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**SUBSTITUTE SENATE BILL 5744**

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**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)

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

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

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

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

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

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

**PART I**

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

**DECLINE OR REVENUE LOSS**

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

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

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

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

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

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

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

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

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

(3) Within ten days following the meeting with the employee, 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 employment contract of the employee be nonrenewed and stating the reason or reasons for nonrenewal. A copy of the report must be delivered to the employee at least three days before the scheduled meeting of the board of directors. In taking action upon the recommendation of the superintendent, the board of directors must consider any written communication that the employee files with the secretary of the board at any time before that meeting.

(4) The board of directors must notify the employee in writing of its final decision within ten days following the meeting at which the recommendation for nonrenewal was considered. The decision of the board of directors to not renew the contract of an employee may be appealed in accordance with RCW 28A.405.320 through 28A.405.360 to the superior court in the county in which the school district is located.

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

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

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

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

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

(3)(a) In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall specify the cause or causes for nonrenewal of contract. ((~~Such~~))

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

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

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

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

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

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

**Sec.**  RCW 28A.405.300 and 2010 c 235 s 305 are each amended to read as follows:

Except as provided in sections 101 and 102 of this act, in the event it is determined that there is probable cause or causes for a teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with the school district, hereinafter referred to as "employee," to be discharged or otherwise adversely affected in his or her contract status, such employee shall be notified in writing of that decision, which notification shall specify the probable cause or causes for such action. Such determinations of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notices shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for a hearing pursuant to RCW 28A.405.310 to determine whether or not there is sufficient cause or causes for his or her discharge or other adverse action against his or her contract status.

In the event any such notice or opportunity for hearing is not timely given, or in the event cause for discharge or other adverse action is not established by a preponderance of the evidence at the hearing, such employee shall not be discharged or otherwise adversely affected in his or her contract status for the causes stated in the original notice for the duration of his or her contract.

If such employee does not request a hearing as provided herein, such employee may be discharged or otherwise adversely affected as provided in the notice served upon the employee.

Transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 or 28A.405.245 shall not be construed as a discharge or other adverse action against contract status for the purposes of this section.

**PART II**

**TEACHER AND PRINCIPAL AGREEMENT ON STAFFING PLACEMENTS**

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

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

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

(3)(a) Beginning the effective date of this section, when a determination is made that the services of a certificated classroom teacher are no longer required for the reasons stated in subsection (6) of this section and the employee is therefore displaced from a particular school but not discharged by the school district, the employee must receive written notification of his or her removal from the school. The notice must be served upon the employee personally or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable aged and discretion who is a resident at the abode.

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

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

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

(6) This section applies to any teacher who is displaced as a result of, but not limited to, a transfer request; drop in enrollment; reduction in program; reduction in building; or implementation of a federal or state accountability intervention model such as turnaround, school closure, or transformation model. These reasons for displacement do not constitute probable cause for the purposes of RCW 28A.405.210, 28A.405.300, or 28A.405.310, except as provided in subsection (4) of this section.

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

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