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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1691

02/13/2023 Authored by Jordan, Greenman, Hill, Long, Berg and others
The bill was read for the first time and referred to the Committee on Education Policy
03/06/2023 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act
1.2 relating to labor relations; modifying public labor relations; modifying teacher
1.3 probationary period requirements; amending Minnesota Statutes 2022, sections
1.4 13.43, subdivision 6; 120A.414, subdivision 2; 122A.181, subdivision 5; 122A.26,
1.5 subdivision 2; 122A.40, subdivision 5; 122A.41, subdivision 2; 179A.03,
1.6 subdivisions 14, 18, 19; 179A.06, by adding a subdivision; 179A.07, subdivision
1.7 6, by adding subdivisions; 572B.17.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2022, section 13.43, subdivision 6, is amended to read:

1.10 Subd. 6. Access by labor organizations. Personnel data may must be disseminated to
1.11 labor organizations to the extent that the responsible authority determines that the
1.12 dissemination is necessary to conduct elections, notify employees of fair share fee
1.13 assessments, and implement the provisions of chapters 179 and 179A. Personnel data shall
1.14 be disseminated to labor organizations and to the Bureau of Mediation Services to the extent
1.15 the dissemination is ordered or authorized by the commissioner of the Bureau of Mediation
1.16 Services.

1.17 Sec. 2. Minnesota Statutes 2022, section 120A.414, subdivision 2, is amended to read:

1.18 Subd. 2. Plan. A school board may adopt an e-learning day plan after consulting meeting
1.19 and negotiating with the exclusive representative of the teachers. A charter school may
1.20 adopt an e-learning day plan after consulting with its teachers, or after meeting and
1.21 negotiating with the exclusive representative for its teachers. The plan must include
1.22 accommodations for students without Internet access at home and for digital device access
1.23 for families without the technology or an insufficient amount of technology for the number

2.1 of children in the household. A school's e-learning day plan must provide accessible options
2.2 for students with disabilities under chapter 125A.

2.3 Sec. 3. Minnesota Statutes 2022, section 122A.181, subdivision 5, is amended to read:

2.4 Subd. 5. **Limitations on license.** (a) A Tier 1 license is limited to the content matter
2.5 indicated on the application for the initial Tier 1 license under subdivision 1, clause (2), and
2.6 limited to the district or charter school that requested the initial Tier 1 license.

2.7 (b) A Tier 1 license does not bring an individual within the definition of a teacher for
2.8 purposes of section 122A.40, subdivision 1, or 122A.41, subdivision 1, clause (a).

2.9 ~~(c) A Tier 1 license does not bring an individual within the definition of a teacher under~~
2.10 ~~section 179A.03, subdivision 18.~~

2.11 Sec. 4. Minnesota Statutes 2022, section 122A.26, subdivision 2, is amended to read:

2.12 Subd. 2. **Exceptions.** (a) A person who teaches in a community education program
2.13 ~~which~~ that qualifies for aid pursuant to section 124D.52 shall continue to meet licensure
2.14 requirements as a teacher. A person who teaches in an early childhood and family education
2.15 program ~~which~~ that is offered through a community education program and which qualifies
2.16 for community education aid pursuant to section 124D.20 or early childhood and family
2.17 education aid pursuant to section 124D.135 shall continue to meet licensure requirements
2.18 as a teacher. A person who teaches in a community education course ~~which~~ that is offered
2.19 for credit for graduation to persons under 18 years of age shall continue to meet licensure
2.20 requirements as a teacher.

2.21 (b) A person who teaches a driver training course ~~which~~ that is offered through a
2.22 community education program to persons under 18 years of age shall be licensed by the
2.23 Professional Educator Licensing and Standards Board or be subject to section 171.35. A
2.24 license ~~which~~ that is required for an instructor in a community education program pursuant
2.25 to this ~~subdivision~~ paragraph shall not be construed to bring an individual within the
2.26 definition of a teacher for purposes of section 122A.40, subdivision 1, or 122A.41,
2.27 subdivision 1, ~~clause~~ paragraph (a).

2.28 **EFFECTIVE DATE.** This section is effective for the 2023-2024 school year and later.

2.29 Sec. 5. Minnesota Statutes 2022, section 122A.40, subdivision 5, is amended to read:

2.30 Subd. 5. **Probationary period.** (a) The first three consecutive years of a teacher's first
2.31 teaching experience in Minnesota in a single district is deemed to be a probationary period

3.1 of employment, and, the probationary period in each district in which the teacher is thereafter
3.2 employed shall be one year. The school board must adopt a plan for written evaluation of
3.3 teachers during the probationary period that is consistent with subdivision 8. Evaluation
3.4 must occur at least three times periodically throughout each school year for a teacher
3.5 performing services during that school year; the first evaluation must occur within the first
3.6 90 days of teaching service. Days devoted to parent-teacher conferences, teachers' workshops,
3.7 and other staff development opportunities and days on which a teacher is absent from school
3.8 must not be included in determining the number of school days on which a teacher performs
3.9 services. Except as otherwise provided in paragraph (b), during the probationary period any
3.10 annual contract with any teacher may or may not be renewed as the school board shall see
3.11 fit. However, the board must give any such teacher whose contract it declines to renew for
3.12 the following school year written notice to that effect before July 1. If the teacher requests
3.13 reasons for any nonrenewal of a teaching contract, the board must give the teacher its reason
3.14 in writing, including a statement that appropriate supervision was furnished describing the
3.15 nature and the extent of such supervision furnished the teacher during the employment by
3.16 the board, within ten days after receiving such request. The school board may, after a hearing
3.17 held upon due notice, discharge a teacher during the probationary period for cause, effective
3.18 immediately, under section 122A.44.

3.19 (b) A board must discharge a probationary teacher, effective immediately, upon receipt
3.20 of notice under section 122A.20, subdivision 1, paragraph (b), that the teacher's license has
3.21 been revoked due to a conviction for child abuse or sexual abuse.

3.22 (c) A probationary teacher whose first three years of consecutive employment are
3.23 interrupted for active military service and who promptly resumes teaching consistent with
3.24 federal reemployment timelines for uniformed service personnel under United States Code,
3.25 title 38, section 4312(e), is considered to have a consecutive teaching experience for purposes
3.26 of paragraph (a).

3.27 (d) A probationary teacher whose first three years of consecutive employment are
3.28 interrupted for maternity, paternity, or medical leave and who resumes teaching within 12
3.29 months of when the leave began is considered to have a consecutive teaching experience
3.30 for purposes of paragraph (a) if the probationary teacher completes a combined total of
3.31 three years of teaching service immediately before and after the leave.

3.32 (e) A probationary teacher must complete at least ~~120~~ 60 days of teaching service each
3.33 year during the probationary period. Days devoted to parent-teacher conferences, teachers'
3.34 workshops, and other staff development opportunities and days on which a teacher is absent
3.35 from school do not count as days of teaching service under this paragraph.

4.1 Sec. 6. Minnesota Statutes 2022, section 122A.41, subdivision 2, is amended to read:

4.2 Subd. 2. **Probationary period; discharge or demotion.** (a) ~~All teachers in the public~~
4.3 ~~schools in cities of the first class during the first three years of consecutive employment~~
4.4 ~~shall be deemed to be in a probationary period of employment during which period any~~
4.5 ~~annual contract with any teacher may, or may not, be renewed as the school board, after~~
4.6 ~~consulting with the peer review committee charged with evaluating the probationary teachers~~
4.7 ~~under subdivision 3, shall see fit. The first three consecutive years of a teacher's first teaching~~
4.8 experience in Minnesota in a single district is deemed to be a probationary period of
4.9 employment, and the probationary period in each district in which the teacher is thereafter
4.10 employed shall be one year. The school site management team or the school board if there
4.11 is no school site management team, shall adopt a plan for a written evaluation of teachers
4.12 during the probationary period according to subdivisions 3 and 5. Evaluation by the peer
4.13 review committee charged with evaluating probationary teachers under subdivision 3 shall
4.14 occur at least three times periodically throughout each school year for a teacher performing
4.15 services during that school year; the first evaluation must occur within the first 90 days of
4.16 teaching service. Days devoted to parent-teacher conferences, teachers' workshops, and
4.17 other staff development opportunities and days on which a teacher is absent from school
4.18 shall not be included in determining the number of school days on which a teacher performs
4.19 services. The school board may, during such probationary period, discharge or demote a
4.20 teacher for any of the causes as specified in this code. A written statement of the cause of
4.21 such discharge or demotion shall be given to the teacher by the school board at least 30
4.22 days before such removal or demotion shall become effective, and the teacher so notified
4.23 shall have no right of appeal therefrom.

4.24 (b) A probationary teacher whose first three years of consecutive employment are
4.25 interrupted for active military service and who promptly resumes teaching consistent with
4.26 federal reemployment timelines for uniformed service personnel under United States Code,
4.27 title 38, section 4312(e), is considered to have a consecutive teaching experience for purposes
4.28 of paragraph (a).

4.29 (c) A probationary teacher whose first three years of consecutive employment are
4.30 interrupted for maternity, paternity, or medical leave and who resumes teaching within 12
4.31 months of when the leave began is considered to have a consecutive teaching experience
4.32 for purposes of paragraph (a) if the probationary teacher completes a combined total of
4.33 three years of teaching service immediately before and after the leave.

4.34 (d) A probationary teacher must complete at least ~~120~~ 60 days of teaching service each
4.35 year during the probationary period. Days devoted to parent-teacher conferences, teachers'

5.1 workshops, and other staff development opportunities and days on which a teacher is absent
5.2 from school do not count as days of teaching service under this paragraph.

5.3 Sec. 7. Minnesota Statutes 2022, section 179A.03, subdivision 14, is amended to read:

5.4 Subd. 14. **Public employee or employee.** (a) "Public employee" or "employee" means
5.5 any person appointed or employed by a public employer except:

5.6 (1) elected public officials;

5.7 (2) election officers;

5.8 (3) commissioned or enlisted personnel of the Minnesota National Guard;

5.9 (4) emergency employees who are employed for emergency work caused by natural
5.10 disaster;

5.11 (5) part-time employees whose service does not exceed the lesser of 14 hours per week
5.12 or 35 percent of the normal work week in the employee's appropriate unit;

5.13 (6) employees whose positions are basically temporary or seasonal in character and: (i)
5.14 are not for more than 67 working days in any calendar year; ~~or~~ (ii) are not working for a
5.15 Minnesota school district or charter school; or (iii) are not for more than 100 working days
5.16 in any calendar year and the employees are under the age of 22, are full-time students
5.17 enrolled in a nonprofit or public educational institution prior to being hired by the employer,
5.18 and have indicated, either in an application for employment or by being enrolled at an
5.19 educational institution for the next academic year or term, an intention to continue as students
5.20 during or after their temporary employment;

5.21 (7) employees providing services for not more than two consecutive quarters to the
5.22 Board of Trustees of the Minnesota State Colleges and Universities under the terms of a
5.23 professional or technical services contract as defined in section 16C.08, subdivision 1;

5.24 (8) employees of charitable hospitals as defined by section 179.35, subdivision 3, except
5.25 that employees of charitable hospitals as defined by section 179.35, subdivision 3, are public
5.26 employees for purposes of sections 179A.051, 179A.052, and 179A.13;

5.27 (9) full-time undergraduate students employed by the school which they attend under a
5.28 work-study program or in connection with the receipt of financial aid, irrespective of number
5.29 of hours of service per week;

5.30 (10) an individual who is employed for less than 300 hours in a fiscal year as an instructor
5.31 in an adult vocational education program;

6.1 (11) an individual hired by the Board of Trustees of the Minnesota State Colleges and
6.2 Universities to teach one course for three or fewer credits for one semester in a year;

6.3 (12) with respect to court employees:

6.4 (i) personal secretaries to judges;

6.5 (ii) law clerks;

6.6 (iii) managerial employees;

6.7 (iv) confidential employees; and

6.8 (v) supervisory employees;

6.9 (13) with respect to employees of Hennepin Healthcare System, Inc., managerial,
6.10 supervisory, and confidential employees.

6.11 (b) The following individuals are public employees regardless of the exclusions of
6.12 paragraph (a), clauses (5) and (6):

6.13 (1) an employee hired by a school district or the Board of Trustees of the Minnesota
6.14 State Colleges and Universities except at the university established in the Twin Cities
6.15 metropolitan area under section 136F.10 or for community services or community education
6.16 instruction offered on a noncredit basis: (i) to replace an absent teacher or faculty member
6.17 who is a public employee, where the replacement employee is employed more than 30
6.18 working days as a replacement for that teacher or faculty member; or (ii) to take a teaching
6.19 position created due to increased enrollment, curriculum expansion, courses which are a
6.20 part of the curriculum whether offered annually or not, or other appropriate reasons;

6.21 (2) an employee hired for a position under paragraph (a), clause (6), item (i), if that same
6.22 position has already been filled under paragraph (a), clause (6), item (i), in the same calendar
6.23 year and the cumulative number of days worked in that same position by all employees
6.24 exceeds 67 calendar days in that year. For the purpose of this paragraph, "same position"
6.25 includes a substantially equivalent position if it is not the same position solely due to a
6.26 change in the classification or title of the position; and

6.27 (3) an early childhood family education teacher employed by a school district.

6.28 Sec. 8. Minnesota Statutes 2022, section 179A.03, subdivision 18, is amended to read:

6.29 Subd. 18. **Teacher.** "Teacher" means any public employee other than a superintendent
6.30 or assistant superintendent, principal, assistant principal, or a supervisory or confidential
6.31 employee, employed by a school district:

7.1 (1) in a position for which the person must be licensed by the Professional Educator
7.2 Licensing and Standards Board or the commissioner of education; ~~or~~

7.3 (2) in a position as a physical therapist, occupational therapist, art therapist, music
7.4 therapist, or audiologist; or

7.5 (3) in a position providing instruction to children in a prekindergarten or early learning
7.6 program, except that an employee in a bargaining unit certified before January 1, 2023, may
7.7 remain in a bargaining unit that does not include teachers unless an exclusive representative
7.8 files a petition for a unit clarification or to transfer exclusive representative status.

7.9 **EFFECTIVE DATE.** This section is effective July 1, 2023.

7.10 Sec. 9. Minnesota Statutes 2022, section 179A.03, subdivision 19, is amended to read:

7.11 Subd. 19. **Terms and conditions of employment.** "Terms and conditions of employment"
7.12 means the hours of employment, the compensation therefor including fringe benefits except
7.13 retirement contributions or benefits other than employer payment of, or contributions to,
7.14 premiums for group insurance coverage of retired employees or severance pay, staffing
7.15 ratios, class sizes in school districts and charter schools, student testing, student-to-personnel
7.16 ratios in school districts, and the employer's personnel policies affecting the working
7.17 conditions of the employees. In the case of professional employees the term does not mean
7.18 educational policies of a school district. "Terms and conditions of employment" is subject
7.19 to section 179A.07.

7.20 Sec. 10. Minnesota Statutes 2022, section 179A.06, is amended by adding a subdivision
7.21 to read:

7.22 Subd. 8. **Liability.** (a) A public employer, a labor organization, or any of its employees
7.23 or agents shall not be liable for and shall have a complete defense to claims or actions under
7.24 the laws of this state for requiring, deducting, receiving, or retaining agency or fair share
7.25 fees from public employees. Current or former public employees shall not have standing
7.26 to pursue these claims or actions if the fees were permitted at the time under the laws of
7.27 this state then in force and paid, through payroll deduction or otherwise, prior to June 27,
7.28 2018.

7.29 (b) This section applies to claims or actions pending on the effective date of this section
7.30 and to claims or actions filed on or after that date.

7.31 (c) The enactment of this section shall not be interpreted to create the inference that any
7.32 relief made unavailable by this section would otherwise be available.

8.1 (d) The legislature finds and declares:

8.2 (1) application of this section to pending claims or actions clarifies state law rather than
 8.3 changes it. Public employees who paid agency or fair share fees as a condition of employment
 8.4 according to state law and supreme court precedent prior to June 27, 2018, had no legitimate
 8.5 expectation of receiving the money under any available cause of action. Public employees
 8.6 and organizations who relied on and abided by state law and supreme court precedent in
 8.7 deducting and accepting those fees were not liable to refund them. Agency or fair share fees
 8.8 paid for collective bargaining representation that employee organizations were obligated
 8.9 by state law to provide to public employees. Application of this section to pending claims
 8.10 will preserve, rather than interfere with, important reliance interests; and

8.11 (2) this subdivision is necessary to provide certainty to public employers and employee
 8.12 organizations that relied on state law, and to avoid disruption of public employee labor
 8.13 relations.

8.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.15 Sec. 11. Minnesota Statutes 2022, section 179A.07, subdivision 6, is amended to read:

8.16 Subd. 6. **Time off.** A public employer must afford reasonable time off to elected officers
 8.17 or appointed representatives of the exclusive representative to conduct the duties of the
 8.18 exclusive representative and must, upon request, provide for leaves of absence to elected
 8.19 or appointed officials of the exclusive representative, to elected or appointed officials of an
 8.20 affiliate of an exclusive representative, or to a full-time appointed official of an exclusive
 8.21 representative of teachers in another Minnesota school district.

8.22 Sec. 12. Minnesota Statutes 2022, section 179A.07, is amended by adding a subdivision
 8.23 to read:

8.24 Subd. 8. **Bargaining unit information.** (a) Within ten calendar days from the date of
 8.25 hire of a bargaining unit employee, a public employer must provide the following contact
 8.26 information to an exclusive representative in an Excel file format or other format agreed to
 8.27 by the exclusive representative: name, job title, worksite location, home address, work
 8.28 telephone number, home and personal cell phone numbers on file with the public employer,
 8.29 date of hire, and work email address and personal email address on file with the public
 8.30 employer.

8.31 (b) Every 120 calendar days beginning on January 1, 2024, a public employer must
 8.32 provide an exclusive representative in an Excel file or similar format agreed to by the

9.1 exclusive representative the following information for all bargaining unit employees: name,
9.2 job title, worksite location, home address, work telephone number, home and personal cell
9.3 phone numbers on file with the public employer, date of hire, and work email address and
9.4 personal email address on file with the public employer.

9.5 Sec. 13. Minnesota Statutes 2022, section 179A.07, is amended by adding a subdivision
9.6 to read:

9.7 Subd. 9. Access. (a) A public employer must provide an exclusive representative access
9.8 to members of the bargaining unit, including:

9.9 (1) the right to meet with bargaining unit members on the premises of the public employer
9.10 during the workday to investigate and discuss grievances and other workplace issues;

9.11 (2) the right to conduct worksite meetings during lunch and other breaks, and before
9.12 and after the workday, on the public employer's premises to discuss workplace issues,
9.13 collective bargaining, the administration of collective bargaining agreements, and other
9.14 matters related to the duties of an exclusive representative; and

9.15 (3) the right to meet with newly hired employees, without charge to the pay or leave
9.16 time of the employees, for a minimum of 30 minutes, within 30 calendar days from the date
9.17 of hire, during new employee orientations or, if the employer does not conduct new employee
9.18 orientations, at individual or group meetings.

9.19 (b) A public employer must provide an exclusive representative access to the employer's
9.20 email system to communicate with bargaining unit members regarding collective bargaining,
9.21 the administration of collective bargaining agreements, the investigation of grievances,
9.22 other workplace-related complaints and issues, and internal union matters involving the
9.23 governance or business of the union.

9.24 (c) A public employer must provide an exclusive representative access to facilities owned
9.25 or leased by the public employer to conduct meetings with bargaining unit members regarding
9.26 collective bargaining, other workplace-related complaints and issues, and internal union
9.27 matters involving the governance or business of the union, provided the use does not interfere
9.28 with governmental operations. Meetings conducted in government buildings pursuant to
9.29 this subdivision must not be for the purpose of supporting or opposing any candidate for
9.30 partisan political office, or for the purpose of distributing literature or information regarding
9.31 partisan elections. An exclusive representative conducting a meeting in a government
9.32 building or other government facility pursuant to this subdivision may be charged for

10.1 maintenance, security, and other costs related to the use of the government building or
10.2 facility that would not otherwise be incurred by the government entity.

10.3 Sec. 14. Minnesota Statutes 2022, section 572B.17, is amended to read:

10.4 **572B.17 WITNESSES; SUBPOENAS; DEPOSITIONS; DISCOVERY.**

10.5 (a) An arbitrator may issue a subpoena for the attendance of a witness and for the
10.6 production of records and other evidence at any hearing and may administer oaths. A
10.7 subpoena must be served in the manner for service of subpoenas in a civil action and, upon
10.8 motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the
10.9 manner for enforcement of subpoenas in a civil action.

10.10 (b) On request of a party to or a witness in an arbitration proceeding, an arbitrator may
10.11 permit a deposition of any witness to provide testimony at the arbitration hearing, including
10.12 a witness who cannot be subpoenaed for or is unable to attend a hearing, to be taken under
10.13 conditions determined by the arbitrator for use as evidence in order to make the proceeding
10.14 fair, expeditious, and cost-effective.

10.15 (c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in
10.16 the circumstances, taking into account the needs of the parties to the arbitration proceeding
10.17 and other affected persons and the desirability of making the proceeding fair, expeditious,
10.18 and cost-effective.

10.19 (d) If an arbitrator permits discovery under subsection (c), the arbitrator may order a
10.20 party to the arbitration proceeding to comply with the arbitrator's discovery-related orders,
10.21 including the issuance of a subpoena for the attendance of a witness and for the production
10.22 of records and other evidence at a discovery proceeding, and may take action against a party
10.23 to the arbitration proceeding who does not comply to the extent permitted by law as if the
10.24 controversy were the subject of a civil action in this state.

10.25 (e) An arbitrator may issue a protective order to prevent the disclosure of privileged
10.26 information, confidential information, trade secrets, data classified as nonpublic or private
10.27 pursuant to chapter 13, and other information protected from disclosure as if the controversy
10.28 were the subject of a civil action in this state.

10.29 (f) All laws compelling a person under subpoena to testify and all fees for attending a
10.30 judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an
10.31 arbitration proceeding as if the controversy were the subject of a civil action under the laws
10.32 and rules of civil procedure of this state.

11.1 (g) The court may enforce a subpoena or discovery-related order for the attendance of
11.2 a witness within this state and for the production of records and other evidence issued by
11.3 an arbitrator in connection with an arbitration proceeding in another state upon conditions
11.4 determined by the court in order to make the arbitration proceeding fair, expeditious, and
11.5 cost-effective. A subpoena or discovery-related order issued by an arbitrator must be served
11.6 in the manner provided by law for service of subpoenas in a civil action in this state and,
11.7 upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced
11.8 in the manner provided by law for enforcement of subpoenas in a civil action in this state.