

Regular Session, 2013

SENATE BILL NO. 89

BY SENATOR APPEL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TENURE. Provides relative to tenure for teachers and certain other school employees.  
(7/1/2013)

1 AN ACT  
2 To amend and reenact R.S. 17:441, 442, 443, 444(B), to enact R.S. 17:532(C), and to repeal  
3 R.S. 17:45, 444(A), 446, and 461 through 464, all as provided in Act 1 of the 2012  
4 Regular Session of the Louisiana Legislature, relative to tenure for teachers and  
5 certain other school employees; to provide for uniform tenure policies; to provide for  
6 criteria to earn tenure; to limit eligibility for certain school employees, other than  
7 teachers, to acquire tenure; to provide for procedures to terminate employment of  
8 tenured and nontenured teachers; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 17:441, 442, 443, 444(B) are hereby amended and reenacted and R.S.  
11 17:532(C) is hereby enacted to read as follows, all as provided in Act 1 of the 2012 Regular  
12 Session of the Louisiana Legislature:

13 §441. Definitions

14 As used in this Subpart, the word "teacher" means:

15 (1) Any employee of a local public school board, state special school, or a  
16 school or program administered by the special school district who holds a teacher's  
17 certificate and whose legal employment requires such teacher's certificate;

1 (2) Any school lunch supervisor employed by a local public school board  
2 who holds a special parish school lunch supervisor's certificate issued by the  
3 Department of Education of the state of Louisiana and whose employment requires  
4 such certificate. No employee as defined in this Paragraph hired on or after July 1,  
5 2012, shall be eligible to acquire tenure.

6 §442. Tenure

7 A.(1)(a) A teacher who has acquired tenure before September 1, 2012, retains  
8 tenure and is subject to the provisions of this Section.

9 (b) Effective beginning on July 1, 2012, a teacher rated "highly effective" for  
10 five years within a six-year period pursuant to the performance evaluation program  
11 as provided in R.S. 17:3881 through 3905 shall be granted tenure.

12 (2) A teacher paid with federal funds shall not be eligible to acquire tenure,  
13 nor shall time spent in employment paid with federal funds be counted toward the  
14 time required for acquisition of tenure.

15 B. The school superintendent shall notify a teacher, in writing, when tenure  
16 has been awarded and the teacher is deemed to have acquired tenure on the date  
17 specified therein. A teacher who is not awarded tenure remains an at-will employee  
18 of the public school board or the special school district but shall acquire tenure upon  
19 meeting the criteria established in Subsection A of this Section.

20 C.(1) Beginning with the 2013-2014 school year, a tenured teacher who  
21 receives a performance rating of "ineffective" pursuant to the performance evaluation  
22 program as provided in R.S. 17:3881 through 3905 shall immediately lose his tenure  
23 and all rights related thereto. If a teacher is rated "highly effective" based on the  
24 evidence of the growth portion of the evaluation but is rated "ineffective" according  
25 to the observation portion, within thirty days after such finding, the teacher shall be  
26 entitled to a second observation by members of a team of three designees, chosen by  
27 the local superintendent, which shall not include the principal.

28 (2) Such teacher shall reacquire tenure if any of the following applies:

29 (a) The teacher's "ineffective" performance rating is reversed pursuant to the

1 grievance procedure established pursuant to R.S. 17:3883(A)(5). In such case, the  
2 teacher's tenure shall be immediately reinstated.

3 (b) The teacher receives a performance rating of "highly effective" for five  
4 years within a six-year period subsequent to receiving an "ineffective" rating as  
5 provided in Subsection A of this Section.

6 §443. Removal of teachers; procedure; right to appeal

7 A. The school superintendent may terminate the employment of any  
8 nontenured teacher after providing such teacher with the written reasons therefore  
9 and providing the teacher the opportunity to respond. The teacher shall have seven  
10 days to respond, and such response shall be included in the teacher's personnel file.

11 B.(1) A teacher with tenure shall not be removed from office except upon  
12 written and signed charges of poor performance, willful neglect of duty,  
13 incompetency, dishonesty, immorality, or of being a member of or contributing to  
14 any group, organization, movement, or corporation that is by law or injunction  
15 prohibited from operating in the state of Louisiana, and then only if furnished with  
16 a copy of such written charges and given the opportunity to respond. The teacher  
17 shall have seven days to respond, and such response shall be included in the teacher's  
18 personnel file. At the end of this seven-day time period, the superintendent may  
19 terminate the teacher's employment. A teacher shall not be terminated for an  
20 "ineffective" performance rating until completion of the grievance procedure  
21 established pursuant to R.S. 17:3883(A)(5) if a grievance was timely filed. Within  
22 seven days after dismissal, a teacher may request and upon request shall be granted  
23 a hearing by a panel composed of a designee of the superintendent, a designee of the  
24 principal or the administrative head of the state special school in which the teacher  
25 was employed, and a designee of the teacher. In no case shall the superintendent, the  
26 principal or state special school administrative head, or teacher designate an  
27 immediate family member or any full-time employee of the school system by which  
28 the teacher was employed who is under the supervision of the person making the  
29 designation. Such hearing may be private or public, at the option of the teacher, and

1 shall begin within seven business days after receipt of the teacher's request for such  
2 hearing. The teacher shall have the right to appear before the tenure hearing panel  
3 with witnesses on his behalf and with counsel of his selection, all of whom shall be  
4 heard by the panel at the hearing. For the purpose of conducting hearings hereunder,  
5 the panel shall have the power to issue subpoenas to compel the attendance of all  
6 witnesses. Nothing herein contained shall impair the right to seek supervisory  
7 review from a court of competent jurisdiction.

8 (2) The tenure hearing panel shall submit its recommendation to the  
9 superintendent, and the superintendent may choose to reinstate the teacher. If the  
10 superintendent does not reinstate the teacher, the superintendent shall notify the  
11 teacher of his final determination, in writing, and such teacher may, not more than  
12 sixty days from the postmarked date of such written notification, petition a court of  
13 competent jurisdiction to review whether the action of the superintendent was  
14 arbitrary or capricious. The court shall have jurisdiction to affirm or reverse the  
15 action of the superintendent in the matter. The record on review shall be limited to  
16 evidence presented to the tenure hearing panel, and the court shall review the matter  
17 not later than ten days after the petition has been filed. If the action of the  
18 superintendent is reversed by the court and the teacher is ordered reinstated and  
19 restored to duty, the teacher shall be entitled to full pay for any loss of time or salary  
20 he may have sustained by reason of the action of the superintendent.

21 C. For the purposes of this Section, immorality shall mean any conviction of  
22 a felony offense affecting the public morals enumerated in Part V of Chapter 1 of  
23 Title 14 of the Louisiana Revised Statutes of 1950.

24 D. For purposes of this Section, the results of a teacher's evaluation  
25 performed pursuant R.S. 17:3881 through 3905 evaluating the teacher's performance  
26 as "ineffective" shall constitute sufficient proof of poor performance, incompetence,  
27 or willful neglect of duty and no additional documentation shall be required to  
28 substantiate such charges.

29 §444. Promotions to and employment into positions of higher salary and tenure

1           ~~B. (1)~~ A. Whenever a teacher who has acquired tenure, as set forth in R.S.  
2 17:442, in a local public school system or the special school district is promoted by  
3 the superintendent by moving such teacher from a position of lower salary to one of  
4 higher salary, such teacher shall not be eligible to earn tenure in the position to which  
5 he is promoted, but shall retain any tenure acquired as a teacher, pursuant to R.S.  
6 17:442.

7           ~~(4)(a)(i)~~ B.(1) Except as provided otherwise by R.S. 17:54(B), relative to the  
8 maximum term of a superintendent of schools elected by a city or parish school  
9 board, the employment provided for in this Section shall be for a term of not less  
10 than two years, except when such employment is for a temporary position, nor more  
11 than four years, and said term shall be specified in a written contract, which shall  
12 contain performance objectives.

13           ~~(ii)~~ (2) Notwithstanding the provisions of R.S. 42:3 and except as provided  
14 otherwise by R.S. 17:54(B), relative to the maximum term of a superintendent of  
15 schools elected by a city or parish school board, the term of employment provided  
16 in this Section may be for a longer period of time than the term of office of the  
17 employing school board.

18           ~~(b)~~ C. Except as otherwise provided in this Subsection, any person promoted  
19 to a higher position pursuant to this Section shall possess a standard Louisiana  
20 teaching certificate as well as appropriate administrative/supervisory endorsement  
21 when a teaching certificate is a qualification requirement for the post to which the  
22 person is being promoted. Any person holding a provisional teaching certificate  
23 shall not be promoted to a higher position, except when a person meeting the  
24 requirements of this Subsection is not available for employment within the parish or  
25 city school system subject to all other requirements as provided by law.

26           ~~(c)(i)~~ D.(1) The board and the employee may enter into subsequent contracts  
27 of employment. Not less than one hundred and twenty days prior to the termination  
28 of such a contract, the superintendent shall notify the employee of termination of  
29 employment under such contract, or in lieu thereof the board and the employer may

1 negotiate and enter into a contract for subsequent employment.

2 (ii)(2) The employee may choose not to enter into subsequent contracts and  
3 may either terminate his employment or, if he has acquired permanent status as a  
4 teacher, resume employment as a teacher.

5 (iii)(3) The employee shall be retained during the term of a contract unless  
6 the employee is found incompetent or inefficient or is found to have failed to fulfill  
7 the terms and performance objectives of his contract. However, before an employee  
8 can be removed during the contract period, he shall have the right to written charges  
9 and a fair hearing before the board after reasonable written notice.

10 (iv) (4) The board shall negotiate and offer a new contract at the expiration  
11 of each existing contract unless the superintendent recommends against a new  
12 contract based on an evaluation of the contractee as provided for in R.S. 17:391.5,  
13 or unless failure to offer a new contract is based on a cause sufficient to support a  
14 mid-contract termination as provided in ~~Item (iii)~~ **Paragraph (3)** of this  
15 ~~Subparagraph~~ **Subsection**, or unless the position has been discontinued, or unless the  
16 position has been eliminated as a result of district reorganization, provided that  
17 should the position be re-created, the employee, if still employed by the board, shall  
18 have first right of refusal to the re-created position.

19 (v) (5) If the contracted employee is removed or not renewed and had  
20 previously acquired permanent status as a teacher, he shall be returned to his former  
21 position as a teacher or to a position paying the same salary as his former position  
22 as a teacher unless he chooses to terminate his employment.

23 (5) **E.** The provisions of this ~~Subsection~~ **Section** shall apply only to those  
24 whose promotion to or employment in a higher position as provided herein, occurs  
25 on or after August 1, 1985.

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27 §532. Probationary term and tenure

28 \* \* \*

29 C. No employee, as defined in R.S. 17:531, hired on or after July 1, 2012,

1 shall be eligible to acquire permanent status.

2 Section 2. R.S. 17:45, 444(A), 446, and 461 through 464 are hereby repealed, all as  
3 provided in Act 1 of the 2012 Regular Session of the Louisiana Legislature.

4 Section 3. This Act shall become effective on July 1, 2013; if vetoed by the governor  
5 and subsequently approved by the legislature, this Act shall become effective on July 1,  
6 2013, or on the day following such approval by the legislature, whichever is later.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Jeanne C. Johnston.

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#### DIGEST

Proposed law restates and makes technical corrections in provisions in present law as enacted by Act 1 of the 2012 Regular Session of the Louisiana Legislature as follows:

- (1) Consolidates the tenure provisions for all certified school employees and repeals provisions specific to teachers in Orleans Parish and the Special School District.
- (2) Eliminates the three-year probationary period for the acquisition of tenure and the automatic awarding of tenure to a teacher upon successful completion of the probationary period.
- (3) A teacher who acquired tenure before September 1, 2012, retains tenure but is subject to the revised tenure provisions.
- (4) Effective July 1, 2012, a non-tenured teacher who receives a performance rating of "highly effective" for five years within a six-year period shall be granted tenure.
- (5) A teacher who is not awarded tenure remains an at-will employee, but shall acquire tenure upon meeting the specified rating requirement.
- (6) Beginning with the 2013-2014 school year, a tenured teacher who receives a performance rating of "ineffective" shall immediately lose tenure. However, a teacher who is rated "highly effective" on the growth portion of the evaluation, but is rated "ineffective" on the observation portions, is entitled to a second observation within 30 days of such finding.
- (7) A teacher who loses tenure for receiving an "ineffective" performance rating shall reacquire tenure if any one of the following conditions applies:
  - (a) The "ineffective" rating is reversed pursuant to the established grievance procedure.
  - (b) The teacher receives a "highly effective" performance rating for five years within a six-year period.
- (8) The following school employees are not eligible to earn tenure:
  - (a) A school lunch supervisor hired on or after July 1, 2012.
  - (b) Employees of the Iberville Parish School Board, other than teachers, hired on or after July 1, 2012.

- (c) Teachers paid with federal funds.
- (9) The local school superintendent may terminate the employment of a nontenured teacher after providing the teacher with written reasons, to which the teacher shall have seven days to respond. Such response must be included in the teacher's personnel file.
- (10) With respect to terminating employment of a tenured teacher:
- (a) A tenured teacher may be terminated upon written charges of poor performance, willful neglect of duty, incompetency, dishonesty, immorality, or of being a member of an entity prohibited from operating in the state. The teacher has seven days to respond to the written charges. Such response must be included in the teacher's personnel file. At the end of this seven-day period, the superintendent may terminate the teacher's employment.
  - (b) An "ineffective" rating on a performance evaluation constitutes proof of poor performance, incompetence, or willful neglect of duty and no additional documentation to substantiate such charges is required.
  - (c) A teacher shall not be terminated for an "ineffective" performance rating until completion of the grievance period established pursuant to the state's teacher evaluation process, if a grievance was timely filed.
  - (d) The teacher who has been terminated must be given a hearing, if he requests one within seven days of removal. The hearing shall be conducted by a panel composed of a designee of the superintendent, a designee of the principal or the administrative head of the state special school, and a designee of the teacher. Prohibits the designation of an immediate family member or any full-time employee of the school system by which the teacher was employed who is under the supervision of the person making the designation.
  - (e) The teacher has the right to appear before the tenure hearing panel with witnesses on his behalf and be represented by legal counsel.
  - (f) The teacher has the right to seek supervisory review from a court of competent jurisdiction.
  - (g) The hearing panel must submit its recommendation to the superintendent, who may reinstate the teacher. If he does not reinstate the teacher, he shall notify the teacher in writing. The teacher has 60 days from the date of receipt of the termination notice to petition a court to review the superintendent's action and to determine whether it was arbitrary or capricious. The court has the jurisdiction to affirm or reverse the action of the superintendent. Specifies that the record on review is limited to evidence presented to the tenure hearing panel.
  - (h) If the court reverses the superintendent's action and orders the teacher reinstated, the teacher is entitled to full pay for any loss of time or salary sustained.

Effective July 1, 2013.

(Amends R.S. 17:441, 442, 443, 444(B); adds R.S. 17:532(C); repeals R.S. 17:45, 444(A), 446, and 461 through 464)