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## 2011 EDUCATION REFORM BILL

### Summary of Senate Bill 630 (Formerly identified as Amendment to SB 7)

On April 14, 2011, Senate Bill 630 (formerly identified as an amendment to SB 7) was approved by the Illinois Senate by a vote of 59-0 and is now under consideration in the House of Representatives.

The bill is a follow-up to the *Performance Evaluation Reform Act of 2010* ("PERA"), P.A. 96-0861, which was passed in January 2010. PERA was enacted as an attempt to increase Illinois' chances of being awarded a "Race to the Top" grant and declared that school district and the State must ensure that performance evaluation systems for teachers are valid, reliable, and contribute to staff development and improved student achievement outcomes. This is a summary of SB 630's proposed provisions, many of which would drastically change teacher tenure and reductions in force (RIFs).

#### I. **NEW Section 2-3.153, Survey of Learning Conditions**

This proposed section provides that, subject to appropriations to ISBE and commencing with the 2012-13 school year, school districts will be required to administer at least bi-annually an instrument selected by ISBE in every attendance center by a date determined by the State Superintendent. A survey for teachers (as part of the ISBE-selected instrument) must be administered during teachers' meetings, professional development days, or other times that do not interfere with regular classroom or direct instructional duties. If appropriations are insufficient, ISBE must give priority to school districts with low-performing schools and a sample of other school districts.

#### II. **NEW Section 10-16a, Board Member Leadership Training**

This proposed section provides that, within one year of the effective date of the Act or the first year of a Board member's term, any voting Board member must complete a minimum of 4-hour professional development leadership training covering topics of education, labor law, financial oversight, accountability, and fiduciary responsibilities.

#### III. **REVISED Section 10-22.4, Dismissal of Teachers**

This proposed revision expressly provides that, subject to Section 24-10, a school board has the power to dismiss any teacher on the basis of performance.

**IV. REVISED Section 21-23, Suspension or Revocation of Certificate**

- A. This proposed revision provides that any certificate may be suspended or revoked by the State Superintendent for incompetency, which shall include, without limitation, 2 or more school terms of service for which the certificate holder has received an "Unsatisfactory" rating on a performance evaluation conducted pursuant to PERA within a period of 7 school terms of service. The proposed revision includes specific factors to be considered by the State Superintendent when determining whether to suspend or revoke a certificate based on incompetency.
- B. The State Superintendent may require professional development as a sanction in lieu of or in addition to suspension or revocation. The professional development must be at the expense of the certificate holder, who may use training, coursework, or other professional development funds (if available and applicable to the requirements established by administrative or court order) in accordance with the terms of a collective bargaining agreement entered into after the effective date of the Act, unless the collective bargaining agreement specifically precludes use of funds for such purpose.

**V. NEW Section 24-1.5, New or Vacant Teaching Position**

- A. This proposed section provides that a school district's selection of a candidate for a new or vacant teaching position not otherwise required to be filled pursuant to Section 24-12 must be based upon the consideration of factors that include, without limitation:
  - (1) Certifications,
  - (2) Qualifications,
  - (3) Merit and ability (including performance evaluations, if available), and
  - (4) Relevant experience, provided that seniority in the school district must not be considered as a factor, unless all other factors are determine by the school district to be equal.
- B. This proposed section provides a school district's decision to select a particular candidate is not subject to review under grievance resolution procedures, provided that the district does not fail to adhere to procedural requirements for filling new or vacant teaching positions in a collective bargaining agreement.
- C. This proposed section provides that a provision in a collective bargaining agreement regarding the filling of new or vacant teaching positions in existence on the effective date of the Act shall remain in full force and effect for the term of the agreement, unless terminated by mutual agreement.
- D. This proposed section provides that nothing in this Act (1) limits or otherwise impacts school districts' management right to hire new employees, (2) affects what currently is

or may be a mandatory subject of bargaining, or (3) creates a statutory cause of action for a candidate/candidate's representative to challenge a school district's selection based on the school district's failure to adhere to the requirements of this Section.

**VI. REVISED Section 24-11, Contractual Continued Service**

- A. **"PERA implementation date"**: The proposed revision defines this term as the implementation date of the school district's or joint agreement's teacher evaluation system as specified by Section 24A-2.5.
- B. **Tenure After the PERA Implementation Date**: The proposed revision provides that any teacher who is first employed as a full-time teacher in a school district or joint agreement after the PERA implementation date, the probationary period shall be one of the following periods before the teacher shall enter upon contractual continued services in the district or all of the joint agreement programs the teacher is legally qualified to hold, unless the teacher is given written notice of dismissal at least 45 days before the end of any school term within such period:
- (1) **Standard Tenure**: 4 consecutive school terms of service in which the teacher receives overall annual evaluation ratings of:
    - (a) At least "Proficient" in the 4<sup>th</sup> school term, and
    - (b) At least "Proficient" in either the 2nd or 3rd school terms;
  - (2) **Accelerated Tenure**: 3 consecutive school terms of service in which the teacher receives 3 overall annual evaluation ratings of "Excellent"; or
  - (3) **Accelerated Tenure**: 2 consecutive school terms of service in which the teacher receives 2 overall annual evaluation ratings of "Excellent", but only if the teacher:
    - (a) Previously attained tenure in a different school district or joint agreement in Illinois;
    - (b) Voluntarily departed or was honorably dismissed from that district or joint agreement in the school term immediately prior to the teacher's first school term of service applicable to attain tenure; and
    - (c) On his/her 2 most recent overall annual or biannual evaluations from the prior school district or joint agreement, received ratings of "Proficient", with both ratings occurring after the school district's or joint agreement's PERA implementation date.

- (4) **Failure to Obtain Qualifying Performance Evaluation Ratings.** If, at the conclusion of 4 consecutive school terms of service that count toward tenure a teacher's performance evaluation ratings do not qualify him/her for standard tenure, then the teacher shall be dismissed.
  - (5) **Performance Evaluation Rating When No Evaluation Is Completed.** If a performance evaluation is not conducted for any school term when such evaluation is required under Section 24A-5, then the teacher's performance evaluation rating for such term shall be deemed "Proficient".
- C. **School Term.** The proposed revision provides that a school term shall be counted toward attainment of tenure only if the teacher actually teaches or is otherwise present and participating in the district's or program's educational program for 120 days or more. Days of leave under FMLA that the teacher is required to take until the end of the school term shall be considered days of teaching or participation in the district's or program's educational program. A school term that is not counted toward attainment of tenure shall not be considered a break in service for purposes of determining whether a teacher has been employed for 4 consecutive school terms, provided that the teacher actually teaches or is otherwise present and participating in the district's or joint agreement's educational program in the following school term.
- D. **Written Notice of Dismissal.** The proposed revision provides that if the board decides to dismiss a teacher in the last year of the 4-year probationary period or accelerated 3-year probationary period, but not the accelerated 2-year probationary period, the written notice of dismissal must contain specific reasons for dismissal.
- E. **New District/Change in Boundaries.** The proposed revision provides that if the position held by a tenured teacher is transferred to the new/different board due to a change in the boundaries of a school district or the creation of a new school district, the teacher's tenure is not lost. The new/different board shall treat the teacher in the same manner as if the teacher had been its employee during the time the teacher was employed by the old board.
- F. **Special Education Joint Agreements - 2011-12 School Year and Thereafter.**
  - (1) **Reduction in Programs/Positions.** For any teacher employed after July 1, 1987 as a full-time teacher in a joint agreement, in the event of a reduction of the number of programs or positions in the joint agreement in which the notice of dismissal is provided during the 2011-2012 school term or a subsequent school term, the teacher shall be included on the honorable dismissal lists of all joint agreement programs for positions for which the teacher is qualified and is

eligible for employment in such programs in accordance with Section 24-12(b) and (c) and the applicable honorable dismissal policies of the joint agreement.

- (2) **Dissolution of Joint Agreement.** For any teacher employed after July 1, 1987 as a full-time teacher in a joint agreement program, in the event of the dissolution of the joint agreement in which the notice of the dissolution is provided during the 2011-2012 school term or a subsequent school term, the teacher who is qualified shall be included on the order of honorable dismissal lists of each member district and shall be assigned to any comparable position in any such district in accordance with Section 24-12(b) and (c) and the applicable honorable dismissal policies of the joint agreement.

**VI. REVISED Section 24-12, Honorable Dismissals and Recall for the 2011-12 School Year and Thereafter.**

The proposed revision of Section 24-12(b) provides that if any teacher, tenured or probationary, is removed or dismissed as a result of the board's decision to decrease the number of teachers employed by the board, discontinue some particular type of teaching service, or a reduction in the number of programs or positions in a special education joint agreement (i.e., a RIF):

- A. **45-Day Notice.** Written notice must be mailed to the teacher, and given either by certified mail or personal delivery, with receipt, at least 45 days before the end of the school term, with a statement of honorable dismissal and the reason thereof.
- B. **Categorization of Teachers.** Each teacher must be categorized into one or more positions for which the teacher is qualified to hold, based upon legal qualifications and any other qualifications established in a district or joint agreement job description, on or before May 10 prior to the school year which the sequence of dismissal is determined. Within each position, and subject to agreements made by the joint committee (as set forth in Section 24-12(c)), the school district or joint agreement must establish four groupings of teachers qualified to hold the position as follows:
  - (1) **Grouping 1:** Probationary teachers with no performance evaluation ratings;
  - (2) **Grouping 2:** Teachers who received an "Unsatisfactory" or "Needs Improvement" rating on 1 of the last 2 evaluations;
  - (3) **Grouping 3:** Teachers who received at least "Satisfactory" or "Proficient" ratings on both of the last 2 evaluations, or on the last evaluation if only 1 evaluation is available, unless the teacher qualifies for Grouping 4; and

- (4) **Grouping 4:** Teachers who received "Excellent" ratings on both of the last 2 evaluations, or teachers who received "Excellent" ratings on 2 of the last 3 evaluations and a "Satisfactory" or "Proficient" rating on the 3rd evaluation.

**C. Sequence of Dismissal.** The sequence of dismissal shall be as follows, except that this Section shall not impair the operation of any affirmative action program regardless of whether it exists by operation of law or is conducted voluntarily by the board:

- (1) Among teachers qualified to hold a position, teachers must be dismissed in the order of their groupings, with Grouping 1 dismissed first and Grouping 4 dismissed last.

- (2) Within Grouping 1, the sequence of dismissal must be at the discretion of the school district or joint agreement.

- (3) Within Grouping 2, the sequence of dismissal must be based upon the average performance evaluation ratings, with the teacher(s) with the lowest average dismissed first.

- a. Numerical values of performance evaluation ratings:

Excellent = 4

Satisfactory/Proficient = 3

Needs Improvement = 2

Unsatisfactory = 1

- b. A teacher's average performance evaluation rating is the average of the last 2 evaluation ratings, or the last evaluation rating if only 1 is available.

- c. Between teachers in Grouping 2 with the same average rating, the teacher(s) with less seniority in the district or joint agreement must be dismissed first, unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement.

- (4) Within each Grouping 3 and Grouping 4, the teacher(s) with less seniority in the district or joint agreement must be dismissed first, unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement.

**D. Sequence of Honorable Dismissal List.**

- (1) Each year the board shall, in consultation with any exclusive employee representatives, establish a sequence of honorable dismissal list categorized by positions and the groupings.
- (2) Copies of the list must be distributed to the exclusive bargaining representatives at least 75 days before the end of the school term, provided that the school district or joint agreement may, with notice to any exclusive employee representatives, move teachers from Grouping 1 to another grouping during the period of time from 75 days until 45 days before the end of the school term.
- (3) A teacher's grouping and ranking on the honorable dismissal list shall be deemed part of the teacher's performance evaluation and that information may be disclosed to the exclusive bargaining representative as part of a sequence of honorable dismissal list, notwithstanding any laws prohibiting disclosure of such information.

**E. Recall.** If the board or joint agreement has any vacancies for the following school term or within one calendar year from the beginning of the following school term, the positions must be tendered to the teachers who were in Groupings 3 or 4 and are qualified to hold the positions, based upon legal qualifications and any other qualifications established in a district or joint agreement job description, on or before the May 10 prior to the date of the positions becoming available. The order of recall must be in inverse order of dismissal, unless an alternative order of recall is established in a collective bargaining agreement.

- (1) If during the preceding school year the number of honorable dismissal notices based on economic necessity exceeds 15% of the number of full-time equivalent positions filled by certified employees (excluding principals and administrative personnel), then the recall period is for the following term or within 2 calendar years from the beginning of the following school term.
- (2) If the number of honorable dismissal notices based upon economic necessity exceeds 5 notices or 150% of the average number of teachers honorably dismissed in the preceding 3 years, whichever is more, the board shall also hold a public hearing on the question of the dismissals. Following the hearing and board review, the action to approve the reduction shall require a majority vote of the board members.

**F. PERA-Compliant Performance Evaluation Ratings.** For performance evaluation ratings determined prior to September 1, 2012, any school district or joint agreement with a performance evaluation rating system that does not use either of the rating category systems specified in PERA must establish a basis for assigning each teacher a rating that complies with PERA for all ratings to be used to determine sequence of dismissal.

- G. Existing CBA Provisions.** Any provisions of sequence of honorable dismissals and recall in a collective bargaining agreement entered into on or before January 1, 2011 and in effect on the effective date of the Act that may conflict with this Act shall remain in effect through the expiration of the agreement or June 30, 2013, whichever is earlier.
- H. Section 24-12(c), Joint Committee.** The proposed revision provides that each school district or joint agreement must use a joint committee composed of equal representation selected by the school board and its teachers or, if applicable, the exclusive bargaining representative of its teachers, to address the specific matters stated in Section 24-12(c) related to honorable dismissals.
- I. Section 24-12(d), Hearing Procedures.**
- (1) The requirements and procedures of Section 24-12 do not apply to any dismissal sought under Section 24-16.5.
  - (2) If a dismissal of a tenured teacher is sought for any reason other than honorable dismissal or dismissal under Section 24-16.5, the board must first approve a motion containing specific charges by a majority vote of all members.
  - (3) Within 5 days of adoption of the motion, written notice of the charges, including a bill of particulars and the teacher's right to request a hearing, must be mailed to the teacher and given by either certified mail or personal delivery, with receipt.
  - (4) Any written notice on or after July 1, 2012, shall inform the teacher of the right to request a hearing before a mutually-selected hearing officer, with the cost of the hearing officer split equally between the teacher and the board, or a hearing officer before a board-selected hearing officer, with the cost of the hearing officer paid by the board.
  - (5) The board may suspend the teacher without pay pending the hearing, but if the board's dismissal is not sustained, the teacher shall not suffer the loss of any salary or benefits by reason of the suspension.
  - (6) The teacher must request a hearing in writing within 17 days (as opposed to 10 days) of receipt of the notice.
  - (7) The teacher is required to answer the bill of particulars and aver affirmative defenses in his or her defense, and the time for initially doing so and the time for updating such answer and defenses after pre-hearing discovery must be set by the hearing officer.

- (8) The hearing officer shall hold a hearing and render a final decision for dismissal pursuant to Article 24A or shall report to the board findings of fact and a recommendation as to whether or not the teacher must be dismissed for conduct. A copy of the decision or findings of fact and recommendation shall be given to both the board and teacher within 30 days from the conclusion of the hearing or closure of the record, whichever is later.
  - (a) Within 45 days of receipt of the hearing officer's findings of fact and recommendation, the board shall issue a written order as to whether the teacher must be retained or dismissed for cause.
  - (b) The written order must incorporate the hearing officer's findings of fact, except that the board may modify or supplement the findings if, in its opinion, the findings of fact are against the manifest weight of the evidence.
  - (c) If the board dismisses a teacher notwithstanding the hearing officer's findings of fact and recommendation, the board shall make a conclusion and include such conclusion and the reasons thereof in the written order.

J. The changes made by this Act shall apply to dismissals instituted on or after September 1, 2011, or the effective date of this Act, whichever is later.

**VIII. NEW Section 24-16.5, Optional Alternative Dismissal Process for PERA Evaluations.**

- A. This proposed section provides for an optional dismissal process that is an alternative to the process set forth in Section 24-12, which may be used if the following are met:
  - (1) The cause of dismissal is that the teacher has failed to complete a remediation plan with a rating equal to or better than a "Proficient" rating;
  - (2) The "Unsatisfactory" performance evaluation rating that preceded remediation resulted from a PERA evaluation; and
  - (3) The school district has complied with the pre-remediation and remediation requirements of Section 24-16.5(c).
- B. **Pre-remediation and Remediation Requirements.** Each school district electing to use this alternative process must comply with the following pre-remediation and remediation activities and requirements:

- (1) Before a school district's first remediation to a dismissal under Section 24-16.5, the school district must create and establish a list of at least 2 evaluators who will be available to serve as second evaluators. The school district shall provide its teacher representatives with an opportunity to submit additional names of evaluators who will be added to the list, except that the representatives may not submit more evaluators than the number of evaluators submitted by the school district (unless otherwise agreed to by the school district).
  - (2) Before a school district's first remediation to a dismissal under the alternative process, the school district shall, in good faith cooperation with its teacher representatives, establish a process for selecting a second evaluator from the list.
  - (3) For each remediation preceding a dismissal under the alternative process, the school district shall select a second evaluator from the list using the selection process, who must not be the same individual who determined the teacher's "Unsatisfactory" rating or the administrator to which that individual directly reports.
  - (4) The second evaluator must either conduct a mid-point and final evaluation during remediation or conduct an independent assessment of whether the teacher completed the remediation plan with a rating equal to or better than a "Proficient" rating.
- C. **Written Notice.** To institute the alternative dismissal proceeding, the board must first provide written notice to the teacher within 30 days after the completion of the final remediation evaluation. In addition to the standard notice requirements in Section 24-12, the written notice must specify that dismissal is sought under Section 24-16.5 and include a copy of each performance evaluation related to the scope of the hearing.
- D. **Hearing Procedures.** In addition to the standard hearing procedures, the following must be met:
- (1) The hearing officer must have successfully completed the pre-qualification program described in Section 24A-3, unless ISBE waives the requirement.
  - (2) The scope of the hearing must be limited to the Unsatisfactory performance evaluation that preceded remediation, the remediation plan, the teacher's compliance with the remediation plan and the final remediation evaluation, and the evaluation by the second evaluator.

- (3) Each party shall be given only 2 days to present evidence and testimony, unless a longer period is mutually agreed upon by the parties or deemed necessary by the hearing officer.

E. **Findings of Fact and Recommendation.** The hearing officer shall not issue a decision, and shall issue only findings of fact and a recommendation to the board to either retain or dismiss the teacher.

- (1) A copy of the hearing officer's report shall be given to both the board and teacher within 30 days from the close of the record of the hearing.
- (2) Within 45 days of receipt of the hearing officer's findings of fact and recommendation, the board shall issue a written order as to whether the teacher must be retained or dismissed for cause, provided that only PERA-trained board members may participate in the vote with respect to the decision.
- (3) If the board dismisses a teacher notwithstanding the hearing officer's recommendation of retention, the board shall make a conclusion and include such conclusion and the reasons thereof in the written order.

F. **Judicial Review.** For school district having less than 500,000 inhabitants, the teacher may seek review of the district's dismissal in the appellate court directly. If the hearing officer recommended dismissal, the board's decision may be reversed only if it is found arbitrary, capricious, an abuse of discretion, or not in accordance with law.

**IX. REVISED Section 24A-5, Evaluation Plans**

After the PERA implementation, if a tenured teacher successfully completes a remediation plan following an "Unsatisfactory" rating and receives a subsequent "Unsatisfactory" rating in any of his/her annual or biannual overall performance evaluations received during the 36-month period following completion of the remediation plan, then the school district may forego remediation and seek dismissal in accordance with Section 24-12(d).