



Jim Kelly

Bill Analysis

Legislative Service Commission

H.B. 473

126th General Assembly
(As Introduced)

Rep. Trakas

BILL SUMMARY

- Eliminates state requirements that school districts base classroom teachers' and educational assistants' pay on their seniority and level of education, and instead requires school districts to collectively bargain merit-based pay structures for teachers and educational assistants within specified parameters.
- Eliminates continuing contracts (tenure) for classroom teachers and educational assistants employed by school districts.
- Retains the current state minimum salary requirements and continuing contracts for teachers and educational assistants employed by educational service centers.
- Specifies that the bill's changes to teachers' and educational assistants' salary schedules and contract terms do not override current collective bargaining agreements.
- Nullifies State Board of Education rules requiring a person, as a condition of obtaining or renewing an educator license to be a classroom teacher, to earn a master's degree or fulfill continuing education requirements.

CONTENT AND OPERATION

Merit pay for classroom teachers

(R.C. 3317.13, 3317.14, 3317.141, 3319.12, and 4117.09; conforming changes in R.C. 3313.42, 3314.10, 3319.10, 5126.24, and 5705.412)

The bill requires each school district to create a merit pay system for its classroom teachers. The system must be spelled out in salary schedules agreed to

in the teachers' collective bargaining agreement with their employing district. The bill appears to preclude the possibility of basing any part of a teacher's pay on the teacher's seniority or level of education. Instead, each district's pay structure for teachers must consist of:

(1) A base salary amount, which must be the same for all teachers teaching the same subject or the same grade level (see "**Base salary amount**," below); plus

(2) Other increments that vary based on measures of student academic achievement, evaluations by peers and students, and attainment of academic goals by the school building and the school district (see "**Merit-based components**," below).

This district-by-district system would replace the current state minimum teacher salary schedule, which bases teacher pay on years of service and educational levels, and the state law requiring each district to adopt a salary schedule that provides incremental pay increases based on years of service and level of education.

Base salary amount

(R.C. 3317.141(A)(2) and (B))

Under the bill, each classroom teacher is entitled to a base salary amount designated in the collective bargaining agreement. This amount must be based on the subject area taught by the teacher or, if the teacher provides instruction in more than one subject area (as an elementary school teacher often does), on the grade level taught by the teacher. The base salary amount may vary among different groups of teachers based upon the subjects or grade levels they teach, but it must be the same for each teacher who provides instruction in the same subject or grade level, regardless of educational background or years of teaching experience. In no case, though, may the base salary amount, exclusive of retirement and sick leave, be less than \$22,000 for a teacher in an "Urban 21" district or less than \$20,000 for a teacher in any other district.¹

The base salary amount may not account for more than 50% of the maximum salary a teacher may receive under the negotiated salary schedule. That is, at least half of the maximum salary a teacher may earn must consist of merit-based components.

¹ *The current state minimum teacher's salary is \$20,000 for a first-year teacher with a bachelor's degree (R.C. 3317.13). The Urban 21 school districts are Akron, Canton, Cincinnati, Cleveland, Cleveland Heights-University Heights, Columbus, Dayton, East Cleveland, Elyria, Euclid, Hamilton, Lima, Lorain, Mansfield, Middletown, Parma, South-Western, Springfield, Toledo, Warren, and Youngstown.*

Merit-based components

(R.C. 3317.141(B))

In addition to the base salary amount, a teacher may earn more money based on the teacher's performance on the following measures:

(1) The academic achievement of students assigned to the teacher's classroom compared to their academic achievement in the previous school year or, for teachers in kindergarten and first grade, the progress made by students assigned to the teacher's classroom toward academic achievement goals;

(2) Evaluations of the teacher conducted by administrators, other teachers, or union representatives;

(3) Evaluations of the teacher provided by students and their parents;

(4) Attainment of school building performance goals specified in the collective bargaining agreement; and

(5) Attainment of school district performance goals specified in the collective bargaining agreement.

The amount awarded to a teacher for performance on any one of these measures may not account for more than 10% of the maximum salary the teacher may be paid under the negotiated salary schedule.

Collective bargaining process

(R.C. 3317.141(C) and 4117.09)

Procedures for implementing the new salary schedule must be determined through the collective bargaining process in each school district. The bill specifically states that the following topics are appropriate subjects for collective bargaining:

(1) The base salary amount paid to teachers of different subjects or grade levels;

(2) The method of measuring student academic achievement for the purpose of determining teacher performance in grades 2 through 12;

(3) The academic achievement goals that students in kindergarten and first grade are expected to meet for the purpose of evaluating teachers in those grades;

(4) The manner in which the peer evaluations will be conducted;

(5) The manner in which the student and parent evaluations will be conducted, including procedures for excluding evaluations submitted by students or parents with whom a teacher has repeatedly experienced behavioral problems;

(6) School district and building performance goals; and

(7) The method for determining a teacher's salary during the initial year of employment when there is no basis for judging the teacher's performance.

Pay variations possible

(R.C. 3317.141(B) and 3319.12)

While current law generally guarantees each teacher at least the same salary as the teacher received the preceding year, the bill explicitly permits a teacher's salary above the base salary amount (that is, the merit-based components) to fluctuate from year to year based on performance. However, since the bill does not specify how often a teacher's salary must be adjusted based on performance, that issue would presumably be left up to the collective bargaining process. For example, in some cases, the collective bargaining agreement might allow for adjustments every year for the duration of the teacher's contract. In other cases, the agreement may require adjustments only when a teacher's contract is up for renewal.

Filing of salary schedule

(R.C. 3317.01 and 3317.141(D) and (E))

As under current law, each school district annually must file a copy of its negotiated salary schedule for classroom teachers with the Superintendent of Public Instruction by October 15. A district that fails to file the salary schedule or to pay teachers in accordance with it is ineligible to receive state funding. The state Superintendent immediately must investigate a written complaint that a district has failed or refused to implement the merit pay system. If the investigation finds that the complaint was accurate, the Superintendent must order the district board of education to correct the conditions within ten days, and no state funds may be distributed to the district until the Superintendent has satisfactory evidence of full compliance.

Subsidy eliminated

(R.C. 3317.023; conforming changes in R.C. 3313.64, 3314.08, 3317.02, 3317.022, 3317.08, 3317.082, 3317.11, 3317.16, 3317.19, and 3323.14; Sections 4 and 5)

Under current law, a school district that pays higher-than-average teacher salaries (usually because its teaching force has a great deal of seniority) may receive a small subsidy from the state, which is in addition to its usual state payments. The bill eliminates this subsidy to conform to its elimination of seniority as a factor in teacher pay.

Teacher tenure eliminated

(R.C. 3319.02, 3319.08, 3319.11, 3319.111, 3319.17, and 3319.18)

The bill eliminates continuing contract status, or "tenure," for classroom teachers employed by school districts. Therefore, under the bill, school districts may employ teachers only under limited-term contracts. The length of teacher contracts, which may be no more than five years, must be designated by the collective bargaining agreement.

This change appears to affect both teachers hired after the bill's effective date and tenured teachers who are currently employed under continuing contracts. Therefore, under the bill, teachers who currently have continuing contracts would have limited contracts instead, once their current collective bargaining agreements expire. (See "**Application to future collective bargaining agreements only**," below, and **COMMENT**.)

Background on teacher tenure

Under current law, certain teachers and other school district employees who hold professional (eight-year), permanent, or life teaching certificates (issued under former law), or who hold professional educator licenses (as currently authorized) and meet continuing education requirements, must be offered continuing contracts, as opposed to limited-term contracts. Continuing contracts do not expire until the teacher resigns or retires or the district board provides due process to terminate or suspend the contract for specific violations. Continuing contracts, therefore, are commonly characterized as "tenure."

Generally, a teacher is eligible for a continuing contract if the teacher meets the certification or licensure requirement and has taught within the school district for three of the past five years. A teacher who had a continuing contract elsewhere generally must be offered a continuing contract after working for two years in the new district. A school district board may terminate a teacher's continuing contract only "for gross inefficiency or immorality; for willful and persistent violations of

reasonable regulations of the board of education; or for other good and just cause," for sexual conduct with a student, for advocating the violent or unlawful overthrow of the government, for abuse of sick leave, or for assisting a student to cheat on a state proficiency or achievement test.² A district board that intends to terminate a teacher's continuing contract must provide the teacher with written notice and an opportunity for a private hearing. A common pleas court has held that Ohio's teacher tenure laws must be construed liberally in favor of teachers' rights.³

Merit pay and limited-term contracts for educational assistants

(R.C. 3317.12, 3317.142, 3319.081, 3319.082, and 3319.088)

The bill establishes essentially the same merit pay requirements for educational assistants who are employed by school districts to directly assist teachers as it does for the teachers themselves. (It does not, however, prescribe a minimum base salary amount for educational assistants, as it does for teachers.)

As it likewise does for teachers employed by school districts, the bill eliminates tenure for educational assistants employed by school districts to directly assist teachers. Under the bill, educational assistants may renew their limited-term employment contracts, and the term of these renewals may not exceed five years. An educational assistant's salary may be reduced from the previous year's salary in accordance with the merit pay structure established in the collective bargaining agreement.

Background on educational assistants' employment terms

"Educational assistants" are nonteaching employees who hold either an educational aide permit or an educational paraprofessional license issued by the State Board of Education. Most educational assistants provide direct instructional support under the supervision of a licensed teacher and, therefore, fall under the bill's merit pay system. However, holders of a student monitor educational aide permit, such as cafeteria aides and playground supervisors, do not perform instructional duties and would be paid according to the salary schedule adopted for other nonteaching employees in the school district.⁴

² R.C. 124.36, 3319.141, 3319.151, and 3319.16, none in the bill.

³ Mroczek v. Bd. of Education of the Beachwood City School District et al., 61 OMisc 6, 14 OO3d 394, 400 NE2d 1362 (1979).

⁴ See Ohio Administrative Code 3301-25-03.

Under current law, school districts must pay their nonteaching employees, including educational assistants, according to a salary schedule that bases pay on training, experience, and qualifications. Educational assistants currently are eligible to be "continued in employment" at the end of their initial two-year employment contracts.

Application to future collective bargaining agreements only

(Section 3)

The bill's changes to teachers' and educational assistants' salary schedules and contract terms do not override current collective bargaining agreements. When a school district renews an existing agreement, however, it must comply with the changes. In other words, any new collective bargaining agreement after the bill's effective date would have to eliminate tenure and incorporate the bill's merit pay components into the salary schedule.

Effect on school district RIF authority

(R.C. 3316.07, 3319.17, and 3317.172)

Background on school district RIF authority

Continuing law allows a school district board of education to make a reasonable reduction in force (RIF), affecting teachers or nonteaching employees, when, for any of certain statutorily specified reasons, the board decides it is necessary to reduce the workforce. Among the reasons for which a board may reduce the number of teachers are: (1) return to duty of regular teachers after leaves of absence, (2) suspension of schools, (3) territorial changes affecting the district, (4) financial reasons, or (5) decreased enrollment. In addition, when the Auditor of State declares a school district to be in a state of fiscal emergency, a "financial planning and supervision commission" is appointed for the district, and among that commission's powers is authority to reduce the number, first, of nonteaching employees and second, if still fiscally necessary, of teachers.⁵

The bill

Because the bill eliminates tenure for classroom teachers and educational assistants who provide instructional support, it eliminates provisions that require school districts to give preference to those with tenure when reducing the

⁵ In certain city school districts where nonteaching employees are covered by the Civil Service Law (R.C. Chapter 124.), reductions in force of nonteaching employees must be in accordance with that law. However, the Civil Service Law does not apply to nonteaching employees who are educational assistants (R.C. 3319.088(D)).

workforce. Moreover, the bill also eliminates the requirement that preference be given to teachers and assistants with seniority. As a result, each district superintendent would determine which classroom teachers and educational assistants would be given preference when the district is implementing reductions in force, whether the reductions are ordered by the district board or a financial planning and supervision commission.

ESC employees still eligible for step increases and tenure

(R.C. 3314.10, 3317.12, 3317.13, 3317.14, 3319.02, 3319.08, 3319.11, 3319.111, 3319.17, and 3319.172)

Neither the bill's requirements for merit pay structures, nor its elimination of tenure for classroom teachers and educational assistants, apply to employees of educational service centers.

No master's degrees or continuing education for educator licenses

(R.C. 3319.22 and 3319.283)

The bill explicitly prohibits the State Board of Education from requiring a person, as a condition of obtaining or renewing an educator license to be a classroom teacher, to earn a degree higher than a bachelor's degree or to complete any continuing education. (However, it does retain the current requirement for veterans of the armed forces who are allowed to teach without an educator license to complete 15 hours of continuing education every five years.⁶)

Under current State Board rules, each person applying to renew or upgrade a professional educator license must complete a certain number of continuing education hours, and each person seeking a second renewal of a professional educator license must have either earned a master's degree or completed 30 semester hours of graduate credit. The latter requirement applies to persons who either entered college after January 1, 1998, or finished a college's teacher preparation program after July 1, 2002.⁷ The bill nullifies these requirements.

⁶ *Veterans eligible to teach without an educator license must (1) have been honorably discharged between June 30, 1994, and June 30, 2000, (2) have had meaningful teaching or instructional experience while in the armed forces, and (3) hold at least a bachelor's degree (R.C. 3319.283).*

⁷ *Ohio Administrative Code 3301-24-08.*

COMMENT

Changing the employment contract status for current teachers and educational assistants could prompt a legal challenge as a violation of the contract clauses of the U.S. and Ohio constitutions, both of which prohibit the passage of laws impairing the obligation of contracts (U.S. Const., Art. I, § 10 and Ohio Const., Art. II, § 28). Federal and Ohio courts have generally upheld the validity of laws that modify existing contracts if the laws are a legitimate exercise of the state's "police power" to protect the health, safety, and welfare of citizens. The U.S. Supreme Court has held that laws impairing contracts must be reasonable and necessary to serve an important public purpose or address a broad social or economic problem, preferably in an area already subject to state regulation (see *United States Trust Company of New York v. New Jersey* (1977), 431 U.S. 1 and *Allied Structural Steel v. Spannaus* (1978), 438 U.S. 234). It is not clear whether a court would view the elimination of continuing contracts for teachers as falling within these parameters.

HISTORY

ACTION	DATE
Introduced	01-17-06

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