

ASSEMBLY BILL

No. 1619

Introduced by Assembly Member Gonzalez

February 6, 2014

An act to amend Sections 1296, 44908, 44910, 44929.21, and 44948.3 of, and to repeal Sections 44929.23, 44948, 44948.2, and 44948.5, of, the Education Code, relating to permanent school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1619, as introduced, Gonzalez. Permanent employees: regional occupational centers or programs.

(1) Existing law provides that a certificated employee of a school district of any type or class or a county superintendent of schools, with an average daily attendance of 250 or more, who completes 2 consecutive years and is reelected for the next succeeding school year to a position requiring certification, shall become and be classified as a permanent employee of the school district or county superintendent. Existing law authorizes the governing board of a school district of any type or class having an average daily attendance of less than 250 pupils to classify as a permanent employee of the district any employee who, after having been employed by the school district for 3 complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications. If that classification is not made, existing law provides that the employee shall not attain permanent status and may be reelected from year to year thereafter without becoming a permanent employee until a change in classification is made.

This bill would provide that a certificated employee of a school district of any type or class or of a county superintendent of schools, regardless of the average daily attendance of the school district or county superintendent of schools, who completes 2 consecutive years and is so reelected shall become and be classified as a permanent employee.

(2) Existing law provides that a probationary employee who, in any one school year, has served for at least 75% of the number of days the regular schools of the district in which he or she is employed are maintained is deemed to have served a complete school year.

This bill would instead provide that a probationary employee is deemed to have served a complete school year if the employee, in any one school year, serves for at least 75% of a full-time equivalent position.

(3) Existing law authorizes the establishment of regional occupational centers or programs to provide career technical education and technical training to students. Existing law requires instruction in those centers or programs to only be given by a qualified teacher holding a certificate, as provided, but prohibits service by a person as an instructor in classes conducted at regional occupational centers or programs from being included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district.

This bill would instead provide service by a person as an instructor in classes conducted at regional occupational centers or programs shall be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district.

(4) Existing law provides that first- and 2nd-year probationary employees of a school district may be dismissed during the school year for unsatisfactory performance or for cause, pursuant to specified procedures. Existing law specifies that those provisions do not apply to probationary employees in a school district having an average daily attendance of less than 250 pupils. Existing law prohibits the governing board of a school district with an average daily attendance of less than 250 pupils from dismissing probationary employees during the school year, except for cause, pursuant to separate procedures. However, existing law authorizes the governing board of a school district having an average daily attendance of less than 250 pupils to elect to dismiss probationary employees pursuant to the procedures applicable to

probationary employees of a school district having an average daily attendance of 250 or more pupils.

This bill would delete the procedures specific to probationary employees of a school district with an average daily attendance of less than 250 pupils, thereby subjecting all probationary employees, regardless of the average daily attendance of the school district, to the same dismissal procedures. The bill would also delete obsolete references, update references, and make conforming and nonsubstantive 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 1296 of the Education Code is amended
2 to read:

3 ~~1296. (a) If the average daily attendance of the schools and~~
4 ~~classes maintained by a county superintendent of schools is 250~~
5 ~~or more, each person who, after being employed for three complete~~
6 ~~consecutive school years by the superintendent in a teaching~~
7 ~~position in those schools or classes requiring certification~~
8 ~~qualifications and whose salary is paid from the county school~~
9 ~~service fund, is reelected for the next succeeding school year to~~
10 ~~such a position in those schools or classes, shall be classified as~~
11 ~~and become a permanent employee of the county superintendent~~
12 ~~of schools.~~

13 ~~Such an employee shall have the same rights and duties as~~
14 ~~employees of school districts to which Section 44882 applies.~~
15 ~~Sections 44841, 44842, 44882, 44948.3, and 44948.5 are applicable~~
16 ~~to these employees.~~

17 ~~This subdivision shall apply only to probationary employees~~
18 ~~whose probationary period commenced prior to the 1983-84 fiscal~~
19 ~~year.~~

20 ~~(b) If the average daily attendance of the schools and classes~~
21 ~~maintained by a county superintendent of schools is 250 or more,~~
22 ~~each~~

23 ~~1296. (a) A person who, after being employed for two complete~~
24 ~~consecutive school years by the a county superintendent of schools~~
25 ~~in a teaching position in those schools or classes requiring~~
26 ~~certification qualifications and whose salary is paid from the county~~

1 school service fund, is reelected for the next succeeding school
2 year to such a position in those schools or classes, shall be
3 classified as and become a permanent employee of the county
4 superintendent of schools.

5 The

6 (b) *The* county superintendent of schools shall notify the
7 employee, on or before March 15 of the employee’s second
8 complete consecutive year of employment by the superintendent
9 in a teaching position in schools or classes maintained by the
10 county superintendent of schools requiring certification
11 qualifications, of the decision to reelect or not reelect the employee
12 for the next succeeding school year to such a position in those
13 schools. ~~In the event that~~ *If* the county superintendent of schools
14 does not give notice pursuant to this section on or before March
15 15, the employee shall be deemed reelected for the next succeeding
16 school year.

17 Such an employee shall have the same rights and duties as
18 employees of school districts to which Section ~~44882~~ *44929.21*
19 applies. Sections ~~44841, 44842, 44882, 44948.3, and 44948.5~~
20 *44842, 44929.21, and 44948.3* are applicable to these employees.

21 ~~This subdivision shall apply only to probationary employees~~
22 ~~whose probationary period commenced during the 1983–84 fiscal~~
23 ~~year or any fiscal year thereafter.~~

24 (c) As used in this section, “teaching position” means any
25 certificated position designated as of January 1, 1983, by the county
26 board of education or the county superintendent of schools as a
27 teaching position for the purpose of granting probationary or
28 permanent status.

29 SEC. 2. Section 44908 of the Education Code is amended to
30 read:

31 44908. A probationary employee who, in any one school year,
32 has served for at least 75 percent of ~~the number of days the regular~~
33 ~~schools of the district in which he is employed are maintained a~~
34 *full-time equivalent position* shall be deemed to have served a
35 complete school year. In case of evening schools, 75 percent of
36 the number of days the evening schools of the *school* district are
37 in session shall be deemed a complete school year.

38 SEC. 3. Section 44910 of the Education Code is amended to
39 read:

1 44910. Service by a person as an instructor in classes conducted
 2 at regional occupational centers or programs, as authorized pursuant
 3 to Section 52301, shall ~~not~~ be included in computing the service
 4 required as a prerequisite to attainment of, or eligibility to,
 5 classification as a permanent employee of a school district.

6 ~~This section shall not be construed to apply to any regularly~~
 7 ~~credentialed teacher who has been employed to teach in the regular~~
 8 ~~educational programs of the school district and subsequently~~
 9 ~~assigned as an instructor in regional occupational centers or~~
 10 ~~programs, nor shall it affect the status of regional occupational~~
 11 ~~center teachers classified as permanent or probationary at the time~~
 12 ~~this section becomes effective.~~

13 SEC. 4. Section 44929.21 of the Education Code is amended
 14 to read:

15 ~~44929.21. (a) Every employee of a school district of any type~~
 16 ~~or class having an average daily attendance of 250 or more who,~~
 17 ~~after having been employed by the district for three complete~~
 18 ~~consecutive school years in a position or positions requiring~~
 19 ~~certification qualifications, is reelected for the next succeeding~~
 20 ~~school year to a position requiring certification qualifications shall,~~
 21 ~~at the commencement of the succeeding school year be classified~~
 22 ~~as and become a permanent employee of the district.~~

23 ~~This subdivision shall apply only to probationary employees~~
 24 ~~whose probationary period commenced prior to the 1983-84 fiscal~~
 25 ~~year.~~

26 ~~(b) Every~~

27 ~~44929.21. (a) An employee of a school district of any type or~~
 28 ~~class having an average daily attendance of 250 or more who, after~~
 29 ~~having been employed by the district for two complete consecutive~~
 30 ~~school years in a position or positions requiring certification~~
 31 ~~qualifications, is reelected for the next succeeding school year to~~
 32 ~~a position requiring certification qualifications shall, at the~~
 33 ~~commencement of the succeeding school year be classified as and~~
 34 ~~become a permanent employee of the *school* district.~~

35 ~~The~~

36 ~~(b) The governing board of the school district shall notify the~~
 37 ~~employee, on or before March 15 of the employee's second~~
 38 ~~complete consecutive school year of employment by the *school*~~
 39 ~~district in a position or positions requiring certification~~
 40 ~~qualifications, of the decision to reelect or not reelect the employee~~

1 for the next succeeding school year to the position. In the event
2 that the governing board of the school district does not give notice
3 pursuant to this section on or before March 15, the employee shall
4 be deemed reelected for the next succeeding school year.

5 ~~This subdivision shall apply only to probationary employees
6 whose probationary period commenced during the 1983-84 fiscal
7 year or any fiscal year thereafter.~~

8 SEC. 5. Section 44929.23 of the Education Code is repealed.

9 ~~44929.23. (a) The governing board of a school district of any
10 type or class having an average daily attendance of less than 250
11 pupils may classify as a permanent employee of the district any
12 employee who, after having been employed by the school district
13 for three complete consecutive school years in a position or
14 positions requiring certification qualifications, is reelected for the
15 next succeeding school year to a position requiring certification
16 qualifications. If that classification is not made, the employee shall
17 not attain permanent status and may be reelected from year to year
18 thereafter without becoming a permanent employee until a change
19 in classification is made.~~

20 ~~(b) Notwithstanding subdivision (a), Section 44929.21 shall
21 apply to certificated employees employed by a school district, if
22 the governing board of the school district elects to dismiss
23 probationary employees pursuant to Section 44948.2. If that
24 election is made, the governing board thereafter shall classify as
25 a permanent employee of the district any probationary employee
26 who, after being employed for two complete consecutive school
27 years in a position or positions requiring certification qualifications,
28 is reelected for the next succeeding school year to a position
29 requiring certification qualifications as required by Section
30 44929.21. Any probationary employee who has been employed
31 by the district for two or more consecutive years on the date of
32 that election in a position or positions requiring certification
33 qualifications shall be classified as a permanent employee of the
34 district.~~

35 ~~(c) If the classification is not made pursuant to subdivision (a)
36 or (b), the employee shall not attain permanent status and may be
37 reelected from year to year thereafter without becoming a
38 permanent employee until the classification is made.~~

39 SEC. 6. Section 44948 of the Education Code is repealed.

1 ~~44948. (a) Governing boards of school districts shall dismiss~~
2 ~~probationary employees during the school year for cause only, as~~
3 ~~in the case of permanent employees.~~

4 ~~This subdivision shall apply only to probationary employees~~
5 ~~whose probationary period commenced prior to the 1983–84 fiscal~~
6 ~~year or who are employed in a school district having an average~~
7 ~~daily attendance of less than 250 pupils.~~

8 ~~(b) The governing board may suspend a probationary employee~~
9 ~~for a specified period of time without pay as an alternative to~~
10 ~~dismissal pursuant to this section. This subdivision shall apply~~
11 ~~only to probationary employees whose probationary period~~
12 ~~commenced prior to the 1983–84 fiscal year.~~

13 SEC. 7. Section 44948.2 of the Education Code is repealed.

14 ~~44948.2. Notwithstanding subdivision (a) of Section 44948~~
15 ~~and subdivision (c) of Section 44948.3, the governing board of~~
16 ~~any school district having an average daily attendance of less than~~
17 ~~250 may elect to dismiss probationary employees during the school~~
18 ~~year pursuant to the provisions of Section 44948.3. Once a district~~
19 ~~has made an election pursuant to this section, it shall only dismiss~~
20 ~~probationary certificated employees during the school year pursuant~~
21 ~~to this section.~~

22 SEC. 8. Section 44948.3 of the Education Code is amended to
23 read:

24 44948.3. (a) First and second year probationary employees
25 may be dismissed during the school year for unsatisfactory
26 performance determined pursuant to Article 11 (commencing with
27 Section 44660) of Chapter 3, or for cause pursuant to Section
28 44932. Any dismissal pursuant to this section shall be in
29 accordance with all of the following procedures:

30 (1) The superintendent of the school district or the
31 superintendent’s designee shall give 30 days’ prior written notice
32 of dismissal, not later than March 15 in the case of second year
33 probationary employees. The notice shall include a statement of
34 the reasons for the dismissal and notice of the opportunity to
35 appeal. In the event of a dismissal for unsatisfactory performance,
36 a copy of the evaluation conducted pursuant to Section 44664 shall
37 accompany the written notice.

38 (2) The *probationary* employee shall have 15 days from receipt
39 of the notice of dismissal to submit to the governing board *of the*
40 *school district* a written request for a hearing. The governing board

1 *of the school district* may establish procedures for the appointment
2 of an administrative law judge to conduct the hearing and submit
3 a recommended decision to the board. The failure of ~~an a~~
4 *probationary* employee to request a hearing within 15 days from
5 receipt of a dismissal notice shall constitute a waiver of the right
6 to a hearing.

7 (b) The governing ~~board;~~ *board of the school district*, pursuant
8 to this section, may suspend a probationary employee for a
9 specified period of time without pay as an alternative to dismissal.

10 ~~(c) This section applies only to probationary employees whose~~
11 ~~probationary period commenced during the 1983–84 fiscal year~~
12 ~~or any fiscal year thereafter, and does not apply to probationary~~
13 ~~employees in a school district having an average daily attendance~~
14 ~~of less than 250 pupils.~~

15 SEC. 9. Section 44948.5 of the Education Code is repealed.

16 ~~44948.5. (a) This section applies only to those persons~~
17 ~~currently employed as probationary employees whose probationary~~
18 ~~period commenced prior to the 1983–84 fiscal year.~~

19 ~~(b) No later than March 15 and before a probationary employee~~
20 ~~is given notice by the governing board of the school district that~~
21 ~~his or her services will not be required for the ensuing year for~~
22 ~~reasons other than those specified in Section 44955, the governing~~
23 ~~board of the school district and the employee shall be given written~~
24 ~~notice by the superintendent of the district or his or her designee,~~
25 ~~or, in the case of a district which has no superintendent, by the~~
26 ~~clerk or secretary of the governing board of the school district that~~
27 ~~it has been recommended that the notice be given to the employee,~~
28 ~~and stating the reasons therefor.~~

29 ~~If the probationary employee has been in the employ of the~~
30 ~~district for less than 45 days on March 15, the giving of the notice~~
31 ~~may be deferred until the 45th day of employment and all time~~
32 ~~period and deadline dates prescribed by this subdivision shall be~~
33 ~~coextensively extended.~~

34 ~~Until the employee has requested a hearing as provided in~~
35 ~~subdivision (c) or has waived his or her right to a hearing, the~~
36 ~~notice and the reasons therefor shall be confidential and shall not~~
37 ~~be divulged by any person, except as may be necessary in the~~
38 ~~performance of duties. However, the violation of this requirement~~
39 ~~of confidentiality, in and of itself, shall not in any manner be~~

1 ~~construed as affecting the validity of any hearing conducted~~
2 ~~pursuant to this section.~~

3 ~~(e) The employee may request a hearing to determine if there~~
4 ~~is cause for not reemploying him or her for the ensuing year. A~~
5 ~~request for a hearing shall be in writing and shall be delivered to~~
6 ~~the person who sent the notice pursuant to subdivision (b), on or~~
7 ~~before a date specified in that subdivision, which shall not be less~~
8 ~~than seven days after the date on which the notice is served upon~~
9 ~~the employee. If an employee fails to request a hearing on or before~~
10 ~~the date specified, his or her failure to do so shall constitute a~~
11 ~~waiver of his or her right to a hearing. The notice provided for in~~
12 ~~subdivision (b) shall advise the employee of the provisions of this~~
13 ~~subdivision.~~

14 ~~(d) In the event a hearing is requested by the employee, the~~
15 ~~proceeding shall be conducted and a decision made in accordance~~
16 ~~with Chapter 5 (commencing with Section 11500) of Part 1 of~~
17 ~~Division 3 of Title 2 of the Government Code and the governing~~
18 ~~board shall have all the power granted to an agency therein, except~~
19 ~~that all of the following shall apply:~~

20 ~~(1) The respondent shall file his or her notice of defense, if any,~~
21 ~~within five days after service upon him or her of the accusation~~
22 ~~and he or she shall be notified of this five-day period for filing in~~
23 ~~the accusation.~~

24 ~~(2) The discovery authorized by Section 11507.6 of the~~
25 ~~Government Code shall be available only if request is made~~
26 ~~therefor within 15 days after service of the accusation, and the~~
27 ~~notice required by Section 11505 of the Government Code shall~~
28 ~~so indicate.~~

29 ~~(3) The hearing shall be conducted by an administrative law~~
30 ~~judge who shall prepare a proposed decision, containing findings~~
31 ~~of fact and a determination as to whether the charges sustained by~~
32 ~~the evidence are related to the welfare of the schools and the pupils~~
33 ~~thereof. The proposed decision shall be prepared for the governing~~
34 ~~board and shall contain a determination as to the sufficiency of~~
35 ~~the cause and a recommendation as to disposition. However, the~~
36 ~~governing board of the school district shall make the final~~
37 ~~determination as to the sufficiency of the cause and disposition.~~
38 ~~None of the findings, recommendations, or determinations~~
39 ~~contained in the proposed decision prepared by the administrative~~
40 ~~law judge shall be binding on the governing board of the school~~

1 district. Nonsubstantive procedural errors committed by the school
2 district or governing board of the school district shall not constitute
3 cause for dismissing the charges unless the errors are prejudicial
4 errors. Copies of the proposed decision shall be submitted to the
5 governing board of the school district and to the employee on or
6 before May 7 of the year in which the proceeding is commenced.
7 All expenses of the hearing, including the cost of the administrative
8 law judge, shall be paid by the governing board of the school
9 district from the school district funds.

10 The board may adopt from time to time such rules and procedures
11 not inconsistent with provisions of this section as may be necessary
12 to effectuate this section.

13 (e) The governing board's determination not to reemploy a
14 probationary employee for the ensuing school year shall be for
15 cause only. The determination of the governing board as to the
16 sufficiency of the cause pursuant to this section shall be conclusive,
17 but the cause shall relate solely to the welfare of the schools and
18 the pupils thereof. The decision made after the hearing shall be
19 effective on May 15 of the year the proceeding is commenced.

20 (f) Notice to the probationary employee by the governing board
21 of a school district that his or her service will not be required for
22 the ensuing year, shall be given no later than May 15.

23 (g) If a governing board of a school district notifies a
24 probationary employee that his or her services will not be required
25 for the ensuing year, the governing board of the school district
26 shall, within 10 days after delivery to it of the employee's written
27 request, provide the employee with a statement of its reasons for
28 not reemploying him or her for the ensuing school year.

29 (h) Any notice or request shall be deemed sufficient when it is
30 delivered in person to the employee to whom it is directed, or when
31 it is deposited in the United States registered mail, postage prepaid
32 and addressed to the last known address of the employee.

33 (i) In the event that the governing board of a school district does
34 not give notice provided for in subdivision (e) on or before May
35 15, the employee shall be deemed reemployed for the ensuing
36 school year.

37 (j) If after request for hearing pursuant to subdivision (e) any
38 continuance is granted pursuant to Section 11524 of the
39 Government Code, the dates prescribed in subdivisions (d), (e),
40 (f), and (i) which occur on or after the date of granting the

1 ~~continuance shall be extended for a period of time equal to the~~
2 ~~continuance.~~

O