

Amendment No. 3 to SB0113

Gresham  
Signature of Sponsor

**AMEND Senate Bill No. 113**

**House Bill No. 130\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 5, Part 6, known as the Education Professional Negotiations Act, is amended by deleting the part in its entirety and by substituting instead the following:

**49-5-601.** As used in this section, unless the context otherwise requires:

(1) "Professional employee" means any person employed by any local board of education in a position that requires a license issued by the department of education for service in public elementary and secondary schools of this state, supported, in whole or in part, by local, state or federal funds, but shall not include a retired teacher who is employed as a teacher in accordance with title 8, chapter 36, part 8;

(2) "Professional employees' organization" means any organization with membership open to professional employees, as defined in subdivision (1), in which the employees participate and that exists for the purpose of promoting the professional status and growth of educators and the welfare of students; and

(3) "Strike" means the failure with others to report for duty, the willful absence from one's position, the stoppage of work or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, and without the lawful approval of one's superior; or in any manner interfering with the operation of the public school system, for the purpose of inducing or coercing the recognition of any employee organization or a change in the conditions or compensation or the rights, privileges or obligations of employment.

**49-5-602.** It is unlawful for any professional employees' organization or its representatives or any professional employee to engage in a strike or to urge, coerce or encourage others to engage in a strike.

**49-5-603.**

(a)

(1) If a strike occurs, the local education agency may apply to the chancery court of the county to enjoin the strike. The application shall set forth the facts constituting the strike.

(2) If the court finds, after a hearing, that a strike has occurred, the court may enjoin the organization or its representatives or any professional employee from engaging in the strike or urging, coercing or encouraging others to engage in the strike.

(b) When the local education agency has determined which employees engaged in or participated in the strike, those employees may be subject to dismissal or forfeiture of their claim to tenure status, if they presently have attained tenure, and the employees may revert to probationary teacher status. Any employees who engaged in or participated in the strike but who are not tenured teachers may also be subject to dismissal.

**49-5-604.**

(a)

(1) Every local board of education shall develop and adopt a professional employee manual that contains the local board's procedures for establishing policies relative to the employment and working conditions of professional employees. The professional employee manual, once adopted, shall be binding on the local education agency until a new or renewed professional employee manual is adopted by the local board of education as provided in subdivision (a)(2).

(2) Except as provided in subdivision (a)(3), every three (3) years, or more frequently at the discretion of the local board of education, the professional employee manual shall be reviewed by the local board of education; revised, if deemed advisable, after receiving input from professional employees and the general public as provided in subdivisions (c)(2) through (4); and adopted.

(3) If a judicial decision or change in statutory or regulatory law necessitates that a local board of education modify or rescind a provision of the professional employee manual, then the local board of education is not required to comply with subdivisions (c)(2) through (4) in making such modification or rescission.

(b)

(1) The subjects addressed in the professional employee manual shall include, but not be limited to, the local board's procedures for establishing policies relative to:

- (A) Salaries or wages;
- (B) Benefits, including insurance and retirement benefits;
- (C) Leave;
- (D) Student discipline procedures; and
- (E) Working conditions.

(2) The procedures for establishing policies shall include, but not be limited to, providing notice of the local board's intent to consider or establish a policy to professional employees, parents, other education stakeholders, and the general public at least fifteen (15) calendar days prior to the scheduled meeting relative to the policy. The notice shall include a description of the policy to be considered or established.

(3) The professional employee manual shall be in accordance with all applicable mandatory federal, state, or local laws, policies, or guidelines and shall incorporate citations to, or the text of, federal, state, and local laws, policies,

and guidelines governing, or relevant to, the subjects enumerated in subdivision

(b)(1).

(c) A professional employee manual shall be developed and adopted by a local board of education as provided in this subsection (c).

(1)

(A)

(i) No later than August 15, 2011, the state board of education, with the assistance of the department of education, and the department of human resources shall jointly develop and publish a model professional employee manual to aid local boards of education in the development of their professional employee manuals. The state board of education and the department of human resources may include annotations and suggested alternatives to provide guidance in those areas where a local board of education has discretion.

(ii) In developing the model professional employee manual, the state board of education and the department of human resources shall conduct a comprehensive review of contracts or agreements governing terms and conditions of professional service entered into by local boards of education and recognized professional employees' organizations under the Education Professional Negotiations Act that are in effect on the effective date of this act. The state board and the department of human resources shall incorporate in the model manual those provisions addressing procedures for establishing local board of education policies identified as appearing in a majority of such contracts or agreements.

(iii) The state board of education and the department of human resources shall maintain and continue to revise the model professional employee manual when necessary to harmonize the model manual with applicable law and best practices; provided, that the state board of education shall notify each local board of education when the model manual is revised.

(B) Every local board of education shall develop and adopt, as provided in subdivisions (c)(2) through (4), an initial professional employee manual no later than April 17, 2012.

(C)

(i) The initial professional employee manual shall take effect July 1, 2012; provided, however, that any contract or agreement governing terms and conditions of professional service entered into by a board of education and a recognized professional employees' organization under the Education Professional Negotiations Act prior to the effective date of this act shall remain in effect until its expiration, at which time the professional employee manual adopted by the local board of education shall take effect.

(ii) If any such contract or agreement expires prior to July 1, 2012, then the teachers employed by such board of education shall have the rights in their employment that are afforded to them under federal, state, and local law as well as applicable local board of education policies.

(2) A local board of education shall promulgate a professional employee manual taking into full consideration input received from professional employees, parents, other education stakeholders, and otherwise interested members of the general public. Any proposed manual shall be posted for review on the web site

of the local board of education. If a local board of education does not have a web site, then the local board shall, instead of posting a professional employee manual on its web site, make available at least two (2) copies of the proposed and adopted professional employee manual in each school library within the jurisdiction of the local education agency.

(3)

(A) Professional employees employed by, and retired professional employees formerly employed by, the local education agency shall be provided a forty-five (45) calendar day period to submit written input to the local board of education relative to the proposed professional employee manual. No professional employee, retired professional employee, or professional employees' organization shall be denied the opportunity to submit input for consideration by the local board of education. If the proposed professional employee manual is revised by the local board of education in response to the input the board receives pursuant to this subdivision (c)(3)(A), then the revisions shall be made available for review as provided in subdivision (c)(2).

(B) The local board of education shall conduct at least one (1) public hearing, in accordance with title 8, chapter 44, part 1, after the period for input provided in subdivision (c)(3)(A) has ended. If revisions are made to the proposed professional employee manual, then no public hearing relative to the proposed manual shall be held earlier than seven (7) calendar days from the date the proposed manual is made available for review. Any public hearing held relative to the proposed professional employee manual shall be held at a location and time reasonably calculated to afford professional employees, parents, other education stakeholders, and otherwise interested members of the general public the

opportunity to provide input relative to the proposed professional employee manual.

(4) The adopted manual shall be made publicly available as provided in subdivision (c)(2). The local board of education shall file a copy of the adopted professional employee manual with the commissioner of education no later than seven (7) calendar days after its adoption.

**49-5-605.**

(a) On or after the effective date of this act, no local board of education shall engage in mandatory collective bargaining with a professional employees' organization or teachers' union concerning the terms or conditions of professional service.

(b) Nothing in this act shall be construed to abridge or impair a contract or agreement governing terms and conditions of professional service entered into by a board of education and a recognized professional employees' organization under the Education Professional Negotiations Act before the effective date of this act. Any such contract or agreement shall remain in full force and effect until the expiration of the contract or agreement.

SECTION 2. Tennessee Code Annotated, Section 5-23-107(1), is amended by deleting the language "or negotiated agreement pursuant to title 49, chapter 5, part 6" and by substituting instead the language "or professional employee manual adopted pursuant to § 49-5-604".

SECTION 3. Tennessee Code Annotated, Section 49-1-201(d)(2), is amended by deleting the subdivision in its entirety.

SECTION 4. Tennessee Code Annotated, Section 49-1-207(g), is amended by deleting the subsection in its entirety.

SECTION 5. Tennessee Code Annotated, Section 49-1-614(d)(2), is amended by deleting the language ", and the Education Professional Negotiations Act, compiled in chapter 5, part 6 of this title,".

SECTION 6. Tennessee Code Annotated, Section 49-2-203(a), is amended by deleting subdivision (6) in its entirety and by substituting instead the following:

(6) Except as otherwise provided in this title, establish policies relative to the dismissal of teachers, principals, supervisors and other employees by the director of schools upon sufficient proof of improper conduct, inefficient service or neglect of duty; provided, that no one shall be dismissed without first having been given in writing due notice of the charge or charges and an opportunity for defense;

SECTION 7. Tennessee Code Annotated, Section 49-2-203(a), is amended by adding the following language as a new, appropriately designated subdivision:

( ) Develop and adopt a professional employee manual as provided in § 49-5-604; provided, however, that no local education board shall, through the development and adoption of the professional employee manual act to adversely affect an individual professional employee or group of professional employees for purposes unrelated to the duties and powers of the local board of education.

SECTION 8. Tennessee Code Annotated, Section 49-2-301(b)(1)(EE), is amended by deleting the subdivision in its entirety and by substituting instead the following:

In the approved budget and consistent with existing state laws and board policies, employ, transfer, suspend, nonrenew and dismiss all personnel, licensed or otherwise, except as provided in § 49-2-203(a)(1) and in chapter 5, part 5 of this title.

SECTION 9. Tennessee Code Annotated, Section 49-3-306(h), is amended by deleting the language "and in compliance with § 49-5-611".

SECTION 10. Tennessee Code Annotated, Section 49-5-5012, is amended by deleting the section in its entirety.

SECTION 11. Tennessee Code Annotated, Section 49-13-118, is amended by deleting the section in its entirety.

SECTION 12. Because title 49, chapter 5, part 6, shall continue to be applicable to contracts or agreements governing terms and conditions of professional service that were negotiated and entered into by a board of education and a recognized professional employees'



organization before the effective date of this act, the code commission is requested to place the Education Professional Negotiations Act together with an appropriate statement indicating its applicability in an appendix to title 49 for the sole purpose of providing a readily available reference for those affected by such contracts or agreements until the time that all contracts or agreements negotiated under the act have expired.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.