

AMENDED IN SENATE JUNE 2, 2010
AMENDED IN SENATE APRIL 28, 2010
AMENDED IN SENATE APRIL 13, 2010

SENATE BILL

No. 955

Introduced by Senator Huff

February 4, 2010

An act to amend Sections 1294, 1296, 44929.21, 44936, 44944, 44945, 44955, and 44956 of, to add ~~Section 44955.1~~ *Sections 44955.1 and 44955.2* to, and to repeal Section 44949 of, the Education Code, relating to school districts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 955, as amended, Huff. School districts.

(1) Existing law provides that, after a certificated employee of a school district or a county superintendent of schools with an average daily attendance of 250 or more completes 2 consecutive years of employment and is reelected for the next succeeding school year to a position requiring certification, the employee becomes and is classified as a permanent employee of the school district or county superintendent. Existing law additionally requires the governing board of a school district or county superintendent to notify the employee on or before March 15 of the employee's 2nd year of probation of the decision of the governing board or school district to reelect or not reelect the employee for the next succeeding school year to the position.

This bill would instead require the governing board and county superintendent of schools to notify the employee of its decision to reelect or not reelect the employee on or after May 1 but no later than 30 days

before the last schoolday scheduled on the school calendar of the employee's 2nd year of probation.

(2) Existing law establishes certain procedures with which the governing board of a school district is required to comply before dismissing or suspending a permanent employee, including, at the employee's option, a hearing. Existing law establishes a ~~commission of professional competence~~ *Commission on Professional Competence* for each hearing, consisting of specified members. Existing law deems the decision of the ~~commission on professional competence~~ *Commission on Professional Competence* to be the final decision of the governing board.

Existing law prohibits a notice of dismissal or suspension initiated pursuant to these provisions from being given between May 15 and September 15, inclusive, in any year.

This bill would delete that prohibition. The bill would make various changes to the provisions relating to the hearing, including authorizing the ~~commission of~~ *on* professional competence to consist solely of an administrative law judge, as well as providing that the decision of the commission would be advisory, and the final decision regarding the discipline of the employee would be determined by action of the governing board. The bill would provide that an employee requesting a hearing would be placed on administrative leave without pay, unless the employee furnishes to the school district acceptable security, as specified, in which case the employee would be continued to be paid his or her regular salary.

Existing law authorizes the decision of a ~~commission on professional competence~~ *Commission on Professional Competence* to be reviewed by a court of competent jurisdiction on petition of either the governing board or the employee.

This bill would instead authorize the decision to be reviewed on petition of the employee.

(3) 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.

This bill would eliminate this notice requirement and the authority of an employee to request a hearing.

Existing law provides that when employees are terminated pursuant to a reduction in workforce, that a school district is required to terminate the employees in order of seniority. Existing law provides certain exceptions to this rule.

This bill would provide additional exceptions, including authorizing school districts to terminate employees on the basis of performance evaluations, as specified, and on the basis that the employee is assigned to a schoolsite that has been selected by the governing board *for exemption* from certificated reductions in force, based upon the needs of the educational program.

(4) Existing law generally requires school districts to adhere to certain requirements with respect to teacher and administrator employment. Existing law requires a charter school petition to set forth specified information in its charter relating to employment, including the qualifications to be met by individuals to be employed at the school.

This bill would authorize school districts, county offices of education, and charter schools to assign, reassign, and transfer teachers and administrators based on effectiveness and subject matter needs, and without regard to years of service.

(5) Existing law provides certain rights for permanent school employees who have been terminated pursuant to specified provisions of law, including the right to be offered prior opportunity for substitute service during the absence of any other employee who has been granted a leave of absence or who is temporarily absent from duty, as specified, *and generally requires terminations and reappointments to be made in order of seniority, as specified. Existing law also authorizes a school district to deviate from the order of seniority in certain circumstances.*

~~This bill, notwithstanding these provisions, would authorize~~ *would expand the list of circumstances under which a school district is authorized to deviate from terminating or reappointing a certificated employee in order of seniority for specified reasons.* The bill would revise the compensation requirements for employees who serve as substitute teachers in a position requiring certification qualifications for 21 days or more within a period of 60 schooldays by requiring a school district to compensate the employee at a rate no less than the

amount the employee would have received if he or she were being reappointed beginning on the 22nd day during that 60-day period instead of the first day of that service. *The bill would prohibit a school district from taking into consideration whether an employee has exercised specified rights to meet and negotiate when deviating from the order of seniority.*

The bill would make the bill's provisions applicable to county superintendent of schools, and would delete obsolete provisions relating to employees who were on probation prior to 1984.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 1294 of the Education Code is amended
2 to read:

3 1294. Each person employed by a county superintendent of
4 schools in a position requiring certification qualifications, except
5 employees included in the civil service system or in any merit
6 system, or any person who holds an office by virtue of an election
7 conducted under the Elections Code or the Education Code, and
8 whose salary is paid from the county school service fund, has the
9 same right with respect to leaves of absence, sick leave, and
10 bereavement leave as a person employed by a school district or a
11 community college district in a position requiring certification
12 qualifications.

13 Sections 22724, 44845, 44922, 44929.21, 44936, 44944,
14 44945, 44955, 44955.1, 44956, 44962 to 44976, inclusive, 44977,
15 44978, 44979, 44983, 44984, 44985, 44987, 87413, 87414, 87740,
16 87743, 87763 to 87779, inclusive, 87780, 87781, 87782, 87786,
17 87787, and 87788 apply to persons so employed by a county
18 superintendent of schools and so paid from the county school
19 service fund. Whenever, in those provisions, a duty or power is
20 imposed upon or granted to the governing board of a school district
21 or community college district or an employee thereof, the power
22 or duty shall, for the purposes of this section, be deemed to be
23 granted to or imposed on the county superintendent of schools or
24 his or her employee, respectively. When "district" is used in those

1 provisions, it shall, for the purposes of this section, be deemed to
2 mean “county superintendent of schools.” Compensation paid to
3 employees during those leaves shall be paid from the county school
4 service fund.

5 The granting of leaves of absence to employees pursuant to
6 Section 44966 or 87767 shall be by the county superintendent of
7 schools, upon approval by the county board of education.

8 SEC. 2. Section 1296 of the Education Code is amended to
9 read:

10 1296. (a) If the average daily attendance of the schools and
11 classes maintained by a county superintendent of schools is 250
12 or more, each person who, after being employed for two complete
13 consecutive school years by the superintendent in a teaching
14 position in those schools or classes requiring certification
15 qualifications and whose salary is paid from the county school
16 service fund, is reelected for the next succeeding school year to a
17 certificated position in those schools or classes, shall be classified
18 as and become a permanent employee of the county superintendent
19 of schools.

20 (b) The county superintendent of schools shall notify the
21 employee, on or after May 1, but no later than 30 days before the
22 last schoolday scheduled on the school calendar of the employee’s
23 second complete consecutive year of employment by the
24 superintendent in a teaching position in schools or classes
25 maintained by the superintendent requiring certification
26 qualifications, of the decision to reelect or not reelect the employee
27 for the next succeeding school year to the position. If the county
28 superintendent does not give notice to the employee within that
29 time period, the employee shall be deemed reelected for the next
30 succeeding school-year; year. The employee shall have the same
31 rights and duties as employees of school districts to which Section
32 44882 applies. Sections 44841, 44842, 44882, 44948.3, and
33 44948.5 are applicable to these employees.

34 (c) As used in this section, “teaching position” means any
35 certificated position designated as of January 1, 1983, by the county
36 board of education or the county superintendent of schools as a
37 teaching position for the purpose of granting probationary or
38 permanent status.

39 SEC. 3. Section 44929.21 of the Education Code is amended
40 to read:

1 44929.21. (a) Every employee of a school district of any type
2 or class having an average daily attendance of 250 or more who,
3 after having been employed by the district for two complete
4 consecutive school years in a position or positions requiring
5 certification qualifications, is reelected for the next succeeding
6 school year to a position requiring certification qualifications shall,
7 at the commencement of the succeeding school year, be classified
8 as and become a permanent employee of the district.

9 (b) The governing board shall notify the employee, on or after
10 May 1, but no later than 30 days before the last schoolday
11 scheduled on the school calendar of the employee's second
12 complete consecutive school year of employment by the district
13 in a position or positions requiring certification qualifications, of
14 the decision to reelect or not reelect the employee for the next
15 succeeding school year to the position. In the event that the
16 governing board does not give notice to the employee within that
17 time period, the employee shall be deemed reelected for the next
18 succeeding school year.

19 SEC. 4. Section 44936 of the Education Code is amended to
20 read:

21 44936. The notice of dismissal or suspension in a proceeding
22 initiated pursuant to Section 44934 shall be in writing and be served
23 upon the employee personally or by United States registered mail
24 addressed to him at his last known address. A copy of the charges
25 filed, containing the information required by Section 11503 of the
26 Government Code, together with a copy of the provisions of this
27 article, shall be attached to the notice.

28 SEC. 5. Section 44944 of the Education Code is amended to
29 read:

30 44944. (a) (1) In a dismissal or suspension proceeding initiated
31 pursuant to Section 44934, if a hearing is requested by the
32 employee, the hearing shall be commenced within 60 days from
33 the date of the employee's demand for a hearing. The hearing shall
34 be initiated, conducted, and a decision made in accordance with
35 Chapter 5 (commencing with Section 11500) of Part 1 of Division
36 3 of Title 2 of the Government Code. However, the hearing date
37 shall be established after consultation with the employee and the
38 governing board, or their representatives, and the ~~Commission on~~
39 ~~Professional Competence~~ *commission on professional competence*
40 shall have all of the power granted to an agency in that chapter,

except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If a continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to the continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

(2) If the right of discovery granted under paragraph (1) is denied by either the employee or the governing board, all of the remedies in Chapter 7 (commencing with Section 2023.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be available to the party seeking discovery, and the court of proper jurisdiction to entertain his or her motion shall be the superior court of the county in which the hearing will be held.

(3) The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

(4) The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

(5) No witness shall be permitted to testify at the hearing except upon oath or affirmation.

(b) The hearing provided for in this section shall be conducted by a ~~Commission on Professional Competence~~ *commission on professional competence*. The commission shall be established

1 through one of the following two methods, as selected by the
2 governing board:

3 (1) One member of the commission shall be selected by the
4 employee, one member shall be selected by the governing board,
5 and one member shall be an administrative law judge of the Office
6 of Administrative Hearings who shall be chairperson and a voting
7 member of the commission and shall be responsible for ensuring
8 that the legal rights of the parties are protected at the hearing. The
9 member selected by the governing board and the member selected
10 by the employee shall not be related to the employee, shall not be
11 employees of the district initiating the dismissal or suspension,
12 and shall hold a currently valid credential and have at least five
13 years' teaching or administrative experience. If either the governing
14 board or the employee for any reason fails to select a commission
15 member at least seven calendar days prior to the date of the hearing,
16 the failure shall constitute a waiver of the right to selection, and
17 the county board of education or its specific designee shall
18 immediately make the selection. If the county board of education
19 is also the governing board of the school district or has by statute
20 been granted the powers of a governing board, the selection shall
21 be made by the Superintendent, who shall be reimbursed by the
22 school district for all costs incident to the selection.

23 (2) The commission shall consist solely of an administrative
24 law judge of the Office of Administrative Hearings who shall be
25 responsible for ensuring that the legal rights of the parties are
26 protected at the hearing.

27 (c) (1) The commission shall prepare a written decision
28 containing findings of fact, determinations of issues, and a
29 disposition that shall be, solely, one of the following:

30 (A) That the employee should be dismissed.

31 (B) That the employee should be suspended for a specific period
32 of time without pay.

33 (C) That the employee should not be dismissed or suspended.

34 (2) The decision of the commission that the employee should
35 not be dismissed or suspended shall not be based on nonsubstantive
36 procedural errors committed by the school district or governing
37 board unless the errors are prejudicial errors.

38 (3) The commission shall not have the power to dispose of the
39 charge of dismissal by imposing probation or other alternative
40 sanctions. The imposition of suspension pursuant to subparagraph

1 (B) of paragraph (1) shall be available only in a suspension
2 proceeding authorized pursuant to subdivision (b) of Section 44932
3 or Section 44933.

4 (4) The decision of the commission shall be advisory, and the
5 final decision regarding the discipline of the employee shall be
6 determined by action of the governing board of the school district.

7 (5) The board may adopt from time to time rules and procedures
8 not inconsistent with this section as may be necessary to effectuate
9 this section.

10 (6) The governing board and the employee shall have the right
11 to be represented by counsel.

12 (d) (1) If the commission has been established pursuant to
13 paragraph (1) of subdivision (b), and the member selected by the
14 governing board or the member selected by the employee is
15 employed by any school district in this state, the member shall,
16 during any service on the commission, continue to receive salary,
17 fringe benefits, accumulated sick leave, and other leaves and
18 benefits from the district in which the member is employed, but
19 shall receive no additional compensation or honorariums for service
20 on the commission.

21 (2) If the commission has been established pursuant to paragraph
22 (1) of subdivision (b), and service on the commission occurs during
23 summer recess or vacation periods, the member shall receive
24 compensation proportionate to that received during the current or
25 immediately preceding contract period from the member's
26 employing district, whichever amount is greater.

27 (e) (1) If the governing board determines that the employee
28 should be dismissed or suspended, the governing board and the
29 employee shall share equally the expenses of the hearing, including
30 the cost of the administrative law judge. If the commission has
31 been established pursuant to paragraph (1) of subdivision (b), the
32 state shall pay any costs incurred under paragraph (2) of
33 subdivision (d), the reasonable expenses, as determined by the
34 administrative law judge, of the member selected by the governing
35 board and the member selected by the employee, including, but
36 not limited to, payments or obligations incurred for travel, meals,
37 and lodging, and the cost of the substitute or substitutes, if any,
38 for the member selected by the governing board and the member
39 selected by the employee. The Controller shall pay all claims
40 submitted pursuant to this paragraph from the General Fund, and

1 may prescribe reasonable rules, regulations, and forms for the
2 submission of the claims. The employee and the governing board
3 shall pay their own attorney's fees.

4 (2) If the governing board determines that the employee should
5 not be dismissed or suspended, the governing board shall pay the
6 expenses of the hearing, including the cost of the administrative
7 law judge, any costs incurred under paragraph (2) of subdivision
8 (d), the reasonable expenses, as determined by the administrative
9 law judge, of the member selected by the governing board and the
10 member selected by the employee, including, but not limited to,
11 payments or obligations incurred for travel, meals, and lodging,
12 the cost of the substitute or substitutes, if any, for the member
13 selected by the governing board and the member selected by the
14 employee, and reasonable attorney's fees incurred by the employee.

15 (3) As used in this section, "reasonable expenses" shall not be
16 deemed "compensation" within the meaning of subdivision (d).

17 (4) If the employee petitions a court of competent jurisdiction
18 for review of the decision of the commission, the payment of
19 expenses to the administrative law judge required by this
20 subdivision shall not be stayed.

21 (5) (A) If the commission has been established pursuant to
22 paragraph (1) of subdivision (b), and the decision of the governing
23 board is finally reversed or vacated by a court of competent
24 jurisdiction, either the state, having paid the commission members'
25 expenses, shall be entitled to reimbursement from the governing
26 board for those expenses, or the governing board, having paid the
27 expenses, shall be entitled to reimbursement from the state.

28 (B) Either the employee, having paid a portion of the expenses
29 of the hearing, including the cost of the administrative law judge,
30 shall be entitled to reimbursement from the governing board for
31 the expenses, or the governing board, having paid its portion and
32 the employee's portion of the expenses of the hearing, including
33 the cost of the administrative law judge, shall be entitled to
34 reimbursement from the employee for that portion of the expenses.

35 (f) The hearing provided for in this section shall be conducted
36 in a place selected by agreement among the members of the
37 commission. If the commission has been established pursuant to
38 paragraph (1) of subdivision (b), in the absence of agreement, the
39 place shall be selected by the administrative law judge.

1 (g) (1) For the duration of the hearing conducted pursuant to
2 this section, the employee shall be placed on administrative leave
3 without pay, unless the employee furnishes to the school district
4 a suitable bond or other security acceptable to the governing board,
5 as specified in paragraph (2).

6 (2) An employee placed on administrative leave pursuant to this
7 section shall continue to be paid his or her regular salary during
8 the period of his or her administrative leave of absence if during
9 that time he or she furnishes to the school district a suitable bond
10 or other security acceptable to the governing board, as a guarantee
11 that the school district will be repaid the amount of salary during
12 the employee's leave of absence if, by action of the governing
13 board, a final decision is made to terminate the employee, or the
14 employee fails or refuses to return to service following a decision
15 not to terminate the employee. If the governing board determines
16 that the employee should not be dismissed, the governing board
17 shall reimburse the employee for the cost of the bond upon his or
18 her return to service in the school district.

19 (3) If the employee prevails at the hearing, the administrative
20 law judge may recommend a suitable compensatory remedy,
21 including back wages and benefits, which the governing board
22 may adopt if the employee is reinstated. Any employee who is
23 reinstated pursuant to this section, either by the governing board
24 or by order of a court of competent jurisdiction, is entitled to
25 reasonable back wages and benefits.

26 SEC. 6. Section 44945 of the Education Code is amended to
27 read:

28 44945. The decision of the governing board may, on petition
29 of the employee, be reviewed by a court of competent jurisdiction
30 in the same manner as a decision made by a hearing officer under
31 Chapter 5 (commencing with Section 11500) of Part 1 of Division
32 3 of Title 2 of the Government Code. The court, on review, shall
33 exercise its independent judgment on the evidence. The proceeding
34 shall be set for hearing at the earliest possible date and shall take
35 precedence over all other cases, except older matters of the same
36 character and matters to which special precedence is given by law.

37 SEC. 7. Section 44949 of the Education Code is repealed.

38 SEC. 8. Section 44955 of the Education Code is amended to
39 read:

1 44955. (a) No permanent employee shall 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 no
4 probationary employee shall be deprived of his or her position for
5 cause other than as specified in Section 44948.

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

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

33 (3) As between employees who first rendered paid service to
34 the district on the same date, the governing board shall determine
35 the order of termination solely on the basis of needs of the district
36 and the pupils thereof, including distinctions based upon
37 performance evaluations. Upon the request of any employee whose
38 order of termination is so determined, the governing board shall
39 furnish in writing within 30 days of the request, a statement of the
40 specific criteria used in determining the order of termination and

1 the application of the criteria in ranking each employee relative to
2 the other employees in the group. This requirement that the
3 governing board provide, on request, a written statement of reasons
4 for determining the order of termination shall not be interpreted
5 to give affected employees any legal right or interest that would
6 not exist without such a requirement.

7 (c) Notice of termination of services shall be given before the
8 15th of May, and services of those employees shall be terminated
9 in the inverse of the order in which they were employed, as
10 determined by the board in accordance with the provisions of
11 Sections 44844 and 44845.

12 (d) Notwithstanding subdivision (b), *except as specified in*
13 *subdivision (e)*, a school district may deviate from terminating a
14 certificated employee in order of seniority for any of the following
15 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 that the
20 certificated employee has special training and experience necessary
21 to teach that course or course of study or to provide those services,
22 which others with more seniority do not possess.

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

25 (3) On the basis of performance evaluations, if pursuant to a
26 process whereby employees with superior evaluations are retained
27 over those with inferior evaluations. The governing board may
28 exercise its discretion in developing such a process, which shall
29 be applied uniformly to the entire class that is subject to the
30 reduction in force.

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

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

39 SEC. 9. Section 44955.1 is added to the Education Code, to
40 read:

1 44955.1. Notwithstanding any other law, a school district,
2 county office of education, or charter school may assign, reassign,
3 and transfer teachers and administrators based on effectiveness
4 and subject matter needs without regard to years of service.

5 *SEC. 10. Section 44955.2 is added to the Education Code, to*
6 *read:*

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

14 ~~SEC. 10.~~

15 *SEC. 11. Section 44956 of the Education Code is amended to*
16 *read:*

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

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

37 (b) This right to reappointment may be waived by the employee,
38 without prejudice, for not more than one school year, unless the
39 board extends this right, but the waiver shall not deprive the
40 employee of his or her right to subsequent offers of reappointment.

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

4 (1) The district demonstrates a specific need for personnel to
5 teach a specific course or course of study, or to provide services
6 authorized by a services credential with a specialization in either
7 pupil personnel services or health for a school nurse, and that the
8 employee has special training and experience necessary to teach
9 that course or course of study, or to provide those services, which
10 others with more seniority do not possess.

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

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

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

35 (f) Notwithstanding subdivision (e), a school district may deviate
36 from the order of seniority in reappointing a certificated employee
37 for either of the following reasons:

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 the
2 employee has special training and experience, and has demonstrated
3 the competency necessary to teach in a specified grade level or
4 course of study, or to provide those services, which others with
5 more seniority do not possess or are not able to provide.

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

8 (g) During the period of the employee's preferred right to
9 reappointment, the governing board of the district, if it is also the
10 governing board of one or more other districts, may assign him or
11 her to service, which he or she is certificated and competent to
12 render, in the other district or districts. However, the compensation
13 the employee receives may in the discretion of the governing board
14 be the same as he or she would have received had he or she been
15 serving in the district from which his or her services were
16 terminated, and his or her service in the other district or districts
17 shall be counted toward the period required for both state and local
18 retirement, as defined by Section 22102, as though rendered in the
19 district from which his or her services were terminated, and that
20 a permanent employee in the other district or districts shall not be
21 displaced by him or her.

22 It is the intent of this subsection that the employees of a school
23 district, the governing board of which is also the governing board
24 of one or more other school districts, shall not be at a disadvantage
25 as compared with employees of a unified school district.

26 (h) At any time prior to the completion of one year after his or
27 her return to service, he or she may continue or make up, with
28 interest, his or her own contributions to a state or district retirement
29 system, for the period of his or her absence, but it shall not be
30 obligatory on the state or district to match the contributions.

31 (i) If the employee becomes disabled or reaches retirement age
32 at any time before his or her return to service, he or she shall
33 receive, in any state or district retirement system of which he or
34 she was a member, all benefits to which he or she would have been
35 entitled if the disability or retirement occurred at the time of his
36 or her termination of service, plus any benefits he or she may have
37 qualified for thereafter, as though still employed.

38 ~~SEC. 11.~~

39 *SEC. 12.* This act is an urgency statute necessary for the
40 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 In order to make the necessary statutory changes to implement
4 the Budget Act of 2010 at the earliest time possible, it is necessary
5 that this act take effect immediately.

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