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HOUSE BILL 2125

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Brough, Orr, Betrozoff, May and Nealey.

Read first time February 27, 1991. Referred to Committee on Education.

1            AN ACT Relating to contracts for certificated school personnel; and  
2 amending RCW 28A.405.210, 28A.400.300, 28A.405.240, 28A.400.010,  
3 28A.405.220, 28A.405.230, 28A.405.100, 28A.405.310, 28A.405.320,  
4 28A.405.350, 28A.405.380, and 28A.645.010.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 28A.405.210 and 1990 c 33 s 390 are each amended to  
7 read as follows:

8            No teacher, principal, supervisor, superintendent, or other  
9 certificated employee, holding a position as such with a school  
10 district, hereinafter referred to as "employee", shall be employed  
11 except by written order of a majority of the directors of the district  
12 at a regular or special meeting thereof, nor unless ((he or she)) the  
13 employee is the holder of an effective teacher's certificate or other  
14 certificate required by law or the state board of education for the  
15 position for which the employee is employed.

1       The board shall make with each employee employed by it a written  
2 contract, which shall be in conformity with the laws of this state, and  
3 except as otherwise provided by law, limited to a term (~~of not more~~  
4 ~~than one year~~) prescribed in RCW 28A.400.300. However, for those  
5 employees with three-year maximum contract terms, the board may  
6 annually extend the term of each employee's contract for the maximum  
7 term permitted by law. Every such contract shall be made in duplicate,  
8 one copy to be retained by the school district superintendent or  
9 secretary and one copy to be delivered to the employee. No contract  
10 shall be offered by any board for the employment of any employee who  
11 has previously signed an employment contract for that same term in  
12 another school district of the state of Washington unless such employee  
13 shall have been released from his or her obligations under such  
14 previous contract by the board of directors of the school district to  
15 which he or she was obligated. Any contract signed in violation of  
16 this provision shall be void.

17       In the event it is determined that (~~there is probable cause or~~  
18 ~~causes that~~) the employment contract of an employee should not be  
19 renewed by the district for the next ensuing term such employee shall  
20 be notified in writing (~~on or before~~) by May 15th preceding the  
21 commencement of such term of that determination, which notification  
22 shall specify the (~~cause or causes~~) reason or reasons for nonrenewal  
23 of contract. Such determination of (~~probable cause~~) nonrenewal of  
24 contract for certificated employees, other than the superintendent,  
25 shall be made by the superintendent. Such notice shall be served upon  
26 the employee personally, or by certified or registered mail, or by  
27 leaving a copy of the notice at the house of his or her usual abode  
28 with some person of suitable age and discretion then resident therein.  
29 Every such employee so notified, at his or her request made in writing  
30 and filed with the (~~president, chair or secretary of the board of~~

1 directors)) superintendent of the district within ten days after  
2 receiving such notice, shall be granted opportunity for ((hearing  
3 pursuant to RCW 28A.405.310 to determine whether there is sufficient  
4 cause or causes for nonrenewal of contract:— PROVIDED, That any  
5 employee receiving notice of nonrenewal of contract due to an  
6 enrollment decline or loss of revenue may, in his or her request for a  
7 hearing, stipulate that initiation of the arrangements for a hearing  
8 officer as provided for by RCW 28A.405.310(4) shall occur within ten  
9 days following July 15 rather than the day that the employee submits  
10 the request for a hearing. If any such notification or opportunity for  
11 hearing is not timely given, the employee entitled thereto shall be  
12 conclusively presumed to have been reemployed by the district for the  
13 next ensuing term upon contractual terms identical with those which  
14 would have prevailed if his or her employment had actually been renewed  
15 by the board of directors for such ensuing term)) an informal meeting  
16 with the superintendent for the purpose of requesting that the  
17 superintendent reconsider his or her decision. Such meeting shall be  
18 held no later than ten days following receipt of such request, and the  
19 employee shall be given written notice of the date, time, and place of  
20 the meeting at least three days before the meeting. At such meeting  
21 the employee shall be given the opportunity to refute any facts on  
22 which the superintendent's determination was based and to make any  
23 argument in support of his or her request for reconsideration.

24 Within ten days following the meeting with the employee, the  
25 superintendent shall either reinstate the employee or submit to the  
26 school district board of directors for consideration at its next  
27 regular meeting a written report recommending that the employment  
28 contract of the employee be nonrenewed and stating the reason or  
29 reasons therefor. A copy of such report shall be delivered to the  
30 employee at least three days before the scheduled meeting of the board

1 of directors. In taking action on the recommendation of the  
2 superintendent, the board of directors shall consider any written  
3 communication which the employee may file with the secretary of the  
4 board at any time before that meeting. The board of directors shall  
5 notify the employee of its final decision within ten days following the  
6 meeting at which the superintendent's recommendation was considered.  
7 The decision of the board of directors to nonrenew the contract of an  
8 employee shall be final and not subject to appeal. This section  
9 provides the exclusive means for nonrenewing the employment contract of  
10 an employee and no other provision of law applies to the nonrenewal,  
11 including, without limitation, RCW 28A.645.010.

12 This section shall not be applicable to "provisional employees" as  
13 so designated in RCW 28A.405.220; transfer to a subordinate  
14 certificated position as that procedure is set forth in RCW 28A.405.230  
15 shall not be construed as a nonrenewal of contract for the purposes of  
16 this section.

17 **Sec. 2.** RCW 28A.400.300 and 1990 c 33 s 382 are each amended to  
18 read as follows:

19 Every board of directors, unless otherwise specially provided by  
20 law, shall:

21 (1)(a) Employ for ((not more than one)) three years, and for  
22 sufficient cause discharge, all certificated ((and noncertificated))  
23 employees, other than provisional certificated employees as defined in  
24 RCW 28A.405.220 and administrative certificated employees as defined in  
25 RCW 28A.405.230;

26 (b) Employ for not more than one year, and for sufficient cause  
27 discharge, all provisional certificated employees as defined in RCW  
28 28A.405.220;

1       (c) Employ for not more than three years, and for sufficient cause  
2 discharge, all certificated administrative employees as defined in RCW  
3 28A.405.230; and

4       (d) Employ for not more than one year, and for sufficient cause  
5 discharge, all noncertificated employees;

6       (2) Adopt written policies granting leaves to persons under  
7 contracts of employment with the school district(s) in positions  
8 requiring either certification or noncertification qualifications,  
9 including but not limited to leaves for attendance at official or  
10 private institutes and conferences and sabbatical leaves for employees  
11 in positions requiring certification qualification, and leaves for  
12 illness, injury, bereavement and, emergencies for both certificated and  
13 noncertificated employees, and with such compensation as the board of  
14 directors prescribe: PROVIDED, That the board of directors shall adopt  
15 written policies granting to such persons annual leave with  
16 compensation for illness, injury and emergencies as follows:

17       (a) For such persons under contract with the school district for a  
18 full year, at least ten days;

19       (b) For such persons under contract with the school district as  
20 part time employees, at least that portion of ten days as the total  
21 number of days contracted for bears to one hundred eighty days;

22       (c) For certificated and noncertificated employees, annual leave  
23 with compensation for illness, injury, and emergencies shall be granted  
24 and accrue at a rate not to exceed twelve days per year; provisions of  
25 any contract in force on June 12, 1980, which conflict with  
26 requirements of this subsection shall continue in effect until contract  
27 expiration; after expiration, any new contract executed between the  
28 parties shall be consistent with this subsection;

1 (d) Compensation for leave for illness or injury actually taken  
2 shall be the same as the compensation such person would have received  
3 had such person not taken the leave provided in this proviso;

4 (e) Leave provided in this proviso not taken shall accumulate from  
5 year to year up to a maximum of one hundred eighty days for the  
6 purposes of RCW 28A.400.210 and 28A.400.220, and for leave purposes up  
7 to a maximum of the number of contract days agreed to in a given  
8 contract, but not greater than one year. Such accumulated time may be  
9 taken at any time during the school year or up to twelve days per year  
10 may be used for the purpose of payments for unused sick leave.

11 (f) Sick leave heretofore accumulated under section 1, chapter 195,  
12 Laws of 1959 (former RCW 28.58.430) and sick leave accumulated under  
13 administrative practice of school districts prior to the effective date  
14 of section 1, chapter 195, Laws of 1959 (former RCW 28.58.430) is  
15 hereby declared valid, and shall be added to leave for illness or  
16 injury accumulated under this proviso;

17 (g) Any leave for injury or illness accumulated up to a maximum of  
18 forty-five days shall be creditable as service rendered for the purpose  
19 of determining the time at which an employee is eligible to retire, if  
20 such leave is taken it may not be compensated under the provisions of  
21 RCW 28A.400.210 and 28A.310.490;

22 (h) Accumulated leave under this proviso shall be transferred to  
23 and from one district to another, the office of superintendent of  
24 public instruction and offices of educational service district  
25 superintendents and boards, to and from such districts and such  
26 offices;

27 (i) Leave accumulated by a person in a district prior to leaving  
28 said district may, under rules and regulations of the board, be granted  
29 to such person when the person returns to the employment of the  
30 district.

1       When any certificated or classified employee leaves one school  
2 district within the state and commences employment with another school  
3 district within the state, the employee shall retain the same  
4 seniority, leave benefits and other benefits that the employee had in  
5 his or her previous position: PROVIDED, That classified employees who  
6 transfer between districts after July 28, 1985, shall not retain any  
7 seniority rights other than longevity when leaving one school district  
8 and beginning employment with another. If the school district to which  
9 the person transfers has a different system for computing seniority,  
10 leave benefits, and other benefits, then the employee shall be granted  
11 the same seniority, leave benefits and other benefits as a person in  
12 that district who has similar occupational status and total years of  
13 service.

14       **Sec. 3.** RCW 28A.405.240 and 1990 c 33 s 393 are each amended to  
15 read as follows:

16       No certificated employee shall be required to perform duties not  
17 described in the contract unless a new or supplemental contract is made  
18 for a term not to exceed one year, except that in an unexpected  
19 emergency the board of directors or school district administration may  
20 require the employee to perform other reasonable duties on a temporary  
21 basis.

22       No supplemental contract shall be subject to the continuing  
23 contract provisions of this title.

24       **Sec. 4.** RCW 28A.400.010 and 1990 c 33 s 376 are each amended to  
25 read as follows:

26       In all districts the board of directors shall elect a  
27 superintendent who shall have such qualification as the local school  
28 board alone shall determine. The superintendent shall have supervision

1 over the several departments of the schools thereof and carry out such  
2 other powers and duties as prescribed by law. (~~Notwithstanding the~~  
3 ~~provisions of RCW 28A.400.300(1),~~) The board may contract with such  
4 superintendent for a term not to exceed three years when deemed in the  
5 best interest of the district. The right to renew a contract of  
6 employment with any school superintendent shall rest solely with the  
7 discretion of the school board employing such school superintendent.  
8 Regarding such renewal of contracts of school superintendents the  
9 provisions of RCW 28A.405.210, 28A.405.240, and 28A.645.010 shall be  
10 inapplicable.

11 **Sec. 5.** RCW 28A.405.220 and 1990 c 33 s 391 are each amended to  
12 read as follows:

13 Notwithstanding the provisions of RCW 28A.405.210, every person  
14 employed by a school district in a teaching or other nonsupervisory  
15 certificated position shall be subject to nonrenewal of employment  
16 contract as provided in this section during the first three years of  
17 employment by such district, unless the employee has previously  
18 completed at least three years of certificated employment in another  
19 school district in this state, in which case the employee shall be  
20 subject to nonrenewal of employment contract under this section during  
21 the first year of employment with the new district. Employees as  
22 defined in this section shall hereinafter be referred to as  
23 "provisional employees".

24 In the event the superintendent of the school district determines  
25 that the employment contract of any provisional employee should not be  
26 renewed by the district for the next ensuing term such provisional  
27 employee shall be notified thereof in writing on or before May 15th  
28 preceding the commencement of such school term, which notification  
29 shall state the reason or reasons for such determination. Such notice

1 shall be served upon the provisional employee personally, or by  
2 certified or registered mail, or by leaving a copy of the notice at the  
3 place of his or her usual abode with some person of suitable age and  
4 discretion then resident therein. The determination of the  
5 superintendent shall be subject to the evaluation requirements of RCW  
6 28A.405.100.

7 Every such provisional employee so notified, at his or her request  
8 made in writing and filed with the superintendent of the district  
9 within ten days after receiving such notice, shall be given the  
10 opportunity to meet informally with the superintendent for the purpose  
11 of requesting the superintendent to reconsider his or her decision.  
12 Such meeting shall be held no later than ten days following the receipt  
13 of such request, and the provisional employee shall be given written  
14 notice of the date, time and place of meeting at least three days prior  
15 thereto. At such meeting the provisional employee shall be given the  
16 opportunity to refute any facts upon which the superintendent's  
17 determination was based and to make any argument in support of his or  
18 her request for reconsideration.

19 Within ten days following the meeting with the provisional  
20 employee, the superintendent shall either reinstate the provisional  
21 employee or shall submit to the school district board of directors for  
22 consideration at its next regular meeting a written report recommending  
23 that the employment contract of the provisional employee be nonrenewed  
24 and stating the reason or reasons therefor. A copy of such report  
25 shall be delivered to the provisional employee at least three days  
26 prior to the scheduled meeting of the board of directors. In taking  
27 action upon the recommendation of the superintendent, the board of  
28 directors shall consider any written communication which the  
29 provisional employee may file with the secretary of the board at any  
30 time prior to that meeting.

1 The board of directors shall notify the provisional employee in  
2 writing of its final decision within ten days following the meeting at  
3 which the superintendent's recommendation was considered. The decision  
4 of the board of directors to nonrenew the contract of a provisional  
5 employee shall be final and not subject to appeal.

6 This section applies to any person employed by a school district in  
7 a teaching or other nonsupervisory certificated position after June 25,  
8 1976. This section provides the exclusive means for nonrenewing the  
9 employment contract of a provisional employee and no other provision of  
10 law shall be applicable thereto, including, without limitation, RCW  
11 28A.405.210 and chapter 28A.645 RCW.

12 **Sec. 6.** RCW 28A.405.230 and 1990 c 33 s 392 are each amended to  
13 read as follows:

14 Any certificated employee of a school district employed as an  
15 assistant superintendent, director, principal, assistant principal,  
16 coordinator, or in any other supervisory or administrative position,  
17 hereinafter in this section referred to as "administrator", shall be  
18 subject to transfer, at the expiration of the term of his or her  
19 employment contract, to any subordinate certificated position within  
20 the school district. "Subordinate certificated position" as used in  
21 this section, shall mean any administrative or nonadministrative  
22 certificated position for which the annual compensation is less than  
23 the position currently held by the administrator.

24 Every superintendent determining that the best interests of the  
25 school district would be served by transferring any administrator to a  
26 subordinate certificated position shall notify that administrator in  
27 writing on or before May 15th preceding the commencement of such school  
28 term of that determination, which notification shall state the reason  
29 or reasons for the transfer, and shall identify the subordinate

1 certificated position to which the administrator will be transferred.  
2 Such notice shall be served upon the administrator personally, or by  
3 certified or registered mail, or by leaving a copy of the notice at the  
4 place of his or her usual abode with some person of suitable age and  
5 discretion then resident therein.

6 Every such administrator so notified, at his or her request made in  
7 writing and filed with the president or chair, or secretary of the  
8 board of directors of the district within ten days after receiving such  
9 notice, shall be given the opportunity to meet informally with the  
10 board of directors in an executive session thereof for the purpose of  
11 requesting the board to reconsider the decision of the superintendent.  
12 Such board, upon receipt of such request, shall schedule the meeting  
13 for no later than the next regularly scheduled meeting of the board,  
14 and shall notify the administrator in writing of the date, time and  
15 place of the meeting at least three days prior thereto. At such  
16 meeting the administrator shall be given the opportunity to refute any  
17 facts upon which the determination was based and to make any argument  
18 in support of his or her request for reconsideration. The  
19 administrator and the board may invite their respective legal counsel  
20 to be present and to participate at the meeting. The board shall  
21 notify the administrator in writing of its final decision within ten  
22 days following its meeting with the administrator. No appeal to the  
23 courts shall lie from the final decision of the board of directors to  
24 transfer an administrator to a subordinate certificated position(~~+~~  
25 ~~PROVIDED, That in the case of principals such transfer shall be made at~~  
26 ~~the expiration of the contract year and only during the first three~~  
27 ~~consecutive school years of employment as a principal by a school~~  
28 ~~district; except that if any such principal has been previously~~  
29 ~~employed as a principal by another school district in the state of~~  
30 ~~Washington for three or more consecutive school years the provisions of~~

1 ~~this section shall apply only to the first full school year of such~~  
2 ~~employment)).~~

3 This section applies to any person employed as an administrator by  
4 a school district on June 25, 1976 and to all persons so employed at  
5 any time thereafter. This section provides the exclusive means for  
6 transferring an administrator to a subordinate certificated position at  
7 the expiration of the term of his or her employment contract.

8 **Sec. 7.** RCW 28A.405.100 and 1990 c 33 s 386 are each amended to  
9 read as follows:

10 (1) The superintendent of public instruction shall establish and  
11 may amend from time to time minimum criteria for the evaluation of the  
12 professional performance capabilities and development of certificated  
13 classroom teachers and certificated support personnel. For classroom  
14 teachers the criteria shall be developed in the following categories:  
15 Instructional skill; classroom management, professional preparation and  
16 scholarship; effort toward improvement when needed; the handling of  
17 student discipline and attendant problems; and interest in teaching  
18 pupils and knowledge of subject matter.

19 Every board of directors shall, in accordance with procedure  
20 provided in RCW 41.59.010 through 41.59.170, 41.59.910 and 41.59.920,  
21 establish evaluative criteria and procedures for all certificated  
22 classroom teachers and certificated support personnel. The evaluative  
23 criteria must contain as a minimum the criteria established by the  
24 superintendent of public instruction pursuant to this section and must  
25 be prepared within six months following adoption of the superintendent  
26 of public instruction's minimum criteria. The district must certify to  
27 the superintendent of public instruction that evaluative criteria have  
28 been so prepared by the district.

1 Except as provided in subsection (5) of this section, it shall be  
2 the responsibility of a principal or his or her designee to evaluate  
3 all certificated personnel in his or her school. During each school  
4 year all classroom teachers and certificated support personnel,  
5 hereinafter referred to as "employees" in this section, shall be  
6 observed for the purposes of evaluation at least twice in the  
7 performance of their assigned duties. Total observation time for each  
8 employee for each school year shall be not less than sixty minutes.  
9 Following each observation, or series of observations, the principal or  
10 other evaluator shall promptly document the results of the evaluation  
11 in writing, and shall provide the employee with a copy thereof within  
12 three days after such report is prepared. New employees shall be  
13 observed at least once for a total observation time of thirty minutes  
14 during the first ninety calendar days of their employment period.

15 Every employee whose work is judged unsatisfactory based on  
16 district evaluation criteria shall be notified in writing of stated  
17 specific areas of deficiencies along with a suggested specific and  
18 reasonable program for improvement (~~((on or before February 1st))~~) by  
19 January 20th of each year. A probationary period of not less than  
20 sixty days shall be established beginning (~~((on or before February 1st))~~)  
21 by January 20th and ending no later than May 1st. The purpose of the  
22 probationary period is to give the employee opportunity to demonstrate  
23 improvements in his or her areas of deficiency. The establishment of  
24 the probationary period and the giving of the notice to the employee of  
25 deficiency shall be by the school district superintendent and need not  
26 be submitted to the board of directors for approval. During the  
27 probationary period the evaluator shall meet with the employee at least  
28 twice monthly to supervise and make a written evaluation of the  
29 progress, if any, made by the employee. The evaluator may authorize  
30 one additional certificated employee to evaluate the probationer and to

1 aid the employee in improving his or her areas of deficiency; such  
2 additional certificated employee shall be immune from any civil  
3 liability that might otherwise be incurred or imposed with regard to  
4 the good faith performance of such evaluation. The probationer may be  
5 removed from probation if he or she has demonstrated improvement to the  
6 satisfaction of the principal or the principal's designee in those  
7 areas specifically detailed in his or her initial notice of deficiency  
8 and subsequently detailed in his or her improvement program. Lack of  
9 necessary improvement shall be specifically documented in writing with  
10 notification to the probationer and shall constitute grounds for a  
11 finding of probable cause under RCW 28A.405.300 or reason for  
12 nonrenewal under RCW 28A.405.210.

13 The establishment of a probationary period shall not be deemed to  
14 adversely affect the contract status of an employee within the meaning  
15 of RCW 28A.405.300.

16 (2) Every board of directors shall establish evaluative criteria  
17 and procedures for all superintendents, principals, and other  
18 administrators. It shall be the responsibility of the district  
19 superintendent or his or her designee to evaluate all administrators.  
20 Such evaluation shall be based on the administrative position job  
21 description. Such criteria, when applicable, shall include at least  
22 the following categories: Knowledge of, experience in, and training in  
23 recognizing good professional performance, capabilities and  
24 development; school administration and management; school finance;  
25 professional preparation and scholarship; effort toward improvement  
26 when needed; interest in pupils, employees, patrons and subjects taught  
27 in school; leadership; and ability and performance of evaluation of  
28 school personnel.

29 (3) Each certificated employee shall have the opportunity for  
30 confidential conferences with his or her immediate supervisor on no

1 less than two occasions in each school year. Such confidential  
2 conference shall have as its sole purpose the aiding of the  
3 administrator in his or her professional performance.

4 (4) The failure of any evaluator to evaluate, or supervise, or  
5 cause the evaluation or supervision of certificated employees or  
6 administrators in accordance with this section, as now or hereafter  
7 amended, when it is his or her specific assigned or delegated  
8 responsibility to do so, shall be sufficient ~~((cause))~~ reason for the  
9 nonrenewal of any such evaluator's contract under RCW 28A.405.210, or  
10 cause for the discharge of such evaluator under RCW 28A.405.300.

11 (5) After an employee has four years of satisfactory evaluations  
12 under subsection (1) of this section, a school district may use a short  
13 form of evaluation. The short form of evaluation shall include either  
14 a thirty minute observation during the school year with a written  
15 summary or a final annual written evaluation based on the criteria in  
16 subsection (1) of this section and based on at least two observation  
17 periods during the school year totaling at least sixty minutes without  
18 a written summary of such observations being prepared. However, the  
19 evaluation process set forth in subsection (1) of this section shall be  
20 followed at least once every three years and an employee or evaluator  
21 may request that the evaluation process set forth in subsection (1) of  
22 this section be conducted in any given school year. The short form  
23 evaluation process may not be used as a basis for determining that an  
24 employee's work is unsatisfactory under subsection (1) of this section  
25 ~~((nor as probable cause for the nonrenewal of an employee's contract  
26 under RCW 28A.405.210))~~.

27 **Sec. 8.** RCW 28A.405.310 and 1990 c 33 s 396 are each amended to  
28 read as follows:

1 (1) Any employee receiving a notice of probable cause for discharge  
2 or adverse effect in contract status pursuant to RCW 28A.405.300, (~~or~~  
3 ~~any employee, with the exception of provisional employees as defined in~~  
4 ~~RCW 28A.405.220, receiving a notice of probable cause for nonrenewal of~~  
5 ~~contract pursuant to RCW 28A.405.210,~~) shall be granted the  
6 opportunity for a hearing pursuant to this section.

7 (2) In any request for a hearing pursuant to RCW 28A.405.300 (~~or~~  
8 ~~28A.405.210~~), the employee may request either an open or closed  
9 hearing. The hearing shall be open or closed as requested by the  
10 employee, but if the employee fails to make such a request, the hearing  
11 officer may determine whether the hearing shall be open or closed.

12 (3) The employee may engage counsel who shall be entitled to  
13 represent the employee at the prehearing conference held pursuant to  
14 subsection (5) of this section and at all subsequent proceedings  
15 pursuant to this section. At the hearing provided for by this section,  
16 the employee may produce such witnesses as he or she may desire.

17 (4) In the event that an employee requests a hearing pursuant to  
18 RCW 28A.405.300 (~~or 28A.405.210~~), a hearing officer shall be  
19 appointed in the following manner: Within fifteen days following the  
20 receipt of any such request the board of directors of the district or  
21 its designee and the employee or employee's designee shall each appoint  
22 one nominee. The two nominees shall jointly appoint a hearing officer  
23 who shall be a member in good standing of the Washington state bar  
24 association or a person adhering to the arbitration standards  
25 established by the public employment relations commission and listed on  
26 its current roster of arbitrators. Should said nominees fail to agree  
27 as to who should be appointed as the hearing officer, either the board  
28 of directors or the employee, upon appropriate notice to the other  
29 party, may apply to the presiding judge of the superior court for the  
30 county in which the district is located for the appointment of such

1 hearing officer, whereupon such presiding judge shall have the duty to  
2 appoint a hearing officer who shall, in the judgment of such presiding  
3 judge, be qualified to fairly and impartially discharge his or her  
4 duties. Nothing herein shall preclude the board of directors and the  
5 employee from stipulating as to the identity of the hearing officer in  
6 which event the foregoing procedures for the selection of the hearing  
7 officer shall be inapplicable. The district shall pay all fees and  
8 expenses of any hearing officer selected pursuant to this subsection.

9 (5) Within five days following the selection of a hearing officer  
10 pursuant to subsection (4) of this section, the hearing officer shall  
11 schedule a prehearing conference to be held within such five day  
12 period, unless the board of directors and employee agree on another  
13 date convenient with the hearing officer. The employee shall be given  
14 written notice of the date, time, and place of such prehearing  
15 conference at least three days prior to the date established for such  
16 conference.

17 (6) The hearing officer shall preside at any prehearing conference  
18 scheduled pursuant to subsection (5) of this section and in connection  
19 therewith shall:

20 (a) Issue such subpoenas or subpoenas duces tecum as either party  
21 may request at that time or thereafter; and

22 (b) Authorize the taking of prehearing depositions at the request  
23 of either party at that time or thereafter; and

24 (c) Provide for such additional methods of discovery as may be  
25 authorized by the civil rules applicable in the superior courts of the  
26 state of Washington; and

27 (d) Establish the date for the commencement of the hearing, to be  
28 within ten days following the date of the prehearing conference, unless  
29 the employee requests a continuance, in which event the hearing officer  
30 shall give due consideration to such request.

1 (7) The hearing officer shall preside at any hearing and in  
2 connection therewith shall:

3 (a) Make rulings as to the admissibility of evidence pursuant to  
4 the rules of evidence applicable in the superior court of the state of  
5 Washington.

6 (b) Make other appropriate rulings of law and procedure.

7 (c) Within ten days following the conclusion of the hearing  
8 transmit in writing to the board and to the employee, findings of fact  
9 and conclusions of law and final decision. If the final decision is in  
10 favor of the employee, the employee shall be restored to his or her  
11 employment position and shall be awarded reasonable attorneys' fees.

12 (8) Any final decision by the hearing officer (~~to nonrenew the~~  
13 ~~employment contract of the employee, or~~) to discharge the employee, or  
14 to take other action adverse to the employee's contract status, as the  
15 case may be, shall be based solely upon the cause or causes specified  
16 in the notice of probable cause to the employee and shall be  
17 established by a preponderance of the evidence at the hearing to be  
18 sufficient cause or causes for such action.

19 (9) All subpoenas and prehearing discovery orders shall be  
20 enforceable by and subject to the contempt and other equity powers of  
21 the superior court of the county in which the school district is  
22 located upon petition of any aggrieved party.

23 (10) A complete record shall be made of the hearing and all orders  
24 and rulings of the hearing officer and school board.

25 **Sec. 9.** RCW 28A.405.320 and 1990 c 33 s 397 are each amended to  
26 read as follows:

27 Any teacher, principal, supervisor, superintendent, or other  
28 certificated employee, desiring to appeal from any action or failure to  
29 act upon the part of a school board relating to the discharge or other

1 action adversely affecting his or her contract status, (~~(or failure to~~  
2 ~~renew that employee's contract for the next ensuing term,~~)) within  
3 thirty days after his or her receipt of such decision or order, may  
4 serve upon the chair of the school board and file with the clerk of the  
5 superior court in the county in which the school district is located a  
6 notice of appeal which shall set forth also in a clear and concise  
7 manner the errors complained of.

8 **Sec. 10.** RCW 28A.405.350 and 1990 c 33 s 399 are each amended to  
9 read as follows:

10 If the court enters judgment for the employee, and if the court  
11 finds that the probable cause determination was made in bad faith or  
12 upon insufficient legal grounds, the court in its discretion may award  
13 to the employee a reasonable attorneys' fee for the preparation and  
14 trial of (~~(his or her)~~) the appeal, together with (~~(his or her)~~)  
15 taxable costs in the superior court. If the court enters judgment for  
16 the employee, in addition to ordering the school board to reinstate  
17 (~~(or issue a new contract to)~~) the employee, the court may award  
18 damages for loss of compensation incurred by the employee by reason of  
19 the action of the school district.

20 **Sec. 11.** RCW 28A.405.380 and 1990 c 33 s 401 are each amended to  
21 read as follows:

22 In the event that an employee(~~(, with the exception of a~~  
23 ~~provisional employee as defined in RCW 28A.405.220,~~)) receives a notice  
24 of probable cause pursuant to RCW 28A.405.300 (~~(or 28A.405.210)~~)  
25 stating that by reason of a lack of sufficient funds, an enrollment  
26 decline, or loss of levy election the employment (~~(contract)~~) of such  
27 employee should (~~(not)~~) be (~~(renewed)~~) terminated for the next ensuing  
28 school term or that the same should be adversely affected, the employee

1 may appeal any said probable cause determination directly to the  
2 superior court of the county in which the school district is located.  
3 Such appeal shall be perfected by serving upon the secretary of the  
4 school board and filing with the clerk of the superior court a notice  
5 of appeal within ten days after receiving the probable cause notice.  
6 The notice of appeal shall set forth in a clear and concise manner the  
7 action appealed from. The superior court shall determine whether or  
8 not there was sufficient cause for the action as specified in the  
9 probable cause notice, which cause must be proven by a preponderance of  
10 the evidence, and shall base its determination solely upon the cause or  
11 causes stated in the notice of the employee. The appeal provided in  
12 this section shall be tried as an ordinary civil action: PROVIDED,  
13 That the board of directors' determination of priorities for the  
14 expenditure of funds shall be subject to superior court review pursuant  
15 to the standards set forth in RCW 28A.405.340: PROVIDED FURTHER, That  
16 the provisions of RCW 28A.405.350 and 28A.405.360 shall be applicable  
17 thereto.

18 **Sec. 12.** RCW 28A.645.010 and 1990 c 33 s 544 are each amended to  
19 read as follows:

20 Any person, or persons, either severally or collectively, aggrieved  
21 by any decision or order of any school official or board, within thirty  
22 days after the rendition of such decision or order, or of the failure  
23 to act upon the same when properly presented, may appeal the same to  
24 the superior court of the county in which the school district or part  
25 thereof is situated, by filing with the secretary of the school board  
26 if the appeal is from board action or failure to act, otherwise with  
27 the proper school official, and filing with the clerk of the superior  
28 court, a notice of appeal which shall set forth in a clear and concise  
29 manner the errors complained of.

1 Appeals by teachers, principals, supervisors, superintendents, or  
2 other certificated employees from the actions of school boards with  
3 respect to discharge or other action adversely affecting their contract  
4 status(~~(, or failure to renew their contracts for the next ensuing~~  
5 ~~term)) shall be governed by the appeal provisions of chapter(~~s 28A.400~~  
6 ~~and)) 28A.405 RCW (~~therefor and in all other cases shall be governed~~  
7 ~~by chapter 28A.645 RCW)).~~~~~~