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SENATE BILL 5399

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Tom, Litzow, Hill, Hobbs, King, Hargrove, Sheldon, Ranker, and Shin

Read first time 01/24/11. Referred to Committee on Early Learning & K-12 Education.

1 AN ACT Relating to school employee workforce reductions and  
2 assignments; amending RCW 28A.405.210 and 28A.405.300; adding new  
3 sections to chapter 28A.405 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that in order for  
6 Washington schools to be great places to teach and learn - where all  
7 kids and educators succeed - schools must build cultures where all  
8 students thrive. The legislature intends to respect teachers and  
9 principals first by empowering them to create that culture together,  
10 and then by helping them retain the teachers who are crucial to that  
11 culture. In particular, these policies support practices with a track  
12 record of closing the achievement gap. This is done by:

13 (1) Ensuring that teachers who do the best work are the ones who  
14 keep their jobs when budgets need to be cut, by basing reduction in  
15 force policies on the evaluations the legislature has outlined for  
16 measuring teacher performance. Since the loss of teachers through  
17 layoffs already impacts student learning, there is an urgent need to  
18 conduct layoffs in a way that retains the most effective teachers.

1 Educators deserve to be recognized for their ability to help students  
2 learn and children deserve the very best and brightest teachers;

3 (2) Empowering principals and teachers with autonomy in school  
4 placement decisions to ensure the creation of school cultures that both  
5 promote the ongoing improvement of teaching and learning and are  
6 committed to closing the achievement gap. The strongest, most  
7 successful school cultures are those in which teachers and principals  
8 work toward shared goals for improving student learning. In order to  
9 create shared cultures, principals and teachers must be able to agree  
10 that a school placement is the best fit for them; and

11 (3) Recognizing that for the fair evaluation of a principal based  
12 on the criteria outlined by the legislature, specifically that  
13 principals should be evaluated on creating a school culture that  
14 promotes the ongoing improvement of learning and teaching and managing  
15 both staff and fiscal resources to support student achievement and  
16 legal responsibilities for students and staff, a principal needs the  
17 ability to select teachers who have demonstrated effectiveness and have  
18 demonstrated qualifications and teaching experience that support the  
19 instructional practices of his or her school.

20 **PART I**

21 **PERFORMANCE-BASED REDUCTION IN FORCE DUE TO ENROLLMENT**  
22 **DECLINE OR REVENUE LOSS**

23 NEW SECTION. **Sec. 101.** A new section is added to chapter 28A.405  
24 RCW to read as follows:

25 (1) When reductions in the workforce occur due to enrollment  
26 decline or revenue loss, the employment contracts of any certificated  
27 classroom teacher must be nonrenewed in the following manner within  
28 each particular certification or endorsement area. Certificated  
29 classroom teachers who received the lowest evaluation rating, as  
30 described in RCW 28A.405.100, when averaging their two most recent  
31 evaluations in accordance with the method in subsection (2) of this  
32 section, must have their contracts nonrenewed first, with nonrenewals  
33 continuing to proceed upward through the two-year average ratings in  
34 such a manner. Any determination that must be made between teachers  
35 who received the same averaged rating, must provide a preference for  
36 teachers who have the greatest number of years teaching in the school

1 district and any additional criteria established in the policy of the  
2 board or locally bargained agreement; except that any such additional  
3 criteria may be established only if the contract or policy is in the  
4 best interest of the students.

5 (2) For the purposes of calculating two-year averages as provided  
6 in subsection (1) of this section, the average must weigh the teacher's  
7 most recent evaluation by sixty percent and his or her prior year's  
8 rating by forty percent. The numbers to be used in calculating these  
9 averages are as follows, the lowest evaluation rating is worth zero  
10 points, and the highest evaluation rating is worth 4.25 points. If a  
11 four-tiered evaluation system is being used, then the second highest  
12 evaluation rating is worth 2.75 points and the third highest evaluation  
13 rating is worth four points. The weighted two-year average shall be  
14 multiplied by a factor of 1.05 to ensure that the averaging of ratings  
15 for teachers with reasonable variation in their evaluations does not  
16 result in lowering their rating below teachers with similar ratings  
17 based on only one year's evaluation rating. The final two-year  
18 weighted average shall be rounded to the hundredth place before being  
19 used for the decisions made under subsection (1) of this section.  
20 Teachers with only one year of evaluation ratings must use this  
21 evaluation rating in place of a two-year average.

22 (3) For the purposes in subsection (1) of this section, any  
23 certificated classroom teacher for whom no evaluation data is available  
24 must have his or her employment contract nonrenewed before any other  
25 certificated classroom teacher within his or her certification or  
26 endorsement area. If data collection allows, school leaders should  
27 make an effort to complete evaluations before the district is required  
28 to make contract renewal decisions.

29 (4) Any school district whose board policies or locally bargained  
30 agreement outlines recall rights for certificated classroom teachers  
31 must recall staff in the reverse order contracts were nonrenewed as  
32 provided for in subsection (1) of this section. These recall rights  
33 may only guarantee a right to interview and do not supersede the  
34 provisions of section 201 of this act that a certificated classroom  
35 teacher may be assigned to a particular school only with the consent of  
36 the hiring principal. No school district policy may offer recall  
37 rights for more than three years.

1 (5) All collective bargaining agreements and other contracts  
2 entered into between a school district and an employee bargaining unit  
3 or an employee after the effective date of this section must be  
4 consistent with this section.

5 NEW SECTION. **Sec. 102.** A new section is added to chapter 28A.405  
6 RCW to read as follows:

7 (1) In the event that the determination that the employment  
8 contract of a nonprovisional certificated classroom teacher will not be  
9 renewed by the district in accordance with section 101 of this act, the  
10 employee must be notified in writing on or before May 15th or if the  
11 omnibus appropriations act has not passed the legislature by May 15th,  
12 then notification must be no later than June 15th. The notification  
13 must state the reason or reasons for the determination. The notice  
14 must be served upon the employee personally, or by certified or  
15 registered mail, or by leaving a copy of the notice at the place of his  
16 or her usual abode with some person of suitable age and discretion then  
17 resident therein.

18 (2) Every employee who receives notification under this section, at  
19 his or her request made in writing and filed with the superintendent of  
20 the district within ten days after receiving the notice, must be given  
21 the opportunity to meet informally with the superintendent for the  
22 purpose of requesting the superintendent to reconsider the decision.  
23 The meeting must be held no later than ten days following the receipt  
24 of the request, and the employee must be given written notice of the  
25 date, time, and place of meeting at least three days prior thereto. At  
26 the meeting, the employee must be given the opportunity to refute any  
27 facts upon which the superintendent's determination was based and to  
28 make any argument in support of his or her request for reconsideration.

29 (3) Within ten days following the meeting with the employee, the  
30 superintendent must either reinstate the employee or submit to the  
31 school district board of directors for consideration at its next  
32 regular meeting a written report recommending that the employment  
33 contract of the employee be nonrenewed and stating the reason or  
34 reasons for nonrenewal. A copy of the report must be delivered to the  
35 employee at least three days before the scheduled meeting of the board  
36 of directors. In taking action upon the recommendation of the

1 superintendent, the board of directors must consider any written  
2 communication that the employee files with the secretary of the board  
3 at any time before that meeting.

4 (4) The board of directors must notify the employee in writing of  
5 its final decision within ten days following the meeting at which the  
6 recommendation for nonrenewal was considered. The decision of the  
7 board of directors to not renew the contract of an employee may be  
8 appealed in accordance with RCW 28A.405.320 through 28A.405.360 to the  
9 superior court in the county in which the school district is located.

10 (5)(a) This section applies to any person employed by a school  
11 district in a nonprovisional certificated classroom teaching position  
12 after June 25, 2010. This section provides the exclusive means for  
13 nonrenewing the employment contract of a nonprovisional certificated  
14 classroom teacher due to enrollment decline or revenue loss and no  
15 other provision of law is applicable, including RCW 28A.405.210,  
16 28A.405.300, and 28A.405.310.

17 (b) This section is not applicable to "provisional employees" as  
18 designated in RCW 28A.405.220.

19 **Sec. 103.** RCW 28A.405.210 and 2010 c 235 s 303 are each amended to  
20 read as follows:

21 (1) No teacher, principal, supervisor, superintendent, or other  
22 certificated employee, holding a position as such with a school  
23 district, hereinafter referred to as "employee", shall be employed  
24 except by written order of a majority of the directors of the district  
25 at a regular or special meeting thereof, nor unless he or she is the  
26 holder of an effective teacher's certificate or other certificate  
27 required by law or the Washington professional educator standards board  
28 for the position for which the employee is employed.

29 (2) The board shall make with each employee employed by it a  
30 written contract, which shall be in conformity with the laws of this  
31 state, and except as otherwise provided by law, limited to a term of  
32 not more than one year. Every such contract shall be made in  
33 duplicate, one copy to be retained by the school district  
34 superintendent or secretary and one copy to be delivered to the  
35 employee. No contract shall be offered by any board for the employment  
36 of any employee who has previously signed an employment contract for  
37 that same term in another school district of the state of Washington

1 unless such employee shall have been released from his or her  
2 obligations under such previous contract by the board of directors of  
3 the school district to which he or she was obligated. Any contract  
4 signed in violation of this provision shall be void.

5 (3)(a) In the event it is determined that there is probable cause  
6 or causes that the employment contract of an employee should not be  
7 renewed by the district for the next ensuing term such employee shall  
8 be notified in writing on or before May 15th preceding the commencement  
9 of such term of that determination, or if the omnibus appropriations  
10 act has not passed the legislature by May 15th, then notification shall  
11 be no later than June 15th, which notification shall specify the cause  
12 or causes for nonrenewal of contract. ((Such))

13 (b) The determination of probable cause for certificated employees,  
14 other than the superintendent, shall be made by the superintendent.  
15 ((Such))

16 (c) Notice shall be served upon the employee personally, or by  
17 certified or registered mail, or by leaving a copy of the notice at the  
18 house of his or her usual abode with some person of suitable age and  
19 discretion then resident therein.

20 (d) Every ((such)) employee ((so)) notified in accordance with this  
21 section, at his or her request made in writing and filed with the  
22 president, chair, or secretary of the board of directors of the  
23 district within ten days after receiving such notice, shall be granted  
24 opportunity for hearing pursuant to RCW 28A.405.310 to determine  
25 whether there is sufficient cause or causes for nonrenewal of  
26 contract(~~(: PROVIDED, That any employee receiving notice of nonrenewal~~  
27 ~~of contract due to an enrollment decline or loss of revenue may, in his~~  
28 ~~or her request for a hearing, stipulate that initiation of the~~  
29 ~~arrangements for a hearing officer as provided for by RCW~~  
30 ~~28A.405.310(4) shall occur within ten days following July 15 rather~~  
31 ~~than the day that the employee submits the request for a hearing)).~~

32 (e) If any ((such)) notification or opportunity for hearing is not  
33 timely given under this section, then the employee entitled thereto  
34 shall be conclusively presumed to have been reemployed by the district  
35 for the next ensuing term upon contractual terms identical with those  
36 which would have prevailed if his or her employment had actually been  
37 renewed by the board of directors for such ensuing term.

1        (f) This section shall not be applicable to "provisional employees"  
2 as so designated in RCW 28A.405.220((+)) or to reductions in workforce  
3 due to enrollment decline or revenue loss in accordance with sections  
4 101 and 102 of this act.

5        (g) Transfer to a subordinate certificated position as that  
6 procedure is set forth in RCW 28A.405.230 or 28A.405.245 shall not be  
7 construed as a nonrenewal of contract for the purposes of this section.

8        **Sec. 104.** RCW 28A.405.300 and 2010 c 235 s 305 are each amended to  
9 read as follows:

10        Except as provided in sections 101 and 102 of this act, in the  
11 event it is determined that there is probable cause or causes for a  
12 teacher, principal, supervisor, superintendent, or other certificated  
13 employee, holding a position as such with the school district,  
14 hereinafter referred to as "employee", to be discharged or otherwise  
15 adversely affected in his or her contract status, such employee shall  
16 be notified in writing of that decision, which notification shall  
17 specify the probable cause or causes for such action. Such  
18 determinations of probable cause for certificated employees, other than  
19 the superintendent, shall be made by the superintendent. Such notices  
20 shall be served upon that employee personally, or by certified or  
21 registered mail, or by leaving a copy of the notice at the house of his  
22 or her usual abode with some person of suitable age and discretion then  
23 resident therein. Every such employee so notified, at his or her  
24 request made in writing and filed with the president, chair of the  
25 board or secretary of the board of directors of the district within ten  
26 days after receiving such notice, shall be granted opportunity for a  
27 hearing pursuant to RCW 28A.405.310 to determine whether or not there  
28 is sufficient cause or causes for his or her discharge or other adverse  
29 action against his or her contract status.

30        In the event any such notice or opportunity for hearing is not  
31 timely given, or in the event cause for discharge or other adverse  
32 action is not established by a preponderance of the evidence at the  
33 hearing, such employee shall not be discharged or otherwise adversely  
34 affected in his or her contract status for the causes stated in the  
35 original notice for the duration of his or her contract.

36        If such employee does not request a hearing as provided herein,

1 such employee may be discharged or otherwise adversely affected as  
2 provided in the notice served upon the employee.

3 Transfer to a subordinate certificated position as that procedure  
4 is set forth in RCW 28A.405.230 or 28A.405.245 shall not be construed  
5 as a discharge or other adverse action against contract status for the  
6 purposes of this section.

7 **PART II**  
8 **TEACHER AND PRINCIPAL AGREEMENT ON STAFFING PLACEMENTS**

9 NEW SECTION. **Sec. 201.** A new section is added to chapter 28A.405  
10 RCW to read as follows:

11 (1) Any policy adopted by a school district board of directors  
12 after the effective date of this section under RCW 28A.150.230 or in a  
13 locally bargained agreement must contain a provision stating that a  
14 certificated classroom teacher may be assigned to a particular school  
15 only with the mutual agreement of the hiring principal and teacher and,  
16 if applicable to local policy, the school-based entity charged with  
17 hiring decisions. Before consenting, the principal and, if applicable,  
18 the school-based entity charged with hiring must review the  
19 certificated classroom teacher's demonstrated effectiveness and  
20 qualifications to determine that the qualifications and teaching  
21 experience support the instructional practices of the school. The  
22 policy of hiring through mutual agreement shall be referred to as  
23 school-based hiring. In making decisions pursuant to this section, a  
24 school district must work with the local teachers' association to  
25 develop policies for the local school board of directors to adopt. If  
26 no association exists in the school district, the school district must  
27 create an eight person committee consisting of four school district  
28 members and four teachers that must develop the policies. Every school  
29 district must adopt a school-based hiring policy no later than when the  
30 existing locally bargained agreements are renegotiated upon expiration.

31 (2) Beginning the effective date of this section, any active  
32 nonprovisional certificated classroom teacher whose most recent  
33 evaluation rating level was in the top level of a two-level rating  
34 system or in the top two levels of a four-level rating system as  
35 described in RCW 28A.405.100 who has not secured a position through  
36 school-based hiring shall be a member of a priority hiring pool. The



1 priority hiring pool must ensure the teacher a right to interview for  
2 available positions for which he or she is qualified in a school  
3 district.

4 (3)(a) Beginning the effective date of this section, when a  
5 determination is made that the services of a certificated classroom  
6 teacher are no longer required for the reasons stated in subsection (6)  
7 of this section and the employee is therefore displaced from a  
8 particular school but not discharged by the school district, the  
9 employee must receive written notification of his or her removal from  
10 the school. The notice must be served upon the employee personally or  
11 by certified or registered mail, or by leaving a copy of the notice at  
12 the house of his or her usual abode with some person of suitable age  
13 and discretion who is a resident at the abode.

14 (b) Upon notice to the teacher, the department of human resources  
15 for the school district must immediately provide the employee with a  
16 list of all vacant positions for which he or she is qualified, as well  
17 as a list of vacancies in any area identified by the school district to  
18 be an area of critical need. A list of vacancies within the district  
19 must be kept up-to-date and available online. If a displaced employee  
20 applies for a vacancy on the list of vacancies then the employee's  
21 application must be made to the principal of a listed school and the  
22 employee must provide a copy of the application to the school district.  
23 When a principal recommends appointment of an applicant to a vacant  
24 position, the employee shall be transferred to that position.

25 (4) If a nonprovisional certificated classroom teacher has been  
26 displaced in accordance with this section and is unable to secure an  
27 assignment through school-based hiring at a school in the school  
28 district within six months of receiving notification of his or her  
29 displacement as provided in subsection (3)(a) of this section or for  
30 one summer hiring cycle, whichever is longer, then the school district  
31 may not renew the teacher's contract in accordance with RCW  
32 28A.405.210, as lacking an official assignment shall be considered  
33 probable cause for the nonrenewal of a contract. If the teacher  
34 secures an assignment at a school in the school district at a later  
35 date, the school district must reinstate the teacher's salary and  
36 benefits at the level they were when the teacher's contract was  
37 nonrenewed.

1 (5) Nothing in this section limits the ability of a school district  
2 to place a teacher in a six-month or other limited term assignment,  
3 including, but not limited to, a substitute assignment, or  
4 instructional support role during the period in which the teacher is  
5 attempting to secure a classroom assignment through school-based  
6 hiring. Such a limited term assignment does not constitute an  
7 assignment through school-based hiring and may not be deemed to  
8 interrupt the period in which the teacher is required to secure an  
9 assignment through school-based hiring before the district does not  
10 renew the teacher's contract.

11 (6) This section applies to any teacher who is displaced as a  
12 result of, but not limited to, a transfer request; drop in enrollment;  
13 reduction in program; reduction in building; or implementation of a  
14 federal or state accountability intervention model such as turnaround,  
15 school closure, or transformation model. These reasons for  
16 displacement do not constitute probable cause for the purposes of RCW  
17 28A.405.210, 28A.405.300, or 28A.405.310, except as provided in  
18 subsection (4) of this section.

19 (7) Nothing in this section may be interpreted as nullifying the  
20 right of a school district board of directors or superintendent to  
21 involuntarily transfer a teacher if the right is expressed in board  
22 policy or a locally bargained agreement. However, any such assignment  
23 resulting from this transfer must be by mutual agreement of the teacher  
24 and principal in order to comply with the school-based hiring policy in  
25 this section.

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