SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1455

STATE OF NEW JERSEY

DATED: JUNE 18, 2012

The Senate Budget and Appropriations Committee reports favorably Senate Committee Substitute to Senate Bill No. 1455.

The committee substitute requires each school district to submit annually to the Commissioner of Education, for review and approval, an evaluation rubric that the district will use to assess the effectiveness of its teaching staff members. The district may use the model rubric which the commissioner is required to establish or it may use one that meets the minimum standards provided in the substitute. A board of education must: adopt a rubric approved by the commissioner by December 31, 2012; implement a pilot program to test the rubric beginning no later than January 31, 2013; and beginning with the 2013-2014 school year, ensure implementation of the rubric for all educators in the district.

Under current law, all teaching staff members whose positions require that they hold a certificate issued by the State Board of Examiners receive tenure after completing three years of employment in a school district. This substitute provides that all teaching staff members employed on or after the substitute's effective date will become tenured after completing four years of employment in the school district. According to the provisions of the substitute, teachers, principals, assistant principals, and vice-principals will have the following additional requirements for acquiring tenure:

- a teacher will be required to complete a district mentorship program and receive a rating of effective or highly effective in two annual summative evaluations within the first three years after the initial year in which the teacher completes the mentorship program; and
- a principal, assistant principal, or vice-principal will be required to be rated as effective or highly effective in two annual summative evaluations within the first three years of employment following the initial year of employment.

The substitute provides that a teacher, principal, assistant principal, or vice-principal who is transferred or promoted to another position in the same district on or after the effective date of the substitute must meet the current statutory requirement of two years of employment in

the new position in order to acquire tenure in that position, but additionally the employee must be evaluated as effective or highly effective in two annual summative evaluations within the first three years of employment in the new position. In the case of any tenured teacher, principal, assistant principal, or vice-principal who has been rated effective or highly effective on his most recent annual summative evaluation, and who accepts employment in the same position in an underperforming school in another district, that person will be eligible for tenure after being evaluated as effective or highly effective in at least one annual summative evaluation within the first two years of employment in the underperforming school.

In order to ensure the effectiveness of its teachers, the substitute directs each public school to convene a school improvement panel. The panel will include the principal, or his designee who is serving in a supervisory capacity, an assistant or vice-principal, and a teacher. The teacher will be selected in consultation with the majority representative and must have a demonstrated record of success in the classroom. The panel will: oversee the mentoring of teachers; conduct evaluations of teachers, provided that the teacher on the panel will not be included in the evaluation process unless the majority representative has agreed to the contrary; and identify professional development opportunities for all instructional staff members.

Under the substitute, each board of education must implement a mentoring program in which effective experienced teachers are paired with first-year teachers to provide observation and feedback, opportunities for modeling, and confidential support and guidance. The substitute also provides that the board of education, the principal or the superintendent must provide teaching staff members with ongoing professional development and provide additional professional development for any teaching staff member who fails or is struggling to meet the performance standards established by the board for his job. When a teaching staff member is rated ineffective or partially effective, a corrective action plan must also be developed to address deficiencies outlined in the employee's evaluation.

Under the provisions of the substitute the superintendent of schools is required to promptly file a charge of inefficiency whenever a tenured teacher, principal, assistant principal, and vice-principal is rated ineffective or partially effective in an annual summative evaluation and in the following year the employee is rated ineffective. A charge of inefficiency must also be filed when the employee is rated partially effective in two years or is rated ineffective in one year's annual summative evaluation and in the next year is rated partially effective, however in this case, upon a written finding of exceptional circumstances, the superintendent may defer filing the tenure charge until after the next annual summative evaluation.

The substitute requires binding arbitration for contested cases involving the dismissal or reduction in compensation of tenured

employees in the school district. These contested cases will no longer be referred to Administrative Law Judges, and the final determination on the case will no longer be made by the Commissioner of Education, which is the process under current law. The substitute provides that the Commissioner of Education will maintain a panel of 25 arbitrators, with eight designated by the New Jersey Education Association, three designated by the American Federation of Teachers, nine designated by the New Jersey School Boards Association, and five designated by the New Jersey Principals and Supervisors Association. The substitute includes a cap on the costs of the arbitration, with the arbitrator being limited to no more than $1250 per day and no more than $7500 per case. The costs and expenses of the arbitrator will be borne by the State. Arbitrators will be assigned by the commissioner randomly to hear cases.

The substitute provides that for a charge of inefficiency filed against a teacher, principal, assistant principal, or vice-principal based on the rating given in an annual summative evaluation, as described above, the board of education must forward the charge to the commissioner within 30 business days of the filing, unless the board determines that the evaluation process has not been followed. If the charge is forwarded to the commissioner, the individual against whom the charges are filed will have 10 business days to submit a written response to the charges to the commissioner, and the commissioner, unless he determines that the evaluation process has not been followed, is required to forward the case to the arbitrator within five business day following the period provided for the response to the charges. The hearing before the arbitrator must be held within 30 business days of his assignment to the case, and he must render a decision within 30 business days of the start of the hearing.

In rendering a decision on one of these cases, the arbitrator is only permitted to consider whether or not:

- the employee's evaluation failed to adhere substantially to the evaluation process;
- there is a mistake of fact in the evaluation;
- the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination, or other conduct prohibited by State or federal law; or
- the district's actions were arbitrary and capricious.

If the employee is able to demonstrate that any of these facts are applicable, the arbitrator must then determine if that fact materially affected the outcome of the evaluation and if it did not, the arbitrator is required to decide in favor of the board and the employee must be dismissed.

The substitute repeals section 1 of P.L.1998, c.42 (C.52:14B-10.1), which outlines the procedure tenure cases currently follow when referred to the Office of Administrative Law.

The provisions of this substitute will take effect in the 2013-2014 school year, except that the provision of the substitute that requires the State Board of Education to promulgate regulations to set standards for the approval of evaluation rubrics and sets forth the minimum requirements of the new evaluation rubric, will take effect immediately.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the Senate Committee Substitute for Senate Bill No. 1455 of 2012 will lead to an indeterminate change in costs incurred by local school districts, and an indeterminate increase in costs incurred by the State.

School District Costs and Savings

• The number of tenure hearings may increase, which would contribute to increased costs. S-1455 (SCS) requires that a superintendent file tenure charges with the board of education against a teacher, principal, assistant principal, or vice-principal who receives a low rating in consecutive annual summative evaluations. Relative to current law, where the filing of charges is left to the discretion of the superintendent, there may be an increase in the number of tenure hearings and the associated costs.

• S-1455 (SCS) establishes a timeframe in which an arbitrator must complete a tenure hearing and render a decision. A school district that retains outside legal representation in its tenure cases may experience a reduction in legal costs associated with tenure hearings.

• Under current law, a school district may suspend an employee, with or without pay, once tenure charges are certified by the board of education to the Commissioner of Education. However, an employee who is suspended without pay will begin to receive full pay if the arbitrator has not made a determination after 120 calendar days. The substitute changes this to 105 business days, thereby increasing the amount of time that may elapse before the employee's pay is resumed, leading to a possible cost savings to school districts.

State Costs

Section 22 of S-1455 (SCS) specifies that the Department of Education will provide the funding necessary to effectuate the provisions of the substitute. Based on this provision, there are four potential costs that the State may incur:

• The State would incur additional costs for compensating arbitrators who preside over tenure proceedings. The substitute sets their

compensation at $1,250 per day, not to exceed $7,500 per case. The OLS does not anticipate any savings associated with shifting tenure cases from administrative law judges to arbitrators. To the extent that administrative law judges hear cases unrelated to tenure, the proposed shift would likely not lead to a reduction in administrative law judges.

• S-1455 (SCS) requires that all school districts adopt an evaluation rubric for teaching staff members that is approved by the commissioner. If one uses the information included in the department's Notice of Grant Opportunity (NGO) for the teacher effectiveness and principal effectiveness pilot programs, and extrapolates the cost Statewide, the potential cost of adopting such rubrics is $52.4 million for classroom teachers and $11.9 million for administrators; the NGO did not include comparable information for other teaching staff members. As noted in the NGO, the actual cost is contingent on decisions made by school districts, and may be higher or lower.

• S-1455 (SCS) requires that each school establish a school improvement panel, and that a teacher serves on that panel. The inclusion of a teacher on the panel would likely lead to an expenditure increase, since this would likely require additional compensation.

• The substitute requires that each board of education establishes a mentoring program for first-year teachers. Under current State Board of Education regulations, the cost of the current required mentorship is borne by the novice teacher, if State funds are not available. The substitute would presumably shift the cost of the mentorship program to the State.