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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 1870

01/24/2012 Authored by Petersen, B., Garofalo, Quam, Fabian, Downey and others
The bill was read for the first time and referred to the Committee on Education Reform

1.1 A bill for an act
1.2 relating to education; allowing school districts to base unrequested leave of
1.3 absence and certain discharge and demotion decisions on teacher evaluation
1.4 outcomes; amending Minnesota Statutes 2010, sections 122A.40, subdivisions
1.5 10, 11; 122A.41, subdivision 14; Minnesota Statutes 2011 Supplement, section
1.6 122A.41, subdivision 6.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2010, section 122A.40, subdivision 10, is amended to
1.9 read:

1.10 Subd. 10. **Negotiated unrequested leave of absence.** (a) The school board and
1.11 the exclusive bargaining representative of the teachers may negotiate a plan providing for
1.12 unrequested leave of absence without pay or fringe benefits for as many teachers as may
1.13 be necessary because of discontinuance of position, lack of pupils, financial limitations, or
1.14 merger of classes caused by consolidation of districts. ~~Failing to successfully negotiate~~
1.15 ~~such a plan, the provisions of subdivision 11 shall apply.~~ The negotiated plan must not
1.16 include provisions which would result in the exercise of seniority by a teacher holding a
1.17 provisional license, other than a vocational education license, contrary to the provisions of
1.18 subdivision 11, clause (c), or the reinstatement of a teacher holding a provisional license,
1.19 other than a vocational education license, contrary to the provisions of subdivision 11,
1.20 clause (e). The provisions of section 179A.16 do not apply for the purposes of this
1.21 subdivision. The negotiated plan may base unrequested leave of absence decisions on
1.22 licensure fields and teachers' evaluation outcomes under subdivision 8, from the least to
1.23 most effective category and from least to greatest seniority within each category.

1.24 (b) Failing to successfully negotiate a plan under paragraph (a), the provisions of
1.25 subdivision 11 shall apply unless a majority of the school board members formally decides

2.1 to place teachers on unrequested leave of absence based on licensure fields and teachers'
 2.2 evaluation outcomes under subdivision 8, from the least to most effective category and
 2.3 from least to greatest seniority within each category. In such a case the board must
 2.4 develop, publish, and implement an unrequested leave of absence plan based on licensure
 2.5 fields and the teachers' evaluation outcomes, from the least to most effective category and
 2.6 from least to greatest seniority within each category, and subdivision 11 does not apply.

2.7 (c) For purposes of placing a teacher on unrequested leave of absence or recalling
 2.8 a teacher from unrequested leave of absence, nothing in this subdivision shall require
 2.9 a school board to reassign a teacher with more seniority to a different subject matter
 2.10 category or to a substantially different grade level assignment in order to accommodate
 2.11 the seniority claims of a teacher with less seniority. "A substantially different grade level
 2.12 assignment" means an assignment between kindergarten, grades 1 through 6, junior high
 2.13 school, and senior high school.

2.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.15 Sec. 2. Minnesota Statutes 2010, section 122A.40, subdivision 11, is amended to read:

2.16 Subd. 11. **Unrequested leave of absence.** The board may place on unrequested
 2.17 leave of absence, without pay or fringe benefits, as many teachers as may be necessary
 2.18 because of discontinuance of position, lack of pupils, financial limitations, or merger of
 2.19 classes caused by consolidation of districts. The unrequested leave is effective at the close
 2.20 of the school year. In placing teachers on unrequested leave, the board is governed by
 2.21 the following provisions:

2.22 (a) The board may place probationary teachers on unrequested leave first in the
 2.23 inverse order of their employment. A teacher who has acquired continuing contract rights
 2.24 must not be placed on unrequested leave of absence while probationary teachers are
 2.25 retained in positions for which the teacher who has acquired continuing contract rights is
 2.26 licensed;

2.27 (b) Teachers who have acquired continuing contract rights shall be placed on
 2.28 unrequested leave of absence in fields in which they are licensed in the inverse order
 2.29 in which they were employed by the school district. In the case of equal seniority, the
 2.30 order in which teachers who have acquired continuing contract rights shall be placed on
 2.31 unrequested leave of absence in fields in which they are licensed is negotiable;

2.32 (c) Notwithstanding the provisions of clause (b), a teacher is not entitled to exercise
 2.33 any seniority when that exercise results in that teacher being retained by the district in a
 2.34 field for which the teacher holds only a provisional license, as defined by the board of
 2.35 teaching, unless that exercise of seniority results in the placement on unrequested leave of

3.1 absence of another teacher who also holds a provisional license in the same field. The
 3.2 provisions of this clause do not apply to vocational education licenses;

3.3 (d) Notwithstanding clauses (a), (b) and (c), if the placing of a probationary teacher
 3.4 on unrequested leave before a teacher who has acquired continuing rights, the placing of a
 3.5 teacher who has acquired continuing contract rights on unrequested leave before another
 3.6 teacher who has acquired continuing contract rights but who has greater seniority, or the
 3.7 restriction imposed by the provisions of clause (c) would place the district in violation of
 3.8 its affirmative action program, the district may retain the probationary teacher, the teacher
 3.9 with less seniority, or the provisionally licensed teacher;

3.10 (e) For purposes of placing a teacher on unrequested leave of absence or recalling
 3.11 a teacher from unrequested leave of absence, nothing in this subdivision shall require
 3.12 a school board to reassign a teacher with more seniority to a different subject matter
 3.13 category or to a substantially different grade level assignment in order to accommodate
 3.14 the seniority claims of a teacher with less seniority. "A substantially different grade level
 3.15 assignment" means an assignment between kindergarten, grades 1 through 6, junior high
 3.16 school, and senior high school;

3.17 (f) Teachers placed on unrequested leave of absence must be reinstated to the
 3.18 positions from which they have been given leaves of absence or, if not available, to
 3.19 other available positions in the school district in fields in which they are licensed.
 3.20 Reinstatement must be in the inverse order of placement on leave of absence. A teacher
 3.21 must not be reinstated to a position in a field in which the teacher holds only a provisional
 3.22 license, other than a vocational education license, while another teacher who holds a
 3.23 nonprovisional license in the same field remains on unrequested leave. The order of
 3.24 reinstatement of teachers who have equal seniority and who are placed on unrequested
 3.25 leave in the same school year is negotiable;

3.26 ~~(f)~~ (g) Appointment of a new teacher must not be made while there is available, on
 3.27 unrequested leave, a teacher who is properly licensed to fill such vacancy, unless the
 3.28 teacher fails to advise the school board within 30 days of the date of notification that a
 3.29 position is available to that teacher who may return to employment and assume the duties
 3.30 of the position to which appointed on a future date determined by the board;

3.31 ~~(g)~~ (h) A teacher placed on unrequested leave of absence may engage in teaching
 3.32 or any other occupation during the period of this leave;

3.33 ~~(h)~~ (i) The unrequested leave of absence must not impair the continuing contract
 3.34 rights of a teacher or result in a loss of credit for previous years of service;

3.35 ~~(i)~~ (j) The unrequested leave of absence of a teacher who is placed on unrequested
 3.36 leave of absence and who is not reinstated shall continue for a period of five years, after

4.1 which the right to reinstatement ~~shall terminate~~ also terminates. The teacher's right to
 4.2 reinstatement shall also terminate if the teacher fails to file with the board by April 1 of
 4.3 any year a written statement requesting reinstatement;

4.4 (k) The unrequested leave of absence of an ineffective teacher who is placed on
 4.5 unrequested leave of absence and who is not reinstated shall continue for the following
 4.6 school year only, after which the right to reinstatement terminates. The teacher's right to
 4.7 reinstatement also terminates if the teacher fails to file with the board by April 1 in that
 4.8 following school year a written statement requesting reinstatement;

4.9 ~~(l)~~ (l) The same provisions applicable to terminations of probationary or continuing
 4.10 contracts in subdivisions 5 and 7 must apply to placement on unrequested leave of absence;

4.11 ~~(m)~~ (m) Nothing in this subdivision shall be construed to impair the rights of teachers
 4.12 placed on unrequested leave of absence to receive unemployment benefits if otherwise
 4.13 eligible;

4.14 (n) Beginning in the 2015-2016 school year and later, and notwithstanding any
 4.15 contradictory provisions in this subdivision, a school board must place teachers on
 4.16 unrequested leave of absence based on licensure fields and the teachers' most recent
 4.17 evaluation outcomes under subdivision 8, from the least to most effective category and
 4.18 from least to greatest seniority within each category, unless the placement violates the
 4.19 district's affirmative action program. A school board is not required to reassign a teacher
 4.20 with more seniority to a different subject matter category or to a substantially different
 4.21 grade level assignment in order to accommodate the seniority claims of a less senior
 4.22 teacher. The school board must publish in a readily accessible format the unrequested
 4.23 leave of absence plan it develops and implements under this paragraph.

4.24 **EFFECTIVE DATE.** This section is effective for the 2015-2016 school year and
 4.25 later.

4.26 Sec. 3. Minnesota Statutes 2011 Supplement, section 122A.41, subdivision 6, is
 4.27 amended to read:

4.28 Subd. 6. **Grounds for discharge or demotion.** (a) Except as otherwise provided
 4.29 in paragraph (b), causes for the discharge or demotion of a teacher either during or after
 4.30 the probationary period must be:

4.31 (1) immoral character, conduct unbecoming a teacher, or insubordination;

4.32 (2) failure without justifiable cause to teach without first securing the written release
 4.33 of the school board having the care, management, or control of the school in which the
 4.34 teacher is employed;

5.1 (3) inefficiency in teaching or in the management of a school, consistent with
5.2 subdivision 5, paragraph (b);

5.3 (4) affliction with active tuberculosis or other communicable disease must be
5.4 considered as cause for removal or suspension while the teacher is suffering from such
5.5 disability; or

5.6 (5) discontinuance of position or lack of pupils.

5.7 The school board and the exclusive representative of the teachers may negotiate an
5.8 agreement to discharge or demote a teacher under clause (5) based on licensure fields
5.9 and teachers' evaluation outcomes under subdivision 5, from the least to most effective
5.10 category and from least to greatest seniority within each category. Alternatively, the
5.11 majority of the school board members may formally decide to discharge or demote a
5.12 teacher under clause (5) based on licensure fields and teachers' evaluation outcomes
5.13 under subdivision 5, from the least to most effective category and from least to greatest
5.14 seniority within each category, in which case the board must develop and implement
5.15 a discharge and demotion plan based on licensure fields and the teachers' evaluation
5.16 outcomes, from the least to most effective category and from least to greatest seniority
5.17 within each category. Beginning in the 2015-2016 school year and later, the school board
5.18 must discharge or demote a teacher under clause (5) based on licensure fields and the
5.19 teachers' most recent evaluation outcomes under subdivision 5, from the least to most
5.20 effective category and from least to greatest seniority within each category, and licensure
5.21 fields unless the placement violates a district affirmative action program. The school board
5.22 must publish in a readily accessible format any discharge and demotion plan it develops
5.23 to implement clause (5) of this paragraph.

5.24 For purposes of this paragraph, conduct unbecoming a teacher includes an unfair
5.25 discriminatory practice described in section 363A.13.

5.26 (b) A probationary or continuing-contract teacher must be discharged immediately
5.27 upon receipt of notice under section 122A.20, subdivision 1, paragraph (b), that the
5.28 teacher's license has been revoked due to a conviction for child abuse or sexual abuse.

5.29 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.30 Sec. 4. Minnesota Statutes 2010, section 122A.41, subdivision 14, is amended to read:

5.31 Subd. 14. **Services terminated by discontinuance or lack of pupils; preference**
5.32 **given.** (a) Consistent with paragraph (c), a teacher whose services are terminated on
5.33 account of discontinuance of position or lack of pupils must receive first consideration for
5.34 other positions in the district for which that teacher is qualified. In the event it becomes
5.35 necessary to discontinue one or more positions, in making such discontinuance, teachers

6.1 must be discontinued in any department in the inverse order in which they were employed,
6.2 unless a board and the exclusive representative of teachers in the district negotiate a
6.3 plan providing otherwise.

6.4 (b) Notwithstanding the provisions of clause (a), a teacher is not entitled to exercise
6.5 any seniority when that exercise results in that teacher being retained by the district in
6.6 a field for which the teacher holds only a provisional license, as defined by the Board
6.7 of Teaching, unless that exercise of seniority results in the termination of services, on
6.8 account of discontinuance of position or lack of pupils, of another teacher who also
6.9 holds a provisional license in the same field. The provisions of this clause do not apply
6.10 to vocational education licenses.

6.11 (c) For purposes of placing a teacher on unrequested leave of absence or recalling
6.12 a teacher from unrequested leave of absence, nothing in this subdivision shall require
6.13 a school board to reassign a teacher with more seniority to a different subject matter
6.14 category or to a substantially different grade level assignment in order to accommodate
6.15 the seniority claims of a teacher with less seniority. "A substantially different grade level
6.16 assignment" means an assignment between kindergarten, grades 1 through 6, junior high
6.17 school, and senior high school.

6.18 (d) Notwithstanding the provisions of clause (a), a teacher must not be reinstated
6.19 to a position in a field in which the teacher holds only a provisional license, other than a
6.20 vocational education license, while another teacher who holds a nonprovisional license in
6.21 the same field is available for reinstatement.

6.22 **EFFECTIVE DATE.** This section is effective the day following final enactment.