

House Bill 3146

Sponsored by Representative FLORES; Representatives CAMERON, DALLUM, THATCHER, WHISNANT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits school district from considering seniority of teacher when determining assignment of teacher or transfer of teacher.

Declares emergency, effective July 1, 2007.

A BILL FOR AN ACT

1
2 Relating to school district employees; creating new provisions; amending ORS 330.113, 335.505,
3 338.135, 342.845 and 342.934; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. A school district may not consider the seniority of a teacher when deter-**
6 **mining the assignment of the teacher or the transfer of the teacher to a different program**
7 **or school.**

8 **SECTION 2.** ORS 330.113 is amended to read:

9 330.113. (1) When two or more school districts are merged as provided by law, the affected dis-
10 tricts shall be considered merged into the most populous district and:

11 (a) Unless the district school boards or the petitioners requesting the merger recommend that
12 the enlarged school district retain the same name and number which was previously assigned to the
13 most populous district included in the merger, the district boundary board shall give the enlarged
14 district the new name recommended under ORS 330.095, and the county assessor shall assign a new
15 number that has not previously been used. However, if the boundaries of the enlarged school district
16 are the same as the boundaries of the county, the official name of the enlarged school district shall
17 be _____ (name of county) County School District.

18 (b) The school districts included in the merger shall become identified with the newly named
19 district or the most populous district.

20 (c) The employees of the component districts shall be considered to be employees of the enlarged
21 district, which shall succeed the other districts in such merger as a party to their respective con-
22 tracts of employment.

23 (d) [No] A school district employee [*shall*] **may not** be deprived of [*seniority or*] accumulated
24 sick leave solely because the duties of the employee have been assumed or acquired by another
25 school district as a result of a merger or boundary change.

26 (2) The board of directors of the most populous district shall constitute the board of directors
27 of the enlarged district and the terms of all other directors of component districts shall expire on
28 the effective date of the merger except that the number of directors may be increased to seven
29 members and school committees may be authorized pursuant to ORS 330.425.

30 (3) All real and personal property belonging to the districts within the enlarged district shall
31 become the property of the enlarged district.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (4) When a petition or request for a merger of school districts contains proposals for distribution
 2 of debt as provided in ORS 330.095 and the district boundary board in the manner provided in ORS
 3 330.101 declares such merger effective, the district school board of the enlarged district is author-
 4 ized to levy taxes in conformity with such proposals.

5 (5) Notwithstanding ORS 328.555, school districts requesting a boundary change in response to
 6 chapter 393, Oregon Laws 1991, shall, as part of the boundary change request under ORS 330.092,
 7 provide for the distribution of existing debt, if any.

8 **SECTION 3.** ORS 335.505 is amended to read:

9 335.505. (1) Notwithstanding any other statute, whenever kindergarten and grades 1 through 12
 10 of the common schools within the union high school district come under the jurisdiction of the union
 11 high school board or whenever as a result of merger or boundary change the area within the
 12 boundaries of the union high school district becomes a single component school district having
 13 boundaries coterminous with the union high school district, the union high school district and its
 14 component districts other than split districts are to be considered merged and the area within the
 15 boundaries of the union high school district, excluding that part of any split school district that is
 16 within the boundaries, becomes a common school district responsible for educating children in
 17 kindergarten and grades 1 through 12 and all territory therein is withdrawn from any other type
 18 of school district except the education service district or the community college district of which
 19 it may have been a part.

20 (2) The union high school board shall continue as the board of the district. If the board is in-
 21 creased to seven members as part of the vote to lengthen the course of study or the merger pro-
 22 posal, the board shall appoint the two additional members in the manner prescribed for filling
 23 vacancies under ORS 332.030 (4), except that the board shall establish by lot the terms of office of
 24 the appointed members at less than an initial four-year term.

25 (3) The terms of all board members in all component school districts other than split school
 26 districts shall terminate at the time the union high school board becomes the district school board.

27 (4) All property and obligations of the component school districts other than split school dis-
 28 tricts shall become the property and obligations of the new common school district except to the
 29 extent that it was otherwise provided when such district is formed by merger.

30 (5) Whenever at the time a new common school district is formed as provided in subsection (1)
 31 of this section, if any component school district is a split school district, such district shall continue
 32 to exist and shall become responsible for education in kindergarten and grades 1 through 12 for
 33 students resident in the split district.

34 (6) [No] A school district employee [shall] **may not** be deprived of [seniority or] accumulated
 35 sick leave solely because the duties of the employee have been assumed or acquired by another
 36 school district as a result of lengthening the course of study.

37 (7) As used in this section, "property and obligations" includes all contractual obligations, em-
 38 ployment and service contracts, collective bargaining agreements and district assets and liabilities.

39 **SECTION 4.** ORS 338.135 is amended to read:

40 338.135. (1) Employee assignment to a public charter school shall be voluntary.

41 (2) A public charter school or the sponsor of the public charter school may be considered the
 42 employer of any employees of the public charter school. If a school district board is not the sponsor
 43 of the public charter school, the school district board shall not be the employer of the employees
 44 of the public charter school and the school district board may not collectively bargain with the
 45 employees of the public charter school. The public charter school governing body shall control the

1 selection of employees at the public charter school.

2 (3) The school district board of the school district within which the public charter school is lo-
 3 cated shall grant a leave of absence to any employee who chooses to work in the public charter
 4 school. The length and terms of the leave of absence shall be set by negotiated agreement or by
 5 board policy. However, the length of the leave of absence may not be less than two years unless:

6 (a) The charter of the public charter school is terminated or the public charter school is dis-
 7 solved or closed during the leave of absence; or

8 (b) The employee and the school district board have mutually agreed to a different length of
 9 time.

10 (4) An employee of a public charter school operating within a school district who is granted a
 11 leave of absence from the school district and returns to employment with the school district shall
 12 retain [*seniority and*] benefits as an employee pursuant to the terms of the leave of absence.
 13 Notwithstanding ORS 243.650 to 243.782, a school district that was the employer of an employee of
 14 a public charter school not operating within the school district may make provisions for the return
 15 of the employee to employment with the school district.

16 (5) For purposes of ORS chapters 238 and 238A, a public charter school shall be considered a
 17 public employer and as such shall participate in the Public Employees Retirement System.

18 (6) For teacher licensing, employment experience in public charter schools shall be considered
 19 equivalent to experience in public schools.

20 (7)(a) Notwithstanding ORS 342.173, a public charter school may employ as an administrator a
 21 person who is not licensed by the Teacher Standards and Practices Commission.

22 (b) Any person employed as a teacher in a public charter school shall be licensed or registered
 23 to teach by the Teacher Standards and Practices Commission.

24 (c) Notwithstanding paragraph (a) or (b) of this subsection, at least one-half of the total full-time
 25 equivalent (FTE) teaching and administrative staff at the public charter school shall be licensed by
 26 the commission pursuant to ORS 342.135, 342.136, 342.138 or 342.140.

27 (8) Notwithstanding ORS 243.650, a public charter school shall be considered a school district
 28 for purposes of ORS 243.650 to 243.782. An employee of a public charter school may be a member
 29 of a labor organization or organize with other employees to bargain collectively. Bargaining units
 30 at the public charter school may be separate from other bargaining units of the sponsor or of the
 31 school district in which the public charter school is located. Employees of a public charter school
 32 may be part of the bargaining units of the sponsor or of the school district in which the public
 33 charter school is located.

34 (9) A school district or the State Board of Education may not waive the right to sponsor a public
 35 charter school in a collective bargaining agreement.

36 **SECTION 5.** ORS 342.845 is amended to read:

37 342.845. (1) A contract teacher shall not be subjected to the requirement of annual appointment
 38 nor shall the teacher be dismissed or employed on a part-time basis without the consent of the
 39 teacher except as provided in ORS 342.805 to 342.937.

40 (2) Notwithstanding subsection (1) of this section, a part-time contract teacher attains contract
 41 status at not less than half-time but less than full-time and may be assigned within those limits by
 42 the school district. The assignment of a contract part-time teacher is not subject to the procedures
 43 specified in ORS 342.805 to 342.930. A contract part-time teacher who accepts a full-time assignment
 44 shall be considered a contract teacher for purposes of the assignment.

45 (3) No teacher shall be deprived of employment status solely because the duties of employment

1 have been assumed or acquired by another school district or education service district in a state
 2 reorganization of a regional special education program. Where such reorganization occurs, a teacher
 3 shall be transferred to the employment of the school district or education service district which
 4 assumed or acquired program responsibilities. The teacher shall be allowed to transfer accrued sick
 5 leave [*and experience status*] to the new district. However, the district to which the programs are
 6 transferred is obligated to hire displaced employees only to the extent that such would complement
 7 a cost effective staffing plan in the reorganized program.

8 (4)(a) As used in this subsection:

9 (A) "Juvenile detention education program" means the Juvenile Detention Education Program,
 10 as defined in ORS 326.695.

11 (B) "School district" has the meaning given that term in ORS 329.007.

12 (b) No teacher shall be deprived of employment status solely because the duties of employment
 13 have been assumed or acquired by another school district or education service district pursuant to
 14 a transfer of juvenile detention education program responsibilities to another school district or ed-
 15 ucation service district. Where such reorganization occurs, a teacher shall be transferred to the
 16 employment of the school district or education service district that assumed or acquired program
 17 responsibilities. The teacher shall be allowed to transfer accrued sick leave[, *seniority*] and status
 18 as a contract teacher. However, the district to which the program is transferred is obligated to hire
 19 displaced teachers only to the extent that such would complement a cost-effective staffing plan in
 20 the reorganized program.

21 (5)(a) An administrator shall serve a probationary period that does not exceed three years, un-
 22 less the administrator and the school district mutually agree to a shorter time period. Following a
 23 probationary period, an administrator shall be employed by a school district pursuant to a three-year
 24 employment contract. An administrator may be dismissed or have a reduction in pay during the term
 25 of a contract for any reason set forth for dismissal of a teacher in ORS 342.865[, *or pursuant to ORS*
 26 *342.934 (5)*]. If an administrator is dismissed or has a reduction in pay during the term of the con-
 27 tract, the administrator may appeal to the Fair Dismissal Appeals Board in the same manner as
 28 provided for the appeal of a dismissal or a nonextension of a contract teacher. An administrator
 29 may not appeal the nonextension of a contract to the Fair Dismissal Appeals Board.

30 (b) The administrator may be assigned and reassigned at will during the term of the contract.

31 (c) The district school board may elect not to extend the administrator's contract for any cause
 32 the school board in good faith considers sufficient. Prior to March 15 of the second year of the ad-
 33 ministrator's contract, the school board shall take one of the following actions:

34 (A) Issue a new three-year contract effective July 1 following the March 15 of the second year
 35 of the administrator's contract;

36 (B) Provide, in writing, notice that the contract will not be renewed or extended; or

37 (C) Extend the existing contract for a period of not more than one year.

38 (6) If an administrator receives notice of contract nonextension prior to the expiration of the
 39 administrator's contract, the administrator shall have the right to fill any vacant teaching position
 40 in the district for which the contract administrator is licensed and competent as defined in ORS
 41 342.934, provided the administrator has three years' teaching experience in Oregon that has been
 42 successful, in the judgment of the district superintendent.

43 **SECTION 6.** ORS 342.934 is amended to read:

44 342.934. (1) The procedure for reduction in teacher staff positions resulting from the school dis-
 45 trict's lack of funds to continue its educational program at its anticipated level or resulting from the

1 district's elimination or adjustment of classes due to administrative decision shall be as provided in
 2 this section. However, nothing in this section is intended to interfere with the right of a fair dis-
 3 missal district to discharge, remove or fail to renew the contract of a probationary teacher pursuant
 4 to ORS 342.835.

5 (2) The school district shall make every reasonable effort to:

6 (a) Transfer teachers of courses scheduled for discontinuation to other teaching positions for
 7 which they are licensed and qualified.

8 (b) Combine teaching positions in a manner which allows teachers to remain qualified so long
 9 as the combined positions meet the curriculum needs of the district [*and the competence consideration*
 10 *specified in subsection (4) of this section*].

11 (3) In determining teachers to be retained when a school district reduces its staff under this
 12 section, the school district [*shall*]:

13 (a) **Shall** determine whether teachers to be retained hold proper licenses at the time of layoff
 14 to fill the remaining positions.

15 [*(b) Determine seniority of teachers to be retained, calculated from the first day of actual service*
 16 *as teachers with the school district inclusive of approved leaves of absence. Ties shall be broken by*
 17 *drawing lots.*]

18 [*(c)*] (b) **Shall** determine competence and merit of teachers[, *if necessary, under subsection (4) of*
 19 *this section*].

20 (c) **May not consider the seniority of teachers.**

21 [*(4) If a school district desires to retain a teacher with less seniority than a teacher being released*
 22 *under this section, the district shall determine that the teacher being retained has more competence or*
 23 *merit than the teacher with more seniority who is being released.*]

24 [*(5) An administrator shall retain status and seniority as a contract teacher and voluntarily may*
 25 *return to teaching in a reduction in staff situation. However, an administrator who was never employed*
 26 *as a teacher in the district shall not be eligible to become a nonadministrative teacher in the district*
 27 *if the effect is to displace a nonadministrative contract teacher.*]

28 [(6)] (4) In consultation with its employees or, for those employees in a recognized or certified
 29 collective bargaining unit, with the exclusive bargaining representative of that unit, each school
 30 district shall establish a procedure for recalling teachers to employment in the district who have
 31 been released because of a prospective or actual reduction in staff. The procedure so established
 32 shall define the criteria for recall and the teacher shall have the right of recall thereunder for 27
 33 months after the last date of release by the district unless waived as provided in such procedure
 34 by rejection of a specific position. A contract teacher who is recalled shall retain the status ob-
 35 tained before the release. A probationary teacher who is recalled shall have years taught for the
 36 district counted as if the employment had been continuous for purposes of obtaining contract
 37 teacher status.

38 [(7)] (5) An appeal from a decision on reduction in staff or recall under this section shall be by
 39 arbitration under the rules of the Employment Relations Board or by a procedure mutually agreed
 40 upon by the employee representatives and the employer. The results of the procedure shall be final
 41 and binding on the parties. Appeals from multiple reductions may be considered in a single arbi-
 42 tration. The arbitrator is authorized to reverse the staff reduction decision or the recall decision
 43 made by the district only if the district:

44 (a) Exceeded its jurisdiction;

45 (b) Failed to follow the procedure applicable to the matter before it;

1 (c) Made a finding or order not supported by substantial evidence in the whole record; or

2 (d) Improperly construed the applicable law.

3 [(8)] (6) After August 15, 1997, a school district shall not agree in any collective bargaining
4 agreement to waive the right to consider competence in making decisions about the order of re-
5 duction in staff or recall of staff. Nothing in this subsection shall prevent a school district and the
6 exclusive bargaining representative from agreeing to alternative criteria for competence determi-
7 nations under this subsection so long as the criteria ensure that all retained teachers are qualified
8 for the positions they fill. As used in this subsection, "qualified" means the measurement of the
9 teacher's ability to teach the particular grade level or subject matter in which the teacher is placed
10 after the reduction in force. Qualifications shall be measured by more than seniority and licensure,
11 but may include other criteria that reasonably measure the teacher's fitness to teach the relevant
12 grade or subject level. Determinations of competence or qualifications under this subsection may
13 take into account requirements for any special needs students.

14 [(9)] (7) As used in this section:

15 (a) "Competence" means the ability to teach a subject or grade level based on recent teaching
16 experience related to that subject or grade level within the last five years, or educational attain-
17 ments, or both, but not based solely on being licensed to teach. The district may consider a teacher's
18 willingness to undergo additional training or pursue additional education in deciding upon questions
19 of competence.

20 (b) "Merit" means the measurement of one teacher's ability and effectiveness against the ability
21 and effectiveness of another teacher.

22 **SECTION 7. Section 1 of this 2007 Act and the amendments to ORS 330.113, 335.505,**
23 **338.135, 342.845 and 342.934 by sections 2 to 6 of this 2007 Act apply to contracts entered into**
24 **on or after the effective date of this 2007 Act.**

25 **SECTION 8. This 2007 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
27 **July 1, 2007.**

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