

18A:28-16

LEGISLATIVE HISTORY CHECKLIST

NJSA 18A:28-16 (Teachers - employment rights under Ed. Services Commn.)

Laws of 1973 Chapter 267

Bill No. S411

Sponsor(s) Giuliano & Wallwork

Date Introduced January 24, 1972

Committee: Assembly Education

Senate Education

Amended during passage Yes No Amendments during passage denoted by asterisks.

Date of passage: Assembly April 2, 1973; Re'enacted Nov. 19, 1973

Senate March 16, 1972; Re'enacted Nov. 19, 1973

Date of approval November 29, 1973

Following statements are attached if available:

Sponsor statement	Yes	<input checked="" type="checkbox"/>
Committee Statement:	Assembly	<input checked="" type="checkbox"/>
	Senate	Yes <input checked="" type="checkbox"/>
Fiscal Note	<input checked="" type="checkbox"/>	No
Veto message	Yes	<input checked="" type="checkbox"/>
Message on signing	<input checked="" type="checkbox"/>	No
Following were printed:		
Reports	<input checked="" type="checkbox"/>	No
Hearings	<input checked="" type="checkbox"/>	No

Sponsor's Statement

[OFFICIAL COPY REPRINT]

SENATE, No. 411

STATE OF NEW JERSEY

INTRODUCED JANUARY 24, 1972

By Senators GIULIANO, WALLWORK and DODD

Referred to Committee on Education

AN ACT concerning education and supplementing Title 18A of the
New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Whenever an Educational Services Commission, a Jointure
2 Commission, the Commissioner of Education, the State Board of
3 Education, the Chancellor, the State Board of Higher Education
4 or the board of trustees of any State college, or any officer, board
5 or commission under his, its or their authority shall undertake the
6 operation of any school previously operated by a school district in
7 this State, **all accumulated sick leave, tenure and pension rights of**
8 all teaching staff members **[shall continue in their respective*
9 *positions]** in said school **[and all of their rights of tenure,*
10 *seniority, pension, leave of absence and other similar benefits]**
11 shall be recognized and preserved **by the agency assuming*
12 *operational control of the school,** and any periods of prior em-
13 ployment in such school district shall count toward the acquisition
14 of tenure to the same extent as if all of such employment had been
15 under the Educational Services Commission, Jointure Commission,
16 the Commissioner of Education, the State Board of Education, the
17 Chancellor, the State Board of Higher Education or the board of
18 trustees of any State college, as the case may be.

1 2. Whenever the local board of education of any school district
2 in this State shall undertake the operation of any school previously
3 operated by an Educational Services Commission, a Jointure Com-
4 mission, the Commissioner of Education, the State Board of Edu-
5 cation, the Chancellor, the State Board of Higher Education or
6 the board of trustees of any State college, or any officer, board or
7 commission under his, its or their authority, **all accumulated sick*
8 *leave, tenure and pension rights of** all teaching staff members

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

9 ***[shall continue in their respective positions]*** in said school ***[and**
10 all their rights of tenure, seniority, pension, leave of absence and
11 other similar benefits]*, shall be recognized and preserved **by the*
12 *board assuming operational control of the school,** and any periods
13 of prior employment, by said Educational Services Commission,
14 Jointure Commission, Commissioner of Education, State Board of
15 Education or board of trustees of any State college, or any officer,
16 board or commission under his, its or their authority, shall count
17 toward the acquisition of tenure to the same extent as if all of such
18 employment had been in such school district.

1 *3. *For the academic year following any transfer of operational*
2 *control under section 1 or section 2 of this act, both the local school*
3 *board and the Educational Services Commission, Jointure Commis-*
4 *sion, Commissioner of Education, State Board of Education,*
5 *Chancellor, State Board of Higher Education or the board of*
6 *trustees of a State college, as the case may be, shall comply with*
7 *the notice requirements of P. L. 1971, c. 436 (C. 18A:27-10 et seq.),*
8 *to the same extent as if each had been the employer of all teaching*
9 *staff members of the school in question during the academic year*
10 *preceding the transfer of operational control.**

1 ***[3.]*** *4.* This act shall take effect immediately.

Rec'd. with
Gov. Recomm'ds.

11-12-73

SENATE, No. 411

STATE OF NEW JERSEY

INTRODUCED JANUARY 24, 1972

By Senators GIULIANO and WALLWORK

Referred to Committee on Education

AN ACT concerning education and supplementing Title 18A of the
New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Whenever an Educational Services Commission, a Jointure
2 Commission, the Commissioner of Education, the State Board of
3 Education, the Chancellor, the State Board of Higher Education
4 or the board of trustees of any State college, or any officer, board
5 or commission under his, its or their authority shall undertake the
6 operation of any school previously operated by a school district in
7 this State, all teaching staff members shall continue in their respec-
8 tive positions in said school and all of their rights of tenure,
9 seniority, pension, leave of absence and other similar benefits shall
10 be recognized and preserved and any periods of prior employment
11 in such school district shall count toward the acquisition of tenure
12 to the same extent as if all of such employment had been under the
13 Educational Services Commission, Jointure Commission, the Com-
14 missioner of Education, the State Board of Education, the Chan-
15 cellor, the State Board of Higher Education or the board of trustees
16 of any State college, as the case may be.

1 2. Whenever the local board of education of any school district
2 in this State shall undertake the operation of any school previously
3 operated by an Educational Services Commission, a Jointure Com-
4 mission, the Commissioner of Education, the State Board of Edu-
5 cation, the Chancellor, the State Board of Higher Education or
6 the board of trustees of any State college, or any officer, board or
7 commission under his, its or their authority, all teaching staff
8 members shall continue in their respective positions in said school
9 and all their rights of tenure, seniority, pension, leave of absence
10 and other similar benefits shall be recognized and preserved and
11 any periods of prior employment, by said Educational Services

12 Commission, Jointure Commission, Commissioner of Education,
13 State Board of Education or board of trustees of any State college,
14 or any officer, board or commission under his, its or their authority,
15 shall count toward the acquisition of tenure to the same extent
16 as if all of such employment had been in such school district.

1 3. This act shall take effect immediately.

STATEMENT

This bill protects the employment rights of teaching staff members wherever a school operated by a school district is subsequently operated by an Educational Services Commission, a Jointure Commission, the Commissioner of Education, the State Board of Education or by any officer, board or commission under his or its authority.

The bill also protects the employment rights of teaching staff members wherever a school operated by one of the above agencies is subsequently operated by a local board of education.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 411

STATE OF NEW JERSEY

DATED: MARCH 9, 1972

This bill would continue the employment rights of teaching staff members whenever a school operated by a local board of education is subsequently operated by an educational services commission, a jointure commission, the Commissioner of Education, the State Board of Education, the Chancellor, the State Board of Higher Education or the trustees of any State college or by any officer, board or commission under his, its or their authority.

In addition, Senate Bill 411 would continue the above rights whenever a school operated by one of the above agencies is subsequently operated by a local board of education.

Jointure commissions (established pursuant to N. J. S. 18A:46-24 et seq.) are established voluntarily by two or more boards of education in order to provide for the education and training of handicapped pupils as required by chapter 46 of Title 18A.

Educational services commission (established pursuant to N. J. S. 18A:6-51 et seq.), established voluntarily by two or more boards of education with the approval of the State Board of Education, carry on programs of educational research and development and provide school districts with such educational and administrative service as may be authorized by the State Board of Education.

SENATE AMENDMENTS TO
SENATE, No. 411

STATE OF NEW JERSEY

ADOPTED NOVEMBER 12, 1973

Amend page 1, section 1, line 7, after "State," insert "all accumulated sick leave, tenure and pension rights of".

Amend page 1, section 1, lines 7-8, after "members", delete "shall continue in their respective positions".

Amend page 1, section 1, lines 8-9, after "school", delete "and all of their rights of tenure, seniority, pension, leave of absence and other similar benefits".

Amend page 1, section 1, line 10, after "preserved", insert "by the agency assuming operational control of the school,".

Amend page 1, section 2, line 7, after "authority," insert "all accumulated sick leave, tenure and pension rights of".

Amend page 1, section 2, line 8, after "members", delete "shall continue in their respective positions".

Amend page 1, section 2, lines 9-10, delete "and all their right of tenure, seniority, pension, leave of absence and other similar benefits".

Amend page 1, section 2, line 10, after "preserved", insert "by the board assuming operational control of the school,".

Amend page 2, section 2, after line 16, insert a new section 3 as follows:

"3. For the academic year following any transfer of operational control under section 1 or section 2 of this act, both the local school board and the Educational Services Commission, Jointure Commission, Commissioner of Education, State Board of Education, Chancellor, State Board of Higher Education or the board of trustees of a State college, as the case may be, shall comply with the notice requirements of P. L. 1971, c. 436 (C. 18A :27-10 et seq.), to the same extent as if each had been the employer of all teaching staff members of the school in question during the academic year preceding the transfer of operational control."

Amend page 2, section 3, line 1, delete "3.", and insert "4."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

November 12, 1973

SENATE BILL NO. 411

To the Senate:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 411, with my objections, for reconsideration.

This bill applies to situations where an Educational Services Commission, a Jointure Commission, the Commissioner of Education, the State Board of Education, the Chancellor, the State Board of Higher Education or the board of trustees of any State college, or any officer, board or commission under his, its or their authority, takes over the operation of a school which was previously operated by a local school district, or where a local school district takes over the operation of a school which was previously operated by an Educational Services Commission, a Jointure Commission, the Commissioner of Education, the State Board of Education, the Chancellor, the State Board of Higher Education or the board of trustees of any State college, or any officer, board or commission under his, its or their authority. In either one of these situations, this bill would require that all teaching staff members shall continue in their respective positions in the school in question, and that all their rights of tenure, seniority, pension, leave of absence and other similar benefits shall be recognized and preserved. Additionally, the bill provides that any periods of prior employment in the school shall count towards the acquisition of tenure to the same extent as if the transfer of operational control had not occurred.

I am in full agreement with the legislative determination that the employment rights of teachers should not be destroyed by the types of transfers in question. This situation is in many ways similar to the problems that arise when local school districts combine into a regional district. In such a situation, N.J.S. 18A:13-42 specifically provides that the tenure and pension rights of the teachers in the local districts shall not be affected by the consolidation. That statute also specifies that periods of employment prior to such a consolidation shall count toward the acquisition of tenure in the regional district. It does not, however, purport to affect seniority, leave of absence and other similar benefits.

In the situations covered by this bill, I feel that fairness dictates that the tenure and pension rights of the transferred teachers be preserved, but it would be neither wise nor practical to attempt to preserve rights of

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 411

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seniority, leave of absence and other similar benefits by statute. In some instances, the public instrumentality taking over the school may not have the legal power to grant some of the benefits which were provided prior to the transfer. Furthermore, where the school is consolidated with other institutions, or incorporated into a system of similar schools, it would be inequitable to have the transferred teachers receiving benefits which differ from those given teachers already in such a system. Consideration must be given to the seniority rights of the teachers who are already in the system and any contracts negotiated between the representatives of these teachers and the unit taking over the school in question. In any case, matters of seniority, leave of absence, and other similar benefits are more appropriately handled through the collective bargaining process, where applicable, or through other appropriate procedures, and should not be imposed by law.

I believe that in referring to leave of absence rights, the drafters of this bill were primarily concerned with preserving any accumulated sick leave that the teachers in question had acquired prior to the transfer. If this is true, the bill should be amended in such a manner as to specifically deal with this problem, without affecting leave of absence rights which would accrue after the transfer.

This bill presently states that "all teaching staff members shall continue in their respective positions" Read literally, this would require a teacher to continue to teach in the school even if he wished not to do so. Conversely, this provision might be interpreted to require the retention of a teacher even though his position is no longer necessary and would otherwise be eliminated. Finally, it is unclear how long these teachers would have to be continued in their respective positions. The intent of this provision is apparently to guarantee the teachers in the school being transferred the same right to continued employment as they would have had in the absence of such a transfer.

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Senate Bill No. 411

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In this regard, the provision requiring the recognition and preservation of tenure rights should be adequate to protect teachers who are under tenure. I believe that the most appropriate way of dealing with the reemployment rights of non-tenured teachers is to amend this bill to require that they must be given notice of whether they will be offered a contract for the coming academic year on or before April 30, in accordance with P. L. 1971, c. 436 (C. 18A:27-10 et seq.). This would give the non-tenured teachers the same rights they would have had if no transfer were to occur, while preserving the rights of the employer to decide whether to rehire a probationary teacher. Since in some instances teachers may wish to remain in the present school district rather than being transferred with the school, it is best to require both the authority formerly operating the school and the one taking it over to make their intentions known by April 30.

Accordingly, I am returning Senate Bill No. 411, for reconsideration, with the recommendation that it be amended as follows:

1. Page 1, Section 1, Line 7: After "State," insert "all accumulated sick leave, tenure and pension rights of".
2. Page 1, Section 1, Lines 7 - 8: After "members" delete "shall continue in their respective positions".
3. Page 1, Section 1, Lines 8 - 9: After "school" delete "and all of their rights of tenure, seniority, pension, leave of absence and other similar benefits".
4. Page 1, Section 1, Line 10: After "preserved" insert "by the agency assuming operational control of the school,".
5. Page 1, Section 2, Line 7: After "authority," insert "all accumulated sick leave, tenure and pension rights of".
6. Page 1, Section 2, Line 8: After "members" delete "shall continue in their respective positions".
7. Page 1, Section 2, Lines 9 - 10: Delete "and all their right of tenure, seniority, pension, leave of absence and other similar benefits".

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Senate Bill No. 411

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8. Page 1, Section 2, Line 10: After "preserved" insert "by the board assuming operational control of the school,".

9. Page 2, Section 2, after Line 16: Insert a new section 3 as follows:

"3. For the academic year following any transfer of operational control under section 1 or section 2 of this act, both the local school board and the Educational Services Commission, Jointure Commission, Commissioner of Education, State Board of Education, Chancellor, State Board of Higher Education or the board of trustees of a State college, as the case may be, shall comply with the notice requirements of P. L. 1971, c. 436 (C. 18A:27-10 et seq.), to the same extent as if each had been the employer of all teaching staff members of the school in question during the academic year preceding the transfer of operational control."

10. Page 2, Section 3, Line 1: Delete "3" and insert "4".

Respectfully,

/s/ William T. Cahill

GOVERNOR

[seal]

Attest:

/s/ Jean E. Mulford

Acting Secretary to the Governor