~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 31, 2015

**S. 533**

Introduced by Senators Hayes, Courson, Thurmond, L. Martin, Jackson and Hutto

S. Printed 3/31/15--S. [SEC 4/1/15 11:16 AM]

Read the first time March 10, 2015.

**THE COMMITTEE ON EDUCATION**

To whom was referred a Bill (S. 533) to amend the Code of Laws of South Carolina, 1976, so as to enact the “Teacher Employment and Dismissal Act of 2015”; to amend Section 59‑25‑410, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Section 59‑25‑410 of the 1976 Code is amended to read:

“Section 59‑25‑410. (A) ~~On or before April fifteenth of each year,~~ The boards of trustees of the several school districts annually before May first shall decide and notify, in writing, ~~the teachers~~ a teacher, as defined in Section 59‑1‑130, ~~in their employ~~ whom the district employs concerning ~~their employment~~ his reemployment for the ensuing year. If the ~~board, or the person designated by it,~~ superintendent fails to notify a teacher who has been employed by a school district for a majority of the current school year of his status for the ensuing year, the teacher ~~shall be deemed~~ is considered to be reemployed for the ensuing year and the board shall issue a contract to ~~such teacher~~ him as though the board had reemployed ~~such teacher~~ him in the usual manner. ~~Notices~~ Notice of ~~intent~~ the superintendent’s recommendation not to renew an employment contract ~~shall~~ must be given in writing ~~no later than April fifteenth of each year~~ before May first.

(B) On or before August fifteenth, the superintendent, principal, where applicable, or supervisor shall notify the teacher of his tentative assignment for the ensuing school year.

(C) This section ~~shall~~ does not apply to ~~any~~ a teacher whose contract of employment or dismissal is under appeal under Section 59‑25‑450.

(D) For purposes of this article, ‘teacher’ means ~~all employees~~ an employee possessing a professional certificate issued by the State Department of Education, except ~~those employees~~ an employee working pursuant to ~~multi‑year contracts~~ a multiyear contract.”

SECTION 2. Section 59‑25‑420 of the 1976 Code is amended to read:

“Section 59‑25‑420. (A) ~~Any~~ A teacher who is reemployed by written notification pursuant to Section 59‑25‑410 shall ~~by April twenty‑fifth first~~ before May eleventh notify the board of trustees in writing of his acceptance of the contract. Failure on the part of the teacher to notify the board of acceptance within the specified time limit ~~shall be~~ is conclusive evidence of the teacher’s rejection of the contract.

(B) ~~Any~~ A teacher, receiving a notice that he will not be reemployed for the ensuing year, ~~shall have~~ has the same notice and opportunity for a hearing provided in ~~subsequent sections for teachers~~ this article for a teacher dismissed for cause during the school year.”

SECTION 3. Section 59‑25‑460 of the 1976 Code is amended to read:

“Section 59‑25‑460. (A) ~~No~~ A teacher ~~shall~~ may not be dismissed unless written notice specifying the cause of dismissal ~~is~~ first is given the teacher by the ~~District Board of Trustees~~ superintendent and the teacher is given an opportunity for ~~a~~ an evidentiary hearing ~~has been afforded the teacher~~. The superintendent or his designee may meet with the teacher before issuing a notice of dismissal to discuss alternative resolutions. The parties attending this meeting must have the option of having a representative present. ~~Such~~ This written notice ~~shall~~ must include the fact that a hearing before the board or its designee is available to the teacher upon request ~~provided, such~~ if the request is made in writing within fifteen days as ~~prescribed by~~ provided in Section 59‑25‑470. Any such hearing ~~shall~~ must be public unless the teacher requests in writing that it be private. A board that chooses to delegate the evidentiary hearing to one or more designees, as provided in this section, shall indicate in board policy that it engages in this practice. The hearing process becomes effective when the board adopts the policy, and must be communicated to all affected employees within fifteen days. A subsequent change only may be made pursuant to the board policy revision process.

(B)(1) If the board chooses to delegate the evidentiary hearing to a designee, the designee must be:

(a) an attorney licensed to practice law in this State;

(b) certified by the South Carolina Supreme Court as a mediator or arbitrator; and

(c) designated by the board to hear all evidentiary hearings in the district for the school year, except when:

(i) both parties consent to use an alternate hearing officer; or

(ii) the district uses more than one designee, in which case the parties may by mutual consent select one of these designees for their hearing or, if they fail to reach such an agreement, the board randomly shall select one of its designees for the hearing.

(2) If the designee holds the evidentiary hearing, he shall issue a written report and recommendation containing findings of facts and conclusions of law to the board, superintendent, and teacher within fifteen days after the hearing concludes. The superintendent and the teacher may submit a written response to this report and recommendation to the board within ten days after the date on which the report and recommendation are issued, after which the board shall issue a decision affirming or withdrawing the notice of suspension or dismissal within thirty days. In the interim, the board may conduct a hearing on the order to consider any written responses from the superintendent and teacher, but this hearing may not operate to extend the thirty day limit in which the board shall issue its decision affirming or withdrawing the notice of suspension or dismissal. The board retains final decision‑making authority regarding the teacher dismissal or suspension recommendation based on its consideration of the record, the report and recommendation, and any written submission of the superintendent and teacher.

(C) If the board holds the evidentiary hearing, the board shall issue its decision within the thirty days after the hearing. This decision must be in writing and must include findings of facts and conclusions of law.

(D) The board shall determine if the evidence shows good and just cause for the notice of suspension or dismissal, and accordingly shall render a decision to affirm or withdraw the notice of suspension or dismissal.

(E) The District Board of Trustees as provided in subsection (C), or its designee, as provided in subsection (B), may issue subpoenas requiring the attendance of witnesses at ~~any~~ the hearing and, at the request of the teacher against whom a charge is made, shall issue ~~such~~ these subpoenas, but it may limit the number of these witnesses to ~~be subpoenaed in behalf of the teacher to not more than~~ ten. ~~All~~ Testimony at ~~any~~ a hearing ~~shall~~ must be taken under oath. ~~Any~~ A member of the board, or its designee, may administer oaths to witnesses. The board, or its designee, shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all ~~of the~~ testimony.

(F) If the board’s decision is favorable to the teacher, the board shall pay the cost of the reporter’s attendance and services at the hearing. If the decision is unfavorable to the teacher, one‑half of the cost of the reporter’s attendance and services ~~shall~~ must be borne by the teacher. ~~Either~~ A party desiring a transcript of the hearing ~~shall~~ must pay for the costs ~~thereof~~ of obtaining the transcript.”

SECTION 4. Section 59‑25‑470 of the 1976 Code is amended to read:

“Section 59‑25‑470. (A) Within fifteen days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board, or its designee.

(B) If the teacher fails to make such a request, or after a hearing as ~~herein~~ provided ~~for~~ in this article, the ~~District~~ board ~~of Trustees~~ shall take ~~such~~ action and shall enter ~~such~~ an order as it ~~deems~~ considers lawful and appropriate.

(C) The hearing ~~shall~~ must be held by the board ~~not less than ten nor more than fifteen~~, or its designee, within forty‑five days after the request is served~~, and~~. A notice of the time and place of the hearing ~~shall~~ must be given the teacher not less than five days ~~prior to~~ before the date of the hearing.

(D) The teacher ~~has the privilege of being~~ may be present ~~at the hearing~~ with counsel ~~and of cross‑examining~~ at the hearing, and may cross‑examine witnesses ~~and~~, may offer evidence and witnesses, and present ~~any and all~~ defenses to the charges. Hearsay otherwise inadmissible under the South Carolina Rules of Evidence only may be considered if corroborated and found reliable by the board or its designee; provided, however, that no factual finding may be based solely on hearsay. The board, or its designee, shall order the appearance of any witness requested by the teacher, subject to the limitations of Section 59‑25‑460. The ~~complainants~~ superintendent shall initiate the introduction of evidence in substantiation of the charges. ~~Within ten days following the hearing, the board shall determine whether the evidence showed good and just cause for the notice of suspension or dismissal and shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal.~~”

SECTION 5. Section 59‑25‑480 of the 1976 Code is amended to read:

“Section 59‑25‑480. (A) The decision of the district board of trustees ~~shall be~~ is final, unless within thirty days ~~thereafter~~ afterward an appeal is made to the ~~court of common pleas of any county in which the major portion of such district lies~~ Administrative Law Court (ALC).

(B) ~~Notice of the appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the transcript record with the clerk of such court.~~ An appeal to the ALC must be taken in accordance with Section 1‑23‑600(D) and the appellate rules of procedure for the ALC. ~~Any~~ An appeal from the order of the ~~circuit court shall~~ ALC must be taken in the manner provided by the South Carolina Appellate Court Rules. If the decision of the board is reversed on appeal, ~~on a motion of either party~~ the ~~trial court~~ ALC shall order reinstatement and ~~shall~~ determine the amount for which the board ~~shall be~~ is liable for actual damages and court costs if either party moves for this relief. ~~In no event shall any~~ Liability may not extend beyond two years ~~from~~ after the effective date of dismissal. ~~Amounts~~ An amount earned or ~~amounts~~ earnable with reasonable diligence by the person wrongfully suspended ~~shall~~ must be deducted from any back pay.”

SECTION 6. Section 59‑25‑490 of the 1976 Code is amended to read:

“Section 59‑25‑490. ~~Any~~ A party to ~~such proceedings may cause to be taken the depositions of witnesses~~ a proceeding conducted pursuant to this chapter may depose a witness within or without the State and either by commission or de bene esse. ~~Such depositions shall~~ The deposition must be taken ~~in accordance with~~ pursuant and subject to the same provisions, conditions, and restrictions ~~as~~ that apply to ~~the~~ taking of ~~like~~ similar depositions in ~~civil~~ actions ~~at law~~ brought in the court of common pleas~~; and~~. The same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification ~~thereof~~ of them and matters of practice relating ~~thereto shall~~ to them apply.”

SECTION 7. Section 59‑25‑520 of the 1976 Code is amended to read:

“Section 59‑25‑520. The ~~court of common pleas~~ ALC shall, on application of the district board, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records ~~and shall have the power to punish as for contempt of court, by a fine or imprisonment or both,~~. The unexcused failure or refusal to attend and give testimony or produce books, papers, and records as ~~may have been~~ required ~~in any~~ by subpoena issued by the district board must be considered contempt of court by the ALC, punishable by a fine, imprisonment, or both, by the court. The district board may issue to the sheriff of the county in which ~~any~~ a hearing is held a warrant requiring him to produce at the hearing any witness who ~~shall have~~ has ignored or failed to comply with ~~any~~ a subpoena issued by the district board and duly served upon ~~such~~ the witness. ~~Such a~~ This warrant ~~shall~~ must authorize the sheriff to arrest the witness and produce at the hearing ~~such witness~~, and it ~~shall be his~~ is the duty of the sheriff to do so~~; but~~. The failure of a witness ~~so~~ to appear in response to ~~any such~~ a subpoena may be excused on the same grounds as provided by law in the courts of this State ~~as to~~ regarding the attendance of witnesses and jurors.”

SECTION 8. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

JOHN E. COURSON GERALD MALLOY

For Majority. For Minority.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “TEACHER EMPLOYMENT AND DISMISSAL ACT OF 2015”; TO AMEND SECTION 59‑25‑410, RELATING TO THE ANNUAL APRIL FIFTEENTH DEADLINE FOR NOTIFYING TEACHERS OF THEIR EMPLOYMENT FOR THE ENSUING YEAR, SO AS TO CHANGE THE DEADLINE TO BEFORE MAY FIRST; TO AMEND SECTION 59‑25‑420, RELATING TO THE REQUIREMENT THAT TEACHERS NOTIFY THE DISTRICT OF THEIR ACCEPTANCE OF TEACHING CONTRACTS WITHIN A SPECIFIED PERIOD, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 59‑25‑460, RELATING TO NOTICES OF DISMISSAL AND CONDUCT OF RELATED HEARINGS, SO AS TO PROVIDE FOR THE CONDUCT OF HEARINGS BY THE BOARD OR ITS DESIGNEE, TO PROVIDE FOR THE USE OF THE RECOMMENDATIONS AND REPORT OF A DESIGNEE WHO CONDUCTS A HEARING, TO PROVIDE THE BOARD HAS FINAL DECISION‑MAKING AUTHORITY REGARDING A SUSPENSION OR DISMISSAL HEARING, AMONG OTHER THINGS; TO AMEND SECTION 59‑25‑470, RELATING TO THE SCHEDULING OF TEACHER DISMISSAL HEARINGS, SO AS TO MAKE CONFORMING CHANGES, TO EXTEND THE PERIOD FOR SCHEDULING A HEARING TO FORTY‑FIVE DAYS, AND TO PROVIDE THAT HEARINGS ARE QUASI‑JUDICIAL, AND TO PERMIT THE USE OF HEARSAY EVIDENCE IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION 59‑25‑480, RELATING TO APPEALS TO THE CIRCUIT COURT FROM A DISTRICT LEVEL DECISION ON A TEACHER DISMISSAL HEARING, SO AS TO MAKE CONFORMING CHANGES AND TO PROVIDE THESE APPEALS INSTEAD MUST BE MADE TO THE ADMINISTRATIVE LAW COURT; AND TO AMEND SECTIONS 59‑25‑490 AND 59‑25‑520, BOTH RELATING TO MISCELLANEOUS PROVISIONS CONCERNING DISCOVERY AND RELATED POWERS OF THE JUDICIARY, SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 59‑25‑410 of the 1976 Code is amended to read:

“Section 59‑25‑410. (A) ~~On or before April fifteenth of each year,~~ The ~~boards of trustees of the several~~ school ~~districts~~ district superintendent annually before May first shall ~~decide and~~ notify, in writing, ~~the teachers~~ a teacher, as defined in Section 59‑1‑130, ~~in their employ~~ whom the district employs concerning ~~their~~ his employment for the ensuing year. If the ~~board, or the person designated by it,~~ superintendent fails to notify a teacher who has been employed by a school district for a majority of the current school year of his status for the ensuing year, the teacher ~~shall be deemed~~ is considered to be reemployed for the ensuing year and the board shall issue a contract to ~~such teacher~~ him as though the board had reemployed ~~such teacher~~ him in the usual manner. ~~Notices~~ Notice of the board’s intent not to renew an employment contract ~~shall~~ must be given in writing ~~no later than April fifteenth of each year~~ before May first.

(B) On or before August fifteenth, the superintendent, principal, where applicable, or supervisor shall notify the teacher of his tentative assignment for the ensuing school year.

(C) This section ~~shall~~ does not apply to ~~any~~ a teacher whose contract of employment or dismissal is under appeal under Section 59‑25‑450.

(D) For purposes of this article, ‘teacher’ means ~~all employees~~ an employee possessing a professional certificate issued by the State Department of Education, except ~~those employees~~ an employee working pursuant to ~~multi‑year contracts~~ a multiyear contract.”

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(B)(1) If the board chooses to delegate the evidentiary hearing to a designee, the designee must be:

(a) an attorney licensed to practice law in this State;

(b) certified by the South Carolina Supreme Court as a mediator or arbitrator; and

(c) designated by the board chair.

(2) If the designee holds the evidentiary hearing, he shall issue a written report and recommendation containing findings of facts and conclusions of law to the board within fifteen days after the hearing concludes. The superintendent and the teacher may submit a written response to this report and recommendation to the board within ten days after the date on which the report and recommendation are issued, after which the board shall issue a decision affirming or withdrawing the notice of suspension or dismissal within thirty days. The board retains final decision‑making authority regarding the teacher dismissal or suspension recommendation based on its consideration of the record, the report and recommendation, and any written submission of the superintendent and teacher.

(C) If the board holds the evidentiary hearing, the board shall issue its decision within the thirty days after the hearing. This decision must be in writing and must include findings of facts and conclusions of law.

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(E) The District Board of Trustees as provided in subsection (C), or its designee, as provided in subsection (B), may issue subpoenas requiring the attendance of witnesses at ~~any~~ the hearing and, at the request of the teacher against whom a charge is made, shall issue ~~such~~ these subpoenas, but it may limit the number of these witnesses to ~~be subpoenaed in behalf of the teacher to not more than~~ ten. ~~All~~ Testimony at ~~any~~ a hearing ~~shall~~ must be taken under oath. ~~Any~~ A member of the board, or its designee, may administer oaths to witnesses. The board, or its designee, shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all ~~of the~~ testimony.

(F) If the board’s decision is favorable to the teacher, the board shall pay the cost of the reporter’s attendance and services at the hearing. If the decision is unfavorable to the teacher, one‑half of the cost of the reporter’s attendance and services ~~shall~~ must be borne by the teacher. ~~Either~~ A party desiring a transcript of the hearing ~~shall~~ must pay for the costs ~~thereof~~ of obtaining the transcript.”

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(C) The hearing ~~shall~~ must be held by the board ~~not less than ten nor more than fifteen~~, or its designee, within forty‑five days after the request is served~~, and~~. A notice of the time and place of the hearing ~~shall~~ must be given the teacher not less than five days ~~prior to~~ before the date of the hearing.

(D) The teacher ~~has the privilege of being~~ may be present ~~at the hearing~~ with counsel ~~and of cross‑examining~~ at the hearing, and may cross‑examine witnesses ~~and~~, may offer evidence and witnesses, and present ~~any and all~~ defenses to the charges. An evidentiary hearing is quasi‑judicial. Hearsay evidence is admissible and may be relied upon to support the decision of the board or the report and recommendation of a board designee if the evidence is relevant, believable, and probative and the decision is not based solely on hearsay evidence. The board, or its designee, shall order the appearance of any witness requested by the teacher, subject to the limitations of Section 59‑25‑460. The ~~complainants~~ superintendent shall initiate the introduction of evidence in substantiation of the charges. ~~Within ten days following the hearing, the board shall determine whether the evidence showed good and just cause for the notice of suspension or dismissal and shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal.~~”

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(B) Notice of the appeal and the grounds ~~thereof shall~~ of it must be filed with the district board of trustees. The district board shall, within thirty days ~~thereafter~~ afterward, file a certified copy of the transcript record with the ~~clerk of such court~~ ALC. ~~Any~~ An appeal from the order of the ~~circuit court shall~~ ALC must be taken in the manner provided by the South Carolina Appellate Court Rules. If the decision of the board is reversed on appeal, ~~on a motion of either party~~ the ~~trial court~~ ALC shall order reinstatement and ~~shall~~ determine the amount for which the board ~~shall be~~ is liable for actual damages and court costs if either party moves for this relief. ~~In no event shall any~~ Liability may not extend beyond two years ~~from~~ after the effective date of dismissal. ~~Amounts~~ An amount earned or ~~amounts~~ earnable with reasonable diligence by the person wrongfully suspended ~~shall~~ must be deducted from any back pay.”

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SECTION 8. This act takes effect upon approval by the Governor.

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