HOUSE BILL 1968
By Powers

SENATE BILL 1606

By Niceley

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

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

SECTION 1. This act shall be known and may be cited as the "Local School District Empowerment Act."

SECTION 2. 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 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 3. Tennessee Code Annotated, Section 49-2-301(a), is amended by deleting the initial word "Each" and substituting instead the language "Except as provided in subsection (e), each".

SECTION 4. 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 reestablish 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 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 reestablishing 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 the 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 reestablished, the contractual term of any appointed director of schools shall not be abridged by the reestablishment. 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 local board of education shall appoint or extend the contract or term of a director of schools after a county or municipality

reestablishes the office of superintendent, but may appoint a qualified person as acting director until the office of superintendent is filled by the voters.

(3)

(A) An elected superintendent shall be a person of literary attainment and experience in the art of teaching and school administration, and possess a license of qualification issued by the state board of education prior to the superintendent's election.

(B) The state board of education shall establish minimum requirements for a license of qualification for a superintendent, which shall include, but not be limited to, the following:

(i) The applicant shall hold a teacher's professional license with endorsement as principal or supervisor of instruction;

(ii) The applicant shall hold a master's degree with a major in education administration to include study areas such as:

(a) School organization and administration;

(b) Supervision, curriculum development, and evaluation;

(c) School finance, housing, and transportation;

(d) School and communication relationships; and

(e) Techniques of problem solving by group process; and

(iii) The applicant shall have at least five (5) years' experience to include both teaching and administrative experience.

(4)

(A) No more than ten (10) LEAs shall reestablish the office of elected school superintendent under this act.

(B) The purpose of the limit set in subdivision (e)(4)(A) is to allow the department of education, with the assistance of the comptroller's office of research and education accountability, to create a pilot program. The goal of the pilot program is to determine whether the procedures established in this subsection (e) efficiently enable a county or municipality to reestablish the office of elected superintendent. The department shall report to the general assembly no later than one (1) year after the tenth LEA has reestablished the office of elected superintendent with recommendations, if any, for changes in the procedures.

(f)

(1) In those county or city school systems that reestablish the office of elected school superintendent under subsection (e), unless otherwise provided in this title, all rights, duties, or powers granted to appointed directors of schools 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.

(2) If any law directs or permits the director of schools or the local board of education, as appropriate, to perform an act or function, then in those county or city school systems that reestablish the office of elected school superintendent under subsection (e), the local board of education shall perform such act or function.

SECTION 5. Tennessee Code Annotated, Section 49-2-202(a)(3), is amended by designating subdivisions (a)(3)(i)—(iii) as subdivisions (a)(3)(A)—(C) respectively.

SECTION 6. Tennessee Code Annotated, Section 49-2-202(a)(3)(C), is amended by designating the first sentence as subdivision (i), designating the second and third sentences as subdivision (ii), and adding the following language as subdivision (iii):

(iii) Subdivision (a)(3)(C)(ii) shall not apply in any county or city school system that has reestablished the office of elected superintendent pursuant to § 49-2-301(e). In such systems, if two (2) or more employees who are relatives are within the same direct line of supervision, or become within the same direct line of supervision by marriage or promotion, then the local board of education shall attempt to resolve this issue by transfer of one (1) or more of the employees. If the local board finds that transfer is not feasible or is not in the best interest of students, then an alternate evaluation plan shall be devised for one (1) or more of the employees.

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

(e) Notwithstanding subdivision (a)(1), in any county or city school system that has reestablished the office of elected superintendent pursuant to § 49-2-301(e), the local board of education shall elect, employ, and fix the salaries of principals, supervisors, educational assistants, and other employees of the school system. Subdivisions (a)(1)(A)—(D) shall apply to such school system.

SECTION 8. Tennessee Code Annotated, Section 49-2-301(b)(1)(J), is amended by designating the existing language as subdivision (i) and adding the following language as new subdivision (ii):

(ii) Notwithstanding subdivision (b)(1)(J)(i), in any county or city school system that has reestablished 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 9. Tennessee Code Annotated, Section 49-2-301(b)(1)(L), is amended by designating the existing language as subdivision (i) and adding the following language as new subdivision (ii):

(ii) Notwithstanding subdivision (b)(1)(L)(i), in any county or city school system that has reestablished 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, pending the meeting and approval of the board of education;

SECTION 10. Tennessee Code Annotated, Section 49-2-203, is amended by adding the following language as new subsection (f):

(f)

(1) Notwithstanding § 49-2-301(b)(1)(EE), (FF), and (GG), this subsection shall apply in a county or city school system that has reestablished the office of elected superintendent pursuant to § 49-2-301(e).

(2) 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.

(3) 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.

(4)

(A) 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:

(i) Notice of the charge or charges;

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

(iii) An opportunity to be represented by counsel;

(iv) An opportunity to call and subpoena witnesses;

(v) An opportunity to examine all witnesses; and

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

(B) 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.

(C) 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.

(D) Upon written notice of the 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.

(E) 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.

(F) 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 (f)(4).

(G) 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. The board shall transmit 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 11. Tennessee Code Annotated, Section 49-2-303(a)(1), is amended by deleting the language “Each director of schools” and substituting instead the following language:

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

SECTION 12. Tennessee Code Annotated, Section 49-2-304(a), is amended by designating the existing language as subdivision (1) and adding the following language as new subdivision (2):

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

SECTION 13. Tennessee Code Annotated, Section 49-5-401(b), is amended by designating the existing language as subdivision (1) and adding the following language as new subdivision (2):

(2) Subdivision (b)(1) shall not apply in those county or city school systems that have reestablished the office of elected superintendent pursuant to § 49-2-301(e). In such systems, if a sufficient number of educators and other personnel are not available for election and assignment for the next school year 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 the local board of education, at its next regular or special session called for that purpose, shall confirm the election and assignment of each teacher, or other personnel, employed by the superintendent.

SECTION 14. Tennessee Code Annotated, Section 49-5-409, is amended by deleting the section in its entirety and substituting instead:

(a)

(1) Teachers in service and under control of the public elementary and high schools of this state shall continue in such service until they have received written notice from their board of education or director of schools, as appropriate, of their dismissal or failure of reelection. The notice must be received within five (5) business days following the last instructional day of the school year to be applicable to the next succeeding school year.

(2) If the office of elected superintendent has been reestablished in the LEA, then the local board of education shall provide the written notice. 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.

(b)

(1) A director of schools may transfer any teacher from one (1) position to another at the director's option.

(2) Subdivision (b)(1) shall not apply to a county or city school system that has reestablished the office of elected superintendent, pursuant to § 49-2-301(e). In such system, the local board of education may transfer any teacher from one (1) position to another at the board's option.

(3) Nothing contained in this section shall affect any rights that may have accrued, or may hereafter accrue, on behalf of any teachers or principals in any local school system under any law providing a tenure of office for the teachers and principals.

(c) Nothing in this section shall prohibit a board from abolishing a position after June 15, for sufficient, just, and nondiscriminatory reasons; provided, that the person holding the position is notified immediately in writing stating the reasons for abolishing the position and the person is entitled to the next position that the person is qualified to hold and that opens within the school system during the remainder of the school year. The determination of whether a teacher is qualified for an open position shall be made by the director of schools or, in any county or city school system that has reestablished the office of elected superintendent pursuant to § 49-2-301(e), the local board of education. The teacher's most recent evaluations may be a factor in such determination.

SECTION 15. Tennessee Code Annotated, Section 49-5-503(5), is amended by deleting the language "the director of schools" and substituting instead the following language:

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

SECTION 16. Tennessee Code Annotated, Section 49-5-510, is amended by designating the existing language as subsection (a) and adding the following language as new subsection (b):

(b) Subsection (a) shall not apply in those county or city school systems that have reestablished the office of elected superintendent pursuant to § 49-2-301(e). 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 17. Tennessee Code Annotated, Section 49-5-511(b)(3), is amended by designating the existing language as subdivision (A) and 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 reestablished the office of elected superintendent pursuant to § 49-2-301(e). In those systems, a teacher rated in the three (3) highest categories based on evaluations pursuant to § 49-1-302 who has been dismissed because of abolition of a position shall be placed on a list for reemployment. Nothing in this subsection (b) shall be construed to deprive the local board of education of the power to determine the filling of such vacancy on the basis of the board's 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. A principal may refuse to accept the placement or transfer of a teacher by the board to the principal's school. The teacher's most recent evaluations shall be a factor in such determination.

SECTION 18. Tennessee Code Annotated, Section 49-5-702(b), is amended by designating the first sentence as subdivision (1) and the second sentence as subdivision (2), and adding the following language as new subdivision (3):

(3) Subdivision (b)(2) shall not apply in those county or city school systems that have reestablished the office of elected superintendent pursuant to § 49-2-301(e). 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 19. Tennessee Code Annotated, Section 49-5-703, is amended by designating the existing language as subsection (a) and adding the following language as new subsection (b):

(b) Notwithstanding subsection (a), in county or city school systems that have reestablished the office of elected superintendent pursuant to § 49-2-301(e), the duties assigned the director of schools under subsection (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 adding the following language as new subdivision (2):

(2) In those county or city school systems that have reestablished the office of elected superintendent pursuant to § 49-2-301(e), local boards of education, in employing school transportation personnel, and in contracting for transportation services with persons owning equipment, are authorized to enter into contracts for such services for periods of time not exceeding four (4) years from the date of making the contracts, the purpose of this section being to permit a reasonable degree of employment security for such school transportation personnel.

SECTION 21. Tennessee Code Annotated, Section 49-13-106(b)(3)(E)(ii), is amended by deleting the last sentence of the subdivision and substituting instead:

The director of schools or, if the LEA has reestablished the office of elected superintendent pursuant to § 49-2-301(e), the local board of education, shall have the option to specifically assign these teachers or administrators to those vacant positions;

SECTION 22. Tennessee Code Annotated, Title 49, Chapter 2, Part 3, is amended by adding the following language as a new, appropriately designated section:

(a) This section shall apply only to a county or city school system that has an elected superintendent of schools pursuant to the reestablishment 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 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 23. This act shall take effect July 1, 2016, the public welfare requiring it.