

ASSEMBLY BILL

No. 1034

Introduced by Assembly Member Gatto

February 18, 2011

An act to amend, repeal, and add Section 44956 of the Education Code, relating to education employment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as introduced, Gatto. Education employment: right to reappointment.

Existing law provides that when employees are terminated pursuant to a reduction in workforce, a school district is required to terminate the employees in order of seniority. Existing law requires that a permanent employee terminated pursuant to these provisions, for the period of 39 months from the date of the termination, and who has not reached 65 years of age in the meantime, have the preferred right to reappointment, in order of seniority.

This bill would eliminate the age limit of 65 years. The bill would eliminate the 39-month limitation for employees terminated commencing with the 2007–08 school year, and would restore the 39-month limitation commencing on July 1, 2015.

The bill would make various technical, nonsubstantive changes.

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

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 44956 of the Education Code is amended
2 to read:

3 44956. ~~(a) Any~~ A permanent employee whose services have
4 been terminated *commencing with the 2007–08 school year*, as
5 provided in Section 44955, shall have the following rights:

6 ~~(1) For the period of 39 months from the date of such~~
7 ~~termination, any~~

8 ~~(a) An employee who in the meantime has not attained the age~~
9 ~~of 65 years~~ shall have the preferred right to reappointment, in the
10 order of original employment as determined by the *governing*
11 board in accordance with the provisions of Sections 44831 to
12 44855, inclusive, if the number of employees is increased or the
13 discontinued service is reestablished, with no requirements that
14 were not imposed upon other employees who continued in service;
15 provided, that ~~no~~ a probationary or other employee with less
16 seniority shall *not* be employed to render a service ~~which said that~~
17 ~~the employee is certificated and competent to render. However,~~
18 ~~prior to reappointing any employee to teach a subject which that~~
19 ~~he or she has not previously taught, and for which he or she does~~
20 ~~not have a teaching credential or which that is not within the~~
21 ~~employee’s major area of postsecondary study or the equivalent~~
22 ~~thereof, the governing board shall require the employee to pass a~~
23 ~~subject matter competency test in the appropriate subject.~~

24 ~~(2)~~

25 ~~(b) The aforesaid right to reappointment described in subdivision~~
26 ~~(a) may be waived by the employee, without prejudice, for not~~
27 ~~more than one school year, unless the governing board extends~~
28 ~~this right, but such the waiver shall not deprive the employee of~~
29 ~~his or her right to subsequent offers of reappointment.~~

30 ~~(3)~~

31 ~~(c) Notwithstanding paragraph (1) subdivision (a), a school~~
32 ~~district may deviate from the order of seniority in reappointing a~~
33 ~~certificated employee in order of seniority for either of the~~
34 ~~following reasons:~~

35 ~~(A)~~

36 ~~(1) The school district demonstrates a specific need for personnel~~
37 ~~to teach a specific course or course of study, or to provide services~~
38 ~~authorized by a services credential with a specialization in either~~

1 pupil personnel services or health for a school nurse, and ~~that~~ the
2 employee has special training and experience necessary to teach
3 that course or course of study, or to provide those services, which
4 others with more seniority do not possess.

5 ~~(B)~~

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

8 ~~(4) As to any such~~

9 (d) For an employee who is reappointed, the period of his *or*
10 *her* absence shall be treated as a leave of absence and shall not be
11 considered as a break in the continuity of his *or her* service, he *or*
12 *she* shall retain the classification and order of employment he *or*
13 *she* had when his *or her* services were terminated, and credit for
14 prior service under any state or district retirement system shall not
15 be affected by ~~such~~ *the* termination, but the period of his *or her*
16 absence shall not count as a part of the service required for
17 retirement.

18 ~~(5)~~

19 (e) During the period of his *or her* preferred right to
20 reappointment, ~~any such~~ *an* employee ~~shall~~, in the order of original
21 employment, *shall* be offered prior opportunity for substitute
22 service during the absence of any other employee who has been
23 granted a leave of absence or who is temporarily absent from ~~duty~~;
24 ~~provided, that his~~ *duty*. However, his *or her* services may be
25 terminated upon the return to duty of ~~said~~ *the* other employee and
26 ~~that said~~ *the* substitute service shall not affect the retention of his
27 *or her* previous classification and rights. If, in any school year the
28 employee serves as a substitute in any position requiring
29 certification for any 21 days or more within a period of 60
30 schooldays, the compensation the employee receives for substitute
31 service in that 60-day period, including his *or her* first 20 days of
32 substitute service, shall be not less than the amount the employee
33 would ~~receive~~ *have received* if he *or she* were being reappointed.

34 ~~(6)~~

35 (f) During the period of the employee's preferred right to
36 reappointment, the governing board of the *school* district, if it is
37 also the governing board of one or more other *school* districts,
38 may assign him *or her* to service, which he *or she* is certificated
39 and competent to render, in ~~said~~ *the* other district or ~~districts~~;
40 ~~provided, that~~ *districts*. However, the compensation ~~he the~~

1 ~~employee receives therefor~~ may in the discretion of the governing
 2 board be the same as he *or she* would have received had he *or she*
 3 been serving in the district from which his *or her* services were
 4 terminated, ~~that and~~ his *or her* service in the ~~said~~ other district or
 5 districts shall be counted toward the period required for both state
 6 and local retirement, as defined by Section 22102, as though
 7 rendered in the district from which his *or her* services were
 8 terminated, and ~~that no~~ a permanent employee in ~~said the~~ other
 9 district or districts shall *not* be displaced by him *or her*.

10 It is the intent of this ~~subsection~~ *subdivision* that the employees
 11 of a school district, the governing board of which is also the
 12 governing board of one or more other school districts, shall not be
 13 at a disadvantage as compared with employees of a unified school
 14 district.

15 ~~(7)~~

16 (g) At any time prior to the completion of one year after ~~his the~~
 17 *employee's* return to service, he *or she* may continue or make up,
 18 with interest, his *or her* own contributions to ~~any a~~ state or district
 19 retirement system, for the period of his *or her* absence, but it shall
 20 not be obligatory on *the* state or district to match ~~such these~~
 21 contributions.

22 ~~(8) Should he become~~

23 (h) ~~If the employee becomes~~ disabled or ~~reach~~ *reaches* retirement
 24 age at any time before his *or her* return to service, he *or she* shall
 25 receive, in any state or district retirement system of which he *or*
 26 *she* was a member, all benefits to which he *or she* would have been
 27 entitled had ~~such event~~ *the disability or retirement* occurred at the
 28 time of his *or her* termination of service, plus any benefits he *or*
 29 *she* may have qualified for thereafter, as though still employed.

30 (i) *This section shall become inoperative on July 1, 2015, and,*
 31 *as of January 1, 2016, is repealed, unless a later enacted statute,*
 32 *that becomes operative on or before January 1, 2016, deletes or*
 33 *extends the dates on which it becomes inoperative and is repealed.*

34 SEC. 2. Section 44956 is added to the Education Code, to read:
 35 44956. A permanent employee whose services have been
 36 terminated as provided in Section 44955 shall have the following
 37 rights:

38 (a) For the period of 39 months from the date of the termination,
 39 an employee shall have the preferred right to reappointment, in
 40 the order of original employment as determined by the governing

1 board in accordance with the provisions of Sections 44831 to
2 44855, inclusive, if the number of employees is increased or the
3 discontinued service is reestablished, with no requirements that
4 were not imposed upon other employees who continued in service,
5 provided that a probationary or other employee with less seniority
6 shall not be employed to render a service that the employee is
7 certificated and competent to render. However, prior to
8 reappointing any employee to teach a subject that he or she has
9 not previously taught, and for which he or she does not have a
10 teaching credential or that is not within the employee's major area
11 of postsecondary study or the equivalent thereof, the governing
12 board shall require the employee to pass a subject matter
13 competency test in the appropriate subject.

14 (b) The right to reappointment described in subdivision (a) may
15 be waived by the employee, without prejudice, for not more than
16 one school year, unless the governing board extends this right, but
17 the waiver shall not deprive the employee of his or her right to
18 subsequent offers of reappointment.

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

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

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

31 (d) For an employee who is reappointed, the period of his or
32 her absence shall be treated as a leave of absence and shall not be
33 considered as a break in the continuity of his or her service, he or
34 she shall retain the classification and order of employment he or
35 she had when his or her services were terminated, and credit for
36 prior service under any state or district retirement system shall not
37 be affected by the termination, but the period of his or her absence
38 shall not count as a part of the service required for retirement.

39 (e) During the period of his or her preferred right to
40 reappointment, an employee, in the order of original employment,

1 shall be offered prior opportunity for substitute service during the
2 absence of any other employee who has been granted a leave of
3 absence or who is temporarily absent from duty. However, his or
4 her services may be terminated upon the return to duty of the other
5 employee and the substitute service shall not affect the retention
6 of his or her previous classification and rights. If, in any school
7 year the employee serves as a substitute in any position requiring
8 certification for any 21 days or more within a period of 60
9 schooldays, the compensation the employee receives for substitute
10 service in that 60-day period, including his or her first 20 days of
11 substitute service, shall be not less than the amount the employee
12 would have received if he or she were being reappointed.

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

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

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

37 (h) If the employee becomes disabled or reaches retirement age
38 at any time before his or her return to service, he or she shall
39 receive, in any state or district retirement system of which he or
40 she was a member, all benefits to which he or she would have been

1 entitled had the disability or retirement occurred at the time of his
2 or her termination of service, plus any benefits he or she may have
3 qualified for thereafter, as though still employed.

4 (i) This section shall become operative on July 1, 2015.

5 SEC. 3. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the Constitution and shall go into
8 immediate effect. The facts constituting the necessity are:

9 In order to preserve the public and private investment in the
10 training of certificated employees who have been subject to layoff
11 from public school employment in unprecedented numbers in the
12 past three years, and to ensure that these qualified employees
13 remain in the teaching profession as opposed to seeking
14 employment in other fields, it is necessary to temporarily extend
15 their rights to rehire for the next three years, until state funding
16 for public education increases, and thus, it is necessary that this
17 act take effect immediately.