

House Bill 3176

Sponsored by COMMITTEE ON EDUCATION

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**.

Directs school districts to base employment decisions on specified factors. Changes period of time required to become contract teacher. Increases period of time allowed for probationary period for administrator.

A BILL FOR AN ACT

1
2 Relating to school employees; creating new provisions; and amending ORS 342.815, 342.845, 342.865
3 and 342.934.

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

5 **SECTION 1. (1) As used in this section, "employment decision" means hiring, promoting,**
6 **demoting or terminating an employee, increasing or decreasing the salary of an employee**
7 **or transferring or assigning an employee within a school district.**

8 **(2) A school district shall base all employment decisions for a teacher or school admin-**
9 **istrator on:**

10 **(a) Performance evaluations of the teacher or administrator;**

11 **(b) Student achievement on the statewide assessment system administered pursuant to**
12 **ORS 329.485; and**

13 **(c) The needs of the school district and students.**

14 **(3) A school district shall determine how to measure and what weight to assign each of**
15 **the factors listed in subsection (2) of this section. The school district board shall adopt the**
16 **determination at a public meeting and post the determination on the school district's**
17 **website.**

18 **SECTION 2. ORS 342.815 is amended to read:**

19 342.815. As used in ORS 342.805 to 342.937 unless the context requires otherwise:

20 (1) Notwithstanding ORS 342.120, "administrator" includes any teacher the majority of whose
21 employed time is devoted to service as a supervisor, principal, vice principal or director of a de-
22 partment or the equivalent in a fair dismissal district but shall not include the superintendent,
23 deputy superintendent or assistant superintendent of any such district or any substitute or tempo-
24 rary teacher employed by such a district.

25 (2) "Board" means the board of directors of a fair dismissal school district.

26 (3) "Contract teacher" means any teacher who has been regularly employed by a school district
27 for a probationary period of [*three*] **10** successive school years[,] and who has been retained for the
28 next succeeding school year. The district school board may enter into agreements that provide for
29 a shorter probationary period of not less than one year for teachers who have satisfied the [*three-*
30 *year*] **10-year** probationary period in another Oregon school district.

31 (4) "District superintendent" means the superintendent of schools of a fair dismissal district or,

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 in the absence of the superintendent, the person designated to fulfill the superintendent’s functions.

2 (5) “Fair dismissal district” means any common or union high school district or education ser-
3 vice district.

4 (6) “Probationary teacher” means any teacher employed by a fair dismissal district who is not
5 a contract teacher.

6 (7) “Program of assistance for improvement” means a written plan for a contract teacher that
7 with reasonable specificity:

8 (a) Helps teachers adapt and improve to meet changing demands of the Oregon Educational Act
9 for the 21st Century in ORS chapter 329 if applicable.

10 (b) Identifies specific deficiencies in the contract teacher’s conduct or performance.

11 (c) Sets forth corrective steps the contract teacher may pursue to overcome or correct the de-
12 ficiencies.

13 (d) Establishes the assessment techniques by which the district will measure and determine
14 whether the teacher has sufficiently corrected the deficiencies to meet district standards.

15 (8) “Substitute teacher” means any teacher who is employed to take the place of a probationary
16 or contract teacher who is temporarily absent.

17 (9) Notwithstanding ORS 342.120, “teacher” means any person who holds a teaching license or
18 registration as provided in ORS 342.125 or 342.144 or who is otherwise authorized to teach in the
19 public schools of this state and who is employed half-time or more as an instructor or administrator.

20 (10) “Temporary teacher” means a teacher employed to fill a position designated as temporary
21 or experimental or to fill a vacancy which occurs after the opening of school because of unantic-
22 ipated enrollment or because of the death, disability, retirement, resignation, contract nonextension
23 or dismissal of a contract or probationary teacher.

24 **SECTION 3.** ORS 342.845 is amended to read:

25 342.845. (1) A contract teacher shall not be subjected to the requirement of annual appointment
26 nor shall the teacher be dismissed or employed on a part-time basis without the consent of the
27 teacher except as provided in ORS 342.805 to 342.937.

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

33 (3) No teacher shall be deprived of employment status solely because the duties of employment
34 have been assumed or acquired by another school district or education service district in a state
35 reorganization of a regional special education program. Where such reorganization occurs, a teacher
36 shall be transferred to the employment of the school district or education service district which
37 assumed or acquired program responsibilities. The teacher shall be allowed to transfer accrued sick
38 leave and experience status to the new district. However, the district to which the programs are
39 transferred is obligated to hire displaced employees only to the extent that such would complement
40 a cost effective staffing plan in the reorganized program.

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

42 (A) “Juvenile detention education program” means the Juvenile Detention Education Program,
43 as defined in ORS 326.695.

44 (B) “School district” has the meaning given that term in ORS 329.007.

45 (b) 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 pursuant to
 2 a transfer of juvenile detention education program responsibilities to another school district or ed-
 3 ucation service district. Where such reorganization occurs, a teacher shall be transferred to the
 4 employment of the school district or education service district that assumed or acquired program
 5 responsibilities. The teacher shall be allowed to transfer accrued sick leave, seniority and status as
 6 a contract teacher. However, the district to which the program is transferred is obligated to hire
 7 displaced teachers only to the extent that such would complement a cost-effective staffing plan in
 8 the reorganized program.

9 (5)(a) An administrator shall serve a probationary period that does not exceed [*three*] **10** years,
 10 unless the administrator and the school district mutually agree to a shorter time period. Following
 11 a probationary period, an administrator shall be employed by a school district pursuant to a three-
 12 year employment contract. An administrator may be dismissed or have a reduction in pay during the
 13 term of a contract for any reason set forth for dismissal of a teacher in ORS 342.865[,] or pursuant
 14 to ORS 342.934 [(5)] **(4) or based on the factors listed in section 1 of this 2005 Act.** If an ad-
 15 ministrator is dismissed or has a reduction in pay during the term of the contract, the administrator
 16 may appeal to the Fair Dismissal Appeals Board in the same manner as provided for the appeal of
 17 a dismissal or a nonextension of a contract teacher. An administrator may not appeal the nonex-
 18 tension of a contract to the Fair Dismissal Appeals Board.

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

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

23 (A) Issue a new three-year contract effective July 1 following the March 15 of the second year
 24 of the administrator’s contract;

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

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

27 (6) If an administrator receives notice of contract nonextension prior to the expiration of the
 28 administrator’s contract, the administrator shall have the right to fill any vacant teaching position
 29 in the district for which the contract administrator is licensed and competent as defined in ORS
 30 342.934, provided the administrator has three years’ teaching experience in Oregon that has been
 31 successful, in the judgment of the district superintendent.

32 **SECTION 4.** ORS 342.865 is amended to read:

33 342.865. (1) No contract teacher shall be dismissed or the teacher’s contract nonextended except
 34 for:

35 (a) Inefficiency;

36 (b) Immorality;

37 (c) Insubordination;

38 (d) Neglect of duty, including duties specified by written rule;

39 (e) Physical or mental incapacity;

40 (f) Conviction of a felony or of a crime according to the provisions of ORS 342.143;

41 (g) Inadequate performance;

42 (h) Failure to comply with such reasonable requirements as the board may prescribe to show
 43 normal improvement and evidence of professional training and growth; or

44 (i) Any cause which constitutes grounds for the revocation of such contract teacher’s teaching
 45 license.

1 (2) In determining whether the professional performance of a contract teacher is adequate,
 2 consideration shall be given to regular and special evaluation reports prepared in accordance with
 3 the policy of the employing school district and to any written standards of performance which shall
 4 have been adopted by the board. **In addition, consideration shall be given to student achieve-**
 5 **ment on the statewide assessment system administered pursuant to ORS 329.485.**

6 (3) Suspension or dismissal on the grounds contained in subsection (1)(e) of this section shall
 7 not disqualify the teacher involved for any of the disability benefits provided in ORS chapter 238,
 8 or any of the benefits provided in ORS 332.507.

9 (4) Dismissal under subsection (1)(f) of this section shall remove the individual from any school
 10 district policies, collective bargaining provisions regarding dismissal procedures and appeals and the
 11 provisions of ORS 342.805 to 342.937.

12 **SECTION 5.** ORS 342.934 is amended to read:

13 342.934. (1) The procedure for reduction in teacher staff positions resulting from the school dis-
 14 trict's lack of funds to continue its educational program at its anticipated level or resulting from the
 15 district's elimination or adjustment of classes due to administrative decision shall be as provided in
 16 this section. However, nothing in this section is intended to interfere with the right of a fair dis-
 17 missal district to discharge, remove or fail to renew the contract of a probationary teacher pursuant
 18 to ORS 342.835.

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

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

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

25 (3) In determining **whether to retain** teachers *[to be retained]* when a school district reduces
 26 its staff under this section, the school district shall[:] **base the determination on the factors**
 27 **listed in section 1 of this 2005 Act.**

28 *[(a) Determine whether teachers to be retained hold proper licenses at the time of layoff to fill the*
 29 *remaining positions.]*

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

33 *[(c) Determine competence and merit of teachers, if necessary, under subsection (4) of this section.]*

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

37 *[(5)]* (4) An administrator shall retain status *[and seniority]* as a contract teacher and voluntarily
 38 may return to teaching in a reduction in staff situation. However, an administrator who was never
 39 employed as a teacher in the district shall not be eligible to become a nonadministrative teacher in
 40 the district if the effect is to displace a nonadministrative contract teacher.

41 *[(6)]* (5) In consultation with its employees or, for those employees in a recognized or certified
 42 collective bargaining unit, with the exclusive bargaining representative of that unit, each school
 43 district shall establish a procedure for recalling teachers to employment in the district who have
 44 been released because of a prospective or actual reduction in staff. The procedure so established
 45 shall define the criteria for recall and the teacher shall have the right of recall thereunder for 27

1 months after the last date of release by the district unless waived as provided in such procedure
 2 by rejection of a specific position. A contract teacher who is recalled shall retain the status ob-
 3 tained before the release. A probationary teacher who is recalled shall have years taught for the
 4 district counted as if the employment had been continuous for purposes of obtaining contract
 5 teacher status.

6 [(7)] (6) An appeal from a decision on reduction in staff or recall under this section shall be by
 7 arbitration under the rules of the Employment Relations Board or by a procedure mutually agreed
 8 upon by the employee representatives and the employer. The results of the procedure shall be final
 9 and binding on the parties. Appeals from multiple reductions may be considered in a single arbi-
 10 tration. The arbitrator is authorized to reverse the staff reduction decision or the recall decision
 11 made by the district only if the district:

- 12 (a) Exceeded its jurisdiction;
- 13 (b) Failed to follow the procedure applicable to the matter before it;
- 14 (c) Made a finding or order not supported by substantial evidence in the whole record; or
- 15 (d) Improperly construed the applicable law.

16 [(8)] (7) After August 15, 1997, a school district shall not agree in any collective bargaining
 17 agreement to waive the right to consider competence in making decisions about the order of re-
 18 duction in staff or recall of staff. Nothing in this subsection shall prevent a school district and the
 19 exclusive bargaining representative from agreeing to alternative criteria for competence determi-
 20 nations under this subsection so long as the criteria ensure that all retained teachers are qualified
 21 for the positions they fill. As used in this subsection, "qualified" means the measurement of the
 22 teacher's ability to teach the particular grade level or subject matter in which the teacher is placed
 23 after the reduction in force. Qualifications shall be measured by more than seniority and licensure,
 24 but may include other criteria that reasonably measure the teacher's fitness to teach the relevant
 25 grade or subject level. Determinations of competence or qualifications under this subsection may
 26 take into account requirements for any special needs students.

27 [(9)] (8) As used in this section[.],

28 [(a)] "competence" means the ability to teach a subject or grade level based on recent teaching
 29 experience related to that subject or grade level within the last five years, or educational attain-
 30 ments, or both, but not based solely on being licensed to teach. [*The*] **A school** district may consider
 31 a teacher's willingness to undergo additional training or pursue additional education in deciding
 32 upon questions of competence.

33 [(b)] "*Merit*" means the measurement of one teacher's ability and effectiveness against the ability
 34 and effectiveness of another teacher.]

35 **SECTION 6. (1) Section 1 of this 2005 Act and the amendments to ORS 342.815, 342.845,**
 36 **342.865 and 342.934 by sections 2 to 5 of this 2005 Act apply to collective bargaining and con-**
 37 **tracts entered into on or after the effective date of this 2005 Act.**

38 **(2) Notwithstanding subsection (1) of this section, a teacher who is a contract teacher**
 39 **prior to the effective date of this 2005 Act may continue to be a contract teacher.**