
SECOND SUBSTITUTE HOUSE BILL 2538

State of Washington

62nd Legislature

2012 Regular Session

By House Ways & Means (originally sponsored by Representatives Santos and Maxwell; by request of Governor Gregoire)

READ FIRST TIME 02/07/12.

1 AN ACT Relating to reducing certain requirements affecting school
2 districts; amending RCW 43.09.260, 28A.405.210, 28A.405.220,
3 28A.405.230, 28A.405.245, and 28A.310.250; and declaring an emergency.

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

5 **Sec. 1.** RCW 43.09.260 and 2009 c 564 s 927 are each amended to
6 read as follows:

7 (1) The examination of the financial affairs of all local
8 governments shall be made at such reasonable, periodic intervals as the
9 state auditor shall determine. However, an examination of the
10 financial affairs of all local governments shall be made at least once
11 in every three years, and an examination of individual local government
12 health and welfare benefit plans and local government self-insurance
13 programs shall be made at least once every two years. Additionally,
14 after July 1, 2012, the state auditor shall conduct fiscal and
15 performance audits no more often than once every three years for school
16 districts when no findings of impropriety were found for the school
17 districts for the three-year period immediately preceding the audit
18 period. This subsection does not prohibit the state auditor from
19 conducting audits: (a) To address suspected fraud or irregular

1 conduct; (b) at the request of the local school board of directors; (c)
2 if there has been a change in the superintendent or the chief financial
3 officer in the year immediately preceding the audit; or (d) as required
4 by federal laws or regulations.

5 (2) During the 2009-2011 fiscal biennium, the state auditor shall
6 conduct audits no more often than once every two years of local
7 governments with annual general fund revenues of ten million dollars or
8 less and no findings of impropriety for the three-year period
9 immediately preceding the audit period. This subsection does not
10 prohibit the state auditor from conducting audits: (a) To address
11 suspected fraud or irregular conduct; (b) at the request of the local
12 government governing body; or (c) as required by federal laws or
13 regulations.

14 (3) The term local governments for purposes of this chapter
15 includes but is not limited to all counties, cities, and other
16 political subdivisions, municipal corporations, and quasi-municipal
17 corporations, however denominated.

18 (4) The state auditor shall establish a schedule to govern the
19 auditing of local governments which shall include: A designation of
20 the various classifications of local governments; a designation of the
21 frequency for auditing each type of local government; and a description
22 of events which cause a more frequent audit to be conducted.

23 (5) On every such examination, inquiry shall be made as to the
24 financial condition and resources of the local government; whether the
25 Constitution and laws of the state, the ordinances and orders of the
26 local government, and the requirements of the state auditor have been
27 properly complied with; and into the methods and accuracy of the
28 accounts and reports.

29 (6) A report of such examination shall be made and filed in the
30 office of state auditor, and one copy shall be transmitted to the local
31 government. A copy of any report containing findings of noncompliance
32 with state law shall be transmitted to the attorney general. If any
33 such report discloses malfeasance, misfeasance, or nonfeasance in
34 office on the part of any public officer or employee, within thirty
35 days from the receipt of his or her copy of the report, the attorney
36 general shall institute, in the proper county, such legal action as is
37 proper in the premises by civil process and prosecute the same to final
38 determination to carry into effect the findings of the examination.

1 (7) It shall be unlawful for any local government or the
2 responsible head thereof, to make a settlement or compromise of any
3 claim arising out of such malfeasance, misfeasance, or nonfeasance, or
4 any action commenced therefor, or for any court to enter upon any
5 compromise or settlement of such action, without the written approval
6 and consent of the attorney general and the state auditor.

7 **Sec. 2.** RCW 28A.405.210 and 2010 c 235 s 303 are each amended to
8 read as follows:

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

17 The board shall make with each employee employed by it a written
18 contract, which shall be in conformity with the laws of this state, and
19 except as otherwise provided by law, limited to a term of not more than
20 one year. Every such contract shall be made in duplicate, one copy to
21 be retained by the school district superintendent or secretary and one
22 copy to be delivered to the employee. No contract shall be offered by
23 any board for the employment of any employee who has previously signed
24 an employment contract for that same term in another school district of
25 the state of Washington unless such employee shall have been released
26 from his or her obligations under such previous contract by the board
27 of directors of the school district to which he or she was obligated.
28 Any contract signed in violation of this provision shall be void.

29 In the event it is determined that there is probable cause or
30 causes that the employment contract of an employee should not be
31 renewed by the district for the next ensuing term such employee shall
32 be notified in writing on or before May 15th preceding the commencement
33 of such term of that determination, or (~~(if the omnibus appropriations~~
34 ~~act has not passed the legislature by May 15th, then notification shall~~
35 ~~be no later than June 15th)) thirty days after the omnibus
36 appropriations act passes the legislature, whichever occurs later,
37 which notification shall specify the cause or causes for nonrenewal of~~

1 contract. Such determination of probable cause for certificated
2 employees, other than the superintendent, shall be made by the
3 superintendent. Such notice shall be served upon the employee
4 personally, or by certified or registered mail, or by leaving a copy of
5 the notice at the house of his or her usual abode with some person of
6 suitable age and discretion then resident therein. Every such employee
7 so notified, at his or her request made in writing and filed with the
8 president, chair or secretary of the board of directors of the district
9 within ten days after receiving such notice, shall be granted
10 opportunity for hearing pursuant to RCW 28A.405.310 to determine
11 whether there is sufficient cause or causes for nonrenewal of contract:
12 PROVIDED, That any employee receiving notice of nonrenewal of contract
13 due to an enrollment decline or loss of revenue may, in his or her
14 request for a hearing, stipulate that initiation of the arrangements
15 for a hearing officer as provided for by RCW 28A.405.310(4) shall occur
16 within ten days following July 15 rather than the day that the employee
17 submits the request for a hearing. If any such notification or
18 opportunity for hearing is not timely given, the employee entitled
19 thereto shall be conclusively presumed to have been reemployed by the
20 district for the next ensuing term upon contractual terms identical
21 with those which would have prevailed if his or her employment had
22 actually been renewed by the board of directors for such ensuing term.

23 This section shall not be applicable to "provisional employees" as
24 so designated in RCW 28A.405.220; transfer to a subordinate
25 certificated position as that procedure is set forth in RCW 28A.405.230
26 or 28A.405.245 shall not be construed as a nonrenewal of contract for
27 the purposes of this section.

28 **Sec. 3.** RCW 28A.405.220 and 2010 c 235 s 203 are each amended to
29 read as follows:

30 (1) Notwithstanding the provisions of RCW 28A.405.210, every person
31 employed by a school district in a teaching or other nonsupervisory
32 certificated position shall be subject to nonrenewal of employment
33 contract as provided in this section during the first three years of
34 employment by such district, unless: (a) The employee has previously
35 completed at least two years of certificated employment in another
36 school district in the state of Washington, in which case the employee
37 shall be subject to nonrenewal of employment contract pursuant to this

1 section during the first year of employment with the new district; or
2 (b) the school district superintendent may make a determination to
3 remove an employee from provisional status if the employee has received
4 one of the top two evaluation ratings during the second year of
5 employment by the district. Employees as defined in this section shall
6 hereinafter be referred to as "provisional employees."

7 (2) In the event the superintendent of the school district
8 determines that the employment contract of any provisional employee
9 should not be renewed by the district for the next ensuing term such
10 provisional employee shall be notified thereof in writing on or before
11 May 15th preceding the commencement of such school term, or (~~if the~~
12 ~~omnibus appropriations act has not passed the legislature by May 15th,~~
13 ~~then notification shall be no later than June 15th~~) thirty days after
14 the omnibus appropriations act passes the legislature, whichever occurs
15 later, which notification shall state the reason or reasons for such
16 determination. Such notice shall be served upon the provisional
17 employee personally, or by certified or registered mail, or by leaving
18 a copy of the notice at the place of his or her usual abode with some
19 person of suitable age and discretion then resident therein. The
20 determination of the superintendent shall be subject to the evaluation
21 requirements of RCW 28A.405.100.

22 (3) Every such provisional employee so notified, at his or her
23 request made in writing and filed with the superintendent of the
24 district within ten days after receiving such notice, shall be given
25 the opportunity to meet informally with the superintendent for the
26 purpose of requesting the superintendent to reconsider his or her
27 decision. Such meeting shall be held no later than ten days following
28 the receipt of such request, and the provisional employee shall be
29 given written notice of the date, time and place of meeting at least
30 three days prior thereto. At such meeting the provisional employee
31 shall be given the opportunity to refute any facts upon which the
32 superintendent's determination was based and to make any argument in
33 support of his or her request for reconsideration.

34 (4) Within ten days following the meeting with the provisional
35 employee, the superintendent shall either reinstate the provisional
36 employee or shall submit to the school district board of directors for
37 consideration at its next regular meeting a written report recommending
38 that the employment contract of the provisional employee be nonrenewed

1 and stating the reason or reasons therefor. A copy of such report
2 shall be delivered to the provisional employee at least three days
3 prior to the scheduled meeting of the board of directors. In taking
4 action upon the recommendation of the superintendent, the board of
5 directors shall consider any written communication which the
6 provisional employee may file with the secretary of the board at any
7 time prior to that meeting.

8 (5) The board of directors shall notify the provisional employee in
9 writing of its final decision within ten days following the meeting at
10 which the superintendent's recommendation was considered. The decision
11 of the board of directors to nonrenew the contract of a provisional
12 employee shall be final and not subject to appeal.

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

19 **Sec. 4.** RCW 28A.405.230 and 2010 c 235 s 304 are each amended to
20 read as follows:

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

31 Every superintendent determining that the best interests of the
32 school district would be served by transferring any administrator to a
33 subordinate certificated position shall notify that administrator in
34 writing on or before May 15th preceding the commencement of such school
35 term of that determination, or (~~if the omnibus appropriations act has~~
36 ~~not passed the legislature by May 15th, then notification shall be no~~
37 ~~later than June 15th~~) thirty days after the omnibus appropriations act

1 passes the legislature, whichever occurs later, which notification
2 shall state the reason or reasons for the transfer, and shall identify
3 the subordinate certificated position to which the administrator will
4 be transferred. Such notice shall be served upon the administrator
5 personally, or by certified or registered mail, or by leaving a copy of
6 the notice at the place of his or her usual abode with some person of
7 suitable age and discretion then resident therein.

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

35 This section applies to any person employed as an administrator by
36 a school district on June 25, 1976, and to all persons so employed at
37 any time thereafter, except that RCW 28A.405.245 applies to persons
38 first employed after June 10, 2010, as a principal by a school district

1 meeting the criteria of RCW 28A.405.245. This section provides the
2 exclusive means for transferring an administrator subject to this
3 section to a subordinate certificated position at the expiration of the
4 term of his or her employment contract.

5 **Sec. 5.** RCW 28A.405.245 and 2010 c 235 s 302 are each amended to
6 read as follows:

7 (1) Any certificated employee of a school district under this
8 section who is first employed as a principal after June 10, 2010, shall
9 be subject to transfer as provided under this section, at the
10 expiration of the term of his or her employment contract, to any
11 subordinate certificated position within the school district.
12 "Subordinate certificated position" as used in this section means any
13 administrative or nonadministrative certificated position for which the
14 annual compensation is less than the position currently held by the
15 administrator. This section applies only to school districts with an
16 annual average student enrollment of more than thirty-five thousand
17 full-time equivalent students.

18 (2) During the first three consecutive school years of employment
19 as a principal by the school district, or during the first full school
20 year of such employment in the case of a principal who has been
21 previously employed as a principal by another school district in the
22 state for three or more consecutive school years, the transfer of the
23 principal to a subordinate certificated position may be made by a
24 determination of the superintendent that the best interests of the
25 school district would be served by the transfer.

26 (3) Commencing with the fourth consecutive school year of
27 employment as a principal, or the second consecutive school year of
28 such employment in the case of a principal who has been previously
29 employed as a principal by another school district in the state for
30 three or more consecutive school years, the transfer of the principal
31 to a subordinate certificated position shall be based on the
32 superintendent's determination that the results of the evaluation of
33 the principal's performance using the evaluative criteria and rating
34 system established under RCW 28A.405.100 provide a valid reason for the
35 transfer without regard to whether there is probable cause for the
36 transfer. If a valid reason is shown, it shall be deemed that the
37 transfer is reasonably related to the principal's performance. No

1 probationary period is required. However, provision of support and an
2 attempt at remediation of the performance of the principal, as defined
3 by the superintendent, are required for a determination by the
4 superintendent under this subsection that the principal should be
5 transferred to a subordinate certificated position.

6 (4) Any superintendent transferring a principal under this section
7 to a subordinate certificated position shall notify that principal in
8 writing on or before May 15th before the beginning of the school year
9 of that determination, or (~~if the omnibus appropriations act has not~~
10 ~~passed the legislature by May 15th, then notification shall be no later~~
11 ~~than June 15th)) thirty days after the omnibus appropriations act
12 passes the legislature, whichever occurs later. The notification shall
13 state the reason or reasons for the transfer and shall identify the
14 subordinate certificated position to which the principal will be
15 transferred. The notification shall be served upon the principal
16 personally, or by certified or registered mail, or by leaving a copy of
17 the notice at the place of his or her usual abode with some person of
18 suitable age and discretion then resident therein.~~

19 (5) Any principal so notified may request to the president or chair
20 of the board of directors of the district, in writing and within ten
21 days after receiving notice, an opportunity to meet informally with the
22 board of directors in an executive session for the purpose of
23 requesting the board to reconsider the decision of the superintendent,
24 and shall be given such opportunity. The board, upon receipt of such
25 request, shall schedule the meeting for no later than the next
26 regularly scheduled meeting of the board, and shall give the principal
27 written notice at least three days before the meeting of the date,
28 time, and place of the meeting. At the meeting the principal shall be
29 given the opportunity to refute any evidence upon which the
30 determination was based and to make any argument in support of his or
31 her request for reconsideration. The principal and the board may
32 invite their respective legal counsel to be present and to participate
33 at the meeting. The board shall notify the principal in writing of its
34 final decision within ten days following its meeting with the
35 principal. No appeal to the courts shall lie from the final decision
36 of the board of directors to transfer a principal to a subordinate
37 certificated position.

1 (6) This section provides the exclusive means for transferring a
2 certificated employee first employed by a school district under this
3 section as a principal after June 10, 2010, to a subordinate
4 certificated position at the expiration of the term of his or her
5 employment contract.

6 **Sec. 6.** RCW 28A.310.250 and 2009 c 57 s 4 are each amended to read
7 as follows:

8 No certificated employee of an educational service district shall
9 be employed as such except by written contract, which shall be in
10 conformity with the laws of this state. Every such contract shall be
11 made in duplicate, one copy of which shall be retained by the
12 educational service district superintendent and the other shall be
13 delivered to the employee.

14 Every educational service district superintendent or board
15 determining that there is probable cause or causes that the employment
16 contract of a certificated employee thereof is not to be renewed for
17 the next ensuing term shall be notified in writing on or before May
18 15th preceding the commencement of such term of that determination or
19 ~~((if the omnibus appropriations act has not passed the legislature by~~
20 ~~May 15th, then notification shall be no later than June 15th)) thirty~~
21 days after the omnibus appropriations act passes the legislature,
22 whichever occurs later, which notification shall specify the cause or
23 causes for nonrenewal of contract. Such notice shall be served upon
24 that employee personally, or by certified or registered mail, or by
25 leaving a copy of the notice at the house of his or her usual abode
26 with some person of suitable age and discretion then resident therein.
27 The procedure and standards for the review of the decision of the
28 hearing officer, superintendent or board and appeal therefrom shall be
29 as prescribed for nonrenewal cases of teachers in RCW 28A.405.210,
30 28A.405.300 through 28A.405.380, and 28A.645.010. Appeals may be filed
31 in the superior court of any county in the educational service
32 district.

33 NEW SECTION. **Sec. 7.** Sections 2 through 6 of this act are
34 necessary for the immediate preservation of the public peace, health,

1 or safety, or support of the state government and its existing public
2 institutions, and take effect immediately.

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