

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 381

Introduced by Senator Huff

February 24, 2015

An act to amend ~~Section~~ *Sections 44955, 44956, and 44957* of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 381, as amended, Huff. ~~School~~ *Certificated school* employees: reduction in workforce: deviation from order of ~~seniority~~. *seniority: career pathway programs.*

Under existing law, when *certificated* school 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 the school district demonstrating a specified need for personnel to teach a specific course or course of study and the certificated employee having special training and experience necessary to teach that course or course of study, which others with more seniority do not possess.

This bill would authorize that the *specific* course or course of study, that may allow a school district to deviate from terminating *certificated* school employees in order of seniority, include career technical education ~~and or career pathway programs, program,~~ and would further authorize that a school district may deviate from the order of seniority to comply with the school district's local control and accountability plan, as specified. *The bill additionally would authorize that the specific*

course or course of study for which a school district may deviate from the order of seniority for purposes of reappointment of permanent and probationary employees includes, but is not limited to, career technical education or career pathway program. The bill would also make numerous nonsubstantive changes to these provisions.

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

1 to render a service ~~which said that the~~ permanent employee is
2 certificated and competent to render.

3 ~~In~~

4 (2) *In* computing a decline in average daily attendance for
5 purposes of this ~~section~~ *subdivision* for a newly formed or
6 reorganized school district, each school of the *school* district shall
7 be deemed to have been a school of the newly formed or
8 reorganized *school* district for both of the two previous school
9 years.

10 ~~As~~

11 (3) *As* between employees who first rendered paid service to
12 the *school* district on the same date, the governing board *of the*
13 *school district* shall determine the order of termination solely on
14 the basis of needs of the *school* district and the ~~students thereof.~~
15 *pupils of the school district.* Upon the request of ~~any an~~ employee
16 whose order of termination is so determined, the governing board
17 *of the school district* shall furnish in ~~writing~~ *writing*, no later than
18 five days ~~prior to before~~ the commencement of the hearing held
19 in accordance with Section 44949, a statement of the specific
20 criteria used in determining the order of termination and the
21 application of the criteria in ranking each employee relative to the
22 other employees in the group. ~~This~~ *The* requirement that the
23 governing board *of the school district* provide, on request, a written
24 statement of reasons for determining the order of termination shall
25 not be interpreted to give affected employees any legal right or
26 interest that would not exist without ~~such a~~ *the* requirement.

27 (c) (1) Notice of ~~such the~~ termination of services shall be given
28 ~~before the 15th of the manner prescribed in May 15 pursuant to~~
29 Section 44949, and *the* services of ~~such those~~ employees shall be
30 terminated in the inverse of the order in which they were employed,
31 as determined by the *governing board of the school district* in
32 accordance with ~~the provisions of~~ Sections 44844 and 44845. ~~In~~
33 ~~the event that~~ *If* a permanent or probationary employee is not given
34 the notices and a right to a hearing as provided for in Section
35 44949, he or she shall be deemed reemployed for the ensuing
36 school year.

37 ~~The~~

38 (2) *The* governing board *of the school district* shall make
39 assignments and reassignments in ~~such a~~ manner that employees
40 shall be retained to render any service ~~which~~ their seniority and

1 qualifications entitle them to render. However, ~~prior to before~~
2 assigning or reassigning ~~any~~ a certificated employee to teach a
3 subject ~~which~~ that he or she has not previously taught, and for
4 which he or she does not have a teaching credential or ~~which~~ that
5 is not within the employee's major area of postsecondary study or
6 the equivalent thereof, the governing board *of the school district*
7 shall require the employee to pass a subject matter competency
8 test in the appropriate subject.

9 (d) Notwithstanding subdivision (b), a school district may
10 deviate from terminating a certificated employee in order of
11 seniority for either of the following reasons:

12 (1) The *school* district demonstrates a specific need for personnel
13 to teach a specific course or course of study, *including, but not*
14 *limited to, career technical education or career pathway program,*
15 or to provide services authorized by a services credential with a
16 specialization in either pupil personnel services or health for a
17 school nurse, and that the certificated employee has special training
18 and experience necessary to teach that course or course of study
19 or to provide those services, ~~which~~ that others with more seniority
20 do not possess.

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

23 (3) *For purposes of maintaining or achieving compliance with*
24 *the school district's local control and accountability plan.*

25 SEC. 2. Section 44956 of the Education Code is amended to
26 read:

27 44956. Any permanent employee whose services have been
28 terminated as provided in Section 44955 shall have the following
29 rights:

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

1 reappointing any employee to teach a subject that he or she has
2 not previously taught, and for which he or she does not have a
3 teaching credential or that is not within the employee's major area
4 of postsecondary study or the equivalent thereof, the governing
5 board *of the school district* shall require the employee to pass a
6 subject matter competency test in the appropriate subject.

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

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

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

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

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

35 (e) During the period of his or her preferred right to
36 reappointment, ~~an~~ *the* employee shall, in the order of original
37 employment, be offered prior opportunity for substitute service
38 during the absence of any other employee who has been granted
39 a leave of absence or who is temporarily absent from duty;
40 provided, that his or her services may be terminated upon the return

1 to duty of the other employee and that *the* substitute service shall
2 not affect the retention of his or her previous classification and
3 rights. If, in any school year the employee serves as a substitute
4 in any position requiring certification for 21 days or more within
5 a period of 60 schooldays, the compensation the employee receives
6 for substitute service in that 60-day period, including his or her
7 first 20 days of substitute service, shall ~~be~~ not *be* less than the
8 amount the employee would receive if he or she were being
9 reappointed.

10 (f) (1) During the period of the employee's preferred right to
11 reappointment, the governing board of the *school* district, if it is
12 also the governing board of one or more other *school* districts,
13 may assign him or her to service, which he or she is certificated
14 and competent to render, in ~~another~~ *said other school* district or
15 districts; provided, that the compensation he or she receives
16 ~~therefor~~ *for the service* may, in the discretion of the governing
17 ~~board,~~ *board of the school district*, be the same as he or she would
18 have received had he or she been serving in the *school* district
19 from which his or her services were terminated, that his or her
20 service in the other *school* district or districts shall be counted
21 toward the period required for both state and local retirement as
22 though rendered in the *school* district from which his or her
23 services were terminated, and that no permanent employee in the
24 other *school* district or districts shall be displaced by him or her.

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

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

36 (h) Should he or she become disabled or reach retirement age
37 at any time before his or her return to service, he or she shall
38 receive, in any state or *school* district retirement system of which
39 he or she was a member, all benefits to which he or she would
40 have been entitled had such event occurred at the time of his or

1 her termination of service, plus any benefits he or she may have
2 qualified for ~~thereafter~~, *after his or her termination of service*, as
3 though still employed.

4 SEC. 3. Section 44957 of the Education Code is amended to
5 read:

6 44957. ~~Any~~ A probationary employee whose services have
7 been terminated as provided in Section 44955 shall have the
8 following rights:

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

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

34 (1) The *school* district demonstrates a specific need for personnel
35 to teach a specific course or course of study, *including, but not*
36 *limited to, career technical education or career pathway program*,
37 or to provide services authorized by a services credential with a
38 specialization in either pupil personnel services or health for a
39 school nurse, and that the employee has special training and
40 experience necessary to teach that course or course of study, or to

1 provide those services, ~~which~~ *that* others with more seniority do
2 not possess.

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

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

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

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

38 **SECTION 1.** ~~Section 44955 of the Education Code is amended~~
39 ~~to read:~~

1 ~~44955. (a) A permanent employee shall not be deprived of his~~
2 ~~or her position for causes other than those specified in Sections~~
3 ~~44907 and 44923, and Sections 44932 to 44947, inclusive, and a~~
4 ~~probationary employee shall not be deprived of his or her position~~
5 ~~for cause other than as specified in Sections 44948 to 44949,~~
6 ~~inclusive.~~

7 ~~(b) (1) If in a school year the average daily attendance in all of~~
8 ~~the schools of a school district for the first six months that school~~
9 ~~is in session shall have declined below the corresponding period~~
10 ~~of either of the previous two school years, if the governing board~~
11 ~~of a school district determines that attendance in the school district~~
12 ~~will decline in the following year as a result of the termination of~~
13 ~~an interdistrict tuition agreement as described in Section 46304,~~
14 ~~if a particular kind of service is to be reduced or discontinued not~~
15 ~~later than the beginning of the following school year, or if the~~
16 ~~amendment of state law requires the modification of curriculum,~~
17 ~~and if the governing board of the school district determines it~~
18 ~~necessary by reason of any of these conditions to decrease the~~
19 ~~number of permanent employees in the school district, the~~
20 ~~governing board of the school district may terminate the services~~
21 ~~of not more than a corresponding percentage of the certificated~~
22 ~~employees of the school district, permanent as well as probationary,~~
23 ~~at the close of the school year. Except as otherwise provided by~~
24 ~~statute, the services of a permanent employee shall not be~~
25 ~~terminated under this section while a probationary employee, or~~
26 ~~any other employee with less seniority, is retained to render a~~
27 ~~service that the permanent employee is certificated and competent~~
28 ~~to render.~~

29 ~~(2) In computing a decline in average daily attendance for~~
30 ~~purposes of this subdivision for a newly formed or reorganized~~
31 ~~school district, each school of the school district shall be deemed~~
32 ~~to have been a school of the newly formed or reorganized school~~
33 ~~district for both of the two previous school years.~~

34 ~~(3) As between employees who first rendered paid service to~~
35 ~~the school district on the same date, the governing board of the~~
36 ~~school district shall determine the order of termination solely on~~
37 ~~the basis of needs of the school district and the pupils of the school~~
38 ~~district. Upon the request of an employee whose order of~~
39 ~~termination is so determined, the governing board of the school~~
40 ~~district shall furnish in writing, no later than five days before the~~

1 commencement of the hearing held in accordance with Section
2 44949, a statement of the specific criteria used in determining the
3 order of termination and the application of the criteria in ranking
4 each employee relative to the other employees in the group. The
5 requirement that the governing board of the school district provide,
6 on request, a written statement of reasons for determining the order
7 of termination shall not be interpreted to give affected employees
8 any legal right or interest that would not exist without the
9 requirement.

10 (e) (1) Notice of the termination of services shall be given
11 before May 15 pursuant to Section 44949, and the services of those
12 employees shall be terminated in the inverse of the order in which
13 they were employed, as determined by the governing board of the
14 school district in accordance with the provisions of Sections 44844
15 and 44845. If a permanent or probationary employee is not given
16 the notices and a right to a hearing as provided for in Section
17 44949, he or she shall be deemed reemployed for the ensuing
18 school year.

19 (2) The governing board of the school district shall make
20 assignments and reassignments in a manner that employees shall
21 be retained to render any service their seniority and qualifications
22 entitle them to render. However, before assigning or reassigning
23 a certificated employee to teach a subject that he or she has not
24 previously taught, and for which he or she does not have a teaching
25 credential or that is not within the employee's major area of
26 postsecondary study or the equivalent thereof, the governing board
27 of the school district shall require the employee to pass a subject
28 matter competency test in the appropriate subject.

29 (d) Notwithstanding subdivision (b), a school district may
30 deviate from terminating a certificated employee in order of
31 seniority for either of the following reasons:

32 (1) The school district demonstrates a specific need for personnel
33 to teach a specific course or course of study, including, but not
34 limited to, career technical education or career pathway programs,
35 or to provide services authorized by a services credential with a
36 specialization in either pupil personnel services or health for a
37 school nurse, and that the certificated employee has special training
38 and experience necessary to teach that course or course of study
39 or to provide those services, that others with more seniority do not
40 possess.

- 1 ~~(2) For purposes of maintaining or achieving compliance with~~
- 2 ~~constitutional requirements related to equal protection of the laws.~~
- 3 ~~(3) For purposes of maintaining or achieving compliance with~~
- 4 ~~the school district's local control and accountability plan.~~

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