

I-3684

HOUSE EDUCATION COMMITTEE  
SUBCOMMITTEE ON TEACHER TENURE,  
SENATE EDUCATION COMMITTEE  
SUBCOMMITTEE ON TENURE AND CERTIFICATION.

Final Report,  
1971-72 Interim

State of Minnesota  
House Research Department  
Senate Counsel  
December, 1972

During the 1971-72 interim period, both the House and the Senate undertook a reassessment of the State's position on what has long been considered the bulwark of academic freedom -- tenure for teachers.

On April 7, 1972, the House Subcommittee on Teacher Tenure and the Senate Subcommittee on Tenure and Certification met jointly to consider the tenure legislation introduced during the last session and to receive the testimony of interested organizations and individuals.

At this meeting, primary consideration was given to H.F.1543. The author of the bill, Representative Steve Szarke presented his position as being one opposed to the repeal of tenure. He described teacher tenure laws as the teachers due process.

The bill that he authored had the primary purpose of merging the two existing tenure laws into one. The other changes in the law that he discussed included a two year probationary period for all teachers any time they begin a new teaching job, third year optional probationary period as an alternative for a teacher faced with dismissal before his probationary period ends, and an annual evaluation of teachers by an evaluation team within the school. He also suggested that since the probationary period is on a calendar basis rather than actual teaching time basis, the Legislature should enact a provision that would allow for a tolling of the statute for such things as maternity leave, or as an

alternative, they should define the probatony period as time actually spent teaching.

William Wettergreen, Executive Secretary of the Minnesota School Boards Association, discussed with the Committee his organizations position on teacher tenure. The MSBA takes the position that the Legislature should repeal the Teacher Tenure Law. If the law is not repealed, they feel, that the probationary features of the present law should be extended by at least one year and that there should be one state-wide teacher tenure law.

He attributed some of the public's dissatisfaction with the tenure law as being related to the lock-step salary schedules in effect in all school districts, which does not take into consideration the abilities of any teacher. He also stated that the current two-year probationary period is a fallacy in that school boards and administrators do not have a full two years in which to make their evaluation. The final reason for dissatisfaction with the tenure law, is the unnecessarily complicated procedure that must be followed in order to terminate a teacher.

Mr. Robert Arnold, Executive Secretary of the Minnesota Elementary School Principals' Association, then presented his organizations position on tenure. The MESSA advocates the establishment of one tenure law applicable to all school districts in the State and to all certificated employees except superintendents. The organization feels that the

two year probationary period is acceptable and there should be no options for extending this time period. On the question of teacher evaluation, both teachers and administrators should have input, and teachers with certain deficiencies should be given notice and the opportunity to correct those deficiencies.

Mr. A. L. Gallop, Executive Secretary of the Minnesota Education Association, expressed their opposition to any efforts made to weaken the teacher tenure laws. He opined that any problems being encountered in the laws are not due to any inadequacy in the law, but rather are due to the inability of school administrators and others charged with the responsibility of enforcing the law to make it work.

He then discussed the MEA Legislative proposal for teacher certification and accountability. He felt that teachers should be given the responsibility as well as the right to determine the competency of teachers including responsibilities in the area of teacher preparation programs in colleges.

In commenting on H.F. 1543, Mr. Gallop offered certain criticisms of the bills provisions, such as no right to appeal a discharge or demotion, the voluntary third year probation, the boards right to recover salary payments made during the period of suspension in the event that they successfully terminate the teachers contract, and the omission of the absolute right to judicial review from the actions of the board.

Mr. Henry Winkels, representing the Minnesota Federation of Teachers, opposed the combining of the two teacher tenure laws, and felt that the 1971 public employees bargaining bill should have no effect on the teacher tenure laws.

Mr. L. E. Wermager, Executive Secretary of the Minnesota Association of School Administrators, felt that some form of tenure was necessary, but expressed the opinion that difficulty of dismissal is a serious problem and that dismissals should be based upon the educational qualifications of the teacher, his teaching ability, and his effectiveness in teaching children and not on the basis of some vague social policy.

As was evident from the remarks of the participants in this meeting, solution to the problem of tenure depends entirely on who you ask. To some, tenure is a legislatively granted licensure of mediocrity and an impregnable haven for the incompetent. To others, it is a necessary safeguard against the perfunctory action of a politically sensitive school board and a guarantee of the fundamental due process rights of a teacher.

While the proponents of either position can and have produced documented evidence to support their point of view, the Subcommittee feels that it would serve no purpose to keep a tally of allegations and either retain or abolish tenure on the basis of who can produce the greater weight of evidence.

The Subcommittees feel that if a teacher is in fact, ineffective, incompetent or morally unfit, there needs to be an orderly process for his removal. But a teacher who is an innovator, who may be controversial or politically unpopular, but can still make the classroom and the whole process of education a stimulating and rewarding experience for the student should be protected.

The Subcommittees recognize that the tenure laws do create problems by making it difficult for school boards to remove incompetent teachers. But on the other hand, the tenure laws protect teachers from improper pressures and may well protect school boards from the very same pressures.

RECOMMENDATIONS:

The Subcommittees therefore adopt the position that the best interests of the children of this state can be served by a tenure law which provides essential protection of academic freedom yet allows the orderly dismissal of the unqualified. To insure this ideal, the Subcommittee's recommend:

1.) That the two tenure laws currently in effect be replaced by a single law applicable to all school districts in the state.

2.) That the probationary period be defined by statute as time actually spent in teaching. (For example, 18 months of actual teaching time rather than "the first and second consecutive years").

3.) That school boards and school administrators exercise their right and responsibility to terminate unqualified teachers regardless of the complexities and cumbersome procedure inherent in the existing tenure laws.

## QUESTIONNAIRE

Those organizations which would be directly affected by any changes in the tenure laws were asked during the interim to respond to a questionnaire dealing with tenure in general but with particular reference to H.F.1543. A summary of their responses is attached.



Summary of Responses Received from Educational Organizations on  
 Subject of Tenure with particular reference to amended H.F. 1543.  
 (Complete text of responses available from committee files.)

<u>QUESTION</u>	<u>NEA</u>	<u>NFT</u>	<u>MSBA</u>	<u>MESPA</u>	<u>MASSP</u>
I. Is statutory tenure desirable in light of PELRA?	Most desirable.	Should be preserved.	PELRA will result in repeal of tenure within 4 years.	PELRA does not meet need met by tenure law - chaotic conditions would result if it replaced tenure.	The two laws are not related, nor are they in conflict.
II. Is it desirable to have 2 tenure laws?	No, separate tenure laws are an anomaly and ought to be consolidated.	Can cooperate with proponents of consolidation if this effort produces not one iota less protection than now under either law.	No.	No, we recommend just 1 tenure law applicable to all school districts.	No problems with 2, but might be better to have 1.
III. Is amended H.F. 1543 desirable?		Generally no, see separate bill.			
Specifically in the context of amended H.F. 1543:					
1.a. Who should be covered by tenure?	Suggest use of definition of teacher in PELRA for consistency "certificated personnel other than Supt. or Asst. Supt.", might add administrative personnel and delete certificated personnel.	Law should be written only for teachers broadly defined, i.e., those directly involved in development of learning process and not for Supts., and Asst. Business Mgrs.	No one.	All certificated personnel except Supt. because Supt. is ex officio member of the board.	All certificated personnel, particularly administrators.

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1.b. What distinctions should be made between different kinds of personnel?	No cause for differentiating tenure for teachers as opposed to administrators.	None (apparently) for those who should be covered.	If there is to be a difference, law should distinguish between teachers and management.	Apparently none.	Should apply to all personnel alike.
2.a. Should grounds and procedure for demotion be made a part of a tenure law?	Demotion not used.	---	Demotion policy in cities has worked to a degree; out-state has had no opportunity to use it.	Only aware of 1 case in state courts in 20 years; absence of provision has caused no problem or even attention.	Experience the same under each law.
3.a. How many years of probation do you recommend?	2.	No more than 2, but reduced or eliminated if internship adopted.	3.	2.	2 years by position.
3.b. Should probation be extended at the option of the board?	No.	No.	Questionable.	No.	No.
3.c. Extended only with consent of teacher?	No, consent could be forced.	No.	No, why have probation if this be true.	No.	Less objection than if board.
3.d. Should alternative forms of pre-tenured status be considered, such as internship? 3.e. How different from probation?	Internship not necessary or desirable.	No, internship a phase of student teaching. Affords no job protection. Should be governed not by tenure law but by certification requirements.	Not sure, may assure better teachers.	Has no place in the statutory tenure scheme.	Already functions, legislation in this area is neither necessary or desirable.
3.f. Years of probation for transferred tenured teacher? 3.g. Transferred probationary teacher?	1 year.	1 year?  1 year?	--- Bad teacher in one district may be good in another.	Present statutes are proper. Probationary period should be inflexible by statute.	2 years.  2 years.

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4.a. Should the law require annual evaluation of probationary teachers? 4.b. All teachers? 4.c. By whom? 4.d. In writing, in teachers' files?	Effective annual evaluation should be part of every good administrative program; statutory mandate should be immaterial but many districts do not have effective review; statute might stifle innovative review practices.	Quarterly evaluation by supt., principal, or supervisor available to teacher; written reasons for non-renewal upon request, and statement of appropriate supervision (see Hughes amendment, Sec. 1).	a. Yes. b. Yes. c. 1st choice-administrative staff, 2nd - committee from educational community.	a. Unwise to provide by statute; but effective evaluation is essential. c. Teachers as well as administrators. d. Yes.	a. Legislation would serve little purpose, undesirable precedent for prescribing administrative practices. b. Yes, maybe more for probationers. c. Principal. d. Yes, and receipted by teacher.
5.a. Teacher access to files? 5.b. On what terms?	a. Yes. b. On terms added by '71 Legislature.	a. Yes. b. As expressed in present law.	a. Yes, but only those generated in district. b. Teacher should have opportunity to reply.	a. Yes. b. Only proscription reasonable hours for inspection and copying.	a. Yes. b. As expressed in current law and H.F. 1543.
6.a. Should tenure be qualified by good behavior requirement? 6.b. What kind of conduct does this require that is not proscribed specifically?	a. Strongly opposed. b. All forms of behavior which justify discharge or termination are in 125.12, Subd. 6 and 8.	a. Specific grounds set out in Hughes amendment (Sec. 1, Subd. 6) only.	---	Adequately covered by Sec. 1, Subd. 6 (1), (?), and (4) of H.F. 1543. Also grounds covered by M.S. 125.12, Subd. 6 and 8, and unwise to alter them. Present statutory grounds have proven sufficient.	Covered under Subd. 6 (1) and (4).

<u>QUESTION</u>	<u>MEA</u>	<u>MFT</u>	<u>MSBA</u>	<u>NECPA</u>	<u>MASSP</u>
7.a. For what causes other than enumerated grounds in H.F. 1543, Subd. 6, might a teacher be discharged or demoted? 7.b. Incompetency added? 7.c. Other good and sufficient grounds? 7.d. Are any grounds in Subd. 6 unnecessary or unused?	a. Oppose any grounds not set out in 125.12, Subd. 6 and 8. b. Too amorphous, indefinable. c. Too amorphous, indefinable. d. Communicable disease should be treated with leave of absence.	a. None other than Sec. 1, Subd. 6 of Hughes amendment. b. If added, would insist on competency of administrators to judge incompetency. c. Definitely not. Negates all specificity. d. Communicable disease should be treated by suspension with opportunity for rehabilitation.	a. No answer. b. Yes. c. Yes. d. No.	See answer to 6. 125.12, Subd. 6 and 8 are entirely adequate; should not be changed until need is inescapably conclusive.	a. Grounds listed plus other good and sufficient grounds should make list complete and operable. b. Incompetency already covered. c. Other good and sufficient grounds should be added to cover the unfore-able.
8. Should board have authority to require retirement at 65?	No objection, but suggest it be complemented with right of teachers to retire earlier.	No comment now, will consider with our retirement proposals.	Yes.	Workable, best feature is discretion in board to continue beyond 65. Suggest board have authority to grant earlier retirement.	Yes, at 65 or higher.
9.a. Should any factor other than seniority be considered when a position is discontinued? 9.b. Should a discontinued teacher be given preference for other positions?	a. No other broadly applicable standard is appropriate. b. Yes, even if he could be qualified by following Fall. Discontinuation should be preceded by public hearing involving all interested parties, to explore less drastic alternatives.	a. Reasons for discontinuance should be defined more extensively. Seniority should be the basic criterion for retention. b. Yes.	a. There should be a number of items such as education, marital status, head of family, competency, etc. b. No, teacher may have not taught in qualified area for 20 years.	a. Seniority is the only basis that has received general acceptance. b. Yes, should have first right to any other position for which he is quali-	a. Practically, seniority is the only factor that can be considered. b. Yes, but change of title does not mean a position has been discontinued.

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10.a. Has suspension and leave of absence provision been worthwhile? 10.b. Suggested changes?	a. Useful, should be retained. b. Leave of absence should be extended to give pregnant teachers right to leave of absence and to return to work.	a. Yes. b. Lengthen rehabilitation period (see Sec. 1, Subd. 7 of Hughes bill).	a. Necessary, but not always workable. b. Should be somewhat of an escape clause for the bd., after so many years; difficult to fill faculty.	125.12, Subd. 7, absolutely necessary and should not be changed in any way.	Workable, and should be left as is.
11. Should a greater degree of deficiency be required for immediate discharge?	Present distinction in 125.12, Subd. 6 and 8, should be retained.	Yes, see Subd. 8 of Hughes bill.	No.	125.12, Subd. 6 and 8, adequately deals with this and should be left undisturbed.	Grounds for immediate discharge in Subd. 8 of 1543 are adequate and workable.
12.a. Should a teacher have notice and a reasonable time to correct deficiency before proceedings? 12.b. For which grounds?	a. Strongly favor retention of 125.12, Subd. 6, which requires notice and time to correct for year end terminations; not appropriate for immediate discharge. b. All but discontinuance of position.	a. Of course. b. For all, to a degree.	a. Yes. b. ---	a. Yes, fair play requires this; many teachers correct themselves. b. Any ground susceptible to correction.	a. Yes. b. Those grounds listed in Subd. 6, 1-4, plus other grounds if added.
13. Should statute state procedural requirements now included in out-state law?	Yes, should be expended to all districts; have proven effective in recent years.	Yes.	Yes.	Provisions of 125.12, Subd. 9, have proven adequate. 125.17, Subd. 5, is totally inadequate.	Hearing procedure in out-state law is good and should be in any new legislation; that in 1543 is not as complete and should be altered.

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14. Should procedures in 1543 be altered:	125.12 procedures are superior to 1543. 1543 is less specific, and contains following defects: A. Teacher has no opportunity to admit charges by default without hearing. B. Reasonable notice better than inflexible 10 days which may not be enough time. C. Strongly oppose right of non-school connected people to file charges. D. Right of Board to recover salary (Subd. 14) from filing to determination of discharged is unfair, and pressures teacher into accelerating hearing. Oppose. E. Appeal by certiori only is discretionary in court, and refusal to hear is not in itself appealable; unprecedented under administrative procedures act, major incursion into teacher security.	Postpone answer for time being.	Not sure.	This subject should be first priority of legislative attention; H.P. 1543 fails to meet minimal due process standards. Basic problem with present law and 1543 is giving Board role of complainant, prosecutor, and judge; we suggest creation of a state tenure commission along lines of Michigan law, Secs. 38.131 to 38.140; whether non-school connected officials should be allowed to bring charges might be considered in context of tenure commission.	Yes, should be altered to conform to 125.12.
15. On appeal, should teacher have a new trial or should court accept facts by Board?	New trial, but scope of evidence limited by recorded Board hearing.	Appellant should have option.	Difficult for court to decide whether teacher is good or not.	New trial if Board is complainant, prosecutor, and jury; if not, (apparently) could take facts as found by commission.	If hearing properly conducted, appeal could be on the record; if not, there should be a new trial.
16. Should any school districts be exempt?	No.	No.	No.	Perhaps an experimental district might be exempt so that we might inquire and be better informed.	No.

<u>QUESTION</u>	<u>NEA</u>	<u>NFT</u>	<u>MSMA</u>	<u>MESEA</u>	<u>MASSP</u>
17.a. What provisions for payment pending charges? b. If exonerated? c. What distinctions should be made? d. When should a board suspend?	a. Full payment even if result is immediate discharge; back pay if successful on appeal. d. There are appropriate circumstances for suspension, but should not cloud assumption of innocence.	a. Same pay. Should continue on basis that person is innocent until proved guilty. c. Except where teacher has to be removed immediately. See special provisions in health cases in Hughes bill (Subd. 7).	a. Board should be allowed to suspend without pay. b. Pay should be restored.	a. With pay until final decision; encourages speedy action, also clouds presumed innocence. d. Suspension should be authorized only in case of immediate discharge; other case results in termination at end of year, so no need for suspension.	a. H.F. 1543, Subd. 8 and 14, are adequate on pay and suspension. d. Board has authority to suspend when necessary for operation of the school.
18. Should charges be expunged if teacher is exonerated?	Feel strongly - Yes.	Yes.	Yes.	Yes.	Yes.
19. Should parents or others have a part in the proceedings?	Yes, in appropriate circumstances; provides outlet for community feelings.	No.	Yes, but hesitant about pupils.	No, except as witnesses.	No, except as witnesses.
20. Hearing open or closed? or at teacher's option?	Teacher's option, as in present law.	Teacher's option.	Either the School Board or the teacher.	Only the teacher should have option.	Teacher's option.
21.a. Individual contracts in writing? b. Form of employment and pay schedule uniform?	a. Yes - for all, to avoid confusion. b. ---	a. Yes, fashioned after master contracts. b. Salaries and school calendar fashioned after master forms.	a. Yes. b. Yes.	Not opposed to individual contracts, but no need; wages and general assignments can be in Board minutes. Cities have gotten along without written contracts.	a. Individual contracts should be required, but not annually, only with change of assignment. b. No, leave to district.

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22. Is April 1 an appropriate deadline?	April 1 is appropriate but would prefer that teacher's unilateral right to resign extend to 10 days beyond settlement of negotiations.	O.K. for probationer.	As good as any	Change not warranted.	Yes, April 1 is O.K.
23. How much notice from resigning teacher?	April 1, or ten days after negotiation settlement.	1 month.	April 1.	60 or 90 days.	April 1, or by request for release after April 1.
24. Other suggestions for change in tenure law?	Uncomfortable and dissatisfied with Board as complainant, prosecutor and judge. Suggest either charges be initiated by Supt. and decided by Senate of 3 Bd. members, 3 faculty, and 1 outsider selected by the other 6, or charges initiated by the Bd. and decided by a statewide 5 to 7 member Tenure Commission appointed by the Governor, three of the members would decide an individual case. Favor Tenure Commission. Will elaborate if committee feels ideas are worthy of exploration.	---	Stated.	Concern that charges, hearing, and judgment initiated by Board; also might be better to remove hearing from involved community.	Our school law among best in country. Fair to public as well as teachers.
25. Other comments:	H.F. 1543 is not a useful or appropriate vehicle to focus attention on a new tenure act for these reasons: A. 1543 is a collation of 2 existing laws and takes more from 125.17, the weaker of the two. B. Mixture of provisions from the two laws results in inconsistent use of terms. C. H.F. 1543 contains no direction as to supervision of a probationary teacher. D. Right to free transcript and to subpoena witnesses eliminated for teacher in 1543.	---	---	Opposed to any diminution of procedures in 125.12.	Strike last phrase of H.F. 1543, Sec. 1, Subd. 2, unfair.