

STATE OF KANSAS

SENATE CHAMBER

MADAM PRESIDENT:

I move to amend **Senate Substitute for HB 2506**, on page 50, following line 43, by inserting the following:

"Sec. 60. On and after July 1, 2014, K.S.A. 72-1412 is hereby amended to read as follows: 72-1412. As used in K.S.A. 72-1412 through 72-1415, and amendments thereto:

(a) "Mentor teacher program" means a program established and maintained by the board of education of a school district for the purpose of providing probationary teachers with professional support and the continuous assistance of an on-site mentor teacher.

(b) "Mentor teacher" means a certificated teacher who has completed at least three consecutive school years of employment in the school district, has been selected by the board of education of the school district on the basis of having demonstrated exemplary teaching ability as indicated by criteria established by the state board of education, and has participated in and successfully completed a training program for mentor teachers provided for by the board of education of the school district in accordance with guidelines prescribed by the state board of education. The primary function of a mentor teacher shall be to provide probationary teachers with professional support and assistance. A mentor teacher may provide assistance and guidance to not more than two probationary teachers.

(c) "Probationary teacher" means a certificated teacher ~~to whom the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, do not apply~~ who has completed less than three consecutive school years of employment in the school district.

Sec. 61. On and after July 1, 2014, K.S.A. 2013 Supp. 72-5436 is hereby amended to read as

follows: 72-5436. As used in this act: (a) "Teacher" means ~~any professional employee who is required to hold a certificate to teach in any school district, and any teacher or instructor in any area vocational-technical school~~ technical college, the institute of technology or community college. The term "teacher" does not include within its meaning ~~any supervisors, principals or superintendents or any persons employed under the authority of K.S.A. 72-8202b, and amendments thereto, or any persons employed in an administrative capacity by any area vocational-technical school~~ technical college, the institute of technology or community college, or commencing in the 2006-2007 school year, any person who is a retirant from school employment of the Kansas public employees retirement system.

(b) "Board" means ~~the board of education of any school district,~~ the board of control of any ~~area vocational-technical school~~ technical college or the institute of technology, and the board of trustees of any community college.

Sec. 62. On and after July 1, 2014, K.S.A. 2013 Supp. 72-5437 is hereby amended to read as follows: 72-5437. (a) All contracts of employment of teachers, ~~as defined in K.S.A. 72-5436, and amendments thereto,~~ except contracts entered into under the provisions of K.S.A. 72-5412a, and amendments thereto, shall be deemed to continue for the next succeeding school year unless written notice of termination or nonrenewal is served as provided in this subsection. Written notice to terminate a contract may be served by a board upon any teacher prior to the time the contract has been completed, and written notice of intention to nonrenew a contract shall be served by a board upon any teacher on or before the third Friday in May. A teacher shall give written notice to a board that the teacher does not desire continuation of a contract on or before the 14th calendar day folling the third Friday in May or, if applicable, not later than 15 days after the issuance of a unilateral contract as authorized by K.S.A. 72-5428a, and amendments thereto, whichever is the later date.

(b) Terms of a contract may be changed at any time by mutual consent of both a teacher and a board.

(c) As used in this section,:

(1) "Board of education" or "board" means the board of education of any school district, the board of control of any technical college or the institute of technology, and the board of trustees of any community college.

(2) "Professional employee" means any person employed by a board of education in a position which requires a certificate issued by the state board of education or employed by a board of education in a professional, educational or instructional capacity.

(3) (A) "Teacher" means (1) a teacher as defined by K.S.A. 72-5436, and amendments thereto, and (2) any professional employee who is required to hold a certificate to teach in any school district, and any teacher or instructor in any technical college, the institute of technology or any community college, including any professional employee who is a retirant from school employment of the Kansas public employees retirement system.

(B) The term "teacher" does not include any supervisors, principals or superintendents or any persons employed under the authority of K.S.A. 72-8202b, and amendments thereto, or any persons employed in any administrative capacity by any technical college, the institute of technology or any community college.

Sec. 63. On and after July 1, 2014, K.S.A. 2013 Supp. 72-5438 is hereby amended to read as follows: 72-5438. (a) Whenever a teacher is given written notice of intention by a board to not renew or to terminate the contract of the teacher as provided in K.S.A. 72-5437, and amendments thereto, the written notice of the proposed nonrenewal or termination shall include: (1) A statement of the reasons for the proposed nonrenewal or termination; and (2) a statement that the teacher may have the matter heard by a hearing officer upon written request filed with ~~the clerk of the board of education or the board of control or the secretary of the board of trustees~~ within 15 calendar days from the date of such notice of nonrenewal or termination.

(b) Within 10 calendar days after the filing of any written request of a teacher to be heard as provided in subsection (a), the board shall notify the commissioner of education that a list of qualified hearing officers is required. Such notice shall contain the mailing address of the teacher. Within 10 days after receipt of notification from the board, the commissioner shall provide to the board and to the teacher, a list of five randomly selected, qualified hearing officers.

(c) Within five days after receiving the list from the commissioner, each party shall eliminate two names from the list, and the remaining individual on the list shall serve as hearing officer. In the process of elimination, each party shall eliminate no more than one name at a time, the parties alternating after each name has been eliminated. The first name to be eliminated shall be chosen by the teacher within five days after the teacher receives the list. The process of elimination shall be completed within five days thereafter.

(d) Either party may request that one new list be provided within five days after receiving the list. If such a request is made, the party making the request shall notify the commissioner and the other party, and the commissioner shall generate a new list and distribute it to the parties in the same manner as the original list.

(e) In lieu of using the process provided in subsections (b) and (c), if the parties agree, they may make a request to the American Arbitration Association for an arbitrator to serve as the hearing officer. Any party desiring to use this alternative procedure shall so notify the other party in the notice required under subsection (a). If the parties agree to use this procedure, the parties shall make a joint request to the American Arbitration Association for a hearing officer within 10 days after the teacher files a request for a hearing. If the parties choose to use this procedure, the parties shall each pay one-half of the cost of the arbitrator and of the arbitrator's expenses.

(f) The commissioner of education shall compile and maintain a list of hearing officers comprised of residents of this state who are attorneys at law. Such list shall include a statement of the

qualifications of each hearing officer.

(g) Attorneys interested in serving as hearing officers under the provisions of this act shall submit an application to the commissioner of education. The commissioner shall determine if the applicant is eligible to serve as a hearing officer pursuant to the provisions of subsection (h).

(h) An attorney shall be eligible for appointment to the list if the attorney has: (1) Completed a minimum of 10 hours of continuing legal education credit in the area of education law, due process, administrative law or employment law within the past five years; or (2) previously served as the chairperson of a due process hearing committee prior to the effective date of this act. An attorney shall not be eligible for appointment to the list if the attorney has been employed to represent a board or a teacher in a due process hearing within the past five years.

Sec. 64. On and after July 1, 2014, K.S.A. 72-5439 is hereby amended to read as follows: 72-5439. The hearing provided for under K.S.A. 72-5438, and amendments thereto, shall commence within 45 calendar days after the hearing officer is selected unless the hearing officer grants an extension of time. The hearing shall afford procedural due process, including the following:

(a) The right of each party to have counsel of such party's own choice present and to receive the advice of such counsel or other person whom such party may select;

(b) the right of each party or such party's counsel to cross-examine any person who provides information for the consideration of the hearing officer, except those persons whose testimony is presented by affidavit;

(c) the right of each party to present such party's own witnesses in person, or their testimony by affidavit or deposition, except that testimony of a witness by affidavit may be presented only if such witness lives more than 100 miles from the location of the ~~unified school district office, area vocational-technical school~~ technical college, institute of technology or community college, or is absent from the state, or is unable to appear because of age, illness, infirmity or imprisonment. When

testimony is presented by affidavit the same shall be served upon ~~the clerk of the board of education or the board of control, or the secretary of the board of trustees;~~ or the agent of the board and upon the teacher in person or by first-class mail to the address of the teacher which is on file with the board not less than 10 calendar days prior to presentation to the hearing officer;

(d) the right of the teacher to testify in the teacher's own behalf and give reasons for the teacher's conduct, and the right of the board to present its testimony through such persons as the board may call to testify in its behalf and to give reasons for its actions, rulings or policies;

(e) the right of the parties to have an orderly hearing; and

(f) the right of the teacher to a fair and impartial decision based on substantial evidence.

Sec. 65. On and after July 1, 2014, K.S.A. 2013 Supp. 72-5445 is hereby amended to read as follows: 72-5445. (a) ~~(1) Subject to the provisions of subsections (b) and (c);~~ The provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, apply only to: ~~(A) (1)~~ Teachers who have completed not less than three consecutive years of employment, and been offered a fourth contract, in the ~~school district, area vocational-technical school~~ technical college, institute of technology or community college by which any such teacher is currently employed; and ~~(B) (2)~~ teachers who have completed not less than two consecutive years of employment, and been offered a third contract, in the ~~school district, area vocational-technical school~~ technical college, institute of technology or community college by which any such teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of ~~subpart (A) paragraph (1)~~ in any ~~school district, area vocational-technical school~~ technical college, the institute of technology or community college in this state.

~~(2)(b)~~ Any board may waive, at any time, the years of employment requirements of provision (1) for any teacher employed by it.

~~(3)(c)~~ The provisions of this subsection are subject to the provisions of K.S.A. 72-5446, and

amendments thereto.

~~(b) The provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, do not apply to any teacher whose license has been nonrenewed or revoked by the state board of education for the reason that the teacher: (1) Has been convicted of a felony under K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009; (2) has been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2013 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, or an act described in K.S.A. 21-3412, prior to its repeal, or subsection (a) of K.S.A. 2013 Supp. 21-5413, or K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2013 Supp. 21-5414, and amendments thereto, if the victim is a minor or student; (3) has been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2013 Supp. 21-6419 through 21-6421, and amendments thereto, or has been convicted of an act described in K.S.A. 21-3517, prior to its repeal, or subsection (a) of K.S.A. 2013 Supp. 21-5505, and amendments thereto, if the victim is a minor or student; (4) has been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 56 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto; (5) has been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 58 of chapter 21 of the Kansas Statutes Annotated or subsection (a)(6) of K.S.A. 2013 Supp. 21-6412, and amendments thereto; (6) has been convicted of an attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2013 Supp. 21-5301, and amendments thereto, to commit any act specified in this subsection; (7) has been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, prior to their repeal,~~

~~or K.S.A. 2013 Supp. 21-6401 or 21-6402, and amendments thereto; (8) has been convicted in another state or by the federal government of an act similar to any act described in this subsection; or (9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.~~

~~(c) (1) The provisions of this subsection shall apply to a teacher described in subsection (a)(1) (A) of this section. After a teacher has completed not less than three consecutive years of employment and if the requirements of paragraph (2) have been satisfied, the board of education of the school district and the teacher may enter into an agreement under which the school district may offer the teacher a contract of employment for a fourth year or a fourth and fifth year and the teacher agrees that the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, shall not apply to such teacher unless a sixth contract is offered to the teacher.~~

~~(2) A school district offering a contract pursuant to this subsection shall prepare a written plan of assistance for the teacher being offered such contract and shall submit such plan of assistance to the teacher at the time such contract is offered. Prior to signing or rejecting a contract, the teacher shall have not less than 48 hours from the time the contract is offered to review and consider the contract and the plan of assistance. The plan of assistance shall be written to address those areas of teacher performance where the school district believes the teacher's performance is less than satisfactory.~~

~~(3) If an agreement under this subsection is reached by the teacher and the school district, then the school district shall file annually a report with the state board of education which shall contain the following information in subparagraphs (A) through (D):~~

~~(A) The number of teachers that were offered by the school district a contract under subsection (a)(1)(A) of this section;~~

~~(B) the number of teachers that were offered by the school district an agreement under this subsection;~~

~~(C) the number of teachers that accepted the agreement under this subsection;~~

~~(D) the number of teachers that were not offered by the school district either a contract under subsection (a)(1)(A) of this section or an agreement under this subsection.~~

~~(4) In addition to the reports required under paragraph (3), each school district shall report annually to the state board of education, the committee on education of the senate and the committee on education of the house of representatives the number of contracts issued under subsection (a) which result in the application of K.S.A. 72-5438 through 72-5443, and amendments thereto, to the teachers who receive such contracts and the year of employment for which the contract is issued.~~

~~(5) The provisions of this subsection shall expire on July 1, 2016.~~

Sec. 66. On and after July 1, 2014, K.S.A. 72-5446 is hereby amended to read as follows: 72-5446. In the event any teacher, as defined in K.S.A. 72-5436, and amendments thereto, alleges that the teacher's contract has been nonrenewed by reason of the teacher having exercised a constitutional right, the following procedure shall be implemented:

(a) The teacher alleging an abridgment by the board of a constitutionally protected right shall notify the board of the allegation within 15 days after receiving the notice of intent to not renew or terminate the teacher's contract. Such notice shall specify the nature of the activity protected, and the times, dates, and places of such activity;

(b) the hearing officer provided for by K.S.A. 72-5438, and amendments thereto, shall thereupon be selected and shall decide if there is substantial evidence to support the teacher's claim that the teacher's exercise of a constitutionally protected right was the reason for the nonrenewal;

(c) if the hearing officer determines that there is no substantial evidence to substantiate the teacher's claim of a violation of a constitutionally protected right, the board's decision to not renew the contract shall stand;

(d) if the hearing officer determines that there is substantial evidence to support the teacher's

claim, the board shall be required to submit to the hearing officer any reasons which may have been involved in the nonrenewal;

(e) if the board presents any substantial evidence to support its reasons, the board's decision not to renew the contract shall be upheld.";

On page 51, in line 3, after "K.S.A." by inserting "72-1412, 72-5439, 72-5446,"; in line 5, after the first comma by inserting "72-5436, 72-5437, 72-5438, 72-5445,";

On page 1, in the title, in line 5, after "licensure" by inserting "and administrative due process"; in line 9, after the second comma by inserting "72-1412, 72-5439, 72-5446,"; in line 10, after the last comma by inserting "72-5436, 72-5437, 72-5438, 72-5445,"

Senator _____