

AMENDED IN SENATE JUNE 9, 2011  
AMENDED IN ASSEMBLY MAY 27, 2011  
AMENDED IN ASSEMBLY APRIL 4, 2011  
AMENDED IN ASSEMBLY MARCH 8, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 5**

---

### Introduced by Assembly Member Fuentes

December 6, 2010

---

An act to amend Section 44661.5 of, ~~and~~ to amend and add Sections 44660, 44661, 44662, and 44664 of, *and to add Section 44662.5 to*, the Education Code, relating to teachers.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 5, as amended, Fuentes. Teachers: best practices teacher evaluation.

Existing law states the intent of the Legislature that school district governing boards establish a uniform system of evaluation and assessment of the performance of all certificated personnel within each school district of the state. Existing law requires the governing board of each school district to establish standards of expected pupil achievement at each grade level in each area of study and to evaluate and assess certificated employee performance on a continuing basis as it reasonably relates to the progress of pupils toward the established standards and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments, the instructional techniques and strategies used by the employee, the employee's adherence to curricular objectives, and the establishment

and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

This bill would provide that the provisions described above would become inoperative on July 1 of the first fiscal year following the fiscal year in which the deficit factor, as specified, is reduced to zero. The bill would state findings and declarations of the Legislature regarding the nature of effective teachers and of the teaching profession. Commencing on July 1 of the first fiscal year following the fiscal year in which the deficit factor, as specified, is reduced to zero, the bill would require the governing board of each school district to adopt and implement a locally negotiated best practices teacher evaluation system, described as one in which each teacher is evaluated on a continuing basis on the degree to which he or she accomplishes specific objectives and multiple observations of instructional and other professional practices are conducted by trained evaluators. *The bill would also require the governing board of each school district to establish and define job responsibilities for certificated, noninstructional employees and evaluate and assess their performance in relation to those responsibilities.*

By requiring school districts to perform additional duties, the 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. Section 44660 of the Education Code is amended
- 2 to read:
- 3 44660. (a) It is the intent of the Legislature that governing
- 4 boards establish a uniform system of evaluation and assessment
- 5 of the performance of all certificated personnel within each school
- 6 district of the state, including schools conducted or maintained by
- 7 county superintendents of education. The system shall involve the

1 development and adoption by each school district of objective  
2 evaluation and assessment guidelines which may, at the discretion  
3 of the governing board, be uniform throughout the district or, for  
4 compelling reasons, be individually developed for territories or  
5 schools within the district, provided that all certificated personnel  
6 of the district shall be subject to a system of evaluation and  
7 assessment adopted pursuant to this article.

8 (b) This article does not apply to certificated personnel who are  
9 employed on an hourly basis in adult education classes.

10 (c) This section shall become inoperative on July 1 of the first  
11 fiscal year following the fiscal year in which the deficit factor set  
12 forth in Section 42238.146 is reduced to zero.

13 SEC. 2. Section 44660 is added to the Education Code, to read:

14 44660. (a) The Legislature finds and declares all of the  
15 following:

16 (1) Teaching is a professional endeavor, in which effective  
17 practice is driven by an understanding of knowledge in the field  
18 and a commitment to all pupils and their families.

19 (2) Excellent teaching requires knowledge, skills, artistry,  
20 passion, and commitment.

21 (3) Effective teachers integrate ethical concern for children and  
22 society, extensive subject matter competence, thoughtfully selected  
23 pedagogical practices, and a depth of knowledge about their pupils,  
24 including knowledge of child and adolescent development and  
25 learning, an understanding of their individual strengths, interests,  
26 and needs, and knowledge about their families and communities.

27 (4) Effective teachers share a common set of professional and  
28 ethical obligations that includes a profound and fundamental  
29 commitment to the growth and success of the individual pupils in  
30 their care as well as to the strengthening and continual revitalization  
31 of our democratic society.

32 (5) *Certificated, noninstructional employees share the same*  
33 *deep commitment to children, families, and communities, and they*  
34 *provide essential support and administrative services to pupils*  
35 *and teachers that enable pupils to succeed.*

36 (b) The Legislature further finds and declares that *because*  
37 *teachers are the most important school-related factor for*  
38 *influencing pupil academic success* the primary purpose of an  
39 evaluation system is to ensure that teachers meet the highest

1 professional standards of effective teaching, thereby resulting in  
2 high levels of pupil learning.

3 (c) This section shall become operative on July 1 of the first  
4 fiscal year following the fiscal year in which the deficit factor set  
5 forth in Section 42238.146 is reduced to zero.

6 SEC. 3. Section 44661 of the Education Code is amended to  
7 read:

8 44661. (a) In the development and adoption of guidelines and  
9 procedures pursuant to this article, the governing board shall avail  
10 itself of the advice of the certificated instructional personnel in the  
11 district's organization of certificated personnel; provided, however,  
12 that the development and adoption of guidelines pursuant to this  
13 article shall also be subject to the provisions of Article 1  
14 (commencing with Section 7100) of Chapter 2 of Part 5 of Division  
15 1 of Title 1.

16 (b) This section shall become inoperative on July 1 of the first  
17 fiscal year following the fiscal year in which the deficit factor set  
18 forth in Section 42238.146 is reduced to zero.

19 SEC. 4. Section 44661 is added to the Education Code, to read:

20 44661. (a) The governing board of each school district shall  
21 adopt and implement a best practices teacher evaluation system  
22 as set forth in this article.

23 (b) The best practices teacher evaluation system required to be  
24 adopted pursuant to this article shall be locally negotiated pursuant  
25 to Chapter 10.7 (commencing with Section 3540) of Division 4 of  
26 Title 1 of the Government Code. If the certificated employees of  
27 the school district do not have an exclusive bargaining  
28 representative, the governing board of the school district shall  
29 adopt objective evaluation and support components, as applicable,  
30 that are consistent with this article.

31 (c) This section shall become operative on July 1 of the first  
32 fiscal year following the fiscal year in which the deficit factor set  
33 forth in Section 42238.146 is reduced to zero.

34 SEC. 5. Section 44661.5 of the Education Code is amended to  
35 read:

36 44661.5. (a) When developing and adopting objective  
37 evaluation and assessment guidelines pursuant to Section 44660,  
38 a school district may, by mutual agreement between the exclusive  
39 representative of the certificated employees of the school district  
40 and the governing board of the school district, include any objective

standards from the National Board for Professional Teaching Standards or any objective standards from the California Standards for the Teaching Profession if the standards to be included are consistent with this article. If the certificated employees of the school district do not have an exclusive representative, the school district may adopt objective evaluation and assessment guidelines consistent with this section.

(b) This section shall become inoperative on July 1 of the first fiscal year following the fiscal year in which the deficit factor set forth in Section 42238.146 is reduced to zero.

SEC. 6. Section 44662 of the Education Code is amended to read:

44662. (a) The governing board of each school district shall establish standards of expected pupil achievement at each grade level in each area of study.

(b) The governing board of each school district shall evaluate and assess certificated employee performance as it reasonably relates to:

(1) The progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments.

(2) The instructional techniques and strategies used by the employee.

(3) The employee's adherence to curricular objectives.

(4) The establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

(c) The governing board of each school district shall establish and define job responsibilities for certificated noninstructional personnel, including, but not limited to, supervisory and administrative personnel, whose responsibilities cannot be evaluated appropriately under the provisions of subdivision (b) and shall evaluate and assess the performance of those noninstructional certificated employees as it reasonably relates to the fulfillment of those responsibilities.

(d) Results of an employee's participation in the Peer Assistance and Review Program for Teachers established by Article 4.5 (commencing with Section 44500) shall be made available as part of the evaluation conducted pursuant to this section.

1 (e) The evaluation and assessment of certificated employee  
2 performance pursuant to this section shall not include the use of  
3 publishers' norms established by standardized tests.

4 (f) Nothing in this section shall be construed as in any way  
5 limiting the authority of school district governing boards to develop  
6 and adopt additional evaluation and assessment guidelines or  
7 criteria.

8 (g) This section shall become inoperative on July 1 of the first  
9 fiscal year following the fiscal year in which the deficit factor set  
10 forth in Section 42238.146 is reduced to zero.

11 SEC. 7. Section 44662 is added to the Education Code, to read:

12 44662. (a) A best practices teacher evaluation system has the  
13 following attributes:

14 (1) Each teacher is evaluated on the degree to which he or she  
15 accomplishes the following objectives:

16 (A) Engages and supports all pupils in learning, evidence of  
17 which may include, but is not limited to, evidence of high  
18 expectations and active pupil engagement for each pupil.

19 (B) Creates and maintains effective environments for pupil  
20 learning, *to the extent that those environments are within the*  
21 *teacher's control.*

22 (C) Understands and organizes subject matter for pupil learning,  
23 evidence of which may include, but is not limited to, extensive  
24 subject matter, content standards, and curriculum competence.

25 (D) Plans instruction and designs learning experiences for all  
26 pupils, evidence of which may include, but is not limited to, use  
27 of differentiated instruction and practices based upon pupil progress  
28 and use of culturally responsive instruction, including, but not  
29 limited to, incorporation of multicultural information and content  
30 into the delivery of curriculum, to eliminate the achievement gap.

31 (E) Uses pupil assessment information to inform instruction  
32 and to improve learning, evidence of which shall include, but is  
33 not limited to, use of formative and summative assessments to  
34 adjust instructional practices to meet the needs of individual pupils.  
35 For certified employees who directly instruct English learner pupils  
36 in acquiring English language fluency, the assessment information  
37 shall include the results of assessments adopted pursuant to Chapter  
38 7 (commencing with Section 60810) of Part 33 of Division 4.

39 (F) Develops as a professional educator, evidence of which may  
40 include, but is not limited to, consistent and positive relationships

1 with pupils, parents, staff, and administrators, use of collaborative  
2 professional practices for improving instructional strategies,  
3 participation in identified professional growth opportunities, and  
4 use of meaningful self-assessment to improve as a professional  
5 educator.

6 (G) Contributes to pupil academic growth based upon multiple  
7 measures, which may include, but are not limited to, classroom  
8 work, local and state academic assessments, and pupil grades,  
9 classroom participation, presentations and performances, and  
10 projects and portfolios. Measures used for assessing pupil academic  
11 growth shall be valid and reliable for the purpose of teacher  
12 evaluation, provided that the evaluation and assessment of  
13 certificated employee performance pursuant to this section shall  
14 not include the use of publisher's norms established by  
15 standardized tests. For certificated employees who directly instruct  
16 English learner pupils in acquiring English, measures shall include  
17 the degree to which pupils acquire the English language  
18 development standards adopted pursuant to Section 60811 for the  
19 purpose of improving a pupil's English proficiency. Pupil data  
20 used for purposes of teacher evaluation shall be confidential in the  
21 same manner as all other elements of a teacher's personnel file.

22 (2) Multiple observations of instructional and other professional  
23 practices are conducted by evaluators who have received  
24 appropriate training and who have demonstrated competence in  
25 teacher evaluation, as determined by the school district.

26 (A) Multiple observations may include, but are not limited to,  
27 classroom observations, one-on-one discussions, and review of  
28 classroom materials and course of study.

29 (B) Observations shall be conducted using a uniform evaluation  
30 tool *that is appropriate to the teacher's assignment*.

31 (C) Prior to each observation, the observer shall meet with the  
32 teacher to discuss the purpose of the observation.

33 (D) After each observation, the observer shall meet with the  
34 teacher to discuss recommendations, as necessary, with regard to  
35 areas of improvement in the performance of the teacher.

36 (b) This section shall not be interpreted to prohibit a locally  
37 negotiated evaluation process from designating certificated  
38 employees to conduct, or participate in, evaluations of other  
39 certificated employees for purposes of determining needs for  
40 professional development or providing corrective advice for the

1 certificated employee being evaluated. A *nonsupervisory*  
2 certificated employee who conducts, or participates in, an  
3 evaluation pursuant to this article shall not be deemed to be  
4 exercising a management or supervisory function as defined by  
5 subdivision (g) or (m) of Section 3540.1 of the Government Code.

6 (c) This section shall become operative on July 1 of the first  
7 fiscal year following the fiscal year in which the deficit factor set  
8 forth in Section 42238.146 is reduced to zero.

9 *SEC. 8. Section 44662.5 is added to the Education Code, to*  
10 *read:*

11 *44662.5. (a) The governing board of each school district shall*  
12 *establish and define job responsibilities for certificated,*  
13 *noninstructional employees, including, but not limited to,*  
14 *supervisory and administrative personnel, whose responsibilities*  
15 *cannot be evaluated appropriately under the provisions of*  
16 *subdivision (a) of Section 44662. The governing board of each*  
17 *school district shall evaluate and assess the performance of*  
18 *certificated, noninstructional employees as it reasonably relates*  
19 *to the fulfillment of those responsibilities.*

20 *(b) This section shall become operative on July 1 of the first*  
21 *fiscal year following the fiscal year in which the deficit factor set*  
22 *forth in Section 42238.146 is reduced to zero.*

23 ~~SEC. 8.~~

24 *SEC. 9. Section 44664 of the Education Code is amended to*  
25 *read:*

26 *44664. (a) Evaluation and assessment of the performance of*  
27 *each certificated employee shall be made on a continuing basis as*  
28 *follows:*

29 (1) At least once each school year for probationary personnel.

30 (2) At least every other year for personnel with permanent status.

31 (3) At least every five years for personnel with permanent status  
32 who have been employed at least 10 years with the school district,  
33 are highly qualified, if those personnel occupy positions that are  
34 required to be filled by a highly qualified professional by the  
35 federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301  
36 et seq.), as defined in Section 7801 of Title 20 of the United States  
37 Code, and whose previous evaluation rated the employee as  
38 meeting or exceeding standards, if the evaluator and certificated  
39 employee being evaluated agree. The certificated employee or the  
40 evaluator may withdraw consent at any time.

(b) The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If an employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the employing authority shall notify the employee in writing of that fact and describe the unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavor to assist the employee in his or her performance. If ~~any~~ a permanent certificated employee has received an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves a positive evaluation or is separated from the district.

(c) ~~Any~~ An evaluation performed pursuant to this article ~~which~~ *that* contains an unsatisfactory rating of an employee's performance in the area of teaching methods or instruction may include the requirement that the certificated employee shall, as determined necessary by the employing authority, participate in a program designed to improve appropriate areas of the employee's performance and to further pupil achievement and the instructional objectives of the employing authority. If a district participates in the Peer Assistance and Review Program for Teachers established pursuant to Article 4.5 (commencing with Section 44500), ~~any~~ a certificated employee who receives an unsatisfactory rating on an evaluation performed pursuant to this section shall participate in the Peer Assistance and Review Program for Teachers.

(d) Hourly and temporary hourly certificated employees, other than those employed in adult education classes who are excluded by the provisions of Section 44660, and substitute teachers may be excluded from the provisions of this section at the discretion of the governing board.

(e) This section shall become inoperative on July 1 of the first fiscal year following the fiscal year in which the deficit factor set forth in Section 42238.146 is reduced to zero.

~~SEC. 9.~~

*SEC. 10.* Section 44664 is added to the Education Code, to read:

44664. (a) Evaluation and assessment of the performance of each certificated employee shall be made on a continuing basis as follows:

1 (1) At least once each school year for probationary personnel.

2 (2) At least every other year for personnel with permanent status.

3 (3) Except as may be provided in the best practices teacher  
4 evaluation system locally negotiated pursuant to subdivision (b)  
5 of Section 44661, at least every three years for personnel with  
6 permanent status who have been employed at least 10 years with  
7 the school district, are highly qualified, if those personnel occupy  
8 positions that are required to be filled by a highly qualified  
9 professional by the federal No Child Left Behind Act of 2001 (20  
10 U.S.C. Sec. 6301 et seq.), as defined in Section 7801 of Title 20  
11 of the United States Code, and whose previous evaluation rated  
12 the employee as meeting or exceeding standards, if the evaluator  
13 and certificated employee being evaluated agree. The certificated  
14 employee or the evaluator may withdraw consent at any time.

15 (b) The evaluation shall include recommendations, if necessary,  
16 as to areas of improvement in the performance of the employee.  
17 If an employee is not performing his or her duties in a satisfactory  
18 manner according to the standards prescribed by the governing  
19 board, the employing authority shall notify the employee in writing  
20 of that fact and describe the unsatisfactory performance. The  
21 employing authority shall thereafter confer with the employee  
22 making specific recommendations as to areas of improvement in  
23 the employee's performance and endeavor to assist the employee  
24 in his or her performance. If ~~any~~ a permanent certificated employee  
25 has received an unsatisfactory evaluation, the employing authority  
26 shall annually evaluate the employee until the employee achieves  
27 a positive evaluation or is separated from the district.

28 (c) ~~Any~~ An evaluation performed pursuant to this article ~~which~~  
29 *that* contains an unsatisfactory rating of an employee's performance  
30 in the area of teaching methods or instruction may include the  
31 requirement that the certificated employee shall, as determined  
32 necessary by the employing authority, participate in a program  
33 designed to improve appropriate areas of the employee's  
34 performance and to further pupil achievement and the instructional  
35 objectives of the employing authority. If a district participates in  
36 the Peer Assistance and Review Program for Teachers established  
37 pursuant to Article 4.5 (commencing with Section 44500), ~~any~~ a  
38 certificated employee who receives an unsatisfactory rating on an  
39 evaluation performed pursuant to this section shall participate in  
40 the Peer Assistance and Review Program for Teachers.

(d) Hourly and temporary hourly certificated employees, other than those employed in adult education classes who are excluded by the provisions of Section 44660, and substitute teachers may be excluded from the provisions of this section at the discretion of the governing board.

(e) This section shall become operative on July 1 of the first fiscal year following the fiscal year in which the deficit factor set forth in Section 42238.146 is reduced to zero.

~~SEC. 10.~~

*SEC. 11.* If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CORRECTIONS:

Text—Page 10.