

# SENATE BILL REPORT

## SB 5744

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As of February 11, 2015

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

**Brief Description:** Regarding school employee workforce reductions and assignments.

**Sponsors:** Senators Litzow, Fain, Hill, Rivers, Schoesler, Braun and Becker.

**Brief History:**

**Committee Activity:** Early Learning & K-12 Education: 2/09/15.

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### SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

**Staff:** Matthew Lemon (786-7405)

**Background:** Employment Contracts. Teachers and other certificated employees may only be hired by written order of a majority of the school board directors. The board must make a written contract with each teacher and the contract must be limited to a one-year term, unless otherwise provided by law.

Nonrenewal for Probable Cause. School boards may nonrenew the contract of a certificated employee when it is determined that there is probable cause. The board must notify the employee in writing no later than May 15, or June 15 if the omnibus appropriations act has not yet passed. An employee whose contract is nonrenewed for probable cause may request a hearing to determine whether there is sufficient cause for nonrenewal.

Performance Evaluations and Human Resource Decisions. Aspects of performance evaluations for certificated employees are specified in statute, including minimum evaluation criteria and the requirement that performance rated as not satisfactory is subject to a probationary period and, if performance does not improve, a finding of probable cause for nonrenewal.

Legislation enacted in 2010 directed the development of a revised evaluation system for teachers and principals. The revised evaluation system includes eight evaluation criteria and a four-level rating system ranging from unsatisfactory to distinguished. Evaluations must be performed annually. Beginning no later than 2013-14 school year, each district adopted an implementation schedule that transitions all teachers and principals to the new evaluation system no later than the 2015-16 school year.

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*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.*

In current law, evaluation results for certificated teachers and principals must be used as one of multiple factors in making human resource and personnel decisions beginning with the 2015-16 school year. These decisions include, but are not limited to, staff assignments and reductions in force.

In 2012 the Legislature asked the Office of Superintendent of Public Instruction to submit a report on best practices and recommendations regarding how teacher and principal evaluations inform human resource and personnel decisions. The December 2013 report asked for a delay in using teacher evaluations to inform human resource decisions until the 2016-17 school year.

Staffing Placements. In current law, one duty of principals is to submit recommendations to the district superintendent regarding appointment, assignment, promotion, transfer, and dismissal of all personnel assigned to the attendance area for which the principals are responsible.

The Professional Educator Standards Board has created administrative rules that districts must conform to when assigning classroom teachers, principals and assistant principals, and educational staff associates within their districts. These rules outline only the necessary certifications teachers must possess to teach in various grade levels or subject areas.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** Reductions in Force (RIF) of Certificated Teachers Due to Enrollment or Revenue Loss. A performance-based framework for RIF due to enrollment decline or revenue loss is set forth in statute. Past performance evaluations are the basis for determining the order in which the contracts of certificated staff within each particular certification or endorsement area are nonrenewed:

- Teachers with no performance evaluation data available must have their contracts nonrenewed first;
- When performance evaluation data is available, teachers who received the lowest evaluation rating when averaging their two most recent evaluations according to a specified, weighted formula must have their contracts nonrenewed before teachers with higher ratings. A teacher's most recent evaluation is weighted by 60 percent and the next-most recent is weighted by 40 percent;
- Teachers with only one year of evaluation rating must use that rating in place of the two-year average; and
- 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 be considered, but those criteria may only be established when they are in the best interest of students.

Recall of RIF Teachers. Teachers whose contracts have been nonrenewed due to enrollment decline or revenue loss must be recalled in the reverse order that their contracts were nonrenewed. Recall rights may only guarantee the right to an interview, last for no more than three years, and do 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 loss is separated and differentiated from the process for nonrenewal of contracts based on probable cause. Teachers whose contracts are nonrenewed due to enrollment declines or revenue loss must be notified in writing on or before May 15, or June 15 if the omnibus appropriations act has not passed.

The employee who receives such a notification may make a written request to meet informally with the superintendent in order to request reconsideration of the decision. Additional steps in this process are laid out in statute, including timing, notice requirements, and school board procedures. An employee may appeal a final decision of nonrenewal to the county superior court, in accordance with statute.

This process applies to any person employed by a school district in a nonprovisional certificated classroom teaching position after June 25, 2015.

Teacher and Principal Agreement on Staffing Placements. Every school board policy and locally bargained agreement adopted after the effective date must contain a provision that a teacher may be assigned to a particular school only with the mutual agreement of the hiring principal and the teacher. This policy of hiring through mutual agreement is referred to as school-based hiring.

School districts must work with the local teachers' association to develop school-based hiring policies. If there is no local association, the district must create an eight-person committee consisting of four district members and four teachers to develop the policies. Districts must adopt school-based hiring policies no later than when locally bargained agreements expire and are renegotiated.

Any active nonprovisional teacher who received an evaluation rating in the top level of a two-level system or the top two levels of a four-level system who has not secured a position through school-based hiring must be placed in a priority hiring pool. Teachers in the pool are ensured a right to interview for available positions within the district for which they are qualified.

Displaced Teachers. Displacement of teachers may occur for several reasons, including but not limited to the following: (1) transfer request, (2) drop in enrollment, (3) reduction in program, (4) reduction in building, and (5) implementation of a federal or state accountability intervention model such as turnaround, closure, or transformation.

If a teacher is displaced from a particular school but not discharged by the district, the teacher must receive written notification. Upon notice the district must immediately provide the teacher with a list of vacant positions for which they are qualified, as well as a list of vacant positions in areas identified as a critical need. Such lists must be kept up to date and available online.

If a displaced teacher applies for a vacancy, the application must be made to the principal of the listed school and a copy provided to the district. The teacher is transferred to the position if the principal recommends appointment.

If a displaced teacher is unable to secure a position through school-based hiring within six months or one summer hiring cycle – whichever is longer – of receiving notification of displacement, then the district may nonrenew the teacher's contract because lacking an official assignment is considered probable cause for nonrenewal. If the teacher secures an assignment at a later date, the district must reinstate the teacher's salary and benefits at the level they were when the contract was nonrenewed.

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

Districts may involuntarily transfer a teacher if allowable in board policy or a locally bargained agreement. However, any assignment resulting from the transfer must be through mutual agreement of the teacher and principal in order to comply with school-based hiring.

**Appropriation:** None

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No

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

**Staff Summary of Public Testimony:** PRO: The purpose of this bill is to make sure we have great teachers in every classroom. The state has many wonderful teachers, but the current seniority system does not guarantee that every classroom has an effective teacher. Current practices are not working to address the opportunity and achievement gaps. This bill is a chance to build teams focused on closing those gaps and will help those students and schools with the most need. Research shows that teachers are the single largest in-school factor on student achievement – even more of a factor than class size or socioeconomic status. The University of Washington Center for Education Data and Research found that there was two to three months of learning lost for students whose teachers were laid off due to seniority compared to teachers laid off due to effectiveness.

Two of the state's closest competitors in jobs and labor markets, Colorado and Massachusetts, both use teacher performance as one criteria in the RIF process. Both states show strong results on several outcomes related to workforce education and employment in science, engineering, and technology. Data show that Washington's industries are highly competitive in today's economy, but the state's job market demands are not aligned with current education policies affecting the workforce. Principals know their students and schools best and should be empowered to make decisions at the school level in order to keep the best teachers for the students, the school, and the culture they are trying to create. Difficult personnel decisions

should be made on merit, not seniority. The state must retain teachers who positively impact student performance and who fit the students and schools in which they teach.

CON: Teachers and educators view themselves as professionals who have chosen a career they can dedicate their lives to over the long-term. RIFs only happen when there are funding cuts or enrollment reductions. Districts and school boards work with their local community to handle these situations when they arise. The federal requirement for highly qualified teachers and the recent recession caused districts to carefully look at RIF policies to ensure they work in today's context. Current law mandates the use of evaluations in all HR decisions beginning next year. This bill may bring back a compliance-only system and will penalize early-career teachers and teachers in districts that transitioned to the new evaluation system early. Rater reliability does not yet exist in districts and RIFs should not be based on something that is not fair, equitable, or reliable. Due process in RIF policies should be protected.

Mutual consent will create a chilling effect on teachers and they may be hesitant to apply for transfers. There have been lawsuits for discrimination in states with this policy. Funding is by district, so principals will never be able to make decisions without regard for the district. We already have a bargaining process that looks at transfer and placement policies. There is no scientific research showing these two policies will improve schools. Instead we need professional development around evaluations and funding for basic education.

OTHER: One section of the bill would transfer authority to assign teachers to buildings and programs away from districts and into the hands of principals and teachers, who could then veto district-initiated transfers. This would adversely impact districts' ability to manage their operations. District-initiated transfers help manage staffing when school populations change from year to year and ensure that mandated specialty programs, such as special education and advanced placement, are taught by highly qualified teachers districtwide. Temporary assignments may be disruptive and may increase the hiring burden on districts. Districts and administrators need to retain the ability to address real-life issues, match assignments to experience and training, ensure specialty programs are taught by highly qualified specialists, and meet mandated course requirements. The most efficient and cost-effective approach is to give districts more flexibility to manage, not less.

**Persons Testifying:** PRO: Senator Litzow, prime sponsor; Frank Ordway, League of Education Voters; Cary Evans, Stand for Children; Cinzia Lettieri, Independent Researcher; Neil Strege, WA Roundtable.

CON: Lucinda Young, WA Education Assn.

OTHER: Charlie Brown, The Schools Alliance.