
SUBSTITUTE SENATE BILL 5744

State of Washington

64th Legislature

2015 Regular Session

By Senate Early Learning & K-12 Education (originally sponsored by Senators Litzow, Fain, Hill, Rivers, Schoesler, Braun, and Becker)

READ FIRST TIME 02/18/15.

1 AN ACT Relating to school employee workforce reductions and
2 assignments; amending RCW 28A.405.210 and 28A.405.300; adding new
3 sections to chapter 28A.405 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that in order for
6 Washington schools to be great places to teach and learn - where all
7 kids and educators succeed - schools must build cultures where all
8 students thrive. The legislature intends to respect teachers and
9 principals first by empowering them to create that culture together,
10 and then by helping them retain the teachers who are crucial to that
11 culture. In particular, these policies support practices with a track
12 record of closing the opportunity gap. This is done by:

13 (1) Ensuring that teachers who do the best work are the ones who
14 keep their jobs when budgets need to be cut, by basing reduction in
15 force policies on the evaluations the legislature has outlined for
16 measuring teacher performance. Since the loss of teachers through
17 layoffs already impacts student learning, there is an urgent need to
18 conduct layoffs in a way that retains the most effective teachers.
19 Educators deserve to be recognized for their ability to help students
20 learn and children deserve the very best and brightest teachers;

1 (2) Empowering principals and teachers with autonomy in school
2 placement decisions to ensure the creation of school cultures that
3 both promote the ongoing improvement of teaching and learning and are
4 committed to closing the opportunity gap. The strongest, most
5 successful school cultures are those in which teachers and principals
6 work toward shared goals for improving student learning. In order to
7 create shared cultures, principals and teachers must be able to agree
8 that a school placement is the best fit for them; and

9 (3) Recognizing that for the fair evaluation of a principal based
10 on the criteria outlined by the legislature, specifically that
11 principals should be evaluated on creating a school culture that
12 promotes the ongoing improvement of learning and teaching and
13 managing both staff and fiscal resources to support student
14 achievement and legal responsibilities for students and staff, a
15 principal needs the ability to select teachers who have demonstrated
16 effectiveness and have demonstrated qualifications and teaching
17 experience that support the instructional practices of his or her
18 school.

19 **PART I**

20 **PERFORMANCE-BASED REDUCTION IN FORCE DUE TO ENROLLMENT**

21 **DECLINE OR REVENUE LOSS**

22 NEW SECTION. **Sec. 101.** A new section is added to chapter
23 28A.405 RCW to read as follows:

24 (1) When reductions in the workforce occur due to enrollment
25 decline or revenue loss, the employment contracts of any certificated
26 classroom teacher must be nonrenewed in the following manner within
27 each particular certification or endorsement area. Certificated
28 classroom teachers who received the lowest evaluation rating, as
29 described in RCW 28A.405.100, when averaging their two most recent
30 evaluations in accordance with the method in subsection (2) of this
31 section, must have their contracts nonrenewed first, with nonrenewals
32 continuing to proceed upward through the two-year average ratings in
33 such a manner. Any determination that must be made between teachers
34 who received the same averaged rating must provide a preference for
35 teachers who have the greatest number of years teaching in the school
36 district and any additional criteria established in the policy of the
37 board or locally bargained agreement; except that any such additional

1 criteria may be established only if the contract or policy is in the
2 best interest of the students.

3 (2) For the purposes of calculating two-year averages as provided
4 in subsection (1) of this section, the average must weigh the
5 teacher's most recent evaluation by sixty percent and his or her
6 prior year's rating by forty percent. The numbers to be used in
7 calculating these averages are as follows, the lowest evaluation
8 rating is worth zero points, and the highest evaluation rating is
9 worth 4.25 points. If a four-tiered evaluation system is being used,
10 then the second highest evaluation rating is worth 2.75 points and
11 the third highest evaluation rating is worth four points. The
12 weighted two-year average shall be multiplied by a factor of 1.05 to
13 ensure that the averaging of ratings for teachers with reasonable
14 variation in their evaluations does not result in lowering their
15 rating below teachers with similar ratings based on only one year's
16 evaluation rating. The final two-year weighted average shall be
17 rounded to the hundredth place before being used for the decisions
18 made under subsection (1) of this section. Teachers with only one
19 year of evaluation ratings must use this evaluation rating in place
20 of a two-year average.

21 (3) For the purposes in subsection (1) of this section, any
22 certificated classroom teacher for whom no evaluation data is
23 available must have his or her employment contract nonrenewed before
24 any other certificated classroom teacher within his or her
25 certification or endorsement area. If data collection allows, school
26 leaders should make an effort to complete evaluations before the
27 district is required to make contract renewal decisions.

28 (4) Any school district whose board policies or locally bargained
29 agreement outlines recall rights for certificated classroom teachers
30 must recall staff in the reverse order contracts were nonrenewed as
31 provided for in subsection (1) of this section. These recall rights
32 may only guarantee a right to interview and do not supersede the
33 provisions of section 201 of this act that a certificated classroom
34 teacher may be assigned to a particular school only with the consent
35 of the hiring principal. No school district policy may offer recall
36 rights for more than three years.

37 (5) All collective bargaining agreements and other contracts
38 entered into between a school district and an employee bargaining
39 unit or an employee after the effective date of this section must be
40 consistent with this section.

1 NEW SECTION. **Sec. 102.** A new section is added to chapter
2 28A.405 RCW to read as follows:

3 (1) In the event that the determination that the employment
4 contract of a nonprovisional certificated classroom teacher will not
5 be renewed by the district in accordance with section 101 of this
6 act, the employee must be notified in writing on or before May 15th
7 or if the omnibus appropriations act has not passed the legislature
8 by May 15th, then notification must be no later than June 15th. The
9 notification must state the reason or reasons for the determination.
10 The notice must be served upon the employee personally, or by
11 certified or registered mail, or by leaving a copy of the notice at
12 the place of his or her usual abode with some person of suitable age
13 and discretion then resident therein.

14 (2) Every employee who receives notification under this section,
15 at his or her request made in writing and filed with the
16 superintendent of the district within ten days after receiving the
17 notice, must be given the opportunity to meet informally with the
18 superintendent for the purpose of requesting the superintendent to
19 reconsider the decision. The meeting must be held no later than ten
20 days following the receipt of the request, and the employee must be
21 given written notice of the date, time, and place of meeting at least
22 three days prior thereto. At the meeting, the employee must be given
23 the opportunity to refute any facts upon which the superintendent's
24 determination was based and to make any argument in support of his or
25 her request for reconsideration.

26 (3) Within ten days following the meeting with the employee, the
27 superintendent must either reinstate the employee or submit to the
28 school district board of directors for consideration at its next
29 regular meeting a written report recommending that the employment
30 contract of the employee be nonrenewed and stating the reason or
31 reasons for nonrenewal. A copy of the report must be delivered to the
32 employee at least three days before the scheduled meeting of the
33 board of directors. In taking action upon the recommendation of the
34 superintendent, the board of directors must consider any written
35 communication that the employee files with the secretary of the board
36 at any time before that meeting.

37 (4) The board of directors must notify the employee in writing of
38 its final decision within ten days following the meeting at which the
39 recommendation for nonrenewal was considered. The decision of the
40 board of directors to not renew the contract of an employee may be

1 appealed in accordance with RCW 28A.405.320 through 28A.405.360 to
2 the superior court in the county in which the school district is
3 located.

4 (5)(a) This section applies to any person employed by a school
5 district in a nonprovisional certificated classroom teaching position
6 after June 25, 2015. This section provides the exclusive means for
7 nonrenewing the employment contract of a nonprovisional certificated
8 classroom teacher due to enrollment decline or revenue loss and no
9 other provision of law is applicable, including RCW 28A.405.210,
10 28A.405.300, and 28A.405.310.

11 (b) This section is not applicable to "provisional employees" as
12 designated in RCW 28A.405.220.

13 **Sec. 103.** RCW 28A.405.210 and 2010 c 235 s 303 are each amended
14 to read as follows:

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

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

36 (3)(a) In the event it is determined that there is probable cause
37 or causes that the employment contract of an employee should not be
38 renewed by the district for the next ensuing term such employee shall
39 be notified in writing on or before May 15th preceding the

1 commencement of such term of that determination, or if the omnibus
2 appropriations act has not passed the legislature by May 15th, then
3 notification shall be no later than June 15th, which notification
4 shall specify the cause or causes for nonrenewal of contract.
5 ((Such))

6 (b) The determination of probable cause for certificated
7 employees, other than the superintendent, shall be made by the
8 superintendent. ((Such))

9 (c) Notice shall be served upon the employee personally, or by
10 certified or registered mail, or by leaving a copy of the notice at
11 the house of his or her usual abode with some person of suitable age
12 and discretion then resident therein.

13 (d) Every ((such)) employee ((se)) notified in accordance with
14 this section, at his or her request made in writing and filed with
15 the president, chair, or secretary of the board of directors of the
16 district within ten days after receiving such notice, shall be
17 granted opportunity for hearing pursuant to RCW 28A.405.310 to
18 determine whether there is sufficient cause or causes for nonrenewal
19 of contract ~~((: PROVIDED, That any employee receiving notice of~~
20 ~~nonrenewal of contract due to an enrollment decline or loss of~~
21 ~~revenue may, in his or her request for a hearing, stipulate that~~
22 ~~initiation of the arrangements for a hearing officer as provided for~~
23 ~~by RCW 28A.405.310(4) shall occur within ten days following July 15~~
24 ~~rather than the day that the employee submits the request for a~~
25 ~~hearing)).~~

26 (e) If any ((such)) notification or opportunity for hearing is
27 not timely given under this section, then the employee entitled
28 thereto shall be conclusively presumed to have been reemployed by the
29 district for the next ensuing term upon contractual terms identical
30 with those which would have prevailed if his or her employment had
31 actually been renewed by the board of directors for such ensuing
32 term.

33 (f) This section shall not be applicable to "provisional
34 employees" as so designated in RCW 28A.405.220((+)) or to reductions
35 in workforce due to enrollment decline or revenue loss in accordance
36 with sections 101 and 102 of this act.

37 (g) Transfer to a subordinate certificated position as that
38 procedure is set forth in RCW 28A.405.230 or 28A.405.245 shall not be
39 construed as a nonrenewal of contract for the purposes of this
40 section.

1 NEW SECTION. **Sec. 105.** A new section is added to chapter
2 28A.405 RCW to read as follows:

3 (1) Any policy adopted by a school district board of directors
4 after the effective date of this section under RCW 28A.150.230 or in
5 a locally bargained agreement must contain a provision stating that a
6 certificated classroom teacher may be assigned to a particular school
7 only with the mutual agreement of the hiring principal and teacher
8 and, if applicable to local policy, the school-based entity charged
9 with hiring decisions. Before consenting, the principal and, if
10 applicable, the school-based entity charged with hiring must review
11 the certificated classroom teacher's demonstrated effectiveness and
12 qualifications to determine that the qualifications and teaching
13 experience support the instructional practices of the school. The
14 policy of hiring through mutual agreement shall be referred to as
15 school-based hiring. In making decisions pursuant to this section, a
16 school district must work with the local teachers' association to
17 develop policies for the local school board of directors to adopt. If
18 no association exists in the school district, the school district
19 must create an eight person committee consisting of four school
20 district members and four teachers that must develop the policies.
21 Every school district must adopt a school-based hiring policy no
22 later than when the existing locally bargained agreements are
23 renegotiated upon expiration.

24 (2) Beginning the effective date of this section, any active
25 nonprovisional certificated classroom teacher whose most recent
26 evaluation rating level was in the top level of a two-level rating
27 system or in the top two levels of a four-level rating system as
28 described in RCW 28A.405.100 who has not secured a position through
29 school-based hiring shall be a member of a priority hiring pool. The
30 priority hiring pool must ensure the teacher a right to interview for
31 available positions for which he or she is qualified in a school
32 district.

33 (3)(a) Beginning the effective date of this section, when a
34 determination is made that the services of a certificated classroom
35 teacher are no longer required for the reasons stated in subsection
36 (6) of this section and the employee is therefore displaced from a
37 particular school but not discharged by the school district, the
38 employee must receive written notification of his or her removal from
39 the school. The notice must be served upon the employee personally or
40 by certified or registered mail, or by leaving a copy of the notice

1 at the house of his or her usual abode with some person of suitable
2 aged and discretion who is a resident at the abode.

3 (b) Upon notice to the teacher, the department of human resources
4 for the school district must immediately provide the employee with a
5 list of all vacant positions for which he or she is qualified, as
6 well as a list of vacancies in any area identified by the school
7 district to be an area of critical need. A list of vacancies within
8 the district must be kept up-to-date and available online. If a
9 displaced employee applies for a vacancy on the list of vacancies
10 then the employee's application must be made to the principal of a
11 listed school and the employee must provide a copy of the application
12 to the school district. When a principal recommends appointment of an
13 applicant to a vacant position, the employee shall be transferred to
14 that position.

15 (4) If a nonprovisional certificated classroom teacher has been
16 displaced in accordance with this section and is unable to secure an
17 assignment through school-based hiring at a school in the school
18 district within six months of receiving notification of his or her
19 displacement as provided in subsection (3)(a) of this section or for
20 one summer hiring cycle, whichever is longer, then the school
21 district may not renew the teacher's contract in accordance with RCW
22 28A.405.210, as lacking an official assignment shall be considered
23 probable cause for the nonrenewal of a contract. If the teacher
24 secures an assignment at a school in the school district at a later
25 date, the school district must reinstate the teacher's salary and
26 benefits at the level they were when the teacher's contract was
27 nonrenewed.

28 (5) Nothing in this section limits the ability of a school
29 district to place a teacher in a six-month or other limited term
30 assignment including, but not limited to, a substitute assignment, or
31 instructional support role during the period in which the teacher is
32 attempting to secure a classroom assignment through school-based
33 hiring. Such a limited term assignment does not constitute an
34 assignment through school-based hiring and may not be deemed to
35 interrupt the period in which the teacher is required to secure an
36 assignment through school-based hiring before the district does not
37 renew the teacher's contract.

38 (6) This section applies to any teacher who is displaced as a
39 result of, but not limited to, a transfer request; drop in
40 enrollment; reduction in program; reduction in building; or

1 implementation of a federal or state accountability intervention
2 model such as turnaround, school closure, or transformation model.
3 These reasons for displacement do not constitute probable cause for
4 the purposes of RCW 28A.405.210, 28A.405.300, or 28A.405.310, except
5 as provided in subsection (4) of this section.

6 (7) Nothing in this section may be interpreted as nullifying the
7 right of a school district board of directors or superintendent to
8 involuntarily transfer a teacher if the right is expressed in board
9 policy or a locally bargained agreement. However, any such assignment
10 resulting from this transfer must be by mutual agreement of the
11 teacher and principal in order to comply with the school-based hiring
12 policy in this section.

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