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AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 691

Introduced by Senator Yee Steinberg

(Principal coauthors: Senators Alquist and Harman)

(Principal coauthor: Assembly Member Torlakson)

(Coauthors: Senators Ashburn and DeSaulnier)

(Coauthors: Assembly Members Blumenfield, Conway, Gilmore, Lieu, Portantino, Audra Strickland, and Swanson)

February 27, 2009

An act to amend Section 152.3 of the Penal Code, relating to reporting crimes. An act to amend Sections 44949, 44955, and 44956 of the Education Code, relating to education employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 691, as amended, Yee Steinberg. ~~Reporting crimes. Education employment.~~

(1) Existing law requires that, when a reduction in the number of certificated employees employed by a school district is authorized for specified reasons, the layoffs occur in order of employee seniority. Existing law provides certain exceptions to this requirement, including an exception for purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws. Existing law requires, for 39 months from the date of termination, that

any employee who in the meantime has not attained 65 years of age have the preferred right to reappointment, in the order of original employment, as specified. Existing law provides certain exceptions to this requirement, including an exception for purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

This bill would provide that this exception relates to both pupils and certificated employees. The bill would require that, when classroom teachers, as defined, are subject to notice and layoffs pursuant to these provisions, that the proportion of classroom teachers terminated at schools in deciles 1 to 3, inclusive, of the Academic Performance Index in any given year as part of a reduction in the number of employees pursuant to these provisions be no greater than the proportion of classroom teachers noticed and, when applicable, terminated, respectively, in the school district as a whole.

(2) Existing law requires, when a reduction in the number of certificated employees employed by a school district is authorized for specified reasons, the notice of the termination of the services of an employee in the subsequent school year be given by the governing board to the employee, in a prescribed manner, before May 15. Existing law requires the superintendent of the district, prior to March 15 and before an employee is given the described notice, to give written notice to the governing board and the employee that it has been recommended that the notice be given to the employee, and stating the reasons therefor. Existing law authorizes an employee who is given this notice to request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. Existing law requires that an administrative law judge conduct this hearing, and issue a proposed decision to the governing board containing certain findings of fact and a determination as to the sufficiency of cause for the termination.

This bill would require that this determination also include a determination as to whether the notices of termination issued at schools in deciles 1 to 3, inclusive, of the Academic Performance Index violate the aforementioned limit on terminations of classroom teachers.

~~Existing law, subject to exceptions, provides that any person who reasonably believes that he or she has observed the commission of a murder, rape, or lewd and lascivious act committed by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, where the victim of any of these crimes is under 14 years of age, shall notify a peace officer. Violation~~

of these provisions is a misdemeanor punishable by a fine not exceeding \$1,500 or incarceration not exceeding 6 months in a county jail, or both the fine and incarceration.

This bill would expand those provisions to apply when the victim of the offense observed is under 18 years of age, and would specify that this obligation to report crimes to a peace officer applies to sodomy, oral copulation, and sexual penetration, as specified, where those crimes are accomplished by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and rape in concert. The bill would provide additional exceptions to the reporting requirement for domestic partners, for children under 12 years of age, and for victims of the offenses that are subject to reporting. The bill would provide that a violation of these reporting obligations may also be punished as an infraction by a fine of \$250.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: *yes-no*.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares that every
- 2 California child has a constitutional right, under the equal
- 3 protection clause of the California Constitution, to equal
- 4 educational opportunity.
- 5 (b) The Legislature finds that paragraph (2) of subdivision (d)
- 6 of Section 44955 of the Education Code provides that, for purposes
- 7 of a reduction in force, school districts may deviate from
- 8 terminating a certificated employee in order of seniority in order
- 9 to maintain or achieve compliance with the constitutional
- 10 guarantee of equal protection of the laws. It is therefore the intent
- 11 of the Legislature that school districts utilize this authority to
- 12 prevent disparate impacts of teacher layoffs on pupils' rights to
- 13 education.

1 *SEC. 2. Section 44949 of the Education Code is amended to*
2 *read:*

3 44949. (a) No later than March 15 and before an employee is
4 given notice by the governing board that his or her services will
5 not be required for the ensuing year for the reasons specified in
6 Section 44955, the governing board and the employee shall be
7 given written notice by the superintendent of the district or his or
8 her designee, or in the case of a district which has no
9 superintendent by the clerk or secretary of the governing board,
10 that it has been recommended that the notice be given to the
11 employee, and stating the reasons therefor.

12 Until the employee has requested a hearing as provided in
13 subdivision (b) or has waived his or her right to a hearing, the
14 notice and the reasons therefor shall be confidential and shall not
15 be divulged by any person, except as may be necessary in the
16 performance of duties. However, the violation of this requirement
17 of confidentiality, in and of itself, shall not in any manner be
18 construed as affecting the validity of any hearing conducted
19 pursuant to this section.

20 (b) The employee may request a hearing to determine if there
21 is cause for not reemploying him or her for the ensuing year. A
22 request for a hearing shall be in writing and shall be delivered to
23 the person who sent the notice pursuant to subdivision (a), on or
24 before a date specified in that subdivision, which shall not be less
25 than seven days after the date on which the notice is served upon
26 the employee. If an employee fails to request a hearing on or before
27 the date specified, his or her failure to do so shall constitute his or
28 her waiver of his or her right to a hearing. The notice provided for
29 in subdivision (a) shall advise the employee of the provisions of
30 this subdivision.

31 (c) In the event a hearing is requested by the employee, the
32 proceeding shall be conducted and a decision made in accordance
33 with Chapter 5 (commencing with Section 11500) of Part 1 of
34 Division 3 of Title 2 of the Government Code and the governing
35 board shall have all the power granted to an agency therein, except
36 that all of the following shall apply:

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

1 (2) The discovery authorized by Section 11507.6 of the
2 Government Code shall be available only if request is made
3 therefor within 15 days after service of the accusation, and the
4 notice required by Section 11505 of the Government Code shall
5 so indicate.

6 (3) The hearing shall be conducted by an administrative law
7 judge who shall prepare a proposed decision, containing findings
8 of fact and a determination as to whether the charges sustained by
9 the evidence are related to the welfare of the schools and the pupils
10 thereof. The proposed decision shall be prepared for the governing
11 board and shall contain a determination as to the sufficiency of
12 the cause, *including a determination of whether the proportion of*
13 *classroom teachers noticed at the employee's schoolsite, for*
14 *schools in deciles 1 to 3, inclusive, of the most recently published*
15 *rankings of all public schools based on the Academic Performance*
16 *Index, pursuant to subdivision (a) of Section 52056, exceeds the*
17 *proportion of classroom teachers noticed in the school district as*
18 *a whole in violation of paragraph (1) of subdivision (d) of Section*
19 *44955 and a recommendation as to disposition. However, the*
20 *governing board shall make the final determination as to the*
21 *sufficiency of the cause and disposition. None of the findings,*
22 *recommendations, or determinations contained in the proposed*
23 *decision prepared by the administrative law judge shall be binding*
24 *on the governing board. Nonsubstantive procedural errors*
25 *committed by the school district or governing board of the school*
26 *district shall not constitute cause for dismissing the charges unless*
27 *the errors are prejudicial errors. Copies of the proposed decision*
28 *shall be submitted to the governing board and to the employee on*
29 *or before May 7 of the year in which the proceeding is commenced.*
30 *All expenses of the hearing, including the cost of the administrative*
31 *law judge, shall be paid by the governing board from the district*
32 *funds.*

33 The board may adopt from time to time such rules and procedures
34 not inconsistent with provisions of this section as may be necessary
35 to effectuate this section.

36 (d) Any notice or request shall be deemed sufficient when it is
37 delivered in person to the employee to whom it is directed, or when
38 it is deposited in the United States registered mail, postage prepaid
39 and addressed to the last known address of the employee.

1 (e) If after request for hearing pursuant to subdivision (b) any
 2 continuance is granted pursuant to Section 11524 of the
 3 Government Code, the dates prescribed in subdivision (c) ~~which~~
 4 *that* occur on or after the date of granting the continuance and the
 5 date prescribed in subdivision (c) of Section 44955 which occurs
 6 after the date of granting the continuance shall be extended for a
 7 period of time equal to the continuance.

8 *SEC. 3. Section 44955 of the Education Code is amended to*
 9 *read:*

10 44955. (a) ~~No~~A permanent employee shall *not* be deprived
 11 of his or her position for causes other than those specified in
 12 Sections 44907 and 44923, and Sections 44932 to 44947, inclusive,
 13 and ~~no~~ a probationary employee shall *not* be deprived of his or
 14 her position for cause other than as specified in Sections 44948 to
 15 44949, inclusive.

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

38 In computing a decline in average daily attendance for purposes
 39 of this section for a newly formed or reorganized school district,
 40 each school of the district shall be deemed to have been a school

1 of the newly formed or reorganized district for both of the two
2 previous school years.

3 As between employees who first rendered paid service to the
4 district on the same date, the governing board shall determine the
5 order of termination solely on the basis of needs of the district and
6 ~~the students thereof~~ *pupils of the district*. Upon the request of any
7 employee whose order of termination is so determined, the
8 governing board shall furnish in writing no later than five days
9 prior to the commencement of the hearing held in accordance with
10 Section 44949, a statement of the specific criteria used in
11 determining the order of termination and the application of the
12 criteria in ranking each employee relative to the other employees
13 in the group. *For employees assigned to schools ranked in deciles*
14 *1 to 3, inclusive, of the most recently published rankings of all*
15 *public schools based on the Academic Performance Index, pursuant*
16 *to subdivision (a) of Section 52056, the statement of specific*
17 *criteria shall include data supporting the determination of whether*
18 *the notices issued satisfy paragraph (1) of subdivision (d) of this*
19 *section*. This requirement that the governing board provide, on
20 request, a written statement of reasons for determining the order
21 of termination shall not be interpreted to give affected employees
22 any legal right or interest that would not exist without such a
23 requirement.

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

33 The governing board shall make assignments and reassignments
34 in such a manner that employees shall be retained to render any
35 service ~~which~~ *that* their seniority and qualifications entitle them
36 to render. However, prior to assigning or reassigning any
37 certificated employee to teach a subject ~~which~~ *that* he or she has
38 not previously taught, and for which he or she does not have a
39 teaching credential or ~~which~~ *that* is not within the employee's
40 major area of postsecondary study or the equivalent thereof, the

1 governing board shall require the employee to pass a subject matter
 2 competency test in the appropriate subject.

3 (d) (1) Notwithstanding subdivision (b), *for purposes of*
 4 *maintaining stability of classroom teachers at schools in deciles*
 5 *1 to 3, inclusive, of the most recently published rankings of all*
 6 *public schools based on the Academic Performance Index, pursuant*
 7 *to subdivision (a) of Section 52056, the proportion of classroom*
 8 *teachers noticed and, when applicable, terminated at those schools*
 9 *in any given year as part of a reduction in the number of employees*
 10 *pursuant to this section shall be no greater than the proportion,*
 11 *rounded to the nearest whole number of classroom teachers, of*
 12 *classroom teachers noticed and, when applicable, terminated,*
 13 *respectively, in the school district as a whole.*

14 (2) *For purposes of paragraph (1), the term “classroom*
 15 *teacher” means both certificated employees whose primary*
 16 *responsibility is to provide classroom instruction and certificated*
 17 *employees who provide instructional support to those employees.*
 18 *Certificated employees who provide instructional support to*
 19 *certificated employees providing classroom instruction include,*
 20 *but are not necessarily limited to, all of the following:*

- 21 (A) *Resource teachers.*
- 22 (B) *Mentor teachers.*
- 23 (C) *Content specialists.*
- 24 (D) *Instructional coaches.*
- 25 (E) *Special education teachers and related special education*
 26 *specialists.*

27 (3) *In addition to the requirements prescribed in paragraph (1),*
 28 *a school district may deviate from terminating a certificated*
 29 *employee in order of seniority for either of the following reasons:*

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

38 ~~(2)~~

1 (B) For purposes of maintaining or achieving compliance with
2 constitutional requirements related to equal protection of the laws
3 *as it applies to pupils and to certificated employees.*

4 SEC. 4. Section 44956 of the Education Code is amended to
5 read:

6 44956. (a) Any permanent employee whose services have been
7 terminated as provided in Section 44955 shall have the following
8 rights:

9 (1)

10 (a) For the period of 39 months from the date of such
11 termination, any employee who in the meantime has not attained
12 the age of 65 years shall have the preferred right to reappointment,
13 in the order of original employment as determined by the board
14 in accordance with the provisions of Sections 44831 to 44855,
15 inclusive, if the number of employees is increased or the
16 discontinued service is reestablished, with no requirements that
17 were not imposed upon other employees who continued in service;
18 provided, that no probationary or other employee with less seniority
19 shall be employed to render a service ~~which said that the~~ employee
20 is certificated and competent to render. However, prior to
21 reappointing any employee to teach a subject ~~which that~~ he or she
22 has not previously taught, and for which he or she does not have
23 a teaching credential or ~~which that~~ is not within the employee's
24 major area of postsecondary study or the equivalent thereof, the
25 governing board shall require the employee to pass a subject matter
26 competency test in the appropriate subject.

27 (2)

28 (b) The aforesaid right to reappointment may be waived by the
29 employee, without prejudice, for not more than one school year,
30 unless the board extends this right, but such waiver shall not
31 deprive the employee of his *or her* right to subsequent offers of
32 reappointment.

33 (3)

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

37 (A)

38 (1) The district demonstrates a specific need for personnel to
39 teach a specific course or course of study, or to provide services
40 authorized by a services credential with a specialization in either

1 pupil personnel services or health for a school nurse, and that the
2 employee has special training and experience necessary to teach
3 that course or course of study, or to provide those services, which
4 others with more seniority do not possess.

5 ~~(B)~~

6 (2) For purposes of maintaining or achieving compliance with
7 constitutional requirements related to equal protection of the laws,
8 *as it applies to pupils and to certificated employees.*

9 ~~(4)~~

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

19 ~~(5)~~

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

35 ~~(6)~~

36 (f) During the period of the employee's preferred right to
37 reappointment, the governing board of the district, if it is also the
38 governing board of one or more other districts, may assign him *or*
39 *her* to service, which he *or she* is certificated and competent to
40 render, in ~~said~~ *the* other district or districts; provided, that the

1 compensation he *or she* receives therefor may in the discretion of
 2 the governing board be the same as he *or she* would have received
 3 had he *or she* been serving in the district from which his *or her*
 4 services were terminated, that his *or her* service in the ~~said~~ other
 5 district or districts shall be counted toward the period required for
 6 both state and local retirement, as defined by Section 22102, as
 7 though rendered in the district from which his *or her* services were
 8 terminated, and that ~~no~~ a permanent employee in ~~said~~ the other
 9 district or districts shall *not* be displaced by him *or her*.

10 It is the intent of this ~~subsection~~ *section* that the employees of a
 11 school district, the governing board of which is also the governing
 12 board of one or more other school districts, shall not be at a
 13 disadvantage as compared with employees of a unified school
 14 district.

15 (7)

16 (g) At any time prior to the completion of one year after his *or*
 17 *her* return to service, he *or she* may continue or make up, with
 18 interest, his *or her* own contributions to any state or district
 19 retirement system, for the period of his *or her* absence, but it shall
 20 not be obligatory on *the* state or district to match such
 21 contributions.

22 (8)

23 (h) Should he *or she* become disabled or reach retirement age
 24 at any time before his *or her* return to service, he *or she* shall
 25 receive, in any state or district retirement system of which he *or*
 26 *she* was a member, all benefits to which he *or she* would have been
 27 entitled had such event occurred at the time of his *or her*
 28 termination of service, plus any benefits he *or she* may have
 29 qualified for thereafter, as though still employed.

30 ~~SECTION 1. Section 152.3 of the Penal Code is amended to~~
 31 ~~read:~~

32 ~~152.3. (a) Any person who reasonably believes that he or she~~
 33 ~~has observed the commission of any of the following offenses~~
 34 ~~where the victim is a child under the 18 years of age shall notify~~
 35 ~~a peace officer, as defined in Chapter 4.5 (commencing with~~
 36 ~~Section 830) of Title 3 of Part 2:~~

37 (1) ~~Murder.~~

38 (2) ~~Rape.~~

39 (3) ~~A violation of Section 286, 288, 288a, or 289, accomplished~~
 40 ~~by use of force, violence, duress, menace, or fear of immediate~~

1 and unlawful bodily injury on the victim or another person, or a
2 violation of Section 264.1.

3 (b) This section shall not be construed to affect privileged
4 relationships as provided by law.

5 (c) The duty to notify a peace officer imposed pursuant to
6 subdivision (a) is satisfied if the notification or an attempt to
7 provide notice is made by telephone or any other means.

8 (d) Failure to notify as required pursuant to subdivision (a) is a
9 misdemeanor punishable by a fine of not more than one thousand
10 five hundred dollars (\$1,500), by imprisonment in a county jail
11 for not more than six months, or by both that fine and
12 imprisonment, or is an infraction punishable by a fine of two
13 hundred fifty dollars (\$250).

14 (e) The requirements of this section shall not apply to the
15 following:

16 (1) A victim of the offense subject to reporting pursuant to
17 subdivision (a).

18 (2) A person who is related to either the victim or the offender,
19 including a husband, wife, domestic partner, parent, child, brother,
20 sister, grandparent, grandchild, or other person related by
21 consanguinity or affinity.

22 (3) A person who fails to report based on a reasonable mistake
23 of fact.

24 (4) A person who fails to report based on a reasonable fear for
25 his or her own safety or for the safety of his or her family.

26 (5) A child under 12 years of age.

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.