

AMENDED IN SENATE JULY 1, 2010
AMENDED IN SENATE JUNE 2, 2010
AMENDED IN SENATE APRIL 28, 2010
AMENDED IN SENATE APRIL 13, 2010

SENATE BILL

No. 955

Introduced by Senator Huff
(Principal coauthors: Senators Emmerson and Romero)

February 4, 2010

An act to amend Sections 1294, 1296, *14501*, *44662*, 44929.21, 44936, 44944, 44945, 44955, and 44956 of, *to amend and repeal Section 44660 of*, to add Sections ~~44955.1~~ *44660.5*, *44955.1*, and 44955.2 to, and to repeal Section 44949 of, the Education Code, relating to school districts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 955, as amended, Huff. School districts.

(1) Existing law provides that, after a certificated employee of a school district or a county superintendent of schools with an average daily attendance of 250 or more completes 2 consecutive years of employment and is reelected for the next succeeding school year to a position requiring certification, the employee becomes and is classified as a permanent employee of the school district or county superintendent. Existing law additionally requires the governing board of a school district or county superintendent to notify the employee on or before March 15 of the employee's 2nd year of probation of the decision of the governing board or school district to reelect or not reelect the employee for the next succeeding school year to the position.

This bill would instead require the governing board and county superintendent of schools to notify the employee of its decision to reelect or not reelect the employee on or after May 1 but no later than 30 days before the last schoolday scheduled on the school calendar of the employee's 2nd year of probation.

(2) Existing law states the intent of the Legislature that governing boards of school districts establish a uniform system of evaluation and assessment of the performance of all certificated personnel within each school district of the state, including schools conducted or maintained by county superintendents of education. Existing law requires the evaluation and assessment system to involve the development and adoption of objective guidelines that may be uniform throughout the district or, for compelling reasons, be individually developed for territories or schools within the district.

This bill would make this provision inoperative on July 1, 2012, and repeal it as of January 1, 2013. The bill would reenact the requirement that the governing board establish a uniform system of evaluation and assessment and require it to be a rigorous, transparent, and fair multiple measures evaluation system for both teachers and principals. By requiring the evaluation and assessment system to conform to specified multiple measure requirements, the bill would impose a state-mandated local program. The bill would subject the requirement to develop and implement the evaluation system to specified annual audits commencing with the 2012–13 fiscal year and would require the Superintendent of Public Instruction to institute fiscal penalties, as specified, for noncompliance.

(3) Existing law prohibits the evaluation and assessment of certificated employee performance from including the use of publishers' norms established by standardized tests.

The bill would delete this prohibition.

~~(2)~~

(4) Existing law establishes certain procedures with which the governing board of a school district is required to comply before dismissing or suspending a permanent employee, including, at the employee's option, a hearing. Existing law establishes a Commission on Professional Competence for each hearing, consisting of specified members. Existing law deems the decision of the Commission on Professional Competence to be the final decision of the governing board.

Existing law prohibits a notice of dismissal or suspension initiated pursuant to these provisions from being given between May 15 and September 15, inclusive, in any year.

This bill would delete that prohibition. The bill would make various changes to the provisions relating to the hearing, including authorizing the commission on professional competence to consist solely of an administrative law judge, as well as providing that the decision of the commission would be advisory, and the final decision regarding the discipline of the employee would be determined by action of the governing board. The bill would provide that an employee requesting a hearing would be placed on administrative leave without pay, unless the employee furnishes to the school district acceptable security, as specified, in which case the employee would be continued to be paid his or her regular salary.

Existing

(5) *Existing* law authorizes the decision of a Commission on Professional Competence to be reviewed by a court of competent jurisdiction on petition of either the governing board or the employee.

This bill would instead authorize the decision to be reviewed on petition of the employee.

(3)

(6) Existing law requires, when a reduction in the number of certificated employees employed by a school district is authorized for specified reasons, the notice of the termination of the services of an employee in the subsequent school year be given by the governing board to the employee, in a prescribed manner, before May 15. Existing law requires the superintendent of the district, prior to March 15 and before an employee is given the described notice, to give written notice to the governing board and the employee that it has been recommended that the notice be given to the employee, and stating the reasons therefor. Existing law authorizes an employee who is given this notice to request a hearing to determine if there is cause for not reemploying him or her for the ensuing year.

This bill would eliminate this notice requirement and the authority of an employee to request a hearing.

Existing

(7) *Existing* law provides that when employees are terminated pursuant to a reduction in workforce, that a school district is required to terminate the employees in order of seniority. Existing law provides certain exceptions to this rule.

This bill would provide additional exceptions, including authorizing school districts to terminate employees on the basis of performance evaluations, as specified, and on the basis that the employee is assigned to a schoolsite that has been selected by the governing board for exemption from certificated reductions in force, based upon the needs of the educational program.

~~(4)~~

(8) Existing law generally requires school districts to adhere to certain requirements with respect to teacher and administrator employment. Existing law requires a charter school petition to set forth specified information in its charter relating to employment, including the qualifications to be met by individuals to be employed at the school.

This bill would authorize school districts, county offices of education, and charter schools to assign, reassign, and transfer teachers and administrators based on effectiveness and subject matter needs, and without regard to years of service.

~~(5)~~

(9) Existing law provides certain rights for permanent school employees who have been terminated pursuant to specified provisions of law, including the right to be offered prior opportunity for substitute service during the absence of any other employee who has been granted a leave of absence or who is temporarily absent from duty, as specified, and generally requires terminations and reappointments to be made in order of seniority, as specified. Existing law also authorizes a school district to deviate from the order of seniority in certain circumstances.

This bill would expand the list of circumstances under which a school district is authorized to deviate from terminating or reappointing a certificated employee in order of seniority. The bill would revise the compensation requirements for employees who serve as substitute teachers in a position requiring certification qualifications for 21 days or more within a period of 60 schooldays by requiring a school district to compensate the employee at a rate no less than the amount the employee would have received if he or she were being reappointed beginning on the 22nd day during that 60-day period instead of the first day of that service. The bill would prohibit a school district from taking into consideration whether an employee has exercised specified rights to meet and negotiate when deviating from the order of seniority.

The bill would make the bill's provisions applicable to county superintendent of schools, and would delete obsolete provisions relating to employees who were on probation prior to 1984.

(10) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6)

(11) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~-yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1294 of the Education Code is amended
2 to read:

3 1294. Each person employed by a county superintendent of
4 schools in a position requiring certification qualifications, except
5 employees included in the civil service system or in any merit
6 system, or any person who holds an office by virtue of an election
7 conducted under the Elections Code or the Education Code, and
8 whose salary is paid from the county school service fund, has the
9 same right with respect to leaves of absence, sick leave, and
10 bereavement leave as a person employed by a school district or a
11 community college district in a position requiring certification
12 qualifications.

13 Sections 22724, 44845, 44922, 44929.21, 44936, 44944,
14 44945, 44955, 44955.1, 44956, 44962 to 44976, inclusive, 44977,
15 44978, 44979, 44983, 44984, 44985, 44987, 87413, 87414, 87740,
16 87743, 87763 to 87779, inclusive, 87780, 87781, 87782, 87786,
17 87787, and 87788 apply to persons so employed by a county
18 superintendent of schools and so paid from the county school
19 service fund. Whenever, in those provisions, a duty or power is
20 imposed upon or granted to the governing board of a school district
21 or community college district or an employee thereof, the power
22 or duty shall, for the purposes of this section, be deemed to be
23 granted to or imposed on the county superintendent of schools or
24 his or her employee, respectively. When “district” is used in those

1 provisions, it shall, for the purposes of this section, be deemed to
2 mean “county superintendent of schools.” Compensation paid to
3 employees during those leaves shall be paid from the county school
4 service fund.

5 The granting of leaves of absence to employees pursuant to
6 Section 44966 or 87767 shall be by the county superintendent of
7 schools, upon approval by the county board of education.

8 SEC. 2. Section 1296 of the Education Code is amended to
9 read:

10 1296. (a) If the average daily attendance of the schools and
11 classes maintained by a county superintendent of schools is 250
12 or more, each person who, after being employed for two complete
13 consecutive school years by the superintendent in a teaching
14 position in those schools or classes requiring certification
15 qualifications and whose salary is paid from the county school
16 service fund, is reelected for the next succeeding school year to a
17 certificated position in those schools or classes, shall be classified
18 as and become a permanent employee of the county superintendent
19 of schools.

20 (b) The county superintendent of schools shall notify the
21 employee, on or after May 1, but no later than 30 days before the
22 last schoolday scheduled on the school calendar of the employee’s
23 second complete consecutive year of employment by the
24 superintendent in a teaching position in schools or classes
25 maintained by the superintendent requiring certification
26 qualifications, of the decision to reelect or not reelect the employee
27 for the next succeeding school year to the position. If the county
28 superintendent does not give notice to the employee within that
29 time period, the employee shall be deemed reelected for the next
30 succeeding school year. The employee shall have the same rights
31 and duties as employees of school districts to which Section 44882
32 applies. Sections 44841, 44842, 44882, 44948.3, and 44948.5 are
33 applicable to these employees.

34 (c) As used in this section, “teaching position” means any
35 certificated position designated as of January 1, 1983, by the county
36 board of education or the county superintendent of schools as a
37 teaching position for the purpose of granting probationary or
38 permanent status.

39 SEC. 3. Section 14501 of the Education Code is amended to
40 read:

1 14501. (a) As used in this chapter, “financial and compliance
2 audit” shall be consistent with the definition provided in the
3 “Standards for Audits of Governmental Organizations, Programs,
4 Activities, and Functions” promulgated by the Comptroller General
5 of the United States. Financial and compliance audits conducted
6 under this chapter shall fulfill federal single audit requirements.

7 (b) As used in this chapter, “compliance audit” means an audit
8 that ascertains and verifies whether or not funds provided through
9 apportionment, contract, or grant, either federal or state, have been
10 properly disbursed and expended as required by law or regulation
11 or both and includes the verification of each of the following:

12 (1) The reporting requirements for the sufficiency of textbooks
13 or instructional materials, or both, as defined in Section 60119.

14 (2) Teacher misassignments pursuant to Section 44258.9.

15 (3) The accuracy of information reported on the School
16 Accountability Report Card required by Section 33126. The
17 requirements set forth in paragraphs (1) and (2) and this paragraph
18 shall be added to the audit guide requirements pursuant to
19 subdivision (b) of Section 14502.1.

20 (4) *The development and implementation of the teacher and*
21 *principal evaluation system required pursuant to Section 44660.5.*

22 *SEC. 4. Section 44660 of the Education Code is amended to*
23 *read:*

24 44660. (a) It is the intent of the Legislature that governing
25 boards establish a uniform system of evaluation and assessment
26 of the performance of all certificated personnel within each school
27 district of the state, including schools conducted or maintained by
28 county superintendents of education. The system shall involve the
29 development and adoption by each school district of objective
30 evaluation and assessment guidelines which may, at the discretion
31 of the governing board, be uniform throughout the district or, for
32 compelling reasons, be individually developed for territories or
33 schools within the district, provided that all certificated personnel
34 of the district shall be subject to a system of evaluation and
35 assessment adopted pursuant to this article.

36 ~~This~~

37 (b) *This* article does not apply to certificated personnel who are
38 employed on an hourly basis in adult education classes.

39 (c) *This section shall become inoperative on July 1, 2012, and,*
40 *as of January 1, 2013, is repealed, unless a later enacted statute,*

1 *that becomes operative on or before January 1, 2013, deletes or*
2 *extends the dates on which it becomes inoperative and is repealed.*

3 *SEC. 5. Section 44660.5 is added to the Education Code, to*
4 *read:*

5 *44660.5. (a) (1) By the 2012–13 school year, the governing*
6 *board of a school district shall establish a uniform system of*
7 *evaluation and assessment of the performance of all certificated*
8 *employees within the school district and shall fully implement the*
9 *system by the 2013–14 school year. The system shall clearly define*
10 *a rigorous, transparent, and fair multiple measures evaluation*
11 *system for both teachers and principals and shall involve the*
12 *development and adoption by the governing board of objective*
13 *evaluation and assessment guidelines. All certificated employees*
14 *of the school district shall be subject to a system of evaluation and*
15 *assessment adopted pursuant to this article, except that this article*
16 *does not apply to certificated employees who are employed on an*
17 *hourly basis in adult education classes.*

18 *(2) This article applies to the county superintendent of schools*
19 *and the employees of schools conducted or maintained by the*
20 *county superintendent of schools.*

21 *(b) For purposes of this section, a multiple measures evaluation*
22 *system is a teacher and principal evaluation system that uses*
23 *multiple research-validated approaches to measuring effectiveness,*
24 *including the measures specified in Section 44662. A school district*
25 *evaluation system also shall include a the quantitative pupil*
26 *academic achievement component that shall constitute at least 30*
27 *percent of the overall teacher and principal effectiveness measure.*

28 *(c) (1) The requirement to develop and implement the evaluation*
29 *system shall be subject to the annual audits, conducted pursuant*
30 *to Section 14501, commencing with the 2012–13 fiscal year.*

31 *(2) The Superintendent shall institute fiscal penalties for*
32 *noncompliance with this section. Fiscal penalties shall include,*
33 *but not be limited to, withholding 10 percent of the school district*
34 *or county office of education apportionments. This withholding*
35 *shall be returned to the school district or county office of education*
36 *once the evaluation system required by this section is implemented.*

37 *SEC. 6. Section 44662 of the Education Code is amended to*
38 *read:*

1 44662. (a) The governing board of each school district shall
2 establish standards of expected pupil achievement at each grade
3 level in each area of study.

4 (b) The governing board of each school district shall evaluate
5 and assess certificated employee performance as it reasonably
6 relates to:

7 (1) The progress of pupils toward the standards established
8 pursuant to subdivision (a) and, if applicable, the state adopted
9 academic content standards as measured by state adopted criterion
10 referenced assessments.

11 (2) The instructional techniques and strategies used by the
12 employee.

13 (3) The employee's adherence to curricular objectives.

14 (4) The establishment and maintenance of a suitable learning
15 environment, within the scope of the employee's responsibilities.

16 (c) The governing board of each school district shall establish
17 and define job responsibilities for certificated noninstructional
18 personnel, including, but not limited to, supervisory and
19 administrative personnel, whose responsibilities cannot be
20 evaluated appropriately under the provisions of subdivision (b)
21 and shall evaluate and assess the performance of those
22 noninstructional certificated employees as it reasonably relates to
23 the fulfillment of those responsibilities.

24 (d) Results of an employee's participation in the Peer Assistance
25 and Review Program for Teachers established by Article 4.5
26 (commencing with Section 44500) shall be made available as part
27 of the evaluation conducted pursuant to this section.

28 ~~(e) The evaluation and assessment of certificated employee
29 performance pursuant to this section shall not include the use of
30 publishers' norms established by standardized tests.~~

31 ~~(f) Nothing in this section shall be construed as in any way
32 limiting~~

33 *(e) This section does not limit the authority of the governing
34 board of a school district governing boards to develop and adopt
35 additional evaluation and assessment guidelines or criteria.*

36 ~~SEC. 3.~~

37 *SEC. 7.* Section 44929.21 of the Education Code is amended
38 to read:

39 44929.21. (a) Every employee of a school district of any type
40 or class having an average daily attendance of 250 or more who,

1 after having been employed by the district for two complete
 2 consecutive school years in a position or positions requiring
 3 certification qualifications, is reelected for the next succeeding
 4 school year to a position requiring certification qualifications shall,
 5 at the commencement of the succeeding school year, be classified
 6 as and become a permanent employee of the district.

7 (b) The governing board shall notify the employee, on or after
 8 May 1, but no later than 30 days before the last schoolday
 9 scheduled on the school calendar of the employee's second
 10 complete consecutive school year of employment by the district
 11 in a position or positions requiring certification qualifications, of
 12 the decision to reelect or not reelect the employee for the next
 13 succeeding school year to the position. In the event that the
 14 governing board does not give notice to the employee within that
 15 time period, the employee shall be deemed reelected for the next
 16 succeeding school year.

17 ~~SEC. 4.~~

18 *SEC. 8.* Section 44936 of the Education Code is amended to
 19 read:

20 44936. The notice of dismissal or suspension in a proceeding
 21 initiated pursuant to Section 44934 shall be in writing and be served
 22 upon the employee personally or by United States registered mail
 23 addressed to ~~him at his~~ *the employee at the employee's* last known
 24 address. A copy of the charges filed, containing the information
 25 required by Section 11503 of the Government Code, together with
 26 a copy of the provisions of this article, shall be attached to the
 27 notice.

28 ~~SEC. 5.~~

29 *SEC. 9.* Section 44944 of the Education Code is amended to
 30 read:

31 44944. (a) (1) In a dismissal or suspension proceeding initiated
 32 pursuant to Section 44934, if a hearing is requested by the
 33 employee, the hearing shall be commenced within 60 days from
 34 the date of the employee's demand for a hearing. The hearing shall
 35 be initiated, conducted, and a decision made in accordance with
 36 Chapter 5 (commencing with Section 11500) of Part 1 of Division
 37 3 of Title 2 of the Government Code. However, the hearing date
 38 shall be established after consultation with the employee and the
 39 governing board, or their representatives, and the ~~commission on~~
 40 ~~professional competence~~ *Commission on Professional Competence*

1 shall have all of the power granted to an agency in that chapter,
2 except that the right of discovery of the parties shall not be limited
3 to those matters set forth in Section 11507.6 of the Government
4 Code but shall include the rights and duties of any party in a civil
5 action brought in a superior court under Title 4 (commencing with
6 Section 2016.010) of Part 4 of the Code of Civil Procedure.
7 Notwithstanding any provision to the contrary, and except for the
8 taking of oral depositions, no discovery shall occur later than 30
9 calendar days after the employee is served with a copy of the
10 accusation pursuant to Section 11505 of the Government Code.
11 In all cases, discovery shall be completed prior to seven calendar
12 days before the date upon which the hearing commences. If a
13 continuance is granted pursuant to Section 11524 of the
14 Government Code, the time limitation for commencement of the
15 hearing as provided in this subdivision shall be extended for a
16 period of time equal to the continuance. However, the extension
17 shall not include that period of time attributable to an unlawful
18 refusal by either party to allow the discovery provided for in this
19 section.

20 (2) If the right of discovery granted under paragraph (1) is
21 denied by either the employee or the governing board, all of the
22 remedies in Chapter 7 (commencing with Section 2023.010) of
23 Title 4 of Part 4 of the Code of Civil Procedure shall be available
24 to the party seeking discovery, and the court of proper jurisdiction
25 to entertain his or her motion shall be the superior court of the
26 county in which the hearing will be held.

27 (3) The time periods in this section and of Chapter 5
28 (commencing with Section 11500) of Part 1 of Division 3 of Title
29 2 of the Government Code and of Title 4 (commencing with
30 Section 2016.010) of Part 4 of the Code of Civil Procedure shall
31 not be applied so as to deny discovery in a hearing conducted
32 pursuant to this section.

33 (4) The superior court of the county in which the hearing will
34 be held may, upon motion of the party seeking discovery, suspend
35 the hearing so as to comply with the requirement of the preceding
36 paragraph.

37 (5) No witness shall be permitted to testify at the hearing except
38 upon oath or affirmation.

39 (b) The hearing provided for in this section shall be conducted
40 by a ~~commission on professional competence~~ *Commission on*

1 *Professional Competence.* The commission shall be established
2 through one of the following two methods, as selected by the
3 governing board:

4 (1) One member of the commission shall be selected by the
5 employee, one member shall be selected by the governing board,
6 and one member shall be an administrative law judge of the Office
7 of Administrative Hearings who shall be chairperson and a voting
8 member of the commission and shall be responsible for ensuring
9 that the legal rights of the parties are protected at the hearing. The
10 member selected by the governing board and the member selected
11 by the employee shall not be related to the employee, shall not be
12 employees of the district initiating the dismissal or suspension,
13 and shall hold a currently valid credential and have at least five
14 years' teaching or administrative experience. If either the governing
15 board or the employee for any reason fails to select a commission
16 member at least seven calendar days prior to the date of the hearing,
17 the failure shall constitute a waiver of the right to selection, and
18 the county board of education or its specific designee shall
19 immediately make the selection. If the county board of education
20 is also the governing board of the school district or has by statute
21 been granted the powers of a governing board, the selection shall
22 be made by the Superintendent, who shall be reimbursed by the
23 school district for all costs incident to the selection.

24 (2) The commission shall consist solely of an administrative
25 law judge of the Office of Administrative Hearings who shall be
26 responsible for ensuring that the legal rights of the parties are
27 protected at the hearing.

28 (c) (1) The commission shall prepare a written decision
29 containing findings of fact, determinations of issues, and a
30 disposition that shall be, solely, one of the following:

31 (A) That the employee should be dismissed.

32 (B) That the employee should be suspended for a specific period
33 of time without pay.

34 (C) That the employee should not be dismissed or suspended.

35 (2) The decision of the commission that the employee should
36 not be dismissed or suspended shall not be based on nonsubstantive
37 procedural errors committed by the school district or governing
38 board unless the errors are prejudicial errors.

39 (3) The commission shall not have the power to dispose of the
40 charge of dismissal by imposing probation or other alternative

1 sanctions. The imposition of suspension pursuant to subparagraph
2 (B) of paragraph (1) shall be available only in a suspension
3 proceeding authorized pursuant to subdivision (b) of Section 44932
4 or Section 44933.

5 (4) The decision of the commission shall be advisory, and the
6 final decision regarding the discipline of the employee shall be
7 determined by action of the governing board of the school district.

8 (5) The board may adopt from time to time rules and procedures
9 not inconsistent with this section as may be necessary to effectuate
10 this section.

11 (6) The governing board and the employee shall have the right
12 to be represented by counsel.

13 (d) (1) If the commission has been established pursuant to
14 paragraph (1) of subdivision (b), and the member selected by the
15 governing board or the member selected by the employee is
16 employed by any school district in this state, the member shall,
17 during any service on the commission, continue to receive salary,
18 fringe benefits, accumulated sick leave, and other leaves and
19 benefits from the district in which the member is employed, but
20 shall receive no additional compensation or honorariums for service
21 on the commission.

22 (2) If the commission has been established pursuant to paragraph
23 (1) of subdivision (b), and service on the commission occurs during
24 summer recess or vacation periods, the member shall receive
25 compensation proportionate to that received during the current or
26 immediately preceding contract period from the member's
27 employing district, whichever amount is greater.

28 (e) (1) If the governing board determines that the employee
29 should be dismissed or suspended, the governing board and the
30 employee shall share equally the expenses of the hearing, including
31 the cost of the administrative law judge. If the commission has
32 been established pursuant to paragraph (1) of subdivision (b), the
33 state shall pay any costs incurred under paragraph (2) of
34 subdivision (d), the reasonable expenses, as determined by the
35 administrative law judge, of the member selected by the governing
36 board and the member selected by the employee, including, but
37 not limited to, payments or obligations incurred for travel, meals,
38 and lodging, and the cost of the substitute or substitutes, if any,
39 for the member selected by the governing board and the member
40 selected by the employee. The Controller shall pay all claims

1 submitted pursuant to this paragraph from the General Fund, and
2 may prescribe reasonable rules, regulations, and forms for the
3 submission of the claims. The employee and the governing board
4 shall pay their own attorney's fees.

5 (2) If the governing board determines that the employee should
6 not be dismissed or suspended, the governing board shall pay the
7 expenses of the hearing, including the cost of the administrative
8 law judge, any costs incurred under paragraph (2) of subdivision
9 (d), the reasonable expenses, as determined by the administrative
10 law judge, of the member selected by the governing board and the
11 member selected by the employee, including, but not limited to,
12 payments or obligations incurred for travel, meals, and lodging,
13 the cost of the substitute or substitutes, if any, for the member
14 selected by the governing board and the member selected by the
15 employee, and reasonable attorney's fees incurred by the employee.

16 (3) As used in this section, "reasonable expenses" shall not be
17 deemed "compensation" within the meaning of subdivision (d).

18 (4) If the employee petitions a court of competent jurisdiction
19 for review of the decision of the commission, the payment of
20 expenses to the administrative law judge required by this
21 subdivision shall not be stayed.

22 (5) (A) If the commission has been established pursuant to
23 paragraph (1) of subdivision (b), and the decision of the governing
24 board is finally reversed or vacated by a court of competent
25 jurisdiction, either the state, having paid the commission members'
26 expenses, shall be entitled to reimbursement from the governing
27 board for those expenses, or the governing board, having paid the
28 expenses, shall be entitled to reimbursement from the state.

29 (B) Either the employee, having paid a portion of the expenses
30 of the hearing, including the cost of the administrative law judge,
31 shall be entitled to reimbursement from the governing board for
32 the expenses, or the governing board, having paid its portion and
33 the employee's portion of the expenses of the hearing, including
34 the cost of the administrative law judge, shall be entitled to
35 reimbursement from the employee for that portion of the expenses.

36 (f) The hearing provided for in this section shall be conducted
37 in a place selected by agreement among the members of the
38 commission. If the commission has been established pursuant to
39 paragraph (1) of subdivision (b), in the absence of agreement, the
40 place shall be selected by the administrative law judge.

1 (g) (1) For the duration of the hearing conducted pursuant to
2 this section, the employee shall be placed on administrative leave
3 without pay, unless the employee furnishes to the school district
4 a suitable bond or other security acceptable to the governing board,
5 as specified in paragraph (2).

6 (2) An employee placed on administrative leave pursuant to this
7 section shall continue to be paid his or her regular salary during
8 the period of his or her administrative leave of absence if during
9 that time he or she furnishes to the school district a suitable bond
10 or other security acceptable to the governing board, as a guarantee
11 that the school district will be repaid the amount of salary during
12 the employee's leave of absence if, by action of the governing
13 board, a final decision is made to terminate the employee, or the
14 employee fails or refuses to return to service following a decision
15 not to terminate the employee. If the governing board determines
16 that the employee should not be dismissed, the governing board
17 shall reimburse the employee for the cost of the bond upon his or
18 her return to service in the school district.

19 (3) If the employee prevails at the hearing, the administrative
20 law judge may recommend a suitable compensatory remedy,
21 including back wages and benefits, which the governing board
22 may adopt if the employee is reinstated. Any employee who is
23 reinstated pursuant to this section, either by the governing board
24 or by order of a court of competent jurisdiction, is entitled to
25 reasonable back wages and benefits.

26 ~~SEC. 6.~~

27 *SEC. 10.* Section 44945 of the Education Code is amended to
28 read:

29 44945. The decision of the governing board may, on petition
30 of the employee, be reviewed by a court of competent jurisdiction
31 in the same manner as a decision made by a hearing officer under
32 Chapter 5 (commencing with Section 11500) of Part 1 of Division
33 3 of Title 2 of the Government Code. The court, on review, shall
34 exercise its independent judgment on the evidence. The proceeding
35 shall be set for hearing at the earliest possible date and shall take
36 precedence over all other cases, except older matters of the same
37 character and matters to which special precedence is given by law.

38 ~~SEC. 7.~~

39 *SEC. 11.* Section 44949 of the Education Code is repealed.

1 ~~SEC. 8.~~

2 *SEC. 12.* Section 44955 of the Education Code is amended to
3 read:

4 44955. (a) No permanent employee shall be deprived of his
5 or her position for causes other than those specified in Sections
6 44907 and 44923, and Sections 44932 to 44947, inclusive, and no
7 probationary employee shall be deprived of his or her position for
8 cause other than as specified in Section 44948.

9 (b) (1) Whenever in any school year the average daily
10 attendance in all of the schools of a district for the first six months
11 in which school is in session has declined below the corresponding
12 period of either of the previous two school years, whenever the
13 governing board determines that attendance in a district will decline
14 in the following year as a result of the termination of an interdistrict
15 tuition agreement as defined in Section 46304, whenever a
16 particular kind of service is to be reduced or discontinued not later
17 than the beginning of the following school year, or whenever the
18 amendment of state law requires the modification of curriculum,
19 and when in the opinion of the governing board of the district it
20 has become necessary by reason of any of these conditions to
21 decrease the number of permanent employees in the district, the
22 governing board may terminate the services of not more than a
23 corresponding percentage of the certificated employees of the
24 district, permanent as well as probationary, at the close of the
25 school year. Except as otherwise provided by statute, the services
26 of a permanent employee shall not be terminated under the
27 provisions of this section while any probationary employee, or any
28 other employee with less seniority, is retained to render a service
29 which the permanent employee is certificated and competent to
30 render.

31 (2) In computing a decline in average daily attendance for
32 purposes of this section for a newly formed or reorganized school
33 district, each school of the district shall be deemed to have been
34 a school of the newly formed or reorganized district for both of
35 the two previous school years.

36 (3) As between employees who first rendered paid service to
37 the district on the same date, the governing board shall determine
38 the order of termination solely on the basis of needs of the district
39 and the pupils thereof, including distinctions based upon
40 performance evaluations. Upon the request of any employee whose

1 order of termination is so determined, the governing board shall
2 furnish in writing within 30 days of the request, a statement of the
3 specific criteria used in determining the order of termination and
4 the application of the criteria in ranking each employee relative to
5 the other employees in the group. This requirement that the
6 governing board provide, on request, a written statement of reasons
7 for determining the order of termination shall not be interpreted
8 to give affected employees any legal right or interest that would
9 not exist without such a requirement.

10 (c) Notice of termination of services shall be given before the
11 15th of May, and services of those employees shall be terminated
12 in the inverse of the order in which they were employed, as
13 determined by the board in accordance with the provisions of
14 Sections 44844 and 44845.

15 (d) Notwithstanding subdivision (b), except as specified in
16 subdivision (e), a school district may deviate from terminating a
17 certificated employee in order of seniority for any of the following
18 reasons:

19 (1) The district demonstrates a specific need for personnel to
20 teach a specific course or course of study, or to provide services
21 authorized by a services credential with a specialization in either
22 pupil personnel services or health for a school nurse, and that the
23 certificated employee has special training and experience necessary
24 to teach that course or course of study or to provide those services,
25 which others with more seniority do not possess.

26 (2) For purposes of maintaining or achieving compliance with
27 constitutional requirements related to equal protection of the laws
28 *as it applies to pupils*.

29 (3) On the basis of performance evaluations, if pursuant to a
30 process whereby employees with superior evaluations are retained
31 over those with inferior evaluations. The governing board may
32 exercise its discretion in developing such a process, which shall
33 be applied uniformly to the entire class that is subject to the
34 reduction in force.

35 (4) On the basis that the employee is assigned to a schoolsite
36 that has been selected by the governing board for exemption from
37 certificated reductions in force, based upon the needs of the
38 educational program.

39 (e) A school district shall not deviate from terminating a
40 certificated employee in order of seniority if the employee has 18

1 months or less from his or her date of retirement, or is on medical
2 leave.

3 ~~SEC. 9.~~

4 *SEC. 13.* Section 44955.1 is added to the Education Code, to
5 read:

6 44955.1. Notwithstanding any other law, a school district,
7 county office of education, or charter school may assign, reassign,
8 and transfer teachers and administrators based on effectiveness
9 and subject matter needs without regard to years of service.

10 ~~SEC. 10.~~

11 *SEC. 14.* Section 44955.2 is added to the Education Code, to
12 read:

13 44955.2. A school district that deviates from the order of
14 seniority *for purposes of terminating a certificated employee* under
15 any provision of this chapter shall do so on the basis of one or
16 more of the items specified in subdivision (d) of Section 44955
17 and shall not take into consideration whether an employee has
18 exercised any of the rights guaranteed under Chapter 10.7
19 (commencing with Section 3540) of Division 4 of Title 1 of the
20 Government Code.

21 ~~SEC. 11.~~

22 *SEC. 15.* Section 44956 of the Education Code is amended to
23 read:

24 44956. A permanent employee whose services have been
25 terminated as provided in Section 44955 shall have the following
26 rights:

27 (a) For the period of 39 months from the date of the termination,
28 an employee who in the meantime has not attained 65 years of age
29 shall have the preferred right to reappointment, in the order of
30 original employment as determined by the board in accordance
31 with the provisions of Sections 44831 to 44855, inclusive, if the
32 number of employees is increased or the discontinued service is
33 reestablished, with no requirements that were not imposed upon
34 other employees who continued in service; provided, that a
35 probationary or other employee with less seniority shall not be
36 employed to render a service which said employee is certificated
37 and competent to render. However, before reappointing an
38 employee to teach a subject which he or she has not previously
39 taught, and for which he or she does not have a teaching credential
40 or which is not within the employee's major area of postsecondary

1 study or the equivalent thereof, the governing board shall require
2 the employee to pass a subject matter competency test in the
3 appropriate subject.

4 (b) This right to reappointment may be waived by the employee,
5 without prejudice, for not more than one school year, unless the
6 board extends this right, but the waiver shall not deprive the
7 employee of his or her right to subsequent offers of reappointment.

8 (c) Notwithstanding subdivision (a), a school district may
9 deviate from the order of seniority in reappointing a certificated
10 employee for either of the following reasons:

11 (1) The district demonstrates a specific need for personnel to
12 teach a specific course or course of study, or to provide services
13 authorized by a services credential with a specialization in either
14 pupil personnel services or health for a school nurse, and that the
15 employee has special training and experience necessary to teach
16 that course or course of study, or to provide those services, which
17 others with more seniority do not possess.

18 (2) For purposes of maintaining or achieving compliance with
19 constitutional requirements related to equal protection of the laws
20 *as it applies to pupils*.

21 (d) For an employee who is reappointed, the period of his or
22 her absence shall be treated as a leave of absence and shall not be
23 considered as a break in the continuity of his or her service, he or
24 she shall retain the classification and order of employment he or
25 she had when his or her services were terminated, and credit for
26 prior service under any state or district retirement system shall not
27 be affected by the termination, but the period of his or her absence
28 shall not count as a part of the service required for retirement.

29 (e) During the period of his or her preferred right to
30 reappointment, an employee, in the order of original employment,
31 shall be offered prior opportunity for substitute service during the
32 absence of any other employee who has been granted a leave of
33 absence or who is temporarily absent from duty. However, his or
34 her services may be terminated upon the return to duty of the other
35 employee and the substitute service shall not affect the retention
36 of his or her previous classification and rights. If, in any school
37 year the employee serves as a substitute teacher in any position
38 requiring certification qualifications for 21 days or more within a
39 period of 60 schooldays, the compensation the employee receives
40 for that 60 days, beginning on the 22nd day, shall be not less than

1 the amount the employee would have received if he or she were
2 being reappointed.

3 (f) Notwithstanding subdivision (e), a school district may deviate
4 from the order of seniority in reappointing a certificated employee
5 for either of the following reasons:

6 (1) The district demonstrates a specific need for personnel to
7 teach a specific course or course of study, or to provide services
8 authorized by a services credential with a specialization in either
9 pupil personnel services or health for a school nurse, and the
10 employee has special training and experience, and has demonstrated
11 the competency necessary to teach in a specified grade level or
12 course of study, or to provide those services, which others with
13 more seniority do not possess or are not able to provide.

14 (2) For purposes of maintaining or achieving compliance with
15 constitutional requirements related to equal protection of the laws.

16 (g) During the period of the employee's preferred right to
17 reappointment, the governing board of the district, if it is also the
18 governing board of one or more other districts, may assign him or
19 her to service, which he or she is certificated and competent to
20 render, in the other district or districts. However, the compensation
21 the employee receives may in the discretion of the governing board
22 be the same as he or she would have received had he or she been
23 serving in the district from which his or her services were
24 terminated, and his or her service in the other district or districts
25 shall be counted toward the period required for both state and local
26 retirement, as defined by Section 22102, as though rendered in the
27 district from which his or her services were terminated, and that
28 a permanent employee in the other district or districts shall not be
29 displaced by him or her.

30 It is the intent of this subsection that the employees of a school
31 district, the governing board of which is also the governing board
32 of one or more other school districts, shall not be at a disadvantage
33 as compared with employees of a unified school district.

34 (h) At any time prior to the completion of one year after his or
35 her return to service, he or she may continue or make up, with
36 interest, his or her own contributions to a state or district retirement
37 system, for the period of his or her absence, but it shall not be
38 obligatory on the state or district to match the contributions.

39 (i) If the employee becomes disabled or reaches retirement age
40 at any time before his or her return to service, he or she shall

1 receive, in any state or district retirement system of which he or
2 she was a member, all benefits to which he or she would have been
3 entitled if the disability or retirement occurred at the time of his
4 or her termination of service, plus any benefits he or she may have
5 qualified for thereafter, as though still employed.

6 *SEC. 16. If the Commission on State Mandates determines that*
7 *this act contains costs mandated by the state, reimbursement to*
8 *local agencies and school districts for those costs shall be made*
9 *pursuant to Part 7 (commencing with Section 17500) of Division*
10 *4 of Title 2 of the Government Code.*

11 ~~SEC. 12.~~

12 *SEC. 17.* This act is an urgency statute necessary for the
13 immediate preservation of the public peace, health, or safety within
14 the meaning of Article IV of the Constitution and shall go into
15 immediate effect. The facts constituting the necessity are:

16 In order to make the necessary statutory changes to implement
17 the Budget Act of 2010 at the earliest time possible, it is necessary
18 that this act take effect immediately.