

Regular Session, 2014

HOUSE BILL NO. 653

BY REPRESENTATIVE NANCY LANDRY

SCHOOLS/EMPLOYEES: Provides relative to tenure for teachers and other public school employees

1 AN ACT

2 To amend and reenact R.S. 17:441, 442, 443, and 444(B)(1), to enact R.S. 17:532(C), and
3 to repeal Subpart C of Part I-A of Chapter 1 of Title 17 of the Louisiana Revised
4 Statutes of 1950, comprised of R.S. 17:45, R.S. 17:81(I), 444(A) and (B)(2) and (3),
5 and 446, and Subpart B of Part II of Chapter 2 of Title 17 of the Louisiana Revised
6 Statutes of 1950, comprised of R.S. 17:461 through 464, relative to teachers and
7 other school employees; to provide relative to tenure for school employees and the
8 removal of tenured and nontenured teachers; to provide for effectiveness; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 17:441, 442, 443, and 444(B)(1) are hereby amended and reenacted
12 and R.S. 17:532(C) is hereby enacted to read as follows:

13 §441. Definitions

14 As used in this Subpart, the word "teacher" means:

15 (1) Any employee of ~~any parish or city~~ a local public school board, state
16 special school, or a school or program administered by the special school district
17 who holds a teacher's certificate and whose legal employment requires such teacher's
18 certificate;

19 (2) Any school lunch supervisor employed by a ~~parish or city~~ local public
20 school board who holds a special parish school lunch supervisor's certificate issued

1 by the ~~department~~ Department of ~~education~~ Education of the state of Louisiana and
2 whose employment requires such certificate. No employee as defined in this
3 Paragraph hired on or after July 1, 2014, shall be eligible to acquire tenure.

4 §442. ~~Probation and tenure of parish or city school teachers~~ Tenure

5 ~~Each teacher shall serve a probationary term of three years to be reckoned~~
6 ~~from the date of his first appointment in the parish or city in which the teacher is~~
7 ~~-serving his probation. During the probationary term the parish or city school board,~~
8 ~~as the case may be, may dismiss or discharge any probationary teacher upon the~~
9 ~~written recommendation of the parish or city superintendent of schools, as the case~~
10 ~~may be, accompanied by valid reasons therefor.~~

11 ~~Any teacher found unsatisfactory by the parish or city school board, as the~~
12 ~~case may be, at the expiration of the said probationary term, shall be notified in~~
13 ~~writing by the board that he has been discharged or dismissed; in the absence of such~~
14 ~~notification, such probationary teacher shall automatically become a regular and~~
15 ~~permanent teacher in the employ of the school board of the parish or city, as the case~~
16 ~~may be, in which he has successfully served his three year probationary term, all~~
17 ~~teachers in the employ of any parish or city school board as of July 31, 1946 who~~
18 ~~hold proper certificates and who have served satisfactorily as teachers in that parish~~
19 ~~or city for more than three consecutive years, are declared to be regular and~~
20 ~~permanent teachers in the employ of the school board of that parish or city.~~

21 A.(1)(a) A teacher who has acquired tenure before September 1, 2014,
22 retains tenure and is subject to the provisions of this Section.

23 (b) Effective beginning on July 1, 2014, a teacher rated "highly effective"
24 for five years within a six-year period pursuant to the performance evaluation
25 program as provided in R.S. 17:3881 through 3905 shall be granted tenure.

26 (2) A teacher paid with federal funds shall not be eligible to acquire tenure,
27 nor shall time spent in employment paid with federal funds be counted toward the
28 time required for acquisition of tenure.

1 B. The school superintendent shall notify a teacher, in writing, when tenure
2 has been awarded and the teacher is deemed to have acquired tenure on the date
3 specified therein. A teacher who is not awarded tenure remains an at-will employee
4 of the public school board or the special school district but shall acquire tenure upon
5 meeting the criteria established in Subsection A of this Section.

6 C.(1) Beginning with the 2015-2016 school year, a tenured teacher who
7 receives a performance rating of "ineffective" pursuant to the performance evaluation
8 program as provided in R.S. 17:3881 through 3905 shall immediately lose his tenure
9 and all rights related thereto. If a teacher is rated "highly effective" based on the
10 evidence of the growth portion of the evaluation but is rated "ineffective" according
11 to the observation portion, within thirty days after such finding, the teacher shall be
12 entitled to a second observation by members of a team of three designees, chosen by
13 the local superintendent, which shall not include the principal.

14 (2) Such teacher shall reacquire tenure if any of the following applies:

15 (a) The teacher's "ineffective" performance rating is reversed pursuant to the
16 grievance procedure established pursuant to R.S. 17:3883(A)(5). In such case, the
17 teacher's tenure shall be immediately reinstated.

18 (b) The teacher receives a performance rating of "highly effective" for five
19 years within a six-year period subsequent to receiving an "ineffective" rating as
20 provided in Subsection A of this Section.

21 §443. Removal of teachers; procedure; right to appeal

22 A. The school superintendent may terminate the employment of any
23 nontenured teacher after providing such teacher with the written reasons therefor and
24 providing the teacher the opportunity to respond. The teacher shall have seven days
25 to respond, and such response shall be included in the teacher's personnel file.

26 ~~A.B.(1)~~ A ~~permanent~~ teacher with tenure shall not be removed from office
27 except upon written and signed charges of poor performance, willful neglect of duty,
28 ~~or~~ incompetency, dishonesty, ~~or~~ immorality, or of being a member of or contributing
29 to any group, organization, movement, or corporation that is by law or injunction

1 prohibited from operating in the state of Louisiana, and then only if ~~found guilty~~
2 after furnished with a copy of such written charges and given the opportunity to
3 respond. The teacher shall have seven days to respond, and such response shall be
4 included in the teacher's personnel file. At the end of this seven-day time period, the
5 superintendent may terminate the teacher's employment. A teacher shall not be
6 terminated for an "ineffective" performance rating until completion of the grievance
7 procedure established pursuant to R.S. 17:3883(A)(5) if a grievance was timely filed.
8 Within seven days after dismissal, a teacher may request and upon request shall be
9 granted a hearing by the school board of the parish or city, as the case may be a panel
10 composed of a designee of the superintendent, a designee of the principal or the
11 administrative head of the state special school in which the teacher was employed,
12 and a designee of the teacher. In no case shall the superintendent, the principal or
13 state special school administrative head, or teacher designate an immediate family
14 member or any full-time employee of the school system by which the teacher was
15 employed who is under the supervision of the person making the designation. Such,
16 ~~which~~ hearing may be private or public, at the option of the teacher, At least twenty
17 ~~days in advance of the date of the hearing, the superintendent with approval of the~~
18 ~~school board shall furnish the teacher with a copy of the written charges. Such~~
19 ~~statement of charges shall include a complete and detailed list of the specific reasons~~
20 ~~for such charges and shall include but not be limited to the following: date and place~~
21 ~~of alleged offense or offenses, names of individuals involved in or witnessing such~~
22 ~~offense or offenses, names of witnesses called or to be called to testify against the~~
23 ~~teacher at said hearing, and whether or not any such charges previously have been~~
24 ~~brought against the teacher and shall begin within seven business days after receipt~~
25 ~~of the teacher's request for such hearing. The teacher shall have the right to appear~~
26 ~~before the board~~ tenure hearing panel ~~with witnesses in~~ on his behalf and with
27 counsel of his selection, all of whom shall be heard by the ~~board~~ panel ~~at said the~~
28 hearing. For the purpose of conducting hearings hereunder, the ~~board~~ panel shall
29 have the power to issue subpoenas to compel the attendance of all witnesses ~~on~~

1 ~~behalf of the teacher.~~ Nothing herein contained shall impair the right of appeal to
2 to seek supervisory review from a court of competent jurisdiction.

3 B. ~~(2) If a permanent teacher is found guilty by a school board, after due and~~
4 ~~legal hearing as provided herein, on charges of willful neglect of duty, or of~~
5 ~~incompetency, dishonesty, or immorality, or of being a member of or contributing~~
6 ~~to any group, organization, movement, or corporation that is by law or injunction~~
7 ~~prohibited from operating in the state of Louisiana, and ordered removed from office,~~
8 ~~or disciplined by the board, the superintendent with approval of the board shall~~
9 ~~furnish to the teacher a written statement of recommendation of removal or~~
10 ~~discipline, which shall include but not be limited to the exact reason(s), offense(s),~~
11 ~~or instance(s) upon which the recommendation is based. The tenure hearing panel~~
12 ~~shall submit its recommendation to the superintendent, and the superintendent may~~
13 ~~choose to reinstate the teacher. If the superintendent does not reinstate the teacher,~~
14 ~~the superintendent shall notify the teacher of his final determination, in writing, and~~
15 ~~Such such teacher may, not more than one year sixty days from the date of the said~~
16 ~~finding, postmarked date of such written notification, petition a court of competent~~
17 ~~jurisdiction for a full hearing to review whether the action of the ~~school board~~~~
18 ~~superintendent, and the was arbitrary or capricious. The court shall have jurisdiction~~
19 ~~to affirm or reverse the action of the ~~school board~~ superintendent in the matter. The~~
20 ~~record on review shall be limited to evidence presented to the tenure hearing panel,~~
21 ~~and the court shall review the matter not later than ten days after the petition has~~
22 ~~been filed. If the finding action of the ~~school board~~ superintendent is reversed by the~~
23 ~~court and the teacher is ordered reinstated and restored to duty, the teacher shall be~~
24 ~~entitled to full pay for any loss of time or salary he ~~or she~~ may have sustained by~~
25 ~~reason of the action of the ~~said school board~~ superintendent.~~

26 C. For the purposes of this Section, immorality shall mean any conviction
27 of a felony offense affecting the public morals enumerated in Part V of Chapter 1 of
28 Title 14 of the Louisiana Revised Statutes of 1950.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Nancy Landry

HB No. 653

Abstract: Reenacts those provisions of Acts 2012, No. 1 relative to tenure for school employees and the removal of tenured and nontenured teachers.

Proposed law reenacts those provisions of Acts 2012, No. 1 relative to tenure for school employees and the removal of tenured and nontenured teachers, except changes effective date from July 1, 2012, to July 1, 2014. (Note: Acts 2012, No. 1 has been declared unconstitutional by the 19th JDC as violative of the single object requirements of the constitution. The decision may be appealed to the supreme court. In general, changes made by an unconstitutional Act of the legislature are ineffective and, therefore, the law prior to the unconstitutional Act remains effective. Coding in bill shows changes in the law as it existed prior to Acts 2012, No. 1. This digest treats the law prior to Acts 2012, No. 1 as present law and the reenacted changes of this Act as proposed law.)

Present law requires each teacher to serve a three-year probationary term. Authorizes local school boards to dismiss or discharge any probationary teacher upon written recommendation of the local superintendent accompanied by valid reasons. Provides that any teacher found unsatisfactory by the local school board at the end of the probationary term be dismissed. Provides that if not dismissed, the teacher automatically becomes a regular and permanent teacher. Provides separate provisions for teachers in Orleans Parish and the special school district.

Proposed law provides instead as follows:

- (1) A teacher who receives a performance rating of "highly effective" for five years within a six-year period shall be granted tenure.
- (2) A teacher who is not awarded tenure remains an at-will employee but shall acquire tenure upon meeting this rating requirement.
- (3) Beginning with the 2015-2016 school year, a tenured teacher who receives a performance rating of "ineffective" shall immediately lose tenure.
- (4) A teacher who loses tenure for receiving an "ineffective" performance rating shall reacquire tenure if any one of the following conditions applies:
 - (a) The "ineffective" rating is reversed pursuant to the grievance procedure established in present law.
 - (b) The teacher receives a "highly effective" performance rating for five years within a six-year period.
- (5) Provides that a teacher who has acquired tenure before September 1, 2014, retains tenure and is subject to proposed law.
- (6) Consolidates the tenure provisions for all certified school employees.

Proposed law provides that a school lunch supervisor shall not be eligible for tenure on or after June 1, 2014.

Proposed law adds that an employee of the Iberville Parish School Board who (1) is a member of or is eligible for membership in the State Teachers' Retirement System of La. and who is not covered by the provisions of present law relative to tenure and (2) is hired on or after July 1, 2014, shall not be eligible to acquire permanent status.

Present law authorizes removal of a tenured teacher upon written charges of willful neglect of duty, incompetency, dishonesty, immorality, or of being a member of an entity prohibited from operating in the state. Proposed law provides that poor performance is also grounds for removal of a tenured teacher. Proposed law provides that an "ineffective" rating on a performance evaluation constitutes proof of poor performance, incompetence, or willful neglect of duty and that no additional documentation to substantiate such charges is required.

Present law provides for a hearing by the school board to determine whether the teacher was guilty of the charges.

Proposed law provides that a teacher has seven days to respond to written charges, after which time the superintendent may remove the teacher. Requires that the removed teacher be given a hearing if he requests one within seven days of removal. Provides for appointment of a panel to conduct such a hearing; the panel is composed of a designee of the superintendent, a designee of the principal or the administrative head of the state special school, and a designee of the teacher; prohibits the designation of an immediate family member or any full-time employee of the school system by which the teacher was employed who is under the supervision of the person making the designation.

Present law provides that if the teacher is found guilty and ordered removed or disciplined by the board, the superintendent with approval of the board is required to furnish to the teacher a written statement of recommendation of removal or discipline. Authorizes the teacher to, within one year, petition a court for a full hearing to review the action of the school board. Provides that if the court reverses the finding of the school board and orders the teacher reinstated, the teacher is entitled to full pay for any loss of time or salary.

Proposed law requires the hearing panel to submit its recommendation to the superintendent, who may reinstate the teacher. If he does not reinstate the teacher, he shall notify the teacher in writing. Grants the teacher 60 days to petition a court to review the superintendent's action and to determine whether it was arbitrary or capricious. Requires that the record on review be limited to evidence presented to the tenure hearing panel.

Present law provides that it does not impair the right of appeal to a court of competent jurisdiction. Proposed law instead provides that it does not impair the right to seek supervisory review from such court.

Relative to nontenured teachers, proposed law:

- (1) Authorizes a superintendent to terminate employment upon providing the teacher with written charges therefor and the opportunity to respond.
- (2) Grants the teacher seven days to respond and provides that the response shall be included in the teacher's personnel file.

Effective July 1, 2014.

(Amends R.S. 17:441, 442, 443, and 444(B)(1); Adds R.S. 17:532(C); Repeals R.S. 17:45, 81(I), 444(A) and (B)(2) and (3), 446, and 461- 464)