

## State of Minnesota

## HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **1870**

01/24/2012 Authored by Petersen, B.; Garofalo; Quam; Fabian; Downey and others  
The bill was read for the first time and referred to the Committee on Education Reform

02/13/2012 Adoption of Report: Pass as Amended and Read Second Time

02/16/2012 Calendar for The Day, Amended  
Read Third Time as Amended  
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act

1.2 relating to education; allowing school districts to base unrequested leave of

1.3 absence and certain discharge and demotion decisions on teacher evaluation

1.4 outcomes; amending Minnesota Statutes 2010, sections 122A.40, subdivisions

1.5 10, 11, 19; 122A.41, subdivisions 14, 15; 123A.75, subdivision 1; Minnesota

1.6 Statutes 2011 Supplement, sections 122A.245, subdivision 1; 122A.41,

1.7 subdivision 6.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2011 Supplement, section 122A.245, subdivision 1,

1.10 is amended to read:

1.11 Subdivision 1. **Requirements.** (a) To improve academic excellence, improve ethnic

1.12 and cultural diversity in the classroom, and close the academic achievement gap, the

1.13 Board of Teaching must approve qualified teacher preparation programs under this section

1.14 that are a means to acquire a two-year limited-term license, which the board may renew

1.15 one time for an additional one-year term, and to prepare for acquiring a standard license.

1.16 The following entities are eligible to participate under this section:

1.17 (1) a school district or charter school that forms a partnership with a college or

1.18 university that has a board-approved alternative teacher preparation program; or

1.19 (2) a school district or charter school, after consulting with a college or university

1.20 with a board-approved teacher preparation program, forms a partnership with a nonprofit

1.21 corporation organized under chapter 317A for an education-related purpose that has a

1.22 board-approved teacher preparation program.

1.23 (b) Before participating in this program, a candidate must:

1.24 (1) have a bachelor's degree with a 3.0 or higher grade point average unless the

1.25 board waives the grade point average requirement based on board-adopted criteria;

2.1 (2) pass the reading, writing, and mathematics skills examination under section  
2.2 122A.09, subdivision 4, paragraph (b); and

2.3 (3) obtain qualifying scores on applicable board-approved rigorous content area and  
2.4 pedagogy examinations under section 122A.09, subdivision 4, paragraph (e).

2.5 (c) The Board of Teaching must issue a two-year limited-term license to a person  
2.6 who enrolls in an alternative teacher preparation program. This limited-term license is not  
2.7 a provisional license under section 122A.40 or 122A.41.

2.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.9 Sec. 2. Minnesota Statutes 2010, section 122A.40, subdivision 10, is amended to read:

2.10 Subd. 10. **Negotiated unrequested leave of absence.** (a) The school board and the  
2.11 exclusive bargaining representative of the teachers ~~may~~ must negotiate a plan providing  
2.12 for unrequested leave of absence without pay or fringe benefits for as many teachers  
2.13 as may be necessary because of discontinuance of position, lack of pupils, financial  
2.14 limitations, or merger of classes caused by consolidation of districts. The plan must  
2.15 base unrequested leave of absence decisions on teachers' subject matter licensure fields  
2.16 and evaluation outcomes, from the least to most effective category under subdivision  
2.17 8 and from the least to greatest seniority within each effectiveness category, and must  
2.18 be consistent with subdivision 11, paragraph (n). Failing to successfully negotiate  
2.19 such a plan, the provisions of subdivision 11 shall apply. The negotiated plan must not  
2.20 include provisions which would result in the exercise of seniority by a teacher holding a  
2.21 provisional license, other than a vocational education license if required for the position,  
2.22 contrary to the provisions of subdivision 11, ~~clause~~ paragraph (c), or the reinstatement of a  
2.23 teacher holding a provisional license, other than a vocational education license required  
2.24 for the position, contrary to the provisions of subdivision 11, ~~clause (c)~~ paragraph (f). The  
2.25 provisions of section 179A.16 do not apply for the purposes of this subdivision.

2.26 (b) For purposes of placing a teacher on unrequested leave of absence or recalling a  
2.27 teacher from unrequested leave of absence, nothing in this subdivision requires a school  
2.28 board to reassign a teacher with more seniority to a different subject matter licensure  
2.29 field in order to accommodate the seniority claims of a teacher who is similarly licensed  
2.30 and effective but with less seniority. For purposes of this subdivision, a teacher holding  
2.31 a provisional license is a teacher who has received a waiver or variance to teach from  
2.32 the Minnesota Board of Teaching.

2.33 (c) Notwithstanding section 13.43, subdivision 2, paragraph (a), clause (5), or  
2.34 other law to the contrary, a teacher's effectiveness category and the underlying data on  
2.35 the individual teacher generated under the teacher evaluation process in subdivision 8,

3.1 paragraph (b), used to determine a teacher's effectiveness category for purposes of this  
3.2 subdivision are private data on individuals.

3.3 (d) Nothing in this subdivision permits a school board to use a teacher's remuneration  
3.4 as a basis for making unrequested leave of absence or discharge decisions.

3.5 **EFFECTIVE DATE.** This section is effective the day following final enactment  
3.6 and applies to negotiated plans agreed to after that date.

3.7 Sec. 3. Minnesota Statutes 2010, section 122A.40, subdivision 11, is amended to read:

3.8 Subd. 11. **Unrequested leave of absence.** The board may place on unrequested  
3.9 leave of absence, without pay or fringe benefits, as many teachers as may be necessary  
3.10 because of discontinuance of position, lack of pupils, financial limitations, or merger  
3.11 of classes caused by consolidation or reorganization of districts under chapter 123A.

3.12 The unrequested leave is effective at the close of the school year. In placing teachers on  
3.13 unrequested leave, the board is governed by the following provisions:

3.14 (a) The board may place probationary teachers on unrequested leave first in the  
3.15 inverse order of their employment. A teacher who has acquired continuing contract  
3.16 rights must not be placed on unrequested leave of absence while probationary teachers  
3.17 are retained in positions for which the teacher who has acquired continuing contract  
3.18 rights is licensed;

3.19 (b) Teachers who have acquired continuing contract rights shall be placed on  
3.20 unrequested leave of absence in fields in which they are licensed in the inverse order  
3.21 in which they were employed by the school district. In the case of equal seniority, the  
3.22 order in which teachers who have acquired continuing contract rights shall be placed on  
3.23 unrequested leave of absence in fields in which they are licensed is negotiable;

3.24 (c) Notwithstanding the provisions of ~~clause~~ paragraph (b), a teacher is not entitled  
3.25 to exercise any seniority when that exercise results in that teacher being retained by the  
3.26 district in a field for which the teacher holds only a provisional license, as defined by the  
3.27 board of teaching, unless that exercise of seniority results in the placement on unrequested  
3.28 leave of absence of another teacher who also holds a provisional license in the same field.  
3.29 The provisions of this ~~clause~~ paragraph do not apply to vocational education licenses;  
3.30 required for available positions.

3.31 (d) Notwithstanding ~~clauses~~ paragraphs (a), (b) and (c), if the placing of a  
3.32 probationary teacher on unrequested leave before a teacher who has acquired continuing  
3.33 rights, the placing of a teacher who has acquired continuing contract rights on unrequested  
3.34 leave before another teacher who has acquired continuing contract rights but who has  
3.35 greater seniority, or the restriction imposed by the provisions of ~~clause~~ paragraph (c) would

4.1 place the district in violation of its affirmative action program, the district may retain the  
 4.2 probationary teacher, the teacher with less seniority, or the provisionally licensed teacher.

4.3 (e) For purposes of placing a teacher on unrequested leave of absence or recalling a  
 4.4 teacher from unrequested leave of absence, nothing in this subdivision requires a school  
 4.5 board to reassign a teacher with more seniority to a different subject matter licensure field  
 4.6 in order to accommodate the seniority claims of a teacher who is similarly licensed and  
 4.7 effective but with less seniority.

4.8 (f) Teachers placed on unrequested leave of absence must be reinstated to the  
 4.9 positions from which they have been given leaves of absence or, if not available, to other  
 4.10 available positions in the school district in fields in which they are licensed. Reinstatement  
 4.11 must be in the inverse order of placement on leave of absence. A teacher must not be  
 4.12 reinstated to a position in a field in which the teacher holds only a provisional license,  
 4.13 other than a vocational education license if required for the position, while another teacher  
 4.14 who holds a nonprovisional license in the same field remains on unrequested leave.  
 4.15 The order of reinstatement of teachers who have equal seniority and who are placed on  
 4.16 unrequested leave in the same school year is negotiable.

4.17 ~~(f)~~ (g) Appointment of a new teacher must not be made while there is available, on  
 4.18 unrequested leave, a teacher who is properly licensed to fill such vacancy, unless the  
 4.19 teacher fails to advise the school board within 30 days of the date of notification that a  
 4.20 position is available to that teacher who may return to employment and assume the duties  
 4.21 of the position to which appointed on a future date determined by the board.

4.22 ~~(g)~~ (h) A teacher placed on unrequested leave of absence may engage in teaching  
 4.23 or any other occupation during the period of this leave.

4.24 ~~(h)~~ (i) The unrequested leave of absence must not impair the continuing contract  
 4.25 rights of a teacher or result in a loss of credit for previous years of service.

4.26 ~~(i)~~ (j) Consistent with paragraph (n) and subdivision 10, the unrequested leave of  
 4.27 absence of a teacher who is categorized as effective or better under subdivision 8, who  
 4.28 is placed on unrequested leave of absence, and who is not reinstated shall continue for a  
 4.29 period of five years, after which the right to reinstatement shall terminate terminates. The  
 4.30 teacher's right to reinstatement ~~shall also terminate terminates~~ if the teacher fails to file  
 4.31 with the board by April 1 of ~~any~~ each year a written statement requesting reinstatement.

4.32 (k) Consistent with paragraph (n) and subdivision 10, the unrequested leave of  
 4.33 absence of a teacher who is categorized as ineffective or less under subdivision 8, who  
 4.34 is placed on unrequested leave of absence, and who is not reinstated continues for the  
 4.35 following school year only, after which the teacher's right to reinstatement terminates. The

5.1 teacher's right to reinstatement also terminates if the teacher fails to file with the board by  
 5.2 April 1 in that following school year a written statement requesting reinstatement.

5.3 ~~(j)~~ (l) The same provisions applicable to terminations of probationary or continuing  
 5.4 contracts in subdivisions 5 and 7 must apply to placement on unrequested leave of  
 5.5 absence.

5.6 ~~(k)~~ (m) Nothing in this subdivision shall be construed to impair the rights of teachers  
 5.7 placed on unrequested leave of absence to receive unemployment benefits if otherwise  
 5.8 eligible.

5.9 (n) Beginning in the 2016-2017 school year and later, and notwithstanding any law  
 5.10 to the contrary, a school board must place teachers on unrequested leave of absence based  
 5.11 on their subject matter licensure fields and most recent evaluation outcomes, from the  
 5.12 least to most effective category under subdivision 8 and from the least to greatest seniority  
 5.13 within each effectiveness category. A school board is not required to reassign a teacher  
 5.14 with more seniority to a different subject matter licensure field in order to accommodate  
 5.15 the seniority claims of a teacher who is similarly licensed and effective but with less  
 5.16 seniority. A school board may decide not to renew a probationary teacher's contract or  
 5.17 may place the probationary teacher on unrequested leave of absence as it sees fit. The  
 5.18 school board must publish in a readily accessible format the unrequested leave of absence  
 5.19 plan it develops and implements under this paragraph.

5.20 (o) For purposes of this subdivision, a teacher who holds only a provisional license  
 5.21 is a teacher who has received a waiver or variance to teach from the Minnesota Board of  
 5.22 Teaching.

5.23 (p) Notwithstanding section 13.43, subdivision 2, paragraph (a), clause (5), or  
 5.24 other law to the contrary, a teacher's effectiveness category and the underlying data on  
 5.25 the individual teacher generated under the teacher evaluation process in subdivision 8,  
 5.26 paragraph (b), used to determine a teacher's effectiveness category for purposes of this  
 5.27 subdivision are private data on individuals.

5.28 **EFFECTIVE DATE.** This section is effective the day following final enactment  
 5.29 except that paragraph (n) is effective for the 2016-2017 school year and later.

5.30 Sec. 4. Minnesota Statutes 2010, section 122A.40, subdivision 19, is amended to read:

5.31 Subd. 19. **Records relating to individual teacher; access; expungement.** All  
 5.32 evaluations and files generated within a school district relating to each individual teacher,  
 5.33 including teacher evaluation data under subdivisions 8, 10, and 11, among other teacher  
 5.34 evaluations and files, must be available to each individual teacher upon written request.  
 5.35 Effective January 1, 1976, all evaluations and files, wherever generated, relating to each

6.1 individual teacher must be available to each individual teacher upon written request. The  
 6.2 teacher shall have the right to reproduce any of the contents of the files at the teacher's  
 6.3 expense and to submit for inclusion in the file written information in response to any  
 6.4 material contained therein.

6.5 A district may destroy the files as provided by law and must expunge from  
 6.6 the teacher's file any material found to be false or inaccurate through the grievance  
 6.7 procedure required pursuant to section 179A.20, subdivision 4. The grievance procedure  
 6.8 promulgated by the director of the bureau of mediation services, pursuant to section  
 6.9 179A.04, subdivision 3, clause (h), applies to those principals and supervisory employees  
 6.10 not included in an appropriate unit as defined in section 179A.03. Expungement  
 6.11 proceedings must be commenced within the time period provided in the collective  
 6.12 bargaining agreement for the commencement of a grievance. If no time period is provided  
 6.13 in the bargaining agreement, the expungement proceedings must commence within 15  
 6.14 days after the teacher has knowledge of the inclusion in the teacher's file of the material  
 6.15 the teacher seeks to have expunged.

6.16 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.17 Sec. 5. Minnesota Statutes 2011 Supplement, section 122A.41, subdivision 6, is  
 6.18 amended to read:

6.19 Subd. 6. **Grounds for discharge or demotion.** (a) Except as otherwise provided  
 6.20 in paragraph (b), causes for the discharge or demotion of a teacher either during or after  
 6.21 the probationary period must be:

6.22 (1) immoral character, conduct unbecoming a teacher, or insubordination;

6.23 (2) failure without justifiable cause to teach without first securing the written release  
 6.24 of the school board having the care, management, or control of the school in which the  
 6.25 teacher is employed;

6.26 (3) inefficiency in teaching or in the management of a school, consistent with  
 6.27 subdivision 5, paragraph (b);

6.28 (4) affliction with active tuberculosis or other communicable disease must be  
 6.29 considered as cause for removal or suspension while the teacher is suffering from such  
 6.30 disability; or

6.31 (5) discontinuance of position or lack of pupils.

6.32 Beginning no later than the 2016-2017 school year, and notwithstanding any  
 6.33 contradictory provisions in this subdivision, the school board must discharge or demote  
 6.34 teachers under clause (5) based on their subject matter licensure fields and most recent  
 6.35 evaluation outcomes, from the least to most effective category under subdivision 5 and

7.1 from the least to greatest seniority within each effectiveness category. Notwithstanding  
 7.2 section 13.43, subdivision 2, paragraph (a), clause (5), or other law to the contrary,  
 7.3 a teacher's effectiveness category and the underlying data on the individual teacher  
 7.4 generated under the teacher evaluation process in subdivision 5, paragraph (b), used  
 7.5 to determine a teacher's effectiveness category for purposes of this subdivision are  
 7.6 private data on individuals. The school board must publish in a readily accessible format  
 7.7 any discharge and demotion plan it develops to implement clause (5). Nothing in this  
 7.8 subdivision permits a school board to use a teacher's remuneration as a basis for making  
 7.9 discharge or demotion decisions.

7.10 For purposes of this paragraph, conduct unbecoming a teacher includes an unfair  
 7.11 discriminatory practice described in section 363A.13.

7.12 (b) A probationary or continuing-contract teacher must be discharged immediately  
 7.13 upon receipt of notice under section 122A.20, subdivision 1, paragraph (b), that the  
 7.14 teacher's license has been revoked due to a conviction for child abuse or sexual abuse.

7.15 **EFFECTIVE DATE.** This section is effective the day following final enactment  
 7.16 and applies to negotiated plans agreed to after that date.

7.17 Sec. 6. Minnesota Statutes 2010, section 122A.41, subdivision 14, is amended to read:

7.18 Subd. 14. **Services terminated by discontinuance or lack of pupils; preference**  
 7.19 **given.** (a) To the extent consistent with paragraph (c) and subdivision 6, paragraph (a),  
 7.20 clause (5), a teacher whose services are terminated on account of discontinuance of  
 7.21 position or lack of pupils must receive first consideration for other positions in the district  
 7.22 for which that teacher is qualified. ~~In the event~~ If it becomes ~~is~~ necessary to discontinue  
 7.23 one or more positions, in making such discontinuance, teachers must be discontinued in  
 7.24 any department in the inverse order in which they were employed, unless a board and the  
 7.25 exclusive representative of teachers in the district negotiate a plan providing otherwise.

7.26 (b) Notwithstanding the provisions of ~~clause~~ paragraph (a), and to the extent  
 7.27 consistent with paragraph (c) and subdivision 6, paragraph (a), a teacher is not entitled  
 7.28 to exercise any seniority when that exercise results in that teacher being retained by the  
 7.29 district in a field for which the teacher holds only a provisional license, as defined by the  
 7.30 Board of Teaching, unless that exercise of seniority results in the termination of services,  
 7.31 on account of discontinuance of position or lack of pupils, of another teacher who also  
 7.32 holds a provisional license in the same field. The provisions of this clause do not apply  
 7.33 to vocational education licenses.

7.34 (c) For purposes of discharging, demoting, or recalling a teacher whose services are  
 7.35 terminated under this subdivision, nothing in this subdivision requires a school board

8.1 to reassign a teacher with more seniority to a different subject matter licensure field in  
8.2 order to accommodate the seniority claims of a teacher who is similarly licensed and  
8.3 effective but with less seniority.

8.4 (d) Notwithstanding the provisions of ~~clause~~ paragraph (a), and to the extent  
8.5 consistent with paragraph (c) and subdivision 6, paragraph (a), a teacher must not be  
8.6 reinstated to a position in a field in which the teacher holds only a provisional license,  
8.7 other than a vocational education license if required for the position, while another teacher  
8.8 who holds a nonprovisional license in the same field is available for reinstatement.

8.9 (e) For purposes of this subdivision, a teacher who holds a provisional license is  
8.10 a teacher who has received a waiver or variance to teach from the Minnesota Board of  
8.11 Teaching.

8.12 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.13 Sec. 7. Minnesota Statutes 2010, section 122A.41, subdivision 15, is amended to read:

8.14 Subd. 15. **Records relating to individual teacher; access; expungement.** All  
8.15 evaluations and files generated within a district relating to each individual teacher,  
8.16 including teacher evaluation data under subdivisions 5, 6, and 14, among other teacher  
8.17 evaluations and files, must be available to each individual teacher upon the teacher's  
8.18 written request. Effective January 1, 1976, all evaluations and files, wherever generated,  
8.19 relating to each individual teacher must be available to each individual teacher upon the  
8.20 teacher's written request. The teacher has the right to reproduce any of the contents of the  
8.21 files at the teacher's expense and to submit for inclusion in the file written information in  
8.22 response to any material contained therein.

8.23 A district may destroy the files as provided by law and must expunge from  
8.24 the teacher's file any material found to be false or substantially inaccurate through  
8.25 the grievance procedure required pursuant to section 179A.20, subdivision 4. The  
8.26 grievance procedure promulgated by the director of the Bureau of Mediation Services,  
8.27 pursuant to section 179A.04, subdivision 3, clause (h), applies to those principals and  
8.28 supervisory employees not included in an appropriate unit as defined in section 179A.03.  
8.29 Expungement proceedings must be commenced within the time period provided in the  
8.30 collective bargaining agreement for the commencement of a grievance. If no time period  
8.31 is provided in the bargaining agreement, the expungement proceedings must commence  
8.32 within 15 days after the teacher has knowledge of the inclusion in the teacher's file of the  
8.33 material the teacher seeks to have expunged.

8.34 **EFFECTIVE DATE.** This section is effective the day following final enactment.



9.1 Sec. 8. Minnesota Statutes 2010, section 123A.75, subdivision 1, is amended to read:

9.2 Subdivision 1. **Teacher assignment.** (a) As of the effective date of a consolidation  
9.3 in which a district is divided or the dissolution of a district and its attachment to two or  
9.4 more existing districts, each teacher employed by an affected district shall be assigned to  
9.5 the newly created or enlarged district on the basis of a ratio of the pupils assigned to each  
9.6 district according to the new district boundaries. The district receiving the greatest number  
9.7 of pupils must be assigned the teacher with the greatest seniority, and the remaining  
9.8 teachers must be alternately assigned to each district until the district receiving the fewest  
9.9 pupils has received its ratio of teachers who will not be retiring before the effective date of  
9.10 the consolidation or dissolution.

9.11 (b) Notwithstanding paragraph (a), the board and the exclusive representative of  
9.12 teachers in each district involved in the consolidation or dissolution and attachment may  
9.13 negotiate a plan for assigning teachers to each newly created or enlarged district.

9.14 (c) Notwithstanding any other law to the contrary, the provisions of this section apply  
9.15 only to the extent they are consistent with section 122A.40, subdivisions 8, 10, and 11.

9.16 **EFFECTIVE DATE.** This section is effective the day following final enactment.