

SENATE BILL 44

By Summerville

AN ACT to amend Tennessee Code Annotated, Title 49,
relative to election of directors of schools.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-2-203(a)(14)(A), is amended by deleting the language “Notwithstanding any other public or private act to the contrary” and by substituting instead the language “Unless a county or municipal legislative body has voted to establish the office of elected superintendent of schools and the voters of the county or municipality have by referendum approved establishment of the office of elected superintendent of schools”.

SECTION 2. Tennessee Code Annotated, Section 49-2-301(a), is amended by deleting the initial word “Each” and by substituting instead the language “Except as provided in subsection (e), each”.

SECTION 3. Tennessee Code Annotated, Section 49-2-301, is amended by adding the following new subsections:

(e)

(1)

(A) Notwithstanding subsection (a) or any provisions of Chapter 535 of the Public Acts of 1992 to the contrary, any county or municipality operating a school system may establish the office of elected school superintendent by a two-thirds (2/3) vote of the membership of the county or municipal legislative body.

(B) Any such ordinance or resolution of a county or municipality shall not become operative until approved in an election herein provided

in the county or municipality, as the case may be. The county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the ordinance or resolution, after the receipt of a certified copy of the ordinance or resolution, and a majority vote of those voting in the election shall determine whether the ordinance or resolution is to be operative.

(C) If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns. If the majority vote is against the ordinance or resolution, the legislative body shall take no action on establishing the office of elected school superintendent for at least two (2) years from the date the election is held.

(D) If approved in the election on the question, elections for school superintendent shall be held at the regular August election. The office shall be filled by popular vote for a term of four (4) years. The person elected shall take office September 1 following the election.

(2)

(A) If the office of elected school superintendent is established, the contractual term of any appointed director of schools shall not be abridged by the establishment. If a county or municipality chooses to conduct an election prior to the expiration of a contract, it is the responsibility of the county or municipal legislative body to satisfy any contractual obligation to an incumbent director of schools.

(B) No board of education shall appoint or extend the contract or term of a director of public schools after a county or municipality establishes the office of elected superintendent, but may negotiate with the director of public schools to continue as acting director until the office of superintendent is filled by the voters.

(3) An elected superintendent shall only be required to have a baccalaureate degree.

(f) In those county or city school systems that establish the office of elected school superintendent under subsection (e), unless otherwise provided in this title, all rights, duties or powers of appointed directors of schools granted shall be rights, duties or powers of elected superintendents and any reference to an appointed director of schools shall be deemed to be a reference to an elected superintendent.

SECTION 4. Tennessee Code Annotated, Section 49-2-203(a)(1), is amended by designating the existing language as subdivision (A) and by adding the following language as new subdivision (B):

(B) Notwithstanding subdivision (a)(1)(A), in any county or city school system that has established the office of elected superintendent pursuant to § 49-2-301(e):

(i) Elect principals, supervisors, teachers, educational assistants, attendance officers, clerical assistants and other employees authorized by this title, and to fix salaries for such authorized positions according to the provisions of this title; and make written contracts with the teachers;

(a) No individual shall be elected to an interim contract unless the individual so elected is to fill a vacancy created by a leave of absence as set forth in § 49-5-702;

(b) All contracts with educational assistants shall be for nonteaching positions;

(c) Educational assistants shall be subject to direct supervision of certificated teachers when directly involved in the instructional program;
and

(d) No member of any local board of education shall be eligible for election as a teacher or any other position under the board carrying with it any salary or compensation.

(ii) Employ janitors, engineers and such other persons as may be necessary to care for the school property, and to fix their compensation.

SECTION 5. Tennessee Code Annotated, Section 49-2-301(b)(1)(J), is amended by designating the existing language as subdivision (i) and by adding the following language as new subdivision (ii):

(ii) Notwithstanding subdivision (b)(1)(J)(i), in any county or city school system that has established the office of elected superintendent pursuant to § 49-2-301(e), recommend to the board of education, supervisors, teachers, educational assistants, clerical assistants and other employees in the schools.

SECTION 6. Tennessee Code Annotated, Section 49-2-301(b)(1)(L), is amended by designating the existing language as subdivision (i) and by adding the following language as new subdivision (ii):

(ii) Notwithstanding subdivision (b)(1)(L)(i), in any county or city school system that has established the office of elected superintendent pursuant to § 49-2-301(e), assign teachers and educational assistants to the end that the best interests of the schools may be promoted thereby, pending the meeting and approval of the board of education.

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

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(A) Notwithstanding § 49-2-301(b)(1)(EE), (FF) and (GG), this subsection shall apply in county or city school systems that have established the office of elected superintendent pursuant to § 49-2-301(e);

(B) Within the approved budget and consistent with existing state laws and board policies, the local board shall employ, transfer, suspend, nonrenew and dismiss all personnel, licensed or otherwise;

(C) All persons who are employed in a position for which no teaching license is required shall be hired at the will of the local board of education. The local board shall develop a policy for dismissing such employees;

(D)

(i) The board may dismiss any nontenured, licensed employee under the board's jurisdiction for incompetence, inefficiency, insubordination, improper conduct or neglect of duty, after giving the employee, in writing, due notice of the charge or charges and providing a hearing; provided, that no nontenured, licensed employee under the board's jurisdiction shall be dismissed without first having been given, in writing:

(a) Notice of the charge or charges;

(b) An opportunity for a full and complete hearing before an impartial hearing officer selected by the board;

(c) An opportunity to be represented by counsel;

(d) An opportunity to call and subpoena witnesses;

(e) An opportunity to examine all witnesses; and

(f) The right to require that all testimony be given under oath.

(ii) Factual findings and decisions in all dismissal cases shall be reduced to written form and delivered to the affected employee within ten (10) working days following the close of the hearing;

(iii) Any nontenured, licensed employee desiring to appeal from a decision rendered in favor of the school system shall first exhaust the administrative remedy of appealing the decision of the hearing officer to the board of education within ten (10) working days of the hearing officer rendering written findings of fact and conclusions to the affected employee;

(iv) Upon written notice of such appeal being given to the superintendent, the superintendent shall prepare a copy of the proceedings, transcript, documentary and other evidence presented, and transmit the copy of the proceedings, transcript, documentary and other evidence presented within twenty (20) working days of receipt of notice of appeal to the board;

(v) The board shall hear the appeal on the record and no new evidence shall be introduced. The affected employee may appear in person or by counsel and argue why the decision should be modified or reversed. The board may sustain the decision, send the record back if additional evidence is necessary, revise the penalty or reverse the decision. Before any such charges shall be sustained or punishment inflicted, a majority of the membership of the board shall concur in sustaining the charges. The members of the board shall render the decision on the appeal within ten (10) working days after the conclusion of the hearing;

(vi) The superintendent shall also have the right to appeal any adverse ruling by the hearing officer to the board under the same conditions as are set out in this subdivision (a)(16)(D); and

(vii) Any party dissatisfied with the decision rendered by the board shall have the right to appeal to the chancery court in the county where the school system is located within twenty (20) working days after receipt of notice of the decision of the board. It shall be the duty of the board to cause to be transmitted the entire record and other evidence in the case to the court. The review of the court shall be de novo on the record of the hearing held by the hearing officer and reviewed by the board.

SECTION 8. Tennessee Code Annotated, Section 49-2-303(a)(1), is amended by deleting the language "Each director of schools" and by substituting instead the following language:

Each director of schools or, in any county or city school system that has established the office of elected superintendent pursuant to § 49-2-301(e), each local board of education

SECTION 9. Tennessee Code Annotated, Section 49-2-304(a), is amended by designating the existing language as subdivision (1) and by adding the following language as new subdivision (2):

(2) Notwithstanding subdivision (1), in any county or city school system that has established the office of elected superintendent pursuant to § 49-2-301(e), local boards of education may employ one (1) or more supervisors for the supervision of teaching in grades one through twelve (1-12), or any combination of these grades, in the respective school systems.

SECTION 10. Tennessee Code Annotated, Section 49-5-401(b), is amended by designating the existing language as subdivision (1) and by adding the following language as new subdivision (2):

(2) The provisions of subdivision (b)(1) shall not apply in those county or city school systems that have established the office of elected superintendent. In such system, if a sufficient number of educators and other personnel are not available for election and assignment by May 15, the local board of education may direct and authorize the local superintendent of schools to locate, employ and assign to the several schools such educators and other personnel as are necessary to meet the needs and programs authorized by the board of education; provided, that in such cases it is the duty of the local board of education, at its next regular or special session called for the purpose, to confirm the election and assignment of each teacher, or other personnel, employed by the superintendent.

SECTION 11. Tennessee Code Annotated, Section 49-5-409(a), is amended by adding the following sentence at the end of the subsection:

If the local board of education is required to provide the written notice, because the office of elected superintendent has been established in the LEA, then the notice shall contain a statement of prior authorization by a majority vote of the membership of the board with the name of the teacher being recorded in the minutes of the board.

SECTION 12. Tennessee Code Annotated, Section 49-5-409(c), is amended by deleting the language "the director of schools" and by substituting instead the following language:

the director of schools or, in any county or city school system that has established the office of elected superintendent pursuant to § 49-2-301(e), the local board of education

SECTION 13. Tennessee Code Annotated, Section 49-5-503(5), is amended by deleting the language "the director of schools" and by substituting instead the following language:

the director of schools or, in any county or city school system that has established the office of elected superintendent pursuant to § 49-2-301(e), the local board of education

SECTION 14. Tennessee Code Annotated, Section 49-5-510, is amended by designating the existing language as subsection (a) and by adding the following language as new subsection (b):

(b) Subsection (a) shall not apply in those county or city school systems that have established the office of elected superintendent. In those systems, the superintendent, with the approval of the board, may transfer a teacher from one (1) location to another within the school system, or from one (1) type of work to another for which the teacher is qualified and licensed. Such transfer shall be made only by the concurrent action of the superintendent and the board.

SECTION 15. Tennessee Code Annotated, Section 49-5-511(b)(3), is amended by designating the existing language as subdivision (A) and by adding the following language as new subdivision (B):

(B) Subdivision (b)(3)(A) shall not apply in those county or city school systems that have established the office of elected superintendent. In those systems, a tenured teacher who has been dismissed because of abolition of a position shall be placed on a list for reemployment in the first vacancy the teacher is qualified by training and experience to fill. Nothing in this subdivision or in subdivisions (b)(1), (2) or (4) shall be construed to deprive the board of education of the power to determine the filling of such vacancy on the basis of its evaluation of the teacher's competence, compatibility and suitability to properly discharge the duties required for the vacant position considered in

the light of the best interest of the students in the school where the vacancy exists. The teacher's most recent evaluations may be a factor in such determination.

SECTION 16. Tennessee Code Annotated, Section 49-5-702(b), is amended by designating the first sentence of the subsection as subdivision (1) and the second sentence as subdivision (2), the third sentence as subdivision (4), and by adding the following language as new subdivision (3):

(3) Subdivision (b)(2) shall not apply in those county or city school systems that have established the office of elected superintendent. In those systems, the thirty-day notice may be waived or reduced by the local board or upon a certified statement of a physician approved by the local board.

SECTION 17. Tennessee Code Annotated, Section 49-5-703, is amended by designating the existing language as subsection (a) and by adding the following language as new subsection (b):

(b) Notwithstanding subsection (a), in county or city school systems that have established the office of elected superintendent, the duties assigned the director of schools under subsection (a) shall be the duties of the local board of education.

SECTION 18. Tennessee Code Annotated, Section 49-5-5209(a)(2), is amended by redesignating the existing language as subdivision (A) and by adding the following as new subdivision (B):

(B) Notwithstanding subdivision (A), in county or city school systems that have established the office of elected superintendent, the duties assigned the director of schools under subdivision (A) shall be the duties of the local board of education.

SECTION 19. Tennessee Code Annotated, Section 49-5-5209(a)(3), is amended by the existing language as subdivision (A) and by adding the following as new subdivision (B):

(B) Notwithstanding subdivision (A), in county or city school systems that have established the office of elected superintendent, the duties assigned the director of schools under subdivision (A) shall be the duties of the local board of education.

SECTION 20. Tennessee Code Annotated, Section 49-6-2101(e), is amended by designating the existing language as subdivision (1) and by adding the following as new subdivision (2):

(2) In those county or city school systems that have established the office of elected superintendent, local boards of education, in employing school transportation personnel, and boards of education, in contracting for transportation services with persons owning equipment, are authorized to enter into contracts for such services for periods of time as long as, but not exceeding, four (4) years from the date of making the contracts, it being the purpose of this section to permit a reasonable degree of employment security for such school transportation personnel.

SECTION 21. Tennessee Code Annotated, Section 49-6-3112(a)(2)(B), is amended by deleting the language "the directors of schools involved" and by substituting instead the language:

the directors of schools involved or, if a county or city school system involved has established the office of elected superintendent, the local boards of education

SECTION 22. Tennessee Code Annotated, Section 49-13-106(b)(2)(C)(ii), is amended by deleting the language "director of schools" and by substituting instead:

director of schools involved or, if a county or city school system involved has established the office of elected superintendent, the local board of education

SECTION 23. Tennessee Code Annotated, Title 49, Chapter 2, Part 3, is amended by adding the following language as a new, appropriately designated section:

49-2-3__.

(a) The provisions of this section shall apply only to a county or city school system that has an elected superintendent of schools pursuant to the establishment of such office under § 49-2-301(e).

(b)

(1) The legislative body of any county or municipality in which there is a county or city school system with an elected superintendent of schools may abolish such office and return to the appointment and employment of a director of schools by the local board of education by a two-thirds (2/3) vote of the membership of the county or municipal legislative body.

(2) Any such ordinance or resolution of a county or municipality shall not become operative until approved in an election herein provided in the county or municipality, as the case may be.

(c) An election to abolish the office of elected superintendent for a county or city school system shall also be called, if a petition or petitions signed by a number of qualified voters of the county or municipality equaling at least ten percent (10%) of the number of voters who voted in the county or municipality, as applicable, for governor in the last gubernatorial election is filed with the county election commission. This petition shall request that a referendum be conducted in the county or municipality to determine whether the office of elected superintendent should be abolished.

(d) The county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the abolition of the office of elected superintendent after the receipt of a certified copy of an ordinance or resolution of the legislative body under subsection (b) or the receipt of a petition or petitions bearing the required number of signatures under subsection (c). A majority

vote of those voting in the election shall determine whether the office of elected superintendent is to be abolished.

(e)

(1) If the majority vote is for the ordinance or resolution, then the office of superintendent shall be abolished and shall cease to exist upon the expiration of the term of the incumbent superintendent. The local board of education pursuant to § 49-2-203 and § 49-2-301 shall employ a director of schools at the expiration of the term of the incumbent superintendent.

(2) If the majority vote is against the abolition of the office of elected superintendent, then the legislative body shall take no action on returning to the appointment and employment of a director of schools by the local board of education for at least two (2) years from the date the election is held.

SECTION 24. This act shall take effect July 1, 2013, the public welfare requiring it.