

AMENDED IN SENATE MAY 4, 2011

**SENATE BILL**

**No. 355**

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**Introduced by Senator Huff  
(Principal coauthor: Senator Emmerson)**

February 15, 2011

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An act to amend Sections 44662, 44955, and 44956 of, and to add Sections 44955.1 and 44955.2 to, the Education Code, relating to education employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 355, as amended, Huff. Education employment: certificated employees.

(1) Existing law requires each school district to evaluate and assess certificated employee performance as it reasonably relates to pupil academic progress, the instructional techniques and strategies used by the employee, the employee's adherence to curricular objectives, and the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities. ~~Existing law prohibits the evaluation and assessment of certificated employee performance from including the use of publishers' norms established by standardized tests.~~

~~This bill would delete the prohibition relating to using publishers' norms established by standardized tests in employee evaluations and assessments. The bill would authorize the governing board of a school district to evaluate and assess the performance of certificated employees pursuant to a "multiple-measures evaluation system," defined in the bill as a teacher and principal evaluation system that uses multiple research-validated approaches to measuring effectiveness, as specified. Any system developed pursuant to these provisions would be required~~

to meet specified criteria, including a quantitative pupil academic achievement growth component that constitutes at least 30% of the overall teacher and principal effectiveness measure.

(2) 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 further provides those employees with preferred right to reappointment and opportunity for substitute service in order of seniority. Existing law authorizes a school district to deviate from the order of seniority for those purposes for specified reasons, including compliance with constitutional requirements related to equal protection of the laws.

This bill would provide additional reasons for which a school district may deviate from terminating employees in order of seniority, including basing a decision on performance evaluations, if the governing board has implemented the provisions relating to a multiple-measures evaluation system, as described, 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. The bill would provide an exception to this authorization for an employee who has 18 months or less from his or her date of retirement, or is on medical leave. The bill also would authorize the governing board of a school district to deviate from seniority when reappointing employees or offering employees the opportunity for substitute service on the basis of performance evaluations, as specified. The bill would specify that the equal protection exception to the general requirement that terminations and reappointments occur in order of seniority applies to equal protection as it relates to pupils.

(3) Existing law generally requires school districts to adhere to certain requirements with respect to teacher and administrator employment, and requires charter school petitions to contain certain information relating to employment.

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, without regard to years of service.

(4) This bill would make various nonsubstantive and clarifying changes.

Vote: majority. 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 44662 of the Education Code is amended  
2 to read:

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

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

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

13 (2) The instructional techniques and strategies used by the  
14 employee.

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

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

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

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

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

33 ~~(e)~~

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

37 ~~(f)~~

1 (g) (1) The governing board of each school district may  
2 additionally evaluate and assess the performance of all certificated  
3 employees pursuant to the provisions of this subdivision. If the  
4 governing board of a school district establishes a system of  
5 evaluation pursuant to this subdivision, the system shall meet all  
6 of the following criteria:

7 (A) The system shall define a rigorous, transparent, and fair  
8 multiple-measures evaluation system for both teachers and  
9 principals and shall involve the development and adoption by the  
10 governing board of objective evaluation and assessment guidelines.

11 (B) All certificated employees of the school district shall be  
12 subject to a system of evaluation and assessment adopted pursuant  
13 to this article, except that this article does not apply to certificated  
14 employees who are employed on an hourly basis in adult education  
15 classes.

16 (C) For purposes of this subdivision, a “multiple-measures  
17 evaluation system” is a teacher and principal evaluation system  
18 that uses multiple research-validated approaches to measuring  
19 effectiveness, including the measures specified in this section. A  
20 school district evaluation system developed pursuant to this  
21 subdivision also shall include a quantitative pupil academic  
22 achievement growth component that shall constitute at least 30  
23 percent of the overall teacher and principal effectiveness measure.

24 (2) This subdivision applies to the county superintendent of  
25 schools and the employees of schools conducted or maintained by  
26 the county superintendent of schools.

27 SEC. 2. Section 44955 of the Education Code is amended to  
28 read:

29 44955. (a) A permanent employee shall not be deprived of his  
30 or her position for causes other than those specified in Sections  
31 44907 and 44923, and Sections 44932 to 44947, inclusive, and a  
32 probationary employee shall not be deprived of his or her position  
33 for cause other than as specified in Sections 44948 to 44949,  
34 inclusive.

35 (b) (1) ~~Whenever~~*If* in any school year the average daily  
36 attendance in all of the schools of a school district for the first six  
37 months in which school is in session shall have declined below  
38 the corresponding period of either of the previous two school years,  
39 ~~whenever~~ *if* the governing board determines that attendance in a  
40 school district will decline in the following year as a result of the

1 termination of an interdistrict tuition agreement as defined in  
2 Section 46304, ~~whenever~~ *if* a particular kind of service is to be  
3 reduced or discontinued not later than the beginning of the  
4 following school year, or whenever the amendment of state law  
5 requires the modification of curriculum, and if in the opinion of  
6 the governing board of the school district it shall have become  
7 necessary by reason of any of these conditions to decrease the  
8 number of permanent employees in the school district, the  
9 governing board may terminate the services of not more than a  
10 corresponding percentage of the certificated employees of the  
11 school district, permanent as well as probationary, at the close of  
12 the school year. Except as otherwise provided by statute, the  
13 services of a permanent employee shall not be terminated under  
14 the provisions of this section while any probationary employee,  
15 or any other employee with less seniority, is retained to render a  
16 service that the permanent employee is certificated and competent  
17 to render.

18 (2) In computing a decline in average daily attendance for  
19 purposes of this section for a newly formed or reorganized school  
20 district, each school of the district shall be deemed to have been  
21 a school of the newly formed or reorganized district for both of  
22 the two previous school years.

23 (3) As between employees who first rendered paid service to  
24 the school district on the same date, the governing board shall  
25 determine the order of termination solely on the basis of needs of  
26 the school district and the pupils of the district. Upon the request  
27 of any employee whose order of termination is so determined, the  
28 governing board shall furnish in writing no later than five days  
29 prior to the commencement of the hearing held in accordance with  
30 Section 44949, a statement of the specific criteria used in  
31 determining the order of termination and the application of the  
32 criteria in ranking each employee relative to the other employees  
33 in the group. This requirement that the governing board provide,  
34 on request, a written statement of reasons for determining the order  
35 of termination shall not be interpreted to give affected employees  
36 any legal right or interest that would not exist without such a  
37 requirement.

38 (c) Notice of the termination of services shall be given before  
39 the 15th of May in the manner prescribed in Section 44949, and  
40 services of these employees shall be terminated in the inverse of

1 the order in which they were employed, as determined by the  
2 governing board in accordance with the provisions of Sections  
3 44844 and 44845. In the event that a permanent or probationary  
4 employee is not given the notices and a right to a hearing as  
5 provided for in Section 44949, he or she shall be deemed  
6 reemployed for the ensuing school year.

7 (d) Notwithstanding subdivision (b), and except as specified in  
8 subdivision (e), a school district may deviate from terminating a  
9 certificated employee in order of seniority for any of the following  
10 reasons:

11 (1) The school district demonstrates a specific need for personnel  
12 to 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 certificated employee has special training and experience necessary  
16 to teach that course or course of study or to provide those services,  
17 which 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 (3) On the basis of performance evaluations, if both of the  
22 following are met:

23 (A) The school district has implemented an evaluation and  
24 assessment process that contains all of the elements described in  
25 subdivision (f) of Section 44662.

26 (B) Employees with superior evaluations are retained over those  
27 with inferior evaluations.

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

32 (e) A school district shall not deviate from terminating a  
33 certificated employee in order of seniority if the employee has 18  
34 months or less from his or her date of retirement, or is on medical  
35 leave.

36 SEC. 3. Section 44955.1 is added to the Education Code, to  
37 read:

38 44955.1. Notwithstanding any other law, a school district,  
39 county office of education, or charter school may assign, reassign,

1 and transfer teachers and administrators based on effectiveness  
2 and subject matter needs without regard to years of service.

3 SEC. 4. Section 44955.2 is added to the Education Code, to  
4 read:

5 44955.2. A school district that deviates from the order of  
6 seniority for purposes of terminating a certificated employee under  
7 any provision of this chapter shall do so on the basis of one or  
8 more of the items specified in subdivision (d) of Section 44955  
9 and shall not take into consideration whether an employee has  
10 exercised any of the rights guaranteed under Chapter 10.7  
11 (commencing with Section 3540) of Division 4 of Title 1 of the  
12 Government Code.

13 SEC. 5. Section 44956 of the Education Code is amended to  
14 read:

15 44956. A permanent employee whose services have been  
16 terminated as provided in Section 44955 shall have the following  
17 rights:

18 (a) For the period of 39 months from the date of the termination,  
19 any employee who in the meantime has not attained the age of 65  
20 years shall have the preferred right to reappointment, in the order  
21 of original employment as determined by the 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; provided, that ~~no~~ a  
26 probationary or other employee with less seniority shall *not* be  
27 employed to render a service that the employee is certificated and  
28 competent to render. However, prior to reappointing any employee  
29 to teach a subject ~~which~~ *that* he or she has not previously taught,  
30 and for which he or she does not have a teaching credential or  
31 ~~which~~ *that* is not within the employee's major area of  
32 postsecondary study or the equivalent thereof, the governing board  
33 shall require the employee to pass a subject matter competency  
34 test in the appropriate subject.

35 (b) The ~~aforesaid~~ right to reappointment *described in subdivision*  
36 *(a)* may be waived by the employee, without prejudice, for not  
37 more than one school year, unless the governing board extends  
38 this right, but the waiver shall not deprive the employee of his or  
39 her right to subsequent offers of reappointment.

1 (c) Notwithstanding subdivision (a), a school district may  
2 deviate from reappointing a certificated employee in order of  
3 seniority for any of the following reasons:

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

14 (3) On the basis of performance evaluations, if both of the  
15 following are met:

16 (A) The school district has implemented an evaluation and  
17 assessment process that contains all of the elements described in  
18 subdivision (f) of Section 44662.

19 (B) Employees with superior evaluations are given priority for  
20 reappointment over those with inferior evaluations.

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 an employee's preferred right to  
30 reappointment, the 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; provided, that his  
34 or her services may be terminated upon the return to duty of the  
35 other employee and that the substitute service shall not affect the  
36 retention of his or her previous classification and rights. If, in any  
37 school year the employee serves as a substitute in any position  
38 requiring certification for 21 days or more within a period of 60  
39 schooldays, the compensation the employee receives for substitute  
40 service in that 60-day period, including his or her first 20 days of

1 substitute service, shall not be less than the amount the employee  
2 would receive if he or she were being reappointed.

3 (f) Notwithstanding subdivision (e), a school district may deviate  
4 from the order of seniority in offering the opportunity for substitute  
5 service for any of the following reasons:

6 (1) The school district demonstrates a specific need for personnel  
7 to 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, that others with more  
13 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 as it applies to pupils.

17 (3) On the basis of performance evaluations, if both of the  
18 following are met:

19 (A) The school district has implemented an evaluation and  
20 assessment process that contains all of the elements described in  
21 subdivision (f) of Section 44662.

22 (B) Employees with superior evaluations are offered the  
23 opportunity for substitute service over those with inferior  
24 evaluations.

25 (g) During the period of the employee's preferred right to  
26 reappointment, the governing board of the school district, if it is  
27 also the governing board of one or more other school districts,  
28 may assign the employee to service that he or she is certificated  
29 and competent to render, in one of the other school districts. The  
30 compensation the employee receives, in the discretion of the  
31 governing board, may be the same as the employee would have  
32 received had he or she been serving in the school district from  
33 which the employee's services were terminated. The employee's  
34 service in the other school district or school districts shall be  
35 counted toward the period required for both state and local  
36 retirement as though rendered in the school district from which  
37 the employee's services were terminated. The employee shall not  
38 displace any other permanent employee in the other school district  
39 or school districts.

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

5 (h) At any time prior to the completion of one year after the  
6 employee's return to service, the employee may continue or make  
7 up, with interest, his or her own contributions to any state or school  
8 district retirement system for the period of his or her absence, but  
9 it shall not be obligatory on the state or school district to match  
10 the contributions.

11 (i) If the employee becomes disabled or reaches retirement age  
12 at any time before his or her return to service, the employee shall  
13 receive, in any state or school district retirement system of which  
14 the employee was a member, all benefits to which he or she would  
15 have been entitled if the disability or retirement occurred at the  
16 time of his or her termination of service, plus any benefits the  
17 employee may have qualified for thereafter, as though still  
18 employed.