begins all over again, typically with an administrative law judge. Parties can then appeal to the circuit court and beyond. The bill would begin the hearing process with the administrative law judge, with appeals to the tenure commission, but only on the record already compiled. Appeals then would be directly to the state court of appeals. This, along with specified timetables, should take years off the dismissal process without sacrificing anyone's rights or interests.

House Bill 4112 would offer school administrators more time to evaluate teachers for tenure and require them to evaluate probationary teachers each year and provide them with individualized professional development plans. Tenured teachers would be evaluated at least every three years and provide professional development plans when needed. The provisions could produce better working relations between teachers and

administrators and, in any case, should make teachers and administrators focus more on effective classroom performance. Some teacher representatives agree that effective evaluations of teachers are essential and believe the standards in the bill are a bare minimum. (Collective bargaining contracts often call for more frequent, more stringent evaluations.) Some of the problems with the tenure hearing process stem, they say, from inadequate oversight by administrators who fail to set performance standards or document teacher performance and who are unable to help teachers who need improvement.

#### **Against:**

The following are among the concerns that have been expressed by representatives of school boards or school managers.

-- School boards should be allowed the option of holding a local hearing. The bill basically takes the local board out of the tenure process. Some school boards would like to retain the ability to make a decision on the facts presented at a hearing. The local board could employ an administrative law judge for such a purpose and begin the process there. School board members are elected to make such decisions and as the employer of teachers should be able to play a more significant role.

-- The official position of the organization that represents school boards is that the tenure act should be repealed because it is no longer necessary for the protection of teachers in an era of collective bargaining. The circumstances that justified the act's provisions simply no longer exist.

-- The bill should specify that a probationary year means a year of full-time classroom work and not, as for some adult education teachers, a year of one-hour per day in the classroom. Tenure, some say, should be limited to full time teachers in the K-12 system.

-- It is important that the administrative law judges be, and be seen to be, independent and not employees of the same department that later handles appeals of the judge's decision.

-- School administrators have advocated for: the elimination entirely of recall rights; the elimination of demotions from the tenure process; and the termination of teacher pay after the local school board action to dismiss.

***Against:***

The following are among the concerns of representatives of teachers.

-- A four-year probationary period is too long. If school officials cannot determine if someone is a satisfactory teacher in two or three years (which is the current period), they are not likely to be able to do so in four years. Why subject students to a fourth year of an inadequate teacher and why subject good teachers to an additional year of insecurity? It is also possible that teacher creativity could be stifled by the evaluation procedure in districts where it is better to "play it safe."

-- The limitation on the right to recall for laid-off teachers is unfair. It means that after three years tenured teachers no longer have a right to go back to an available opening in their school district. Non-tenured teachers could be employed to fill positions that previously would have been reserved for the experienced, tenured teacher. The recall rights should at least be allowed for a longer period.

-- Allowing administrators to arbitrarily demote teachers (up to three days' pay) is unfair. The bill's change in definition of "demotion" takes certain actions by school officials out of the tenure process and out from under the requirement that actions be for "reasonable and just cause."

***Response:***

As the arguments above suggest, the bills represent a compromise. They represent a significant improvement over the current state of affairs even if not all parties are happy with all of the provisions. Many of the organizations that have expressed the arguments above are generally supportive of the bill as a major step forward to improving the teacher tenure system.