

HOUSE BILL 1244

By Powers

AN ACT to amend Tennessee Code Annotated, Title 49,
relative to the office of elected superintendent of
schools.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Local School District Empowerment Act."

SECTION 2. Tennessee Code Annotated, Section 49-2-203(a)(13)(A), is amended by deleting the language "Notwithstanding any other public or private act to the contrary" and substituting instead the language "Unless a county or municipal legislative body has voted to establish the office of elected superintendent of schools and the voters of the county or municipality have, by referendum, approved the establishment of the office of elected superintendent of schools".

SECTION 3. Tennessee Code Annotated, Section 49-2-301(a), is amended by deleting the word "Each" and substituting instead the language "Except as provided in subsection (e), each".

SECTION 4. Tennessee Code Annotated, Section 49-2-301, is amended by adding the following new subsections:

(e)

(1)

(A) Notwithstanding subsection (a) or Chapter 535 of the Public Acts of 1992 to the contrary, a county or municipality operating a school system may establish the office of elected superintendent of schools by a

two-thirds (2/3) vote of the membership of the county or municipal legislative body.

(B) An ordinance or resolution of a county or municipality to establish the office of elected superintendent of schools shall not become operative until approved in an election in the county or municipality, as applicable. The county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the ordinance or resolution, after the commission receives a certified copy of the ordinance or resolution. A majority vote of those voting in the election determines whether the ordinance or resolution is to be operative.

(C) If the majority vote is for the ordinance or resolution, then it is operative on the date that the county election commission makes its official canvass of the election returns. If the majority vote is against the ordinance or resolution, then the legislative body shall not act on establishing the office of elected superintendent of schools for at least two (2) years from the date on which the election is held.

(D) If approved in the election on the question, then elections for the superintendent must be held at the regular August election. The office must be filled by popular vote for a term of four (4) years. The person elected must take office on September 1, immediately following the election.

(2)

(A) If the office of elected superintendent of schools is established, then the contractual term of an appointed director of schools

shall not be abridged by the establishment. If a county or municipality chooses to conduct an election before the expiration of an incumbent director's contract, then it is the responsibility of the county or municipal legislative body to satisfy any contractual obligation to the incumbent director of schools.

(B) A local board of education shall not appoint or extend the contract or term of a director of schools after the county or municipality establishes the office of elected superintendent of schools, but may appoint a qualified person to serve as acting director until the office of superintendent of schools is filled by the voters.

(3)

(A) An elected superintendent must be a person of literary attainment and experience in the art of teaching and school administration, and possess a license of qualification issued by the state board of education before the superintendent's election.

(B) The state board of education shall establish minimum requirements for a license of qualification for a superintendent, which must include, at a minimum, the following:

(i) The applicant must hold a teacher's professional license with endorsement as principal or supervisor of instruction;

(ii) The applicant must hold a master's degree with a major in education administration to include study areas such as:

(a) School organization and administration;

(b) Supervision, curriculum development, and evaluation;

(c) School finance, housing, and transportation;

(d) School and communication relationships; and

(e) Techniques of problem solving by group

process; and

(iii) The applicant must have at least five (5) years' experience to include both teaching and administrative experience.

(f)

(1) All rights, duties, or powers granted to an appointed director of schools, unless otherwise provided in this title, are the rights, duties, or powers of an elected superintendent for the LEA of a county or city that establishes the office of elected superintendent of schools under subsection (e), and all references to an appointed director of schools are references to an elected superintendent.

(2) If a law directs or permits the director of schools or the local board of education, as appropriate, to perform an act or function, then in the counties or cities that establish the office of elected superintendent of schools under subsection (e), the local board of education is directed or permitted to perform the act or function.

SECTION 5. Tennessee Code Annotated, Section 49-2-202(a)(3)(C), is amended by designating the first sentence as subdivision (i), designating the second and third sentences as subdivision (ii), and adding the following language as subdivision (iii):

(iii) Subdivision (a)(3)(C)(ii) does not apply in the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e). In such LEAs, if two (2) or more employees who are relatives are within the same direct

line of supervision, or become within the same direct line of supervision by marriage or promotion, then the local board of education shall attempt to resolve this issue by transfer of one (1) or more of the employees. If the local board finds that transfer is not feasible or is not in the best interest of students, then an alternate evaluation plan must be devised for one (1) or more of the employees.

SECTION 6. Tennessee Code Annotated, Section 49-2-203, is amended by adding the following language as new subsection (f):

(f) Notwithstanding subdivision (a)(1), in the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e), the local board of education shall elect, employ, and fix the salaries of principals, supervisors, educational assistants, and other employees of the school system. Subdivisions (a)(1)(A)-(D) apply to such school system.

SECTION 7. Tennessee Code Annotated, Section 49-2-301(b)(1)(J), is amended by designating the existing language as subdivision (i) and adding the following language as new subdivision (ii):

(ii) Notwithstanding subdivision (b)(1)(J)(i), in the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e), recommend to the board of education, supervisors, teachers, educational assistants, clerical assistants, and other employees in the schools, pending the meeting and approval of the board of education;

SECTION 8. Tennessee Code Annotated, Section 49-2-301(b)(1)(L), is amended by designating the existing language as subdivision (i) and adding the following language as new subdivision (ii):

(ii) Notwithstanding subdivision (b)(1)(L)(i), in the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e),

assign teachers and educational assistants to the several schools to promote the best interests of the schools, pending the meeting and approval of the board of education;

SECTION 9. Tennessee Code Annotated, Section 49-2-203, is amended by adding the following language as new subsection (g):

(g)

(1) Notwithstanding § 49-2-301(b)(1)(CC), (DD), and (EE), this subsection (g) does not apply in the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e).

(2) Within the approved budget and consistent with existing state laws and board policies, the local board of education shall employ, transfer, suspend, nonrenew, and dismiss all personnel, licensed or otherwise.

(3) All persons who are employed in a position for which a teaching license is not required are hired at the will of the local board. The local board shall develop a policy for dismissing such employees.

(4)

(A) The local board may dismiss any nontenured, licensed employee under the board's jurisdiction for incompetence, inefficiency, insubordination, improper conduct, or neglect of duty after giving the employee, in writing, due notice of the charge or charges and providing a hearing; provided, that a nontenured, licensed employee under the local board's jurisdiction shall not be dismissed without first having been given, in writing:

(i) Notice of the charge or charges;

(ii) An opportunity for a full and complete hearing before an impartial hearing officer selected by the local board;

- (iii) An opportunity to be represented by counsel;
- (iv) An opportunity to call and subpoena witnesses;
- (v) An opportunity to examine all witnesses; and
- (vi) The right to require that all testimony be given under oath.

(B) Factual findings and decisions in all dismissal cases must be reduced to written form and delivered to the affected employee within ten (10) working days following the close of the hearing.

(C) A nontenured, licensed employee who desires to appeal from a decision rendered in favor of the LEA must first exhaust the administrative remedy of appealing the decision of the hearing officer to the local board within ten (10) working days of the hearing officer rendering written findings of fact and conclusions to the affected employee.

(D) Upon written notice of the appeal being given to the superintendent, the superintendent shall prepare a copy of the proceedings, transcript, documentary, and other evidence presented, and transmit the copy of the proceedings, transcript, documentary, and other evidence presented within twenty (20) working days of receipt of notice of appeal to the local board.

(E) The local board shall hear the appeal on the record and new evidence shall not be introduced. The affected employee may appear in person or by counsel and argue why the decision should be modified or reversed. The local board may sustain the decision, send the record back if additional evidence is necessary, revise the penalty, or reverse the

decision. Before charges are sustained or punishment inflicted, a majority of the local board's membership must concur in sustaining the charges. The members of the local board shall render the decision on the appeal within ten (10) working days after the conclusion of the hearing.

(F) The superintendent may appeal an adverse ruling by the hearing officer to the local board under the same conditions as are set out in this subdivision (f)(4).

(G) A party dissatisfied with the decision rendered by the local board has the right to appeal to the chancery court in the county where the LEA is located within twenty (20) working days after receipt of notice of the local board's decision. The local board shall transmit the entire record and other evidence in the case to the court. The court's review must be de novo on the record of the hearing held by the hearing officer and reviewed by the local board.

SECTION 10. Tennessee Code Annotated, Section 49-2-303(a)(1), is amended by deleting the language "Each director of schools" and substituting instead the language:

Each director of schools or, for the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e), each local board of education

SECTION 11. Tennessee Code Annotated, Section 49-2-304(a), is amended by designating the existing language as subdivision (1) and adding the following language as new subdivision (2):

(2) Notwithstanding subdivision (a)(1), for the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e), the local board of education may employ one (1) or more supervisors for the supervision of

teaching in grades kindergarten through twelve (K-12), or any combination of such grades, in the LEA.

SECTION 12. Tennessee Code Annotated, Section 49-5-401(b), is amended by designating the existing language as subdivision (1) and adding the following language as new subdivision (2):

(2) Subdivision (b)(1) does not apply in an LEA in a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e). In such LEAs, if a sufficient number of educators and other personnel are not available for election and assignment for the next school year by May 15, then the local board of education may direct and authorize the elected superintendent to locate, employ, and assign to the several schools such educators and other personnel as are necessary to meet the needs of, and programs authorized by, the board of education; provided, that the local board of education, at its next regular or special session called for that purpose, must confirm the election and assignment of each teacher, or other personnel, employed by the superintendent.

SECTION 13. Tennessee Code Annotated, Section 49-5-409, is amended by deleting the section and substituting the following:

(a)

(1)

(A) Teachers in service and under control of the public elementary or high schools of this state may continue in such service unless written notice is sent to the teacher from the teacher's board of education or director of schools, as appropriate, of the teacher's dismissal or failure of reelection.

(B)

(i) The notice must be sent within five (5) business days following the last instructional day for the school year to be applicable to the next school year.

(ii) If a teacher's dismissal or failure of reelection is due only to a loss of funding for the position, then the local board of education or director of schools, as appropriate, shall state in the notice required under this section that the only reason for dismissing the teacher or not reelecting the teacher's contract for the next school year is a loss of funding for the position.

(2) If the office of elected superintendent of schools is established for the LEA, then the LEA's local board of education shall provide the written notice described in subdivision (a)(1). The notice must contain a statement of prior authorization by a majority vote of the membership of the local board with the name of the teacher being recorded in the local board's minutes.

(b)

(1) A director of schools may transfer a teacher from one (1) position to another at the director's discretion.

(2) Subdivision (b)(1) does not apply in the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e). In such LEAs, the local board of education may transfer a teacher from one (1) position to another at the board's discretion.

(c) This section does not affect any rights that may have accrued, or may hereafter accrue, on behalf of a teacher or principal in an LEA under any law providing a tenure of office for the teachers and principals.

(d) This section does not prohibit a local board from abolishing a position after June 15, for sufficient, just, and nondiscriminatory reasons; provided, that the person holding the position is notified immediately in writing of the reasons for abolishing the position and that the person is entitled to the next position that the person is qualified to hold that opens in the LEA for the remainder of the school year. Whether a teacher is qualified for an open position must be determined by the director of schools or, for the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e), the local board of education. The teacher's most recent evaluations may be a factor in such determination.

(e) Written notice sent by a board of education or director of schools in accordance with this section must be sent by certified mail or overnight carrier to the teacher's physical mailing address on record with the LEA, or transmitted via electronic mail to the email address used by the LEA to communicate with the teacher.

(f) As used in this section, "last instructional day" means the last day of the school year on which students are required to report to school.

SECTION 14. Tennessee Code Annotated, Section 49-5-503(5), is amended by deleting the language "the director of schools" and substituting instead the following language: the director of schools or, for the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e), the local board of education

SECTION 15. Tennessee Code Annotated, Section 49-5-510, is amended by designating the existing language as subsection (a) and adding the following language as new subsection (b):

(b) Subsection (a) does not apply in the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e). In such LEAs, the elected superintendent, with the approval of the local board of education, may

transfer a teacher from one (1) location to another within the LEA, or from one (1) type of work to another for which the teacher is qualified and licensed. The concurrent action of the elected superintendent and the local board is required to make such a transfer.

SECTION 16. Tennessee Code Annotated, Section 49-5-511(b)(3), is amended by designating the existing language as subdivision (A) and adding the following language as new subdivision (B):

(B) Subdivision (b)(3)(A) does not apply in the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e). In such LEAs, a teacher rated in the three (3) highest categories based on evaluations pursuant to § 49-1-302 who has been dismissed because of the abolition of a position must be placed on a list for reemployment. This subsection (b) does not deprive the local board of education of the power to determine the filling of such a vacancy on the basis of the local board's evaluation of the teacher's competence, compatibility, and suitability to properly discharge the duties required for the vacant position, considered in the light of the best interest of the students in the school for which the vacancy exists. A principal may refuse to accept the placement or transfer of a teacher by the local board to the principal's school. The teacher's most recent evaluations must be a factor in such determination.

SECTION 17. Tennessee Code Annotated, Section 49-5-702(b), is amended by designating the first sentence as subdivision (1) and the second sentence as subdivision (2), and adding the following language as new subdivision (3):

(3) Subdivision (b)(2) does not apply in the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e). In such LEAs, the thirty-day notice may be waived or reduced by the local board or upon a certified statement of a physician approved by the local board.

SECTION 18. Tennessee Code Annotated, Section 49-5-703, is amended by designating the existing language as subsection (a) and adding the following language as new subsection (b):

(b) Notwithstanding subsection (a), for the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e), the local board of education assumes the duties assigned to the director of schools under subsection (a).

SECTION 19. Tennessee Code Annotated, Section 49-6-2101(e), is amended by designating the existing language as subdivision (1) and adding the following language as new subdivision (2):

(2) For the LEA of a county or city that establishes the office of elected superintendent of schools pursuant to § 49-2-301(e), the local board of education may, for purposes of employing school transportation personnel and contracting for transportation services with persons owning equipment, enter into contracts for such services for a period of time not to exceed four (4) years from the date on which the contract is executed, to permit a reasonable degree of employment security for school transportation personnel.

SECTION 20. Tennessee Code Annotated, Section 49-13-106(j)(5)(B), is amended by deleting the last sentence of the subdivision and substituting instead:

The director of schools or, if the LEA is one for which the LEA's county or city has established the office of elected superintendent of schools pursuant to § 49-2-301(e), the local board of education, has the option to specifically assign teachers or administrators in a conversion public charter school to vacant positions in other schools in the LEA;

SECTION 21. Tennessee Code Annotated, Title 49, Chapter 2, Part 3, is amended by adding the following language as a new, appropriately designated section:

(a) This section only applies to an LEA that has an elected superintendent of schools pursuant to the LEA's county's or city's establishment of the office under § 49-2-301(e).

(b)

(1) The legislative body of a county or municipality that has established the office of elected superintendent of schools may abolish the office and return to the appointment and employment of a director of schools by the local board of education by a two-thirds (2/3) vote of the membership of the county or municipal legislative body.

(2) An ordinance or resolution of a county or municipality to abolish the office of elected superintendent of schools is not operative until approved in an election in the county or municipality.

(c) An election to abolish the office of elected superintendent of schools may also be called if a petition signed by a number of qualified voters of the county or municipality equaling at least ten percent (10%) of the number of voters who voted in the county or municipality, as applicable, for governor in the last gubernatorial election, are filed with the county election commission. The petition must request that a referendum be conducted in the county or municipality to determine whether the office of elected superintendent of schools should be abolished.

(d) The county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the abolition of the office of elected superintendent of schools after the commission receives a certified copy of an ordinance or resolution to abolish the office of elected superintendent of schools from the legislative body under subsection (b) or a petition bearing the required number

of signatures under subsection (c). A majority vote of those voting in the election determines whether the office of elected superintendent of schools is to be abolished.

(e)

(1) If the majority vote is for abolishing the office of elected superintendent of schools, then the office is abolished and ceases to exist upon the expiration of the term of the incumbent elected superintendent. The local board of education pursuant to §§ 49-2-203 and 49-2-301 shall employ a director of schools at the expiration of the incumbent elected superintendent's term.

(2) If the majority vote is against abolishing the office of elected superintendent of schools, then the legislative body shall not take action on abolishing the office of elected superintendent of schools and returning to the appointment and employment of a director of schools by the local board of education for at least two (2) years from the date the election is held.

SECTION 22. This act takes effect July 1, 2023, the public welfare requiring it.