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HOUSE BILL 2385

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Talcott and Pearson

Read first time 01/13/2004. Referred to Committee on Education.

1            AN ACT Relating to teacher strikes; amending RCW 28A.400.200 and  
2 28A.410.010; adding a new chapter to Title 28A RCW; and creating a new  
3 section.

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

5            NEW SECTION.    **Sec. 1.** INTENT.    The legislature recognizes the  
6 state's paramount duty to provide a basic education to all students  
7 residing in Washington. The legislature also recognizes that various  
8 state courts have ruled teachers do not have a right to strike. The  
9 legislature recognizes further that when an unlawful teacher strike  
10 occurs, it creates significant impacts to students and families.  
11 Therefore, it is the intent of the legislature to ensure that during a  
12 teacher strike, a basic education is provided to all students without  
13 significant interruption. The legislature intends that during a  
14 strike, the superintendent of public instruction must ensure that  
15 schools are opened in a timely fashion to mitigate the impact of a  
16 teacher strike on students and families.

17            NEW SECTION.    **Sec. 2.** DEFINITIONS.    Unless the context clearly

1 requires otherwise, the definitions in this section apply throughout  
2 this chapter.

3 (1) "Strike" means a concerted work stoppage by one or more  
4 teachers in a school district for all or part of a regularly scheduled  
5 school day.

6 (2) "Strike curriculum" means a program of instruction developed  
7 and adopted by a school district for use during a teacher strike and  
8 approved by the state board of education for the purpose of providing  
9 students a basic education in accordance with the goals defined in RCW  
10 28A.150.210.

11 (3) "Strike substitute" means a person qualified under RCW  
12 28A.410.010 for duty as a strike substitute and hired for one hundred  
13 eighty days or less by a school district during a strike for the  
14 purpose of providing students a basic education by implementing the  
15 district's strike curriculum.

16 NEW SECTION. **Sec. 3.** STRIKE CURRICULUM REQUIRED. (1) The  
17 superintendent of public instruction in consultation with the state  
18 board of education must provide oversight and support to school  
19 districts in identifying available and economical resources to develop  
20 strike curriculum.

21 (2) Not later than August 31, 2004, each school district board of  
22 directors must adopt or amend as necessary a strike curriculum for each  
23 grade in which the district offers instruction. A district's strike  
24 curriculum must be readily available for implementation by a substitute  
25 teacher if there is a teacher strike. In developing its strike  
26 curriculum, a district may incorporate existing long-term substitute  
27 plans, web-based curricula, thematic and interdisciplinary units, and  
28 other suitable programs of instruction.

29 NEW SECTION. **Sec. 4.** BASIC EDUCATION DURING A STRIKE. (1) The  
30 superintendent of public instruction in consultation with the state  
31 board of education must develop a voluntary prescreening process to  
32 maintain a confidential list of persons qualified and willing to serve  
33 as substitute teachers during a strike. Upon request from a school  
34 district board of directors during a strike, the superintendent of  
35 public instruction must assist the district with completing the tasks

1 necessary to open the school within the time required in subsection (3)  
2 of this section.

3 (2) The state board of education must establish rules for  
4 eligibility for a strike substitute permit under RCW 28A.410.010.  
5 Rules must reflect the legislative intent to ensure that a district can  
6 meet the requirements under this section to hire substitutes and open  
7 school, and harmonize the need for appropriate minimum qualifications  
8 and safeguards based on age, good moral character, and personal  
9 fitness, with the need for flexibility in making hiring decisions based  
10 on shortages of certificated persons during a strike.

11 (3) Beginning on the first regularly scheduled school day following  
12 the fifth regularly scheduled school day during which a teacher strike  
13 is in effect, a school district must provide a program of instruction  
14 by employing strike substitute teachers to implement the district's  
15 strike curriculum. Strike days are counted cumulatively for each  
16 school calendar year. A district may extend the date for opening  
17 school under this section for up to two days to use up to two  
18 nonstudent days for the training and orientation of strike substitutes.  
19 However, a district may not extend the school calendar more than five  
20 days past the previously published one hundred eighty student days.

21 NEW SECTION. **Sec. 5.** STRIKE SUBSTITUTES. (1) A person employed  
22 as a strike substitute will be compensated for the duration of  
23 employment in the capacity of a strike substitute based on the first  
24 year of service under the statewide salary schedule for certificated  
25 employees, unless one of the following conditions is present, in which  
26 case compensation for service as a strike substitute will be the  
27 greater of the two compensation amounts:

28 (a) The strike substitute is entitled to compensation under the  
29 statewide salary schedule for certificated employees at a rate higher  
30 than the first year of service under the schedule; or

31 (b) The strike substitute is employed in an administrative or  
32 support services capacity in a school district and is entitled to  
33 compensation at a rate higher than the first year of service under the  
34 statewide salary schedule.

35 (2) In making its hiring decisions a school district must comply  
36 with RCW 28A.400.303 and the rules adopted by the state board under RCW  
37 28A.410.010.

1 (3) A school district must inform parents of children enrolled in  
2 the district in writing when a strike substitute is employed who does  
3 not meet the requirements to be defined as highly qualified under the  
4 federal no child left behind act of 2001.

5 (4) To meet the intent of this act, public and private employers  
6 are encouraged, but not required, to grant leave to employees to  
7 support employees who wish to serve as substitutes during a teacher  
8 strike.

9 **Sec. 6.** RCW 28A.400.200 and 2002 c 353 s 2 are each amended to  
10 read as follows:

11 (1) Every school district board of directors (~~shall~~) must fix,  
12 alter, allow, and order paid salaries and compensation for all district  
13 employees in conformance with this section.

14 (2)(a) Salaries for certificated instructional staff (~~shall~~) may  
15 not be less than the salary provided in the appropriations act in the  
16 statewide salary allocation schedule for an employee with a  
17 baccalaureate degree and zero years of service; and

18 (b) Salaries for certificated instructional staff with a masters  
19 degree (~~shall~~) may not be less than the salary provided in the  
20 appropriations act in the statewide salary allocation schedule for an  
21 employee with a masters degree and zero years of service;

22 (3)(a) The actual average salary paid to certificated instructional  
23 staff (~~shall~~) may not exceed the district's average certificated  
24 instructional staff salary used for the state basic education  
25 allocations for that school year as determined pursuant to RCW  
26 28A.150.410.

27 (b) Fringe benefit contributions for certificated instructional  
28 staff (~~shall~~) must be included as salary under (a) of this subsection  
29 only to the extent that the district's actual average benefit  
30 contribution exceeds the amount of the insurance benefits allocation  
31 provided per certificated instructional staff unit in the state  
32 operating appropriations act in effect at the time the compensation is  
33 payable. For purposes of this section, fringe benefits (~~shall~~) do  
34 not include payment for unused leave for illness or injury under RCW  
35 28A.400.210; employer contributions for old age survivors insurance,  
36 workers' compensation, unemployment compensation, and retirement  
37 benefits under the Washington state retirement system; or employer

1 contributions for health benefits in excess of the insurance benefits  
2 allocation provided per certificated instructional staff unit in the  
3 state operating appropriations act in effect at the time the  
4 compensation is payable. A school district may not use state funds to  
5 provide employer contributions for such excess health benefits.

6 (c) Salary and benefits for certificated instructional staff in  
7 programs other than basic education (~~shall~~) must be consistent with  
8 the salary and benefits paid to certificated instructional staff in the  
9 basic education program.

10 (4) Salaries and benefits for certificated instructional staff may  
11 exceed the limitations in subsection (3) of this section only by  
12 separate contract for additional time, additional responsibilities, or  
13 incentives. Supplemental contracts (~~shall~~) may not cause the state  
14 to incur any present or future funding obligation. Supplemental  
15 contracts (~~shall be~~) are subject to the collective bargaining  
16 provisions of chapter 41.59 RCW and the provisions of RCW 28A.405.240,  
17 (~~shall~~) may not exceed one year, and if not renewed (~~shall~~) do not  
18 constitute adverse change in accordance with RCW 28A.405.300 through  
19 28A.405.380. No district may enter into a supplemental contract under  
20 this subsection for the provision of services which are a part of the  
21 basic education program required by Article IX, section 3 of the state  
22 Constitution.

23 (5) Employee benefit plans offered by any district (~~shall~~) must  
24 comply with RCW 28A.400.350 and 28A.400.275 and 28A.400.280.

25 (6) No moneys appropriated under this section may be expended for  
26 sick leave benefits, compensation, or health benefits during the time  
27 an employee engages in a strike or work stoppage. During a strike or  
28 work stoppage, a school district board of directors may require a  
29 signed statement from a licensed health care provider certifying that  
30 an employee's absence was due to illness or injury.

31 **Sec. 7.** RCW 28A.410.010 and 2001 c 263 s 1 are each amended to  
32 read as follows:

33 The state board of education (~~shall~~) must establish, publish, and  
34 enforce rules and regulations determining eligibility for and  
35 certification of personnel employed in the common schools of this  
36 state, including certification for emergency or temporary, substitute  
37 or provisional duty, and duty as a strike substitute consistent with

1 section 4 of this act, and under such certificates or permits as the  
2 board (~~((shall))~~) deems proper or as otherwise prescribed by law. The  
3 rules (~~((shall-require))~~) must provide that the initial application for  
4 certification (~~((shall))~~) requires a record check of the applicant  
5 through the Washington state patrol criminal identification system and  
6 through the federal bureau of investigation at the applicant's expense.  
7 The record check (~~((shall))~~) must include a fingerprint check using a  
8 complete Washington state criminal identification fingerprint card.  
9 The superintendent of public instruction may waive the record check for  
10 any applicant who has had a record check within the two years before  
11 application. The rules (~~((shall))~~) must permit a holder of a lapsed  
12 certificate but not a revoked or suspended certificate to be employed  
13 on a conditional basis by a school district with the requirement that  
14 the holder (~~((must))~~) complete any certificate renewal requirements  
15 established by the state board of education within two years of initial  
16 reemployment. The rules must permit a person otherwise qualified for  
17 duty as a strike substitute to be employed on a provisional basis by a  
18 school district during a strike pending the results of the record check  
19 required under this section.

20 In establishing rules pertaining to the qualifications of  
21 instructors of American sign language the state board shall consult  
22 with the national association of the deaf, "sign instructors guidance  
23 network" (s.i.g.n.), and the Washington state association of the deaf  
24 for evaluation and certification of sign language instructors.

25 The superintendent of public instruction (~~((shall))~~) acts as the  
26 administrator of any such rules and regulations and (~~((have the power~~  
27 ~~to))~~) may issue any certificates or permits and revoke the same in  
28 accordance with board rules and regulations.

29 NEW SECTION. Sec. 8. Section captions used in this act constitute  
30 no part of the law.

31 NEW SECTION. Sec. 9. Sections 1 through 5 of this act constitute  
32 a new chapter in Title 28A RCW.

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