

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 947

Introduced by Assembly Member Olsen

February 22, 2013

An act to amend ~~Section 60604~~ of Sections 44955 and 44956 of, and to add Section 44955.2 to, the Education Code, relating to ~~pupil assessment~~: school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 947, as amended, Olsen. ~~Pupil assessment: statewide program.~~ School employees: teachers: termination: reappointment: seniority deviation.

Existing law provides that, when the services of 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 a preferred right to reappointment and an 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 authorizing school districts to terminate an employee on the basis of performance evaluations 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 workforce, 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 would prohibit a school district that deviates from the order of seniority for purposes of terminating a certificated employee from taking into consideration whether an employee has exercised any of the rights guaranteed in the Educational Employment Relations Act.

The bill would also authorize a school district, during the period of an employee’s preferred right to reappointment, to deviate from the order of seniority in offering the opportunity for substitute service for either of specified reasons.

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 that protection relates to pupils.

The bill would make various nonsubstantive and clarifying changes.

~~Existing law, the Leroy Greene California Assessment of Academic Achievement Act, which will become inoperative on July 1, 2014, and as of January 1, 2015, is repealed, requires the Superintendent of Public Instruction to design and implement a statewide pupil assessment program, and requires school districts, charter schools, and county offices of education to administer to each of its pupils in grades 2 to 11, inclusive, certain achievement tests, including a standards-based achievement test pursuant to the Standardized Testing and Reporting (STAR) Program.~~

~~This bill would make nonsubstantive changes to those provisions relating to the design and implementation of a statewide pupil assessment program by the Superintendent.~~

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 44955 of the Education Code is amended*
- 2 *to read:*
- 3 44955. (a) ~~No~~A permanent employee shall *not* be deprived
- 4 of his or her position for causes other than those specified in
- 5 Sections 44907 and 44923, and Sections 44932 to 44947, inclusive,
- 6 and ~~no~~ a probationary employee shall *not* be deprived of his or
- 7 her position for cause other than as specified in Sections 44948 to
- 8 44949, inclusive.

1 (b) (1) ~~Whenever~~*If* in any school year the average daily
 2 attendance in all of the schools of a district for the first six months
 3 in which school is in session ~~shall have~~ *has* declined below the
 4 corresponding period of either of the previous two school years,
 5 ~~whenever~~ *if* the governing board determines that attendance in a
 6 district will decline in the following year as a result of the
 7 termination of an interdistrict tuition agreement as ~~defined~~
 8 *described* in Section 46304, ~~whenever~~ *if* a particular kind of service
 9 is to be reduced or discontinued not later than the beginning of the
 10 following school year, or ~~whenever~~ *if* the amendment of state law
 11 requires the modification of curriculum, and ~~when~~ *if* in the opinion
 12 of the governing board of the district it ~~shall have~~ *has* become
 13 necessary by reason of any of these conditions to decrease the
 14 number of permanent employees in the district, the governing
 15 board may terminate the services of not more than a corresponding
 16 percentage of the certificated employees of the district, permanent
 17 as well as probationary, at the close of the school year. Except as
 18 otherwise provided by statute, the services of ~~no~~ *a* permanent
 19 employee ~~may~~ *shall not* be terminated under the provisions of this
 20 section while any probationary employee, or any other employee
 21 with less seniority, is retained to render a service ~~which said that~~
 22 *the* permanent employee is certificated and competent to render.

23 ~~In~~
 24 (2) *In* computing a decline in average daily attendance for
 25 purposes of this section for a newly formed or reorganized school
 26 district, each school of the district shall be deemed to have been
 27 a school of the newly formed or reorganized district for both of
 28 the two previous school years.

29 ~~As~~
 30 (3) *As* between employees who first rendered paid service to
 31 the district on the same date, the governing board shall determine
 32 the order of termination solely on the basis of needs of the district
 33 and ~~the students thereof~~ *pupils, including distinctions based upon*
 34 *performance evaluations*. Upon the request of any employee whose
 35 order of termination is so determined, the governing board shall
 36 furnish in writing no later than five days ~~prior to~~ *before* the
 37 commencement of the hearing held in accordance with Section
 38 44949, a statement of the specific criteria used in determining the
 39 order of termination and the application of the criteria in ranking
 40 each employee relative to the other employees in the group. This

1 requirement that the governing board provide, on request, a written
2 statement of reasons for determining the order of termination shall
3 not be interpreted to give affected employees any legal right or
4 interest that would not exist without such a requirement.

5 (c) Notice of ~~such~~ termination of services shall be given before
6 ~~the 15th of~~ May 15 in the manner prescribed in Section 44949,
7 and services of ~~such~~ employees shall be terminated in the inverse
8 of the order in which they were employed, as determined by the
9 board in accordance with ~~the provisions of~~ Sections 44844 and
10 44845. In the event that a permanent or probationary employee is
11 not given the notices and a right to a hearing as provided for in
12 Section 44949, he or she shall be deemed reemployed for the
13 ensuing school year.

14 ~~The governing board shall make assignments and reassignments~~
15 ~~in such a manner that employees shall be retained to render any~~
16 ~~service which their seniority and qualifications entitle them to~~
17 ~~render. However, prior to assigning or reassigning any certificated~~
18 ~~employee to teach a subject which he or she has not previously~~
19 ~~taught, and for which he or she does not have a teaching credential~~
20 ~~or which is not within the employee's major area of postsecondary~~
21 ~~study or the equivalent thereof, the governing board shall require~~
22 ~~the employee to pass a subject matter competency test in the~~
23 ~~appropriate subject.~~

24 (d) Notwithstanding subdivision (b), *and except as specified in*
25 *subdivision (e)*, a school district may deviate from terminating a
26 certificated employee in order of seniority for ~~either~~ *any* of the
27 following reasons:

28 (1) The district demonstrates a specific need for personnel to
29 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 that the
32 certificated employee has special training and experience necessary
33 to teach that course or course of study or to provide those services,
34 which 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 *as it applies to pupils*.

38 (3) *On the basis of performance evaluations, if pursuant to a*
39 *process whereby employees with superior evaluations are retained*
40 *over those with inferior evaluations. The governing board may*

1 *exercise its discretion in developing the process, which shall be*
2 *applied uniformly to the entire class that is subject to the reduction*
3 *in workforce.*

4 *(4) On the basis that the employee is assigned to a schoolsite*
5 *that has been selected by the governing board for exemption from*
6 *certificated reductions in workforce, based upon the needs of the*
7 *educational program.*

8 *(e) A school district shall not deviate from terminating a*
9 *certificated employee in order of seniority if the employee has 18*
10 *months or less from his or her date of retirement, or is on medical*
11 *leave.*

12 *SEC. 2. Section 44955.2 is added to the Education Code, to*
13 *read:*

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

22 *SEC. 3. Section 44956 of the Education Code is amended to*
23 *read:*

24 *44956. (a) ~~Any~~ A permanent employee whose services have*
25 *been terminated as provided in Section 44955 shall have the*
26 *following rights:*

27 *(+)*

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

1 teaching credential or which is not within the employee’s major
2 area of postsecondary study or the equivalent thereof, the governing
3 board shall require the employee to pass a subject matter
4 competency test in the appropriate subject.

5 ~~(2)~~

6 ~~(b) The aforesaid right to reappointment set out in subdivision~~
7 ~~(a) may be waived by the employee, without prejudice, for not~~
8 ~~more than one school year, unless the board extends this right, but~~
9 ~~such the waiver shall not deprive the employee of his or her right~~
10 ~~to subsequent offers of reappointment.~~

11 ~~(3)~~

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

15 ~~(A)~~

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

23 ~~(B)~~

24 ~~(2) For purposes of maintaining or achieving compliance with~~
25 ~~constitutional requirements related to equal protection of the laws.~~
26 ~~laws as that protection applies to pupils.~~

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

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

37 ~~(5)~~

38 ~~(e) During the period of his an employee’s preferred right to~~
39 ~~reappointment, any such the employee shall, in the order of original~~
40 ~~employment, shall be offered prior opportunity for substitute~~

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

13 *(f) Notwithstanding subdivision (e), a school district may deviate*
 14 *from the order of seniority in offering the opportunity for substitute*
 15 *service for either of the following reasons:*

16 *(1) The district demonstrates a specific need for personnel to*
 17 *teach a specific course or course of study, or to provide services*
 18 *authorized by a services credential with a specialization in either*
 19 *pupil personnel services or health for a school nurse, and the*
 20 *employee has special training and experience, and has*
 21 *demonstrated the competency necessary to teach in a specified*
 22 *grade level or course of study, or to provide those services, that*
 23 *others with more seniority do not possess or are not able to*
 24 *provide.*

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

28 ~~(6)~~

29 *(g) (1) During the period of the employee's preferred right to*
 30 *reappointment, the governing board of the district, if it is also the*
 31 *governing board of one or more other districts, may assign ~~him~~*
 32 *the employee to service, which services that he or she is certificated*
 33 *and competent to render, in ~~said~~ one of the other ~~district or districts;~~*
 34 *provided, that the districts. The compensation ~~he~~ the employee*
 35 *receives ~~therefor~~ may, in the discretion of the governing board,*
 36 *may be the same as ~~he~~ the employee would have received had he*
 37 *or she been serving in the district from which ~~his~~ the employee's*
 38 *services were ~~terminated, that his~~ terminated. The employee's*
 39 *service in the ~~said~~ other district or districts shall be counted toward*
 40 *the period required for both state and local retirement, ~~as defined~~*

1 ~~by Section 22102, as though rendered in the district from which~~
 2 ~~his the employee's services were terminated, and that no permanent~~
 3 ~~terminated. The employee in said shall not displace any other~~
 4 ~~permanent employee in the other district or districts shall be~~
 5 ~~displaced by him.~~

6 ~~It~~
 7 (2) ~~It is the intent of this subsection subdivision that the~~
 8 ~~employees of a school district, the governing board of which is~~
 9 ~~also the governing board of one or more other school districts,~~
 10 ~~shall not be at a disadvantage as compared with employees of a~~
 11 ~~unified school district.~~

12 ~~(7)~~
 13 (h) ~~At any time prior to the completion of one year after his the~~
 14 ~~employee's return to service, he the employee may continue or~~
 15 ~~make up, with interest, his or her own contributions to any state~~
 16 ~~or district retirement system; for the period of his or her absence,~~
 17 ~~but it shall not be obligatory on the state or district to match such~~
 18 ~~the contributions.~~

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

28 SECTION 1. ~~Section 60604 of the Education Code is amended~~
 29 ~~to read:~~

30 ~~60604. (a) The Superintendent shall design and implement,~~
 31 ~~consistent with the timetable and plan required pursuant to~~
 32 ~~subdivision (b), a statewide pupil assessment program consistent~~
 33 ~~with the testing requirements of this article and in accordance with~~
 34 ~~the objectives set forth in Section 60602. That statewide pupil~~
 35 ~~assessment program shall include all of the following:~~

36 ~~(1) A plan for producing valid, reliable, and comparable~~
 37 ~~individual pupil scores in grades 2 to 11, inclusive, and a~~
 38 ~~comprehensive analysis of these scores based on the results of the~~
 39 ~~achievement test designated by the state board that assesses a broad~~
 40 ~~range of basic academic skills pursuant to the Standardized Testing~~

1 and Reporting (STAR) Program established by Article 4
2 (commencing with Section 60640):

3 (2) A method of working with publishers to ensure valid,
4 reliable, and comparable individual, grade-level, school-level,
5 district-level, county-level, and statewide scores in grades 2 to 11,
6 inclusive.

7 (3) Statewide academically rigorous content and performance
8 standards that reflect the knowledge and skills that pupils will need
9 to succeed in the information-based, global economy of the 21st
10 century. These skills shall not include personal behavioral standards
11 or skills, including, but not limited to, honesty, sociability, ethics,
12 or self-esteem.

13 (4) A statewide system that provides the results of testing in a
14 manner that reflects the degree to which pupils are achieving the
15 academically rigorous content and performance standards adopted
16 by the state board.

17 (5) The alignment of assessment with the statewide academically
18 rigorous content and performance standards adopted by the state
19 board.

20 (6) The active, ongoing involvement of parents, classroom
21 teachers, administrators, other educators, governing board members
22 of school districts, and the public in all phases of the design and
23 implementation of the statewide pupil assessment program.

24 (7) The development of a contract or contracts with a publisher
25 or publishers, after the approval of statewide academically rigorous
26 content standards by the state board, for the development of
27 performance standards and assessments of applied academic skills
28 designed to test pupils' knowledge of academic skills and abilities
29 to apply that knowledge and those skills to solve problems and
30 communicate.

31 (b) The Superintendent shall develop and annually update for
32 the Legislature a five-year cost projection, implementation plan,
33 and timetable for implementing the program described in
34 subdivision (a). The annual update shall be submitted on or before
35 March 1 of each year to the chairperson of the fiscal subcommittee
36 considering budget appropriations in each house. The update shall
37 explain any significant variations from the five-year cost projection
38 for the current year budget and the proposed budget.

39 (e) The Superintendent shall provide each school district with
40 guidelines for professional development that are designed to assist

1 ~~classroom teachers to use the results of the assessments~~
2 ~~administered pursuant to this chapter to modify instruction for the~~
3 ~~purpose of improving pupil learning. These guidelines shall be~~
4 ~~developed in consultation with classroom teachers and approved~~
5 ~~by the state board before dissemination.~~
6 ~~(d) The Superintendent and the state board shall consider~~
7 ~~comments and recommendations from school districts and the~~
8 ~~public in the development, adoption, and approval of assessment~~
9 ~~instruments.~~
10 ~~(e) The results of the achievement test administered pursuant~~
11 ~~to Article 4 (commencing with Section 60640) shall be returned~~
12 ~~to the school district within the period of time specified by the~~
13 ~~state board.~~