

Senate Amendment 5028

Amendment Text

PAG LIN

1 1 Amend [Senate File 2039](#) as follows:
1 2 #1. By striking everything after the enacting
1 3 clause and inserting the following:
1 4 "Section 1. Section [260C.39](#), unnumbered paragraph
1 5 3, Code Supplement 1997, is amended to read as
1 6 follows:
1 7 The terms of employment of personnel, for the
1 8 academic year following the effective date of the
1 9 agreement to combine the merged areas shall not be
1 10 affected by the combination of the merged areas,
1 11 except in accordance with the procedures under
1 12 sections 279.15 to

~~279.18~~
- ~~279.17~~ and section 279.24,
1 13 to the extent those procedures are applicable, or
1 14 under the terms of the base bargaining agreement. The
1 15 authority and responsibility to offer new contracts or
1 16 to continue, modify, or terminate existing contracts
1 17 pursuant to any applicable procedures under chapter
1 18 279, shall be transferred to the acting, and then to
1 19 the new, board of the combined merged area upon
1 20 certification of a favorable vote to each of the
1 21 merged areas affected by the agreement. The
1 22 collective bargaining agreement of the merged area
1 23 receiving the greatest amount of general state aid
1 24 shall serve as the base agreement for the combined
1 25 merged area and the employees of the merged areas
1 26 which combined to form the new combined merged area
1 27 shall automatically be accreted to the bargaining unit
1 28 from that former merged area for purposes of
1 29 negotiating the contracts for the following years
1 30 without further action by the public employment
1 31 relations board. If only one collective bargaining
1 32 agreement is in effect among the merged areas which
1 33 are combining under this section, then that agreement
1 34 shall serve as the base agreement, and the employees
1 35 of the merged areas which are combining to form the
1 36 new combined merged area shall automatically be
1 37 accreted to the bargaining unit of that former merged
1 38 area for purposes of negotiating the contracts for the
1 39 following years without further action by the public
1 40 employment relations board. The board of the combined
1 41 merged area, using the base agreement as its existing
1 42 contract, shall bargain with the combined employees of
1 43 the merged areas that have agreed to combine for the
1 44 academic year beginning with the effective date of the
1 45 agreement to combine merged areas. The bargaining
1 46 shall be completed by March 15 prior to the academic
1 47 year in which the agreement to combine merged areas
1 48 becomes effective or within one hundred eighty days
1 49 after the organization of the acting board of the new
1 50 combined merged area, whichever is later. If a
2 1 bargaining agreement was already concluded in the
2 2 former merged area which has the collective bargaining
2 3 agreement that is serving as the base agreement for
2 4 the new combined merged area, between the former

2 5 merged area board and the employees of the former
2 6 merged area, that agreement is void, unless the
2 7 agreement contained multiyear provisions affecting
2 8 academic years subsequent to the effective date of the
2 9 agreement to form a combined merged area. If the base
2 10 collective bargaining agreement contains multiyear
2 11 provisions, the duration and effect of the agreement
2 12 shall be controlled by the terms of the agreement.
2 13 The provisions of the base agreement shall apply to
2 14 the offering of new contracts, or the continuation,
2 15 modification, or termination of existing contracts
2 16 between the acting or new board of the combined merged
2 17 area and the combined employees of the new combined
2 18 merged area.

2 19 Sec. 2. Section [275.33](#), subsection 1, Code 1997,
2 20 is amended to read as follows:

2 21 1. The terms of employment of superintendents,
2 22 principals, and teachers, for the school year
2 23 following the effective date of the formation of the
2 24 new district shall not be affected by the formation of
2 25 the new district, except in accordance with the
2 26 provisions of sections 279.15 to

~~279.18~~

~~279.17~~ and

2 27 279.24 and the authority and responsibility to offer
2 28 new contracts or to continue, modify, or terminate
2 29 existing contracts pursuant to sections 279.12,
2 30 279.13, 279.15 to 279.21, 279.23, and 279.24 for the
2 31 school year beginning with the effective date of the
2 32 reorganization shall be transferred from the boards of
2 33 the existing districts to the board of the new
2 34 district on the third Tuesday of January prior to the
2 35 school year the reorganization is effective.

2 36 Sec. 3. Section [279.15](#), Code 1997, is amended to
2 37 read as follows:

2 38 279.15 NOTICE OF TERMINATION REQUEST FOR
2 39 HEARING.

2 40 1. The superintendent or the superintendent's
2 41 designee shall notify the teacher not later than

~~April~~

2 42

~~30~~

~~March 15~~ that the superintendent

~~will recommend in~~

2 43

~~writing~~

~~recommends~~ to the board

~~at a regular or~~

2 44

~~special meeting of the board, held not later than May~~

2 45

~~15,~~

~~that the teacher's continuing contract be~~

2 46 terminated effective at the end of the current school
2 47 year. However, if the district is subject to

2 48 reorganization under chapter 275, the notification
2 49 shall not occur until after the first organizational
2 50 meeting of the board of the newly formed district.
3 1 2. Notification of recommendation of termination
3 2 of a teacher's contract shall be in writing, signed by
3 3 the superintendent and the presiding officer of the
3 4 board, and shall be personally delivered to the
3 5 teacher

~~, or mailed by certified mail~~

~~The~~

3 6 notification shall be complete when received by the
3 7 teacher. The notification and the recommendation to
3 8 terminate shall contain a short and plain statement of
3 9 the reasons, which shall be for just cause, why the
3 10 recommendation is being made.

~~The notification shall~~

~~3 11~~

~~be given at or before the time the recommendation is~~

~~3 12~~

~~given to the board.~~

3 13 3. As a part of the termination proceedings, the
3 14 teacher's complete personnel file of employment by
3 15 that board shall be available to the teacher, which
3 16 file shall contain a record of all periodic
3 17 evaluations between the teacher and appropriate
3 18 supervisors.

3 19 4. Within five days of the receipt of the written
3 20 notice that the superintendent

~~is recommending~~

3 21 recommends termination of the contract, the teacher
3 22 may request, in writing to the secretary of the board,
3 23 a private hearing with

~~the board~~

~~an adjudicator~~

3 24 selected in accordance with section 279.17. The
3 25 private hearing shall not be subject to chapter 21 and
3 26 shall be held no sooner than

~~ten~~

~~twenty~~ days and no

3 27 later than

~~twenty~~

~~thirty~~ days following the receipt of

3 28 the request unless the parties otherwise agree. The
3 29 secretary of the board shall notify the teacher in
3 30 writing of the date, time, and location of the private
3 31 hearing, and at least

~~five~~

~~ten~~ days before the hearing

3 32 shall also furnish to the teacher any documentation
3 33 which may be presented

~~to~~

~~by the superintendent and~~

3 34 the board at the private hearing and a list of persons

3 35 who may address the

~~board~~

- adjudicator in support of

3 36 the superintendent's recommendation at the private
3 37 hearing. At least three days before the hearing, the
3 38 teacher shall provide any documentation the teacher
3 39 expects to present at the private hearing, along with
3 40 the names of any persons who may address the board on
3 41 behalf of the teacher. This exchange of information
3 42 shall be at the time specified unless otherwise
3 43 agreed.

3 44 Sec. 4. Section [279.16](#), Code 1997, is amended to
3 45 read as follows:

3 46 279.16 PRIVATE HEARING DECISION RECORD.

3 47 1. The participants at the private hearing shall
3 48 be

~~at least a majority of the~~

- interested members of

3 49 the board,

~~their legal representatives,~~

- if any, the

3 50 superintendent, the superintendent's designated
4 1 representatives, if any, the teacher's immediate
4 2 supervisor, the teacher, the teacher's
4 3 representatives, if any, and the witnesses for the
4 4 parties. The evidence at the private hearing shall be
4 5 limited to the specific reasons stated in the
4 6 superintendent's notice of recommendation of
4 7 termination. No participant in the hearing shall be
4 8 liable for any damages to any person if any statement
4 9 at the hearing is determined to be erroneous as long
4 10 as the statement was made in good faith. The
4 11 superintendent shall present evidence and argument on
4 12 all issues involved and the teacher may cross-examine,
4 13 respond and present evidence and argument in the
4 14 teacher's behalf relevant to all issues involved.
4 15 Evidence may be by stipulation of the parties and
4 16 informal settlement may be made by stipulation,
4 17 consent, or default or by any other method agreed upon
4 18 by the parties in writing. The board shall employ a
4 19 certified shorthand reporter to keep a record of the
4 20 private hearing.

~~The proceedings or any~~

- Any part

4 21

~~thereof~~

- of the proceedings shall be transcribed at the
4 22 request of either party with the expense of
4 23 transcription charged to the

~~requesting party~~

- school

4 24 district.

4 25 2. The

~~presiding officer of the board~~

- adjudicator

4 26 may administer oaths in the same manner and with like
4 27 effect and under the same penalties as in the case of
4 28 magistrates exercising criminal or civil jurisdiction.
4 29 The

~~board~~

- adjudicator shall cause subpoenas to be
4 30 issued for

~~such~~

- witnesses and the production of

~~such~~

- 4 31 any books and papers

~~as either~~

- the board or the

4 32 teacher may designate. The subpoenas shall be signed

4 33 by the

~~presiding officer of the board~~

- adjudicator.

4 34 3. In case a witness is duly subpoenaed and

4 35 refuses to attend, or in case a witness appears and

4 36 refuses to testify or to produce required books or

4 37 papers, the

~~board~~

- adjudicator shall, in writing,

4 38 report such refusal to the district court of the

4 39 county in which the administrative office of the

4 40 school district is located, and the court shall

4 41 proceed with the person or witness as though the

4 42 refusal had occurred in a proceeding legally pending

4 43 before the court.

4 44

~~The board shall not be bound by common law or~~

4 45

~~statutory rules of evidence or by technical or formal~~

4 46

~~rules of procedure, but it shall hold the hearing in~~

4 47

~~such manner as is best suited to ascertain and~~

4 48

~~conserve the substantial rights of the parties.~~

4 49

~~Process and procedure under sections 279.13 to 279.19~~

4 50

~~shall be as summary as reasonably may be.~~

5 1 4. At the conclusion of the private hearing, the

5 2 superintendent and the teacher may file written briefs

5 3 and arguments with the

~~board~~

- adjudicator within three

5 4 days or such other time as may be agreed upon.

5 5 5. If the teacher fails to timely request a

5 6 private hearing or does not appear at the private
5 7 hearing, the board may proceed and make a
5 8 determination upon the superintendent's
5 9 recommendation. If the teacher fails to timely file a
5 10 request for a private hearing, the determination shall
5 11 be not later than

~~May 31~~

- ~~April 15.~~ If the teacher
5 12 fails to appear at the private hearing, the
5 13 determination shall be not later than five days after
5 14 the scheduled date for the private hearing. The board
5 15 shall convene in open session and by roll call vote
5 16 determine the termination or continuance of the
5 17 teacher's contract.
5 18 6.

~~Within five days after the private hearing, the~~

~~5 19~~

~~board shall, in executive session, meet to make a~~

~~5 20~~

~~final decision upon the recommendation and the~~

~~5 21~~

~~evidence as herein provided.~~

- The

~~board~~

- adjudicator

5 22 shall also consider any written brief and arguments
5 23 submitted by the superintendent and the teacher.

5 24 7. The record for a private hearing shall include
5 25 the following:
5 26

~~1.~~

- a. All pleadings, motions and intermediate
5 27 rulings.
5 28

~~2.~~

- b. All evidence received or considered and all
5 29 other submissions.
5 30

~~3.~~

- c. A statement of all matters officially
5 31 noticed.
5 32

~~4.~~

- d. All questions and offers of proof,
5 33 objections and rulings thereon.
5 34

~~5.~~

- e. All findings and exceptions.
5 35

~~6.~~

- f. Any decision, opinion, or conclusion by the
5 36 board.

~~7.~~

- g. Findings of fact shall be based solely on
5 38 the evidence in the record and on matters officially
5 39 noticed in the record.

5 40 8. The decision of the

~~board~~

- adjudicator shall be
5 41 in writing and shall include findings of fact and
5 42 conclusions of law, separately stated. Findings of
5 43 fact, if set forth in statutory language, shall be
5 44 accompanied by a concise and explicit statement of the
5 45 underlying facts and supporting the findings. Each
5 46 conclusion of law shall be supported by cited
5 47 authority or by reasoned opinion.

5 48 9.

~~When the board has reached a decision, opinion,~~

5 49

~~or conclusion, it shall convene in open meeting and by~~

5 50

~~roll call vote determine the continuance or~~

6 1

~~discontinuance of the teacher's contract. The record~~

6 2

~~of the private conference and findings of fact and~~

6 3

~~exceptions shall be exempt from the provisions of~~

6 4

~~chapter 22.~~

- The

~~secretary of the board~~

- adjudicator

6 5 shall make a decision within thirty days and shall,
6 6 upon reaching a decision, immediately mail notice of
6 7 the

~~board's action~~

- decision to the teacher, the

6 8 superintendent, and the secretary of the board. The
6 9 adjudicator's decision is final and binding unless it
6 10 can be shown that the adjudicator exceeded the
6 11 adjudicator's authority.

6 12 10. The record of the private hearing and findings
6 13 of fact and exceptions shall be exempt from the
6 14 provisions of chapter 22.

6 15 Sec. 5. Section [279.17](#), Code 1997, is amended to
6 16 read as follows:

6 17 279.17

~~APPEAL BY TEACHER TO~~

- SELECTION AND

6 18 AUTHORITY OF ADJUDICATOR.

6 19

~~If the teacher is no longer a probationary teacher,~~

6 20

~~the teacher may, within ten days, appeal the~~

6 21

~~determination of the board to an adjudicator by filing~~

6 22

~~a notice of appeal with the secretary of the board.~~

6 23

~~The notice of appeal shall contain a concise statement~~

6 24

~~of the action which is the subject of the appeal, the~~

6 25

~~particular board action appealed from, the grounds on~~

6 26

~~which relief is sought and the relief sought.~~

6 27 1. Within five days following receipt by the

6 28 secretary of

~~the notice of appeal~~

~~a teacher's request~~

6 29 for a private hearing by an adjudicator as provided in

6 30 section 279.15, the board or the board's legal

6 31 representative, if any, and the teacher or the

6 32 teacher's representative, if any, may select an

6 33 adjudicator who resides within the boundaries of the

6 34 merged area in which the school district is located.

6 35 If an adjudicator cannot be mutually agreed upon

6 36 within the five-day period, the secretary shall notify

6 37 the chairperson of the public employment relations

6 38 board by transmitting the

~~notice of appeal~~

~~request for~~

6 39 a private hearing, and the chairperson of the public

6 40 employment relations board shall within five days

6 41 provide a list of five adjudicators to the parties.

6 42 Within three days from receipt of the list of

6 43 adjudicators, the parties shall select an adjudicator

6 44 by alternately removing a name from the list until

6 45 only one name remains. The person whose name remains

6 46 shall be the adjudicator. The parties shall determine

6 47 by lot which party shall remove the first name from

6 48 the list submitted by the chairperson of the public

6 49 employment relations board. The secretary of the

6 50 board shall inform the chairperson of the public

7 1 employee relations board of the name of the

7 2 adjudicator selected.

7 3

~~If the teacher does not timely request an appeal to~~
-
7 4
. ~~an adjudicator the decision, opinion, or conclusion of~~
-
7 5
. ~~the board shall become final and binding.~~
-
7 6
. ~~Within thirty days after filing the notice of~~
-
7 7
. ~~appeal, or within further time allowed by the~~
-
7 8
. ~~adjudicator, the board shall transmit to the~~
-
7 9
. ~~adjudicator the original or a certified copy of the~~
-
7 10
. ~~entire record of the private hearing which may be the~~
-
7 11
. ~~subject of the petition. By stipulation of the~~
-
7 12
. ~~parties to review the proceedings, the record of the~~
-
7 13
. ~~case may be shortened. The adjudicator may require or~~
-
7 14
. ~~permit subsequent corrections or additions to the~~
-
7 15
. ~~shortened record.~~
-
7 16
. ~~The record certified and filed by the board shall~~
-
7 17
. ~~be the record upon which the appeal shall be heard and~~
-
7 18
. ~~no additional evidence shall be heard by the~~
-
7 19
. ~~adjudicator. In such appeal to the adjudicator,~~
-
7 20

~~especially when considering the credibility of~~

~~7 21~~

~~witnesses, the adjudicator shall give weight to the~~

~~7 22~~

~~fact findings of the board; but shall not be bound by~~

~~7 23~~

~~them.~~

~~7 24~~

~~Before the date set for hearing a petition for~~

~~7 25~~

~~review of board action, which shall be within ten days~~

~~7 26~~

~~after receipt of the record unless otherwise agreed or~~

~~7 27~~

~~unless the adjudicator orders additional evidence be~~

~~7 28~~

~~taken before the board, application may be made to the~~

~~7 29~~

~~adjudicator for leave to present evidence in addition~~

~~7 30~~

~~to that found in the record of the case. If it is~~

~~7 31~~

~~shown to the adjudicator that the additional evidence~~

~~7 32~~

~~is material and that there were good reasons for~~

~~7 33~~

~~failure to present it in the private hearing before~~

~~7 34~~

~~the board, the adjudicator may order that the~~

~~7 35~~

~~additional evidence be taken before the board upon~~

~~7 36~~

~~conditions determined by the adjudicator. The board~~

7 37

~~may modify its findings and decision in the case by~~

7 38

~~reason of the additional evidence and shall file that~~

7 39

~~evidence and any modifications, new findings, or~~

7 40

~~decisions, with the adjudicator and mail copies of the~~

7 41

~~new findings or decisions to the teacher.~~

7 42 2. The adjudicator may affirm

~~board action or~~

7 43

~~remand to the board for further proceedings. The~~

7 44

~~adjudicator shall reverse, modify,~~

~~the~~

7 45 superintendent's recommendation to terminate the

7 46 teacher's contract or

~~grant any appropriate relief~~

7 47

~~from the board action~~

~~require the board to continue~~

7 48 the teacher's contract if

~~substantial rights of the~~

7 49

~~teacher have been prejudiced because the board action~~

7 50

~~is~~

~~the adjudicator determines that termination of the~~

8 1 contract would be any of the following:

8 2

~~1.~~

~~a.~~

~~In~~

~~A violation of a board rule or policy or~~

8 3 contract

~~; or~~

8 4

~~2.~~

- b. Unsupported by a preponderance of the
8 5 competent evidence in the record made before the

~~board~~

-
8 6 adjudicator when that record is viewed as a whole

~~;~~ or

-
8 7

~~3.~~

- c. Unreasonable, arbitrary or capricious or
8 8 characterized by an abuse of discretion or a clearly
8 9 unwarranted exercise of discretion.
8 10

~~The adjudicator shall, within fifteen days after~~

-
8 11

~~the hearing, make a decision and shall give a copy of~~

-
8 12

~~the decision to the teacher and the secretary of the~~

-
8 13

~~board. The decision of the adjudicator shall become~~

-
8 14

~~the final and binding decision of the board unless~~

-
8 15

~~either party within ten days notifies the secretary of~~

-
8 16

~~the board that the decision is rejected. The board~~

-
8 17

~~may reject the decision by majority vote, by roll~~

-
8 18

~~call, in open meeting and entered into the minutes of~~

-
8 19

~~the meeting. The board shall immediately notify the~~

-
8 20

~~teacher of its decision by certified mail. The~~

-
8 21

~~teacher may reject the adjudicator's decision by~~

-
8 22

~~notifying the board's secretary in writing within ten~~

-
8 23

~~days of the filing of such decision.~~

-
8 24 3. All costs of the adjudicator shall be shared
8 25 equally by the teacher and the board.

8 26 Sec. 6. Section [279.18](#), Code 1997, is repealed."

8 27

8 28

8 29 _____

8 30 ELAINE [SZYMONIAK](#)

8 31 [SF 2039.201](#) 77

8 32 kh/jl/28