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**HOUSE BILL 1936**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Muri and Magendanz

AN ACT Relating to the hearing process for adverse changes to certificated employees' contracts; amending RCW 28A.405.210, 28A.405.300, 28A.405.320, 28A.405.330, 28A.405.340, and 42.30.110; adding a new section to chapter 28A.405 RCW; adding a new section to chapter 41.59 RCW; creating a new section; and repealing RCW 28A.405.310.

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

NEW SECTION. **Sec.**  The Washington supreme court has held that, under Article IX, section 1 of the state Constitution, the state has an obligation to provide an opportunity for all children within its borders to obtain a basic education and that this obligation is the state's paramount duty. The legislature finds, similarly to what the California trial court found in *Vergara v. California*, that competent teachers are a critical component of students' success and that grossly ineffective teachers substantially undermine the ability of students to take full advantage of educational opportunity. The legislature further finds that it is too time consuming and too expensive to go through the hearing process required by current statutes to rid school districts of grossly ineffective teachers, and that such time and cost causes districts, in many cases, to be reluctant to even commence the process. As a result, grossly ineffective teachers are left in the classroom, to the detriment of the students. The legislature intends to amend the process in order to make it less time consuming and expensive, thus affording all children the opportunity to obtain a basic education, while still providing due process.

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

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.

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.

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 determination of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such 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. Every such employee so notified, 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~~))section 4 of this act 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)~~))the hearing shall occur within ((~~ten~~))fourteen days following ((~~July 15~~))June 30th rather than the day that the employee submits the request for a hearing. If any such notification or opportunity for hearing is not timely given, 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.

This section shall not be applicable to "provisional employees" as so designated in RCW 28A.405.220; 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:

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~~))section 4 of this act 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.

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

(1) If a timely request for a hearing is received pursuant to RCW 28A.405.210 or 28A.405.300, the school district board of directors shall schedule a hearing to commence within fourteen days after the date upon which the request for a hearing was received.

(2) The employee shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing;

(b) Be represented by legal counsel;

(c) Request either an open or closed hearing. The hearing shall be open or closed as requested by the employee, but if the employee fails to make such a request, the board of directors may determine whether the hearing shall be open or closed;

(d) Present his or her explanation of the alleged misconduct; and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designees of the school district assigned to present the district's case shall have the right to inspect, in advance of the hearing, any documentary and other physical evidence that the employee intends to introduce at the hearing.

(4) The school district directors hearing the case shall not be witnesses and the final decision shall be determined by a preponderance of the evidence and solely on the basis of the evidence presented at the hearing.

(5) Within ten days following the conclusion of the hearing, the board of directors shall transmit in writing to the employee findings of fact, conclusions of law, and final decision. If the final decision is in favor of the employee, the employee must be restored to his or her employment position.

(6) Any final decision by the board of directors to nonrenew the employment contract of the employee, or to discharge the employee, or to take other action adverse to the employee's contract status as the case may be, shall be based solely upon the cause or causes specified in the notice to the employee and shall be established by a preponderance of the evidence at the hearing to be sufficient cause or causes for such action.

(7) A complete record shall be made of the hearing, including either a tape-recorded or verbatim record, and all decisions, orders, and rulings.

**Sec.**  RCW 28A.405.320 and 1990 c 33 s 397 are each amended to read as follows:

Any teacher, principal, supervisor, superintendent, or other certificated employee, desiring to appeal from ((~~any action or failure to act upon the part~~))the final decision of a school board relating to the discharge or other action adversely affecting his or her contract status, or failure to renew that employee's contract for the next ensuing term, within thirty days after his or her receipt of such decision ((~~or order~~)), may serve upon the chair of the school board and file with the clerk of the superior court in the county in which the school district is located a notice of appeal which shall set forth also in a clear and concise manner the errors complained of.

**Sec.**  RCW 28A.405.330 and 1990 c 33 s 398 are each amended to read as follows:

The clerk of the superior court, within ten days of receipt of the notice of appeal from the final decision of the school board shall notify in writing the chair of the school board of the taking of the appeal, and within twenty days thereafter the school board shall at its expense file the complete transcript of the evidence and the papers and exhibits relating to the decision complained of, all properly certified to be correct.

**Sec.**  RCW 28A.405.340 and 1975‑'76 2nd ex.s. c 114 s 6 are each amended to read as follows:

Any appeal to the superior court by an employee shall be heard by the superior court without a jury. Such appeal shall be heard expeditiously. The superior court's review shall be confined to the verbatim transcript of the hearing and the papers and exhibits admitted into evidence at the hearing, except that in cases of alleged irregularities in procedure not shown in the transcript or exhibits and in cases of alleged abridgment of the employee's constitutional free speech rights, the court may take additional testimony on the alleged procedural irregularities or abridgment of free speech rights. The court shall hear oral argument and receive written briefs offered by the parties.

The court may affirm the decision of the board ((~~or hearing officer~~)) or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the employee may have been prejudiced because the decision was:

(1) In violation of constitutional provisions; or

(2) In excess of the statutory authority or jurisdiction of the board ((~~or hearing officer~~)); or

(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or

(5) Clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or

(6) Arbitrary or capricious.

**Sec.**  RCW 42.30.110 and 2014 c 174 s 4 are each amended to read as follows:

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(o) To hear an appeal brought by an employee pursuant to section 4 of this act, however, upon the request of the employee a public hearing open to the public must be conducted.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

NEW SECTION. **Sec.**  A new section is added to chapter 41.59 RCW to read as follows:

Nothing in chapter ..., Laws of 2015 (this act) is intended to alter or affect existing collective bargaining agreements. Chapter ..., Laws of 2015 (this act) applies to all collective bargaining agreements ratified after the effective date of this section.

NEW SECTION. **Sec.**  RCW 28A.405.310 (Adverse change in contract status of certificated employee, including nonrenewal of contract—Hearings—Procedure) and 1990 c 33 s 396, 1987 c 375 s 1, 1977 ex.s. c 7 s 1, & 1975‑'76 2nd ex.s. c 114 s 5 are each repealed.

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