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Bill Summary for SB 7005 by *Kyle, Woodson, Gresham, McNally, Berke, Kelsey, Tate. (***HB 7010** by *Turner M, DeBerry L, Brooks H, Naifeh, Fitzhugh, Maddox, Williams, Dunn.)

Education - As introduced, enacts the "Tennessee First to the Top Act of 2010." - Amends TCA Title 49, Chapters 1, 2, 3 and 5.

Fiscal Summary

Increase Federal Expenditures - Exceeds \$121,250,000 FY 10-11 Exceeds \$121,250,000 FY 11-12 Exceeds \$121,250,000 FY 12-13 Exceeds \$121,250,000 FY 13-14 Increase State Revenue - Exceeds \$60,625,000 FY 10-11 Exceeds \$60,625,000 FY 11-12 Exceeds \$60,625,000 FY 12-13 Exceeds \$60,625,000 FY 13-14 Increase State Expenditures - Exceeds \$60,625,000 FY 10-11 Exceeds \$60,625,000 FY 11-12 Exceeds \$60,625,000 FY 12-13 Exceeds \$60,625,000 FY 13-14 Increase Local Revenue - Exceeds \$60,625,000 FY 10-11 Exceeds \$60,625,000 FY 11-12 Exceeds \$60,625,000 FY 12-13 Exceeds \$60,625,000 FY 13-14 Increase Local Expenditures - Exceeds \$60,725,000 FY 10-11* Exceeds \$10,000,000/FY10-11/Permissive Exceeds \$60,725,000 /FY 11-12* Exceeds \$10,000,000/FY11-12/Permissive Exceeds \$60,725,000 /FY 12-13* Exceeds \$10,000,000/FY 12-13/Permissive Exceeds \$60,725,000 /FY 13-14* Exceeds \$10,000,000/FY 13-14/Permissive Other Fiscal Impact - Funds from recurring appropriation of state revenue will be shifted from existing programs of the Department of Education to fund programs and activities related to "Race to the Top" funding. According to the Department, the funds shifted from existing programs will not be replaced by additional state revenue. There will be no increase in state tax revenue appropriated to the Department as a result of this bill. The Department is unable to specify the amount of funds that will be shifted to "Race to the Top" programs and activities and is unable to identify the current programs that will be affected.

Bill Summary

This bill:

- (1) Provides for the establishment of an achievement school district;
- (2) Revises present law regarding restructuring schools;
- (3) Creates a 15 member teacher evaluation advisory committee;
- (4) Revises present law regarding the evaluation of teachers and principals;
- (5) Revises present law regarding when and in what manner a teacher, having received a notice of charges, may demand a hearing; and
- (6) Makes other revisions to present law regarding education.

ACHIEVEMENT SCHOOL DISTRICT

Under present law, a school that does not meet the performance standards established by the state board of education may be placed in improvement status.

This bill provides for the establishment of an achievement school district by the commissioner of education. The district would provide oversight for the operation of the total program for a school or LEA placed in improvement status under present law.

This bill authorizes the commissioner to contract with any person, governmental entity, or nonprofit entity (managing entity) to manage the day to day operations of any or all schools or LEAs in the district including providing direct services to students. A managing entity may apply to the commissioner for a waiver of any state board of education rule that inhibits or hinders the ability of the school or LEA to achieve the required adequate yearly progress benchmarks. However, the rules relating to the following may not be waived: civil rights; health and safety; public records; immunizations; possession of weapons on school grounds; background checks and fingerprinting of personnel; special education services; student due process; parental rights; student assessment and accountability; open meetings; and at least the same equivalent time of instruction as required in regular public schools.

A managing entity may also determine whether any teacher who was previously assigned to the school will have the option of continuing to teach at the school as an employee of the managing entity or be transferred to other schools within the LEA. Except for the provisions protecting a teacher's rights to accumulated sick leave, retirement benefits, and tenure status, the Education Profession Negotiations Act would not apply to a teacher who accepts the option of teaching at an achievement school district school.

This bill requires the commissioner to develop a transition plan for the purpose of planning the school's or LEA's return to the jurisdiction of the local board of education after the school or LEA achieves the required adequate yearly progress benchmarks for two consecutive years. Implementation of the plan would begin after the school or LEA achieves the required benchmarks for three consecutive years, to be completed after five consecutive years of meeting the benchmarks.

The commissioner may remove any school or LEA from the achievement school district at any time. All BEP funds generated in support of students assigned to schools placed in the achievement school district must be moved to a special BEP reserve account to be held until the school is placed back under the jurisdiction of the LEA.

RESTRUCTURING SCHOOLS

Under present law, if the school does not meet performance standards by the end of the fourth year on improvement status (called restructuring 1), then the school may be placed in the fifth year of such status, which is called restructuring 2. Restructuring 2 status subjects the school or LEA to certain sanctions, including the implementation of a plan for alternative governance of the school. This bill authorizes the commissioner to choose for the school the plan of alternative governance to be developed and implemented.

This bill authorizes the same sanctions that apply to restructuring 2 schools to apply to schools meeting the U.S. department of education's definition of "persistently low achieving schools." These sanctions include making the director of the LEA of the school responsible for implementing the plan for alternative governance from the options provided by the commissioner of education; provided, that, in the case where the plan for alternative governance is implemented, the LEA will continue to be accountable for the match required by the BEP funding formula for students served. This bill adds that the LEA would continue to provide any support services identified by the commissioner.

Generally, present law authorizes the commissioner of education to assume any or all powers of governance for a restructuring 2 LEA. This bill specifies that such powers include the power to assign the LEA or individual schools within the LEA to the achievement school district.

TEACHER EVALUATION ADVISORY COMMITTEE

This bill creates a 15 member teacher evaluation advisory committee to develop and recommend to the state board guidelines and criteria for the annual evaluation of teachers and principals, including a local-level evaluation grievance procedure. The committee would consist of the commissioner, who would serve as chair; the executive director of the state board of education; the chairperson of the education committees of each house; and 11 appointees of the governor. The state board must adopt policies necessary to implement the recommendations of the committee. The annual evaluations would be a factor in employment decisions including promotion, retention, termination, compensation, and the attainment of tenure status.

This bill requires that the following criteria be used in teacher evaluations:

- (1) Teacher effect data, when available, or some other comparable measure of student growth;
- (2) Review of prior evaluations;
- (3) Personal conferences to include strengths and weaknesses and remediation;
- (4) Relative to teachers only, classroom or position observation followed by written assessment; and
- (5) Relative to principals only, additional criteria pursuant to the principal's employment contract. Under present law, the contract must contain performance standards including school performance on value added assessment and other benchmarks for student proficiency, graduation rates, ACT scores where applicable and student attendance. This bill specifies that the principal's annual evaluation must be based on student achievement data, with a significant portion, as determined by the Tennessee evaluation advisory committee, being student growth data as reflected in teacher effect data and TVAAS data.

The policies adopted by the state board must be effective by July 1, 2011, in order to be implemented prior to the 2011-2012 academic year.

EVALUATION OF TEACHERS AND PRINCIPALS

Under present law, data from TCAP tests is used to provide an estimate of the statistical distribution of teacher effects on the educational progress of students within school districts. A specific teacher's effect on the educational progress of students may not be used as a part of formal personnel evaluation until data from three complete academic years are obtained. This bill removes this prohibition on using the data as a part of a formal personnel evaluation.

Under present law, an estimate of specific teacher effects on the educational progress of students is not a public record and is to be made available only to the specific teacher, the teacher's appropriate administrators as designated by the local board of education and school board members. Under this bill, such an estimate may also be made available to the state board approved teacher preparation programs of the individual teacher, but may not personally identify the particular teacher.

TEACHER HEARINGS

Under present law, a tenured teacher who receives a notice of dismissal or suspension charges may demand a hearing before the state board of education within 30 days after receipt of notice. A tenured teacher having received such notice in Davidson County or Memphis may demand such a hearing before an impartial hearing officer selected by the board. Under this bill, all tenured teachers, not just those in Nashville and Memphis, would have the right to demand a hearing on suspension or dismissal charges, before an impartial hearing officer selected by the board. The bill details the manner in which such a hearing would be held.

All tenured teachers and directors of schools would have the right to appeal a decision of the hearing officer to the state board of education on the record and any party would have the right to appeal the decision of the board to chancery court.

OTHER REVISIONS

Present law requires the commissioner to annually formulate a base salary table based on training and experience factors to be applied to all licensed personnel in every LEA, not including substitute personnel. This bill alternatively authorizes an LEA to submit to the commissioner its own proposed salary schedule, subject to collective bargaining where applicable. Implementation of such a salary schedule would be subject to approval by the commissioner and the state board, and in no case may such a schedule result in a reduction of the salary of a teacher employed by the LEA at the time of the adoption of the salary schedule.

Under present law, the class size for any academic class for grades 7-12 may not exceed 35 students and the class size for any educational vocational class may not exceed 25 students. This bill requires the department of education, with the assistance of the LEAs, to identify career and technical education classes in which there is no physical safety risk to students for the purpose of making recommendations to the state board that

such classes be exempted from the maximum class size for career and technical education classes and instead be set at the maximum class size for academic classes in grades 7-12. If the maximum class size of a career and technical class is set at the maximum class size for academic classes in grades 7-12, then the funding level for such class under the BEP must be the same as the funding level for academic classes in the grade level at which the class is taught.

ON JANUARY 15, 2010, THE SENATE ADOPTED AMENDMENTS #1, 2, 4, 5, 6, 7, 8, 9, 15 AND 17 AND PASSED SENATE BILL 7005, AS AMENDED.

AMENDMENT #1 makes the following revisions regarding the teacher evaluation advisory committee, described in the above summary:

- (1) Adds that appointments to the committee must include persons representing the interests of "business" in addition to the interests of teachers, school boards, principals, directors, students, parents and others deemed appropriate;
- (2) Clarifies that the governor, in making appointments to the committee, must strive to ensure that at least one person serving on the committee is at least 60 years of age and that at least one person serving on the committee is a member of a racial minority;
- (3) Prohibits a lobbyist registered under the Tennessee Ethic Commission Act of 2006 from serving as a member of the committee; and
- (4) Adds that the committee would sunset on July 1, 2011, unless continued or extended by the general assembly.

NOTE: In the fifth sentence of subsection (d), the phrase "In making appointments to the board" should instead read "In making appointments to the committee."

AMENDMENT #2 requires that at least five members of the teacher evaluation advisory committee, described in the summary for Senate Amendment #1, be school teachers for grades K-12.

AMENDMENT #4 revises the criteria that must be used in teacher and principal evaluations, as developed by the teacher evaluation advisory committee and adopted by the state board of education, to require that 50 percent of the evaluation criteria developed be comprised of student achievement data, as follows:

- (1) 35 percent of the student achievement data portion of the evaluation must be based on student growth data as represented by the TVAAS, or some other comparable measure of student growth, if TVAAS data is not available;
- (2) The remaining 15 percent must be based on other measures of student achievement selected from a list of measures developed by the committee and adopted by the board. For each evaluation, the person being evaluated must mutually agree with the person conducting the evaluation on which such measures are employed. If the teacher or principal being evaluated does not agree with the measures used, then the person

responsible for conducting the evaluation will choose the evaluation measures.

(3) Notwithstanding (1) and (2), if a particular teacher's or principal's student growth data reflects attainment of a specific achievement level, to be recommended by the committee and adopted by the board, then the student growth data may, at the choice of the person being evaluated, comprise 50 percent of the person's evaluation.

AMENDMENT #5 specifies that the evaluation procedure created by this bill does not apply to teachers who are employed under contracts of a duration of 100 days per school year or less who are not employed full time.

AMENDMENT #6 rewrites this bill's provision whereby all BEP funds generated in support of students assigned to schools placed in the achievement school district must be moved to a special BEP reserve account to be held until the school is placed back under the jurisdiction of the LEA. This amendment instead provides the following:

(1) Absent other funding, the achievement school district must use state and local funding identified in SECTION 5 of this bill (regarding the LEA in an achievement school district being accountable for the match required by the funding formula for students served and being required to provide support services). Such state and local funding may be used to implement new initiatives and programs to the extent that any increase in recurring expenditures are funded additionally so as not to create a financial burden on the LEA when the school or LEA is removed from the achievement school district;

(2) To the extent that such state funds are not used to support a school or LEA in the achievement school district, they must be allocated to a state reserve fund to be distributed to an LEA only upon approval of the commissioner; and

(3) To the extent that such local funds are not used to support a school or LEA in the achievement school district, the LEA must allocate such funds to a special BEP reserve account until the school or LEA is placed back under the jurisdiction of the LEA. It is the legislative intent that such funds be used only for non-recurring purposes.

AMENDMENT #7 requires that any additional expenditure incurred as a result of any alternative salary schedule submitted by an LEA and approved by the commissioner of education pursuant to this bill be subject to appropriation by the governing body empowered to appropriate the funds.

AMENDMENT #8 removes the provision, described in the OTHER REVISIONS section of the above bill summary, that specifies that if the maximum class size of a career and technical class is set at the maximum class size for academic classes in grades 7-12, then the funding level for such class under the BEP must be the same as the funding level for academic classes in the grade level at which the class is taught.

AMENDMENT #9 establishes the teacher professional development fund, into which only federal moneys will be deposited, for purposes of improved teaching, pedagogical skills, and classroom instruction.

AMENDMENT #15 adds to the requirement added by Senate Amendment #2 that at least five members of the teacher evaluation advisory committee must be school teachers for grades K-12 by specifying that such teachers must be public school teachers for K-12 who are licensed to teach in Tennessee.

AMENDMENT #17 clarifies that 35 percent of the evaluation criteria used in teacher and principal and teacher evaluations must be student achievement data based on student growth data as represented by TVAAS, or some other comparable measure of student growth, if no such TVAAS data is available.

ON JANUARY 15, 2010, THE HOUSE SUBSTITUTED SENATE BILL 7005 FOR HOUSE BILL 7010, ADOPTED AMENDMENT #15 AND #19, AND PASSED SENATE BILL 7005, AS AMENDED.

AMENDMENT #15 makes the following revisions to the bill:

- (1) Removes the provisions of Senate Amendment #5 regarding teacher evaluation procedures, as described above;
- (2) Removes the clarification made by Senate Amendment # 17, described in the above summary;
- (3) Requires any individuals, governmental entities, or nonprofit entities contracting with the commissioner to manage the operation of any school under this bill to provide timely information to the LEA and director of schools regarding its operation of such schools, including but not limited to matters relating to employment of personnel at the school. The LEA may continue to support the educational improvement of the school under the direction and guidance of the commissioner and in accordance with any contracts entered into in accordance with this bill. In addition, any individuals, governmental entities, or nonprofit entities contracting with the commissioner may voluntarily work with the LEA in providing to the schools professional development or technical assistance, instructional and administrative support, and facilitating any other support that may be beneficial to academic progress of the school;
- (4) Specifies that any contracts to manage schools or LEAs that have been placed in the achievement school district must require expenditure reports for funds received and expended pursuant to such contracts, and those reports must be provided to the department of education and comptroller for review;
- (5) Specifies that no state funds, other than those held within the special reserve account pursuant to this bill, will be expended on schools or LEAs placed in the achievement school district unless specifically appropriated in the general appropriations act;
- (6) Rewrites the provisions of the bill regarding the membership of the teacher evaluation advisory committee, including the removal of such provisions of Senate Amendments #1, 2, 7, and 15. Under this amendment, the committee would consist of:
 - (A) The commissioner of education, who would serve as chair of the committee;
 - (B) The executive director of the state board of education;
 - (C) A member of the education committee of the house and a member of the education committee of the senate. One of the appointees must be of the majority party, and the other must be of the minority party. Such members would be appointed by the respective speaker;

- (D) A K-12 public school teacher appointed by the speaker of the house and a K-12 public school teacher appointed by the senate; and
- (E) Nine members to be appointed by the governor, which must consist of three public school teachers, two public school principals, one director of a school district, and three members representing other stake-holders interests;
- (7) In addition to (6), this amendment specifies that at least one member of the committee must be a parent of a currently enrolled public school student. This amendment requires that all appointments to the committee be made within 30 days of the bill's effective date;
- (8) Removes this bill's provision regarding increasing the maximum class size of certain career and technical education classes; and
- (9) Requires the department of education to annually report to the general assembly the amount of Race to the Top funds awarded to each LEA and the achievement school district.

AMENDMENT #19 reinstates Senate Amendment #17.

ON JANUARY 15, 2010, THE HOUSE LIFTED THE TABLING MOTION, RECONSIDERED ITS ACTION IN PASSING SENATE BILL 7005, ADOPTED AMENDMENT #23, AND PASSED SENATE BILL 7005, AS AMENDED BY HOUSE AMENDMENT #15, 19, and 23.

AMENDMENT #23 makes the following revisions to the bill:

- (1) Specifies that the evaluation procedure would not apply to teachers who are employed under contracts of a duration of 120 days per school year or less who are not employed full time;
- (2) Under the bill as amended, as described above in (6)(C) of the summary for House Amendment #15, a member of the education committee of each house must be appointed to the teacher evaluation advisory committee by the respective speaker, such that one of the appointees is of the majority party and the other is of the minority party. This amendment revises this provision to instead require that the chairpersons of the education committees of each house be members of the committee; and
- (3) Clarifies that after the teacher evaluation advisory committee develops guidelines and criteria, then the state board of education will adopt "guidelines and criteria" instead of " policies necessary to implement the recommended guidelines and criteria." This amendment also clarifies that the performance standards contained in a principal's contract will include the provisions regarding evaluations being based on student achievement data as defined by "guidelines and criteria adopted by the state board of education" instead of by "guidelines and criteria developed by the teacher evaluation advisory committee and adopted by the board."