

SENATE BILL REPORT

SB 5399

As of February 16, 2011

Title: An act relating to school employee workforce reductions and assignments.

Brief Description: Regarding school employee workforce reductions and assignments.

Sponsors: Senators Tom, Litzow, Hill, Hobbs, King, Hargrove, Sheldon and Shin.

Brief History:

Committee Activity: Early Learning & K-12 Education:

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Staff: Juliana Roe (786-7438)

Background: Pursuant to 2010 legislation, each school district must establish a four-level rating system for evaluating classroom teachers and principals. The rating system must describe performance on a continuum that indicates the extent to which the criteria have been met or exceeded. When student growth data, showing a change in student achievement between two points in time, is available for principals and available and relevant to the teacher and subject matter, it must be based on multiple measures.

The revised evaluation criteria for principals must include creating a school culture that promotes the ongoing improvement of learning and teaching for students and staff; demonstrating commitment to closing the achievement gap; providing for school safety; leading the development, implementation, and evaluation of a data-driven plan for increasing student achievement, including the use of multiple student data elements; assisting instructional staff with alignment of curriculum, instruction, and assessment with state and local district learning goals; monitoring, assisting, and evaluating effective instruction and assessment practices; managing both staff and fiscal resources to support student achievement and legal responsibilities; and partnering with the school community to promote student learning.

Principals hired after June 10, 2010, can be transferred to a subordinate position in the district even if they have more than three years of employment as a principal, based on the superintendent's determination that the results of the principal's performance evaluation provides a valid reason for the transfer. No probationary period is required, but support and an attempt at remediation, as defined by the superintendent, are required. A final decision by

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

the school board to transfer the principal cannot be appealed. These provisions apply only in school districts with more than 35,000 students.

The Office of Superintendent of Public Instruction (OSPI), with stakeholders and experts, must create models for implementing the revised evaluation system criteria, student growth measurement tools, professional development programs, and evaluator training. Beginning in the 2010-11 school year, OSPI must select school districts that, among other things, have the agreement of the local associations representing teachers and principals to collaborate with the district, and will pilot the new teacher and principal evaluation systems. The new evaluation systems must be implemented in all school districts beginning in the 2013-14 school year.

OSPI must provide reports on the status of the new evaluation implementation by July 1, 2011, and July 1, 2012. The 2011 report must include recommendations for whether a single statewide evaluation model should be adopted, whether modified versions should be subject to state approval, what the criteria would be for state approval, and challenges posed by requiring a state approval process.

Summary of Bill: A performance based framework governing reductions in force (RIF) due to declines in enrollment or revenue losses is set forth in statute. Past performance evaluations are key to determining the order in which certificated staff contracts within each particular certification or endorsement area are nonrenewed:

1. If no evaluation data is available for a particular teacher, the teacher's contract must be nonrenewed first.
2. In the event evaluation data is available, a teacher who received the lowest evaluation rating when averaging his or her two most recent evaluations according to a specified, weighted formula is to be nonrenewed before a teacher with a higher two year average rating – the most recent evaluation available is weighted by 60 percent while the next most recent is weighted by 40 percent.
3. If only one year's evaluation is available, this rating is to be used in place of the two year average.
4. In the event of a tie, preference is given to the teacher with the greatest number of years teaching in the district – additional criteria established in school board policy or the applicable collective bargaining agreement may also be determinative in a tie situation, but any such additional criteria must be established only if the contract or policy is in the best interest of the students.

Teachers whose contracts have been nonrenewed due to enrollment decline or revenue loss are to be recalled in the reverse order that their contracts were nonrenewed. Recall rights may only guarantee the right to interview, lasts only three years, and may not supersede other provisions in the act regarding school based hiring. All collective bargaining agreements entered into after the effective date of the act must be consistent with this statutory framework.

The process for RIFs due to enrollment declines or revenue losses is separated and differentiated from that established for nonrenewals based on probable cause. The time frame for notice remains the same, on or before May 15 unless the Omnibus Appropriations Act has not yet passed, in which case the notification must be no later than June 15. There is

no opportunity for a hearing, however. Rather, the employee who receives such a notification may make a written request to meet informally with the superintendent for the purpose of requesting that the superintendent reconsider the decision. The request must be made within ten days of receipt of the notice, and the meeting must occur within ten days of the request being made. At the meeting, the employee must be given the opportunity to refute any facts upon which the superintendent's determination was based, and make any argument in support of his or her request for reconsideration.

Within ten days following that meeting, the superintendent must either reinstate the employee or submit to the school district board of directors, for consideration at its next regular meeting, a written report recommending that the employee's contract be nonrenewed and stating the reasons for nonrenewal. The employee must be copied with this report at least three days prior to the board meeting. In taking action on the report, the school board of directors must consider any written communication that the employee files before the meeting.

Within ten days following the meeting, the board must provide the employee with written notice of its final decision. This decision may be appealed to the superior court in which the school district is located.

This process applies to any person employed by a school district in a certificated classroom teaching position after June 25, 2010. It does not apply to provisional employees.

Every school board policy and collective bargaining agreement adopted after the effective date must provide that teachers may be assigned to a particular school only with the mutual consent of the hiring principal and the teacher. This policy of hiring only by mutual consent is referred to as school-based hiring. School districts must work with their local teacher's association to develop school-based hiring policies. If there is no such association in the district, the school district must create an eight person committee, made up of four school board members and four teachers, to develop such policies. Every school district must adopt such policies no later than the expiration and renegotiation of locally bargained agreements currently in place.

Any nonprovisional employee receiving the top performance rating in a two tiered performance rating system or one of the top two ratings in a four tiered system who has not secured a position through school-based hiring must be placed in the priority hiring pool. Being a member of this pool ensures that a teacher has the right to interview for available positions within the district for which the teacher is qualified.

Displacement may occur as the result of several factors, including but not limited to the following: (1) a transfer request; (2) drop in enrollment; (3) phase-out; (4) reduction in program; (5) reduction in building; and (6) implementation of a federal or state accountability intervention model such as turnaround, school closure, or transformation model.

In the event that a teacher is displaced from a particular school, but not discharged by the district, he or she must receive written notice and may, within ten days, file a request for a hearing on the sufficiency of the determination on which the displacement was based. The

school board of directors must provide an opportunity for a hearing within ten days after the request is submitted.

Additionally, the district's human resources department must immediately provide the employee with a list of all vacant positions for which the employee is qualified as well as a list of vacancies in any area identified by the district to be an area of critical need. Such list must be kept up to date and available online. If a displaced employee applies for a vacancy on the list, the application must be made to the principal with a copy to the school district. It is up to the principal to recommend appointment or not and, if the principal so recommends, the employee is transferred to that position.

Should the displaced employee fail to secure a position through mutual consent within six months of notice of displacement, or for one summer hiring cycle, whichever is longer, then the district may not renew the employee's contract; because, lacking official assignment must be considered probable cause for the nonrenewal of a contract. If that employee later secures a position, the employee must be reinstated at the salary and benefits level in effect at the time of nonrenewal.

Districts may place a teacher in a six month or other limited-term assignment, including a substitute or instructional support position, during the period in which the teacher is attempting to secure a classroom assignment through school-based hiring. A limited-term assignment does not constitute an assignment and does not interrupt the six-month displacement period.

A district may involuntarily transfer a teacher according to board policy or a locally bargained agreement. However, any transfer must be mutually consented to by the teacher and the principal in order to comply with the school-based hiring policy.

Appropriation: None.

Fiscal Note: Requested on January 24, 2011.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.