

ASSEMBLY BILL

No. 1262

Introduced by Assembly Member Dickinson

February 18, 2011

An act to amend, repeal, and add Sections 44956 and 44957 of the Education Code, relating to education employment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1262, as introduced, Dickinson. Education employment: right to reappointment.

Existing law provides that when permanent and probationary 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. Existing law provides similar rights to reappointment for probationary employees, for the period of 24 months from the date of termination.

This bill would eliminate the age limit of 65 years. The bill would eliminate the 39-month limitation for permanent employees terminated commencing with the 2007–08 school year, and would restore the 39-month limitation commencing on July 1, 2016. The bill would eliminate the 24-month limitation for probationary employees terminated commencing with the 2008–09 school year, and would restore the 24-month limitation commencing on July 1, 2016.

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~~

1 certificated employee ~~in order of seniority~~ for either of the
2 following reasons:

3 ~~(A)~~

4 (1) The *school* district demonstrates a specific need for personnel
5 to teach a specific course or course of study, or to provide services
6 authorized by a services credential with a specialization in either
7 pupil personnel services or health for a school nurse, and ~~that~~ the
8 employee has special training and experience necessary to teach
9 that course or course of study, or to provide those services, which
10 others with more seniority do not possess.

11 ~~(B)~~

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

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

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

24 ~~(5)~~

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

40 ~~(6)~~

1 (f) During the period of the employee’s preferred right to
 2 reappointment, the governing board of the *school* district, if it is
 3 also the governing board of one or more other districts, may assign
 4 him *or her* to service, which he *or she* is certificated and competent
 5 to render, in ~~said the~~ other district or ~~districts~~; ~~provided, that~~
 6 ~~districts. However,~~ the compensation ~~he the~~ employee receives
 7 ~~therefor~~ may in the discretion of the governing board be the same
 8 as he *or she* would have received had he *or she* been serving in
 9 the district from which his *or her* services were terminated, ~~that~~
 10 ~~and~~ his *or her* service in the ~~said~~ other district or districts shall be
 11 counted toward the period required for both state and local
 12 retirement, as defined by Section 22102, as though rendered in the
 13 district from which his *or her* services were terminated, and ~~that~~
 14 ~~no~~ a permanent employee in ~~said the~~ other district or districts shall
 15 ~~not~~ be displaced by him *or her*.

16 It is the intent of this ~~subsection~~ *subdivision* that the employees
 17 of a school district, the governing board of which is also the
 18 governing board of one or more other school districts, shall not be
 19 at a disadvantage as compared with employees of a unified school
 20 district.

21 (7)

22 (g) At any time prior to the completion of one year after ~~his the~~
 23 ~~employee’s~~ return to service, he *or she* may continue or make up,
 24 with interest, his *or her* own contributions to ~~any~~ a state or district
 25 retirement system, for the period of his *or her* absence, but it shall
 26 not be obligatory on *the* state or district to match ~~such these~~
 27 contributions.

28 (8) ~~Should he become~~

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

36 (i) *This section shall become inoperative on July 1, 2016, and,*
 37 *as of January 1, 2017, is repealed, unless a later enacted statute,*
 38 *that becomes operative on or before January 1, 2017, deletes or*
 39 *extends the dates on which it becomes inoperative and is repealed.*

40 SEC. 2. Section 44956 is added to the Education Code, to read:

1 44956. A permanent employee whose services have been
2 terminated as provided in Section 44955 shall have the following
3 rights:

4 (a) For the period of 39 months from the date of the termination,
5 an employee shall have the preferred right to reappointment, in
6 the order of original employment as determined by the governing
7 board in accordance with the provisions of Sections 44831 to
8 44855, inclusive, if the number of employees is increased or the
9 discontinued service is reestablished, with no requirements that
10 were not imposed upon other employees who continued in service,
11 provided that a probationary or other employee with less seniority
12 shall not be employed to render a service that the employee is
13 certificated and competent to render. However, prior to
14 reappointing any employee to teach a subject that he or she has
15 not previously taught, and for which he or she does not have a
16 teaching credential or that is not within the employee's major area
17 of postsecondary study or the equivalent thereof, the governing
18 board shall require the employee to pass a subject matter
19 competency test in the appropriate subject.

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

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

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

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

37 (d) For an employee who is reappointed, the period of his or
38 her absence shall be treated as a leave of absence and shall not be
39 considered as a break in the continuity of his or her service, he or
40 she shall retain the classification and order of employment he or

1 she had when his or her services were terminated, and credit for
 2 prior service under any state or district retirement system shall not
 3 be affected by the termination, but the period of his or her absence
 4 shall not count as a part of the service required for retirement.

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

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

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

37 (g) At any time prior to the completion of one year after the
 38 employee’s return to service, he or she may continue or make up,
 39 with interest, his or her own contributions to a state or district
 40 retirement system, for the period of his or her absence, but it shall

1 not be obligatory on the state or district to match these
2 contributions.

3 (h) If the employee becomes disabled or reaches retirement age
4 at any time before his or her return to service, he or she shall
5 receive, in any state or district retirement system of which he or
6 she was a member, all benefits to which he or she would have been
7 entitled had the disability or retirement occurred at the time of his
8 or her termination of service, plus any benefits he or she may have
9 qualified for thereafter, as though still employed.

10 (i) This section shall become operative on July 1, 2016.

11 SEC. 3. Section 44957 of the Education Code is amended to
12 read:

13 44957. ~~Any~~A probationary employee whose services have
14 been terminated *commencing with the 2008–09 school year*, as
15 provided in Section 44955, shall have the following rights:

16 (a) ~~For the period of 24 months from the date of such~~
17 ~~termination, any~~An employee who in the meantime has not attained
18 ~~the age of 65 years~~ shall have the preferred right to reappointment,
19 subject to the prior rights to reappointment by all permanent
20 employees as set forth in Section 44956, in the order of original
21 employment as determined by the governing board in accordance
22 with the provisions of Sections 44831 to 44855, inclusive, if the
23 number of employees is increased or the discontinued service is
24 reestablished, with no requirements that were not imposed upon
25 other employees who continued in service. Except as otherwise
26 provided, ~~no~~ a probationary or temporary employee with less
27 seniority shall *not* be employed to render a service ~~which such that~~
28 ~~the~~ employee is certificated and competent to render and ~~provided~~
29 ~~that such an~~ the employee shall be given a priority over employees
30 whose right to a position is derived pursuant to Section 44918.
31 However, prior to reappointing ~~any an~~ an employee to teach a subject
32 ~~which that~~ he or she has not previously taught, and for which he
33 or she does not have a teaching credential or ~~which that~~ is not
34 within the employee’s major area of postsecondary study or the
35 equivalent thereof, the governing board shall require the employee
36 to pass a subject matter competency test in the appropriate subject.

37 (b) Notwithstanding subdivision (a), a school district may
38 deviate from reappointing a probationary employee in order of
39 seniority for either of the following reasons:

1 (1) The *school* district demonstrates a specific need for personnel
 2 to teach a specific course or course of study, or to provide services
 3 authorized by a services credential with a specialization in either
 4 pupil personnel services or health for a school nurse, and ~~that~~ the
 5 employee has special training and experience necessary to teach
 6 that course or course of study, or to provide those services, which
 7 others with more seniority do not possess.

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

10 (c) ~~As to any such~~ For an employee who is reappointed, the
 11 period of his *or her* absence shall be treated as a leave of absence
 12 and shall not be considered as a break in the continuity of his *or*
 13 *her* service, he *or she* shall retain the classification and order of
 14 employment he *or she* had when his *or her* services were
 15 terminated, and credit for prior service under any state or district
 16 retirement system shall not be affected by ~~such termination;~~
 17 ~~provided, however, that the termination.~~ However, the period of
 18 his *or her* absence shall not be counted as a part of the service
 19 required for attaining permanent status in the district or, except as
 20 provided in subdivision (e), for retirement purposes.

21 (d) During the period of his *or her* preferred right to
 22 reappointment, ~~any such an employee shall~~, in the order of original
 23 employment, and subject to the rights of permanent employees as
 24 set forth in Section 44956, shall be offered prior opportunity for
 25 substitute service during the absence of any other employee who
 26 has been granted leave of absence or who is temporarily absent
 27 from ~~duty; provided, that his~~ duty. However, his *or her* services
 28 may be terminated upon a return to duty of ~~such the~~ other
 29 employee, ~~that such the~~ substitute service shall not affect the
 30 retention of his *or her* previous classification and rights, and ~~that~~
 31 ~~such an the~~ employee shall be given a priority over employees
 32 whose right to a substitute position is derived pursuant to Section
 33 44918.

34 (e) At any time prior to the completion of one year after his *or*
 35 *her* return to service, an employee reappointed under the provisions
 36 of this section may elect to continue or to reinstate his *or her*
 37 membership and interest in any state or district retirement system
 38 and to receive retirement benefits as if no absence from service
 39 had occurred. In the event of ~~such this~~ election the employee shall
 40 pay into the retirement system the amount of his *or her* share of

1 contribution and the district’s share of contribution attributable to
2 the period of absence and the amount of any contributions
3 withdrawn, plus interest.

4 *(f) This section shall become inoperative on July 1, 2016, and,*
5 *as of January 1, 2017, is repealed, unless a later enacted statute,*
6 *that becomes operative on or before January 1, 2017, deletes or*
7 *extends the dates on which it becomes inoperative and is repealed.*

8 SEC. 4. Section 44957 is added to the Education Code, to read:
9 44957. A probationary employee whose services have been
10 terminated as provided in Section 44955 shall have the following
11 rights:

12 (a) For the period of 24 months from the date of the termination,
13 an employee shall have the preferred right to reappointment, subject
14 to the prior rights to reappointment by all permanent employees
15 as set forth in Section 44956, in the order of original employment
16 as determined by the governing board in accordance with the
17 provisions of Sections 44831 to 44855, inclusive, if the number
18 of employees is increased or the discontinued service is
19 reestablished, with no requirements that were not imposed upon
20 other employees who continued in service. Except as otherwise
21 provided, a probationary or temporary employee with less seniority
22 shall not be employed to render a service that the employee is
23 certificated and competent to render and the employee shall be
24 given a priority over employees whose right to a position is derived
25 pursuant to Section 44918. However, prior to reappointing an
26 employee to teach a subject that he or she has not previously taught,
27 and for which he or she does not have a teaching credential or that
28 is not within the employee’s major area of postsecondary study or
29 the equivalent thereof, the governing board shall require the
30 employee to pass a subject matter competency test in the
31 appropriate subject.

32 (b) Notwithstanding subdivision (a), a school district may
33 deviate from reappointing a probationary employee in order of
34 seniority for either of the following reasons:

35 (1) The school district demonstrates a specific need for personnel
36 to teach a specific course or course of study, or to provide services
37 authorized by a services credential with a specialization in either
38 pupil personnel services or health for a school nurse, and the
39 employee has special training and experience necessary to teach

1 that course or course of study, or to provide those services, which
2 others with more seniority do not possess.

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

5 (c) For an employee who is reappointed, the period of his or
6 her absence shall be treated as a leave of absence and shall not be
7 considered as a break in the continuity of his or her service, he or
8 she shall retain the classification and order of employment he or
9 she had when his or her services were terminated, and credit for
10 prior service under any state or district retirement system shall not
11 be affected by the termination. However, the period of his or her
12 absence shall not be counted as a part of the service required for
13 attaining permanent status in the district or, except as provided in
14 subdivision (e), for retirement purposes.

15 (d) During the period of his or her preferred right to
16 reappointment, an employee, in the order of original employment,
17 and subject to the rights of permanent employees as set forth in
18 Section 44956, shall be offered prior opportunity for substitute
19 service during the absence of any other employee who has been
20 granted leave of absence or who is temporarily absent from duty.
21 However, his or her services may be terminated upon a return to
22 duty of the other employee, the substitute service shall not affect
23 the retention of his or her previous classification and rights, and
24 the employee shall be given a priority over employees whose right
25 to a substitute position is derived pursuant to Section 44918.

26 (e) At any time prior to the completion of one year after his or
27 her return to service, an employee reappointed under the provisions
28 of this section may elect to continue or to reinstate his or her
29 membership and interest in any state or district retirement system
30 and to receive retirement benefits as if no absence from service
31 had occurred. In the event of this election the employee shall pay
32 into the retirement system the amount of his or her share of
33 contribution and the district's share of contribution attributable to
34 the period of absence and the amount of any contributions
35 withdrawn, plus interest.

36 (f) This section shall become operative on July 1, 2016.

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

1 In order to preserve the public and private investment in the
2 training of certificated employees who have been subject to layoff
3 from public school employment in unprecedented numbers in the
4 past three years, and to ensure that these qualified employees
5 remain in the teaching profession as opposed to seeking
6 employment in other fields, it is necessary to temporarily extend
7 their rights to rehire for the next three years, until state funding
8 for public education increases, and thus, it is necessary that this
9 act take effect immediately.

O