

**Conference Committee Report on
House Bill No. 130 / Senate Bill No. 113**

The House and Senate Conference Committee appointed pursuant to motions to resolve the differences between the two houses on House Bill No. 130 (Senate Bill No. 113) has met and recommends that all amendments be deleted:

The Committee further recommends that the following amendment be adopted:

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 5, Part 6, known as the Education Professional Negotiations Act, is amended by deleting the part in its entirety and by substituting instead the following language:

49-5-601. Short title—Statement of purpose.

(a) This part shall be known and may be cited as the “Professional Educators Collaborative Conferencing Act of 2011”.

(b)

(1) Local boards of education and their professional employees have an obligation to the public to exert their full and continuing efforts to achieve the highest possible education standards in the institutions that they serve. This requires establishment and maintenance of an educational climate and working environment that will attract and retain a highly qualified professional staff and foster open, collaborative relationships between boards of education and their professional employees based upon mutual respect, in order to stimulate optimum performance by the staff and encourage each and every professional employee to contribute the employee's best to the enhancement of public schools. In order to best achieve these ends, it is the purpose of this part to set forth and recognize the legitimate rights and obligations of boards of education and their professional employees, to establish procedures governing their

respective roles and the important relationships between them, and to promote a professional climate based upon mutual interest in order to focus efforts on teaching and learning for all students of the public schools.

(2) Experience has shown that boards of education and their professional employees can best reach the objectives described in subdivision (b)(1), if each considers the ability, experience and judgment of the other in formulating policies and making decisions that involve the operations of Tennessee's public schools through a collaborative effort of mutual interest and mutual gain. It also has been shown that professional employees can perform at their best when goals and expectations as to the terms and conditions of professional service are set forth with clarity, reliability and fairness to all in a manner demonstrating concern and respect for the interests of the individual employee.

(3) It is the purpose and policy of this part to recognize the interests of individual employees in their relations with boards of education and to recognize certain rights, but not obligations, of professional employees to form, join and assist professional employees' organizations, such rights and responsibilities to include meeting, consulting and conferencing with boards of education in order to discuss matters relating to specific terms and conditions of professional service. Furthermore, in order to foster trust and mutual respect among the parties, and to provide an open and collaborative problem-solving approach to such conferencing, it is the purpose and policy of this part to recognize and adopt the principles and techniques known as interest-based collaborative problem-solving for use in conferences conducted pursuant to this part.

(c) A training program in the principles and techniques of interest-based collaborative problem-solving for use in collaborative conferencing pursuant to this part

shall be developed by the Tennessee Organization of School Superintendents in conjunction with representative organizations of school leaders and administrators and professional employees' organizations by January 1, 2012, at which time a summary report of the training program and related materials, if any, shall be presented to the education committees of the senate and the house of representatives. Such training program shall be implemented, as appropriate, within each local education agency no later than July 1, 2012.

(d) Any and all bargaining being conducted pursuant to the Education Professional Negotiations Act on the effective date of this act shall be suspended indefinitely.

(e) No collaborative conferencing pursuant to this part shall be conducted by a local board of education until the training developed under this part has been implemented within the local education agency.

49-5-602. Part definitions. As used in this part, unless the context otherwise requires:

(1) "Board of education" or "local board of education" has the same meaning as the term is defined in § 49-1-103;

(2) "Collaborative conferencing" means the process by which the chair of a board of education and the board's professional employees, or such representatives as either party or parties may designate, meet at reasonable times to confer, consult and discuss and to exchange information, opinions and proposals on matters relating to the terms and conditions of professional employee service, using the principles and techniques of interest-based collaborative problem-solving;

(3) "Management personnel" means those professional employees certified by the local board of education to represent the board in the collaborative conferencing process;

(4) "Management team" means employees who devote a majority of their time to the system-wide area or areas of professional personnel management, fiscal affairs or general management and shall specifically include principals, assistant principals, supervisors and others whose principal responsibilities are administration rather than teaching;

(5) "Memorandum of understanding" means the written document that memorializes and records the understanding reached by the board of education and its professional employees, or their respective representatives, if so designated, as to the terms and conditions of professional services set forth in this part. The memorandum shall be presented in its entirety to the board of education, to all professional employees covered by the memorandum and to the public, upon request;

(6) "Person" means one (1) or more individuals, organizations, associations, or their representatives;

(7) "Political activity" includes, but is not limited to,

(A) Lobbying as defined in § 3-6-301;

(B) Making contributions to any entity which engages in any form of political communication, including communications which mention the name of a political candidate;

(C) Engaging in or paying for public opinion polling;

(D) Engaging in or paying for any form of political communication, including communications which mention the name of a political candidate;

(E) Engaging in or paying for any type of political advertising in any medium;

(F) Telephone communication for any political purpose;

(G) Distributing political literature of any type; or

(H) Providing any type of in-kind help or support to or for a political candidate;

(8) "Professional employee" means any person employed by any local board of education in a position that requires a license issued by the department of education for service in public elementary and secondary schools of this state, supported, in whole or in part, by local, state or federal funds, but shall not include any member of the management team, as defined in this part, or a retired teacher who is employed as a teacher in accordance with title 8, chapter 36, part 8;

(9) "Professional employees' organization" means any organization with membership open to professional employees, as defined in subdivision (8), in which the professional employees participate and that exists for the purpose of promoting the professional status and growth of educators and the welfare of students;

(10) "Representative" includes any person, or group of persons, organization or association that is designated and authorized by professional employees or local board of education to act for the professional employees or the local board, respectively, under this part;

(11) "Strike" means the failure with others to report for duty, the willful absence from one's position, the stoppage of work or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, and without the lawful approval of one's superior; or in any manner interfering with the operation of the public school system, for the purpose of inducing or coercing the recognition of any employee organization or a change in the conditions or compensation or the rights, privileges or obligations of employment;

(12) "Supervisor" means any professional employee of a local board of education whose full-time job responsibilities consist of oversight of other professional employees or curriculum development or both; and

(13) "Working conditions of professional employees" or "terms and conditions of professional service" means those fundamental matters that affect a professional employee financially or the employee's employment relationship with the board of education and that are specifically designated as such under this part. The term "working conditions" or "terms and conditions of professional service" is intended to be narrowly defined and does not include any matters not specifically designated under this part.

49-5-603. Rights of professional employees.

Professional employees have the right to self-organization, to form, join or be assisted by organizations, to participate in collaborative conferencing with local boards of education through representatives of their own choosing and to engage in other concerted activities for the purpose of other mutual aid and benefit; provided, that professional employees also have the right to refrain from any or all such activities.

49-5-604. Rights preserved.

(a) Those rights and responsibilities of boards of education, directors of schools and professional employees as contained in this title are not statutorily modified or repealed by this act.

(b) This part shall not operate so as to annul or modify any recognition heretofore entered into between a board of education and a professional employees' organization until the termination of an existing agreement between a local board of education and a professional employees' organization. Upon the termination of any existing agreement, subsequent professional employee relationships between the

respective board of education and its professional employees shall be governed by this part.

49-5-605. Representatives.

(a) Experience has shown that efforts to confer, consult, discuss, and to exchange information, opinions, and proposals on terms and conditions of professional service are most efficient and effective when conducted by participants who are selected and authorized to represent individual professional employees or groups of employees. It is the policy and purpose of this part to ensure the rights of professional employees to participate in collaborative conferencing with boards of education through representatives of their own choosing. No professional employee, group of professional employees, or professional employee organization shall be denied the opportunity to represent themselves or groups of professional employees in discussions authorized under this part.

(b)

(1) Upon the submission by fifteen percent (15%) or more of the professional employees in an LEA of a written request to conduct collaborative conferencing with a board of education between October 1 and November 1 of any year, the board of education shall appoint an equal number of its professional employees and board members to serve on a special question committee for the purpose of conducting a confidential poll of all eligible professional employees as provided in subdivision (b)(2).

(2) The confidential poll shall be by secret ballot and shall require the employee to respond to two (2) questions. The first question shall request the employee to respond "YES" or "NO" to the question:

Shall the professional employees of this LEA undertake collaborative conferencing with the board of education?

If the employee responds "YES" to the first question, then the second question shall request that the employee indicate which organization the employee prefers to represent the employee in collaborative conferencing by checking the box related to one (1) of the professional employees' organizations having a presence in the LEA. The second question shall also include a box for the response of "unaffiliated", if an employee does not have a preference as to a professional employees' organization. If the employee responds "NO" to the first question, then the second question shall request the employee to express a preference for one (1) of the professional employees' organizations. The second question shall also provide for a response of "unaffiliated", if an employee does not have a preference of a professional employees' organization, or a response of "none of the above", if the employee does not want to be represented in collaborative conferencing, if such conferencing should occur.

(3) No board of education shall have a duty or obligation to engage in collaborative conferencing with its professional employees pursuant to this part unless a majority of those eligible to vote in the poll under subdivision (b)(2) respond "YES" to the first question.

(4) Upon receiving the results of the poll in which the majority of those eligible to vote respond "YES" to the first question, the board of education shall appoint at least seven (7), but no more than eleven (11) persons, to serve as management personnel. The professional employees shall be entitled to the same number of representatives as the number of management personnel selected by the board of education. The professional employee representatives

shall be selected according to each organization's proportional share of the responses to the second question; provided, however, that only those professional employees' organizations receiving fifteen percent (15%) or more of the responses to the second question shall be entitled to representation. The category of "unaffiliated" as a response to the second question, but not the category of "none of the above", shall be considered a professional employees' organization for the purposes of this subdivision.

(5) If fifteen percent (15%) or more of the professional employees polled indicate a preference for an unaffiliated representative, then the special question committee shall select and appoint a person or persons to serve as an unaffiliated representative or representatives according to the proportional share of responses to the second question in the category "unaffiliated".

(6)

(A) The term of the members of the panel constituted as the result of a poll in which the majority of those eligible to vote respond "YES" to the first question shall be three (3) years. If a vacancy occurs on the panel, then the appointing body which appointed the member to the position that became vacant shall appoint a replacement for the remainder of the term. Prior to expiration of the terms of the members of the panel, a new poll shall be conducted under this subsection (b) to determine whether the professional employees want to continue to engage in collaborative conferencing.

(B) Notwithstanding the provisions of subdivision (A) to the contrary, a memorandum of understanding may provide for polls after a poll in which the majority of those eligible to vote responded "YES" to the

first question to occur more frequently than once every three (3) years.

The term of the members selected for the panel after such poll shall be the length of time specified by the memorandum of understanding between two (2) polls.

(c) Each professional employees' organization receiving fifteen percent (15%) or more of the responses shall select and appoint the appropriate number of persons to serve as representatives of the professional employees preferring that organization. The board of education shall select and appoint its representatives. Representatives shall be appointed no later than December 1.

(d) If a majority vote to conduct collaborative conferencing is not secured, then during any subsequent year, the professional employees may again seek to engage in collaborative conferencing pursuant to subsection (b) .

(e) The results of the confidential poll and the names and positions of the appointed representatives shall be transmitted to the board, professional employees and professional employee organizations prior to January 1 next.

(f) Those persons or organizations initiating the poll shall be assessed the reasonable costs necessitated in conducting the poll by the chair of the special question committee.

49-5-606. Unlawful acts.

(a) It is unlawful for a board of education or its management personnel to:

(1) Impose or threaten to impose reprisals on professional employees or discriminate against professional employees by reason of their exercise of rights guaranteed by this part;

(2) Interfere with, restrain or coerce employees in the exercise of the rights guaranteed in § 49-5-603;

(3) Refuse or fail to participate in collaborative conferencing under this part;

(4) Refuse to permit any professional employees' organization to have access at reasonable times before or after the instructional day to areas in which professional employees work, to use institutional bulletin boards, mail boxes or other communication media or to use institutional facilities as permitted by a local board's policy or procedure for community use at reasonable times for the purpose of holding a meeting concerned with the exercise of the rights guaranteed by this part;

(5) Encourage or discourage membership in any organization by discrimination in hiring, granting of tenure or other terms or conditions of employment. The board of education or management personnel may express any views or opinions on the subject of employer-employee relations; provided, however, that such expression shall contain no threat of reprimand, discharge or promise of benefits;

(6) Discharge or discriminate against an employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under this part; or

(7) Dominate, interfere or assist in the administration of any professional employee organization.

(b) It is unlawful for a professional employees' organization or its representatives to:

(1) Cause or attempt to cause a board of education to engage in conduct violative of this part; provided, that this subdivision (b)(1) shall not be construed to impair the right of professional employees' organizations to prescribe their

own rules with respect to operation involving the acquisition or retention of membership;

(2) Refuse or fail to participate in collaborative conferencing under this part with a board of education;

(3) Interfere with, restrain or coerce professional employees or a board of education in the exercise of rights granted in this part;

(4) Engage in a strike;

(5) Urge, coerce or encourage others to engage in unlawful acts as defined in this part;

(6) Enter onto the school grounds for the purpose of contacting professional employees in such a manner and at such times as will interfere with the normal operations of the school; or

(7) Coerce or attempt to intimidate professional employees who choose not to join a professional employee organization.

(c)

(1) A complaint of an unlawful act shall be filed with, or initiated by the board of education. If no reasonable resolution is reached between the parties, a complaint may be filed in the chancery court of the county where the local education agency is located.

(2) No complaint shall issue based upon any unlawful act occurring more than three (3) months prior to the filing of the complaint.

(3) The court is empowered to prevent any board of education or its agents, or organizations, associations, professional employees, or their agents, from engaging in any unlawful act.

(4) If, upon the preponderance of the evidence taken, the court is of the opinion that a party named in the complaint has engaged in or is engaging in any such unlawful act, then the court shall state its findings of fact, issue an order requiring the party to cease and desist from the unlawful act, and take affirmative action including resumption of collaborative conferencing or reinstatement of employees. The order may further require the party to make reports from time-to-time showing the extent to which it has complied with the order.

(5) If, upon the preponderance of the testimony taken, the court is not of the opinion that a party named in the complaint has engaged in or is engaging in any such unlawful act, then the court shall state its findings of fact and shall issue an order dismissing the complaint.

49-5-607. Strikes — Remedies.

(a)

(1) If a strike occurs, the board of education may apply to the chancery court in the county to enjoin the strike. The application shall set forth the facts constituting the strike.

(2) If the court finds, after a hearing, that a strike has occurred, the court shall enjoin the employees from participating in the strike.

(b) When local boards of education have determined which employees have engaged in or participated in a strike, the employees may be subject to dismissal and, further, shall forfeit their claim to tenure status, if they have attained tenure, and shall revert to probationary status for the next five-year period. Any professional employee who engaged in, or participated in, a strike and who is not a tenured teacher may also be subject to dismissal.

(c) No penalty, forfeiture of rights or privileges or other sanction or fine imposed on a professional employees' organization, its officers or members, as the result of a strike, shall be subject to collaborative conferencing by the organization and a board at any time.

49-5-608. Scope of conferencing.

(a) A local board of education shall be required to participate in collaborative conferencing with professional employees, or their designated representatives, if any, with respect to only those terms and conditions of employment that are specified in this section. Such terms and conditions include and are limited to the following:

(1) Salaries or wages;

(2) Grievance procedures;

(3) Insurance;

(4) Fringe benefits, but not to include pensions or retirement programs of the Tennessee consolidated retirement system or locally authorized early retirement incentives;

(5) Working conditions; except those working conditions which are prescribed by federal law, state law, private act, municipal charter or rules and regulations of the state board of education, the department of education or any other department or agency of state or local government;

(6) Leave; and

(7) Payroll deductions; except as provided in subsection (b).

(b) No other terms or conditions of employment shall be the subject of collaborative conferencing between the board of education and the professional employees or their representatives and no collaborative conferencing shall be conducted on the following subjects:

(1) Differentiated pay plans and other incentive compensation programs including stipends and associated benefits that are based on professional employee performance that exceeds expectations, or that aid in hiring and retaining highly qualified teachers for hard-to-staff schools and subject areas;

(2) Expenditure of grants or awards from federal, state or local governments and foundations or other private organizations that are expressly designated for specific purposes;

(3) Evaluation of professional employees pursuant to federal or state law or state board of education policy;

(4) Staffing decisions and state board of education or local board of education policies relating to innovative educational programs under § 49-1-207; innovative high school programs under title 49, chapter 15; virtual education programs under title 49, chapter 16; and other programs for innovative schools or school districts that may be enacted by the general assembly;

(5) All personnel decisions concerning assignment of professional employees, including, but not limited to, filling of vacancies, assignments to specific schools, positions, professional duties, transfers within the system, layoffs, reductions in force, and recall. No agreement shall include provisions that require personnel decisions to be determined on the basis of tenure, seniority or length of service; and

(6) Payroll deductions for political activities.

(c) The director of schools shall be permitted to communicate with professional employees employed by the local board of education concerning any subject relevant to the operation of the school system, including the terms and conditions of professional

service that are subject to collaborative conferencing, through any means, medium or format the director chooses.

49-5-609. Memorandum of Understanding.

(a) The scope of a memorandum shall extend to those matters of mutual agreement between the board of education and the professional employees; provided, that its scope shall not include proposals contrary to:

- (1) Federal or state law or applicable municipal charter;
- (2) Professional employee rights defined in this part; or
- (3) Board of education rights contained in this title.

(b) If agreement is reached by the management personnel of the board of education and the representatives of its professional employees, they shall jointly prepare a proposed memorandum of understanding. The board of education may enter into the memorandum for a period not to exceed three (3) years. Any items included within the memorandum that require funding shall not be considered effective until such time as the body empowered to appropriate the funds has approved a budget that includes sufficient funding. If the amount of funds appropriated is less than the amount required to address the matters of collaborative conferencing, then the parties may continue to confer to reach agreement within the amount of funds appropriated.

(c) A memorandum of understanding shall be binding on the parties from the date of its approval by the board of education as an item on the agenda of a regular or special called board meeting or at a later effective date that is explicitly stated in the memorandum of understanding.

(d) Nothing in this act shall be construed to require collaborative conferencing, agreement on any terms and conditions of employment, or, if agreement has not been reached between the board of education and the representatives of the professional

employees, a memorandum of understanding. Absent an agreement and memorandum of understanding on terms and conditions specified for collaborative conferencing in this act, the board of education shall have the authority to address such terms and conditions through board policy.

SECTION 2. Tennessee Code Annotated, Section 49-5-510, is amended by deleting the language "and any locally negotiated agreement".

SECTION 3. Tennessee Code Annotated, Section 49-5-511(b)(3), is amended by deleting the language "and any locally negotiated agreement".

SECTION 4. Nothing in this act shall be construed to abridge or impair a contract or agreement governing terms and conditions of professional service entered into by a board of education and a recognized professional employees' organization under the Education Professional Negotiations Act before the effective date of this act. Any such contract or agreement shall remain in full force and effect until the expiration of the contract or agreement.

SECTION 5. Tennessee Code Annotated, Section 5-23-107(1), is amended by deleting the language "negotiated agreement" and by substituting instead the language "memorandum of understanding".

SECTION 6. Tennessee Code Annotated, Section 49-1-201(d)(2), is amended by deleting the language "agreements negotiated under the Education Professional Negotiations Act" and by substituting instead the language "memoranda of understanding under the Professional Educators Collaborative Conferencing Act".

SECTION 7. Tennessee Code Annotated, Section 49-1-207(g), is amended by deleting the subsection in its entirety.

SECTION 8. Tennessee Code Annotated, Section 49-1-614(d)(2), is amended by deleting the language:

, and the Education Professional Negotiations Act, compiled in chapter 5, part 6 of this title,

and by substituting instead the language:

, and the Education Professional Negotiations Act, compiled in chapter 5, part 6 of this title, prior to the effective date of this act,

SECTION 9. Tennessee Code Annotated, Section 49-2-301(b)(1)(EE), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(EE) Within the approved budget and consistent with existing state laws and board policies, employ, transfer, suspend, non-renew and dismiss all personnel, licensed or otherwise, except as provided in § 49-2-203(a)(1) and in chapter 5, part 5 of this title.

SECTION 10. Tennessee Code Annotated, Section 49-3-306(h), is amended by deleting the language "and in compliance with § 49-5-611".

SECTION 11. Tennessee Code Annotated, Section 49-13-118, is amended by deleting the section in its entirety.

SECTION 12. Because title 49, chapter 5, part 6, shall continue to be applicable to contracts or agreements governing terms and conditions of professional service that were negotiated and entered into by a board of education and a recognized professional employees' organization before the effective date of this act, the code commission is requested to place the Education Professional Negotiations Act together with an appropriate statement indicating its applicability in an appendix to title 49 for the sole purpose of providing a readily available reference for those affected by such contracts or agreements until the time that all contracts or agreements negotiated under the act have expired.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of

the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.

Senator Jack Johnson

Representative Debra Maggart

Senator Dolores Gresham

Representative Harry Brooks

Senator Andy Berke

Representative Lois DeBerry