

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 1078 (Weber) – As Introduced February 21, 2019

**SUBJECT:** Certificated school employees: permanent status

**SUMMARY:** Changes the probationary period for teachers from two years to three years. Specifically, **this bill:**

- 1) Requires a county superintendent of schools, with an average daily attendance (ADA) of 250 pupils or more, to notify a probationary employee, on or before March 15 of the employee's third complete consecutive school year of employment by the county superintendent of schools (CS) in a teaching position requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year. Specifies that if the county superintendent of schools does not give notice on or before March 15, the employee shall be deemed reelected for the next succeeding school year as a permanent employee.
- 2) Requires the governing board of a school district, having an ADA of 250 pupils or more, to notify the probationary employee, on or before March 15 of the probationary employee's third complete consecutive school year of employment by the school district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. Specifies that if the governing board of the school district does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year as a permanent employee.
- 3) Specifies that the three year probationary period shall only apply to probationary employees whose probationary period commenced during the 2020–21 fiscal year or any fiscal year thereafter.
- 4) Specifies that to the extent that a three year probationary period conflicts with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2020, the changes shall not apply until the expiration or renewal of that collective bargaining agreement.
- 5) Eliminates the authority of a school district having an ADA of less than 250 pupils to choose between implementing a three year probationary period with more due process rights for teachers during dismissal, or a two year probationary period with fewer due process rights during dismissal; and, instead requires all certificated employees to have a three year probationary period, while authorizing the school district to choose a dismissal system with or without fewer due process rights.
- 6) Makes technical conforming changes regarding the dismissal of probationary status employees.

**EXISTING LAW:*****For Large School Districts and County Offices of Education (COEs):***

- 1) Requires that a certificated employee of a school district or a teacher at a county office of education (COE) having an ADA of 250 or more who, after having been employed for two complete consecutive school years, is reelected for the next succeeding school year, at the commencement of the succeeding school year be classified as, and become, a permanent employee.
- 2) Requires the governing board or the county superintendent of schools (CS) to notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board or the CS does not give notice on or before March 15, the employee must be deemed reelected for the next succeeding school year. This applies only to probationary employees whose probationary period commenced during the 1983–84 fiscal year or any fiscal year thereafter. (Education Code 44929.21)
- 3) Requires every employee of a school district of any type or class having an ADA of 250 or more who, after having been employed by the district for three complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications must, at the commencement of the succeeding school year be classified as and become a permanent employee of the district. Specifies this applies only to probationary employees whose probationary period commenced prior to the 1983–84 fiscal year.

***For Small School Districts:***

- 4) Specifies that the governing board of a school district, having an ADA of less than 250 pupils may classify as a permanent employee of the district any employee who, after having been employed by the school district for three complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications. If that classification is not made, the employee does not attain permanent status and may be reelected from year to year thereafter without becoming a permanent employee until a change in classification is made.
- 5) Specifies that, notwithstanding 4) above, Section 44929.21 shall apply to certificated employees employed by a school district, if the governing board of the school district elects to dismiss probationary employees pursuant to Section 44948.2. Specifies that if that election is made, the governing board thereafter shall classify as a permanent employee of the district any probationary employee who, after being employed for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications as required by Section 44929.21. Any probationary employee who has been employed by the district for two or more consecutive years on the date of that election in a position or positions requiring certification qualifications shall be classified as a permanent employee of the district.

- 6) Specifies that, if the classification is not made pursuant to 4) and 5) above, the employee shall not attain permanent status and may be reelected from year to year thereafter without becoming a permanent employee until the classification is made.

***Teacher Evaluation:***

- 7) Establishes the Stull Act, enacted in 1971, which governs certificated employee evaluations and requires school districts to evaluate and assess teacher performance as it reasonably relates to pupil performance on criterion referenced tests, teacher technique and strategies, curricular objectives, and the maintenance of a suitable learning environment.
- 8) Specifies that in the development and adoption of evaluation guidelines and procedures, the governing board shall avail itself of the advice of the certificated instructional personnel in the district's organization of certificated personnel pursuant to collective bargaining statutes. Specifies that a school district may, by mutual agreement between the exclusive representative of the certificated employees of the school district 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.
- 9) Specifies that teacher evaluations shall be made on a continuing basis at least once each school year for probationary personnel; at least every other year for personnel with permanent status; and, at least every five years for personnel with permanent status who have been employed at least 10 years with the school district, are highly qualified, if those personnel occupy positions that are required to be filled by a highly qualified professional, and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.
- 10) Specifies that an employee who receives an unsatisfactory rating in the area of teaching methods or instruction may be required to participate in a program designed to improve appropriate areas of the employee's performance; and, requires that if a school district participates in the Peer Assistance and Review Program for Teachers (PAR), employees who receive an unsatisfactory rating shall participate in PAR. (Education Code 44660 et. seq.)

***Probationary Employee Dismissal:***

- 11) Authorizes a first and second year probationary employee to be dismissed during the school year for unsatisfactory performance; and, specifies that any dismissal shall be in accordance with all of the following procedures:
  - a) Requires the superintendent of the school district or the superintendent's designee to give 30 days' prior written notice of dismissal, not later than March 15 in the case of a probationary employee in the second complete consecutive school year of probationary employment. Requires that the notice include a statement of the reasons for the dismissal and notice of the opportunity to appeal. In the event of a dismissal for unsatisfactory performance, requires that a copy of the evaluation conducted pursuant to Section 44664 accompany the written notice.

- b) Provides the probationary employee 15 days from receipt of the notice of dismissal to submit to the governing board of the school district a written request for a hearing. Authorizes the governing board of the school district to establish procedures for the appointment of an administrative law judge to conduct the hearing and submit a recommended decision to the governing board. Specifies that the failure of a probationary employee to request a hearing within 15 days from receipt of a dismissal notice shall constitute a waiver of the right to a hearing.

**FISCAL EFFECT:** Unknown

**COMMENTS:** This bill extends the probationary period to three years for certificated employees in all school districts and teachers in county offices of education with an ADA greater than 250 pupils. Specifically, the bill authorizes an employee to earn permanent status after years three of employment.

*According to the Author*, "California has one of the shortest probationary periods of any state, with the deadline for notification of "reelection" of March 15<sup>th</sup> of the second year of teaching. If an additional three months are deducted for summer break where most teachers are out of the classroom, the total time a teacher has to develop and demonstrate their classroom effectiveness – and for administrators to evaluate it - is only around fifteen months. Research supports a longer probationary period as teachers on an upward trajectory will show notable growth in years two through five, with associated gains in student outcomes. Decisions coming at the 18-month mark would only capture first year gains, however, making it difficult to determine if a teacher is on an upward trajectory. Longer probationary periods are now the norm nationally. Forty-two states provide teachers three to five years to demonstrate classroom success and earn permanent status. AB 1078 provides a commonsense fix by giving teachers an extra year to develop and demonstrate – and for administrators to assess - classroom effectiveness."

*What is "permanent employee" status?* "Permanent employee" status guarantees due process rights if a certificated employee is dismissed. In the case of dismissal, "permanent employee" status allows employees to request a hearing before a Commission on Professional Competence to decide whether their dismissal was appropriate. Further, a "permanent employee" has the right to request a hearing during a reduction in force. This type of due process is similar to the state civil service due process.

*Probationary Period:* According to the Legislative Analyst's Office (LAO), the state has explored alternative probationary periods in the past. Between 1959 and 1983, probationary teachers served three years before administrators had to make the decision whether to grant permanent status. In 1983, the state enacted major changes to state teacher policies, including changes to the probationary period and dismissals. Specifically, the state shortened the probationary period from three to two years. However, the state also made it easier to dismiss probationary teachers, removing certain due process rights.

In November 2005, a statewide initiative, Proposition 74, would have extended the probationary period from two years to five years. The measure also would have modified the process by which school boards can dismiss a permanent teaching employee who receives two consecutive unsatisfactory performance evaluations. This measure was defeated by 55.2% of the voters. In a 2005 presentation, the LAO reported the following information about other state policies regarding K-12 teacher probationary periods:

- 1) One Year Probationary Period – Three States
- 2) Two Year Probationary Period – Nine States including California
- 3) Three Year Probationary Period – 33 States
- 4) Four Year Probationary Period – Four States
- 5) Five year Probationary Period – Two States

While this data is from 2005, and some states have shifted their policies in the past decade, this demonstrates that the vast majority of states have a 3 year probationary period for K-12 teachers.

Anecdotal evidence suggests that many administrators state that the current two year probationary period is long enough to assess the vast majority of beginning teachers, and that only in a few cases do administrators feel that additional time would be helpful to make their decision about granting permanent status. The *Committee may wish to consider* whether extending the probationary period is necessary for district administrators to observe and train new teachers, or whether the existing two year period is sufficient.

***Teacher Recruitment during a Shortage:*** Multiple reports highlight California’s ongoing teacher shortages, which are especially severe in certain subject areas, including bilingual education, special education, and STEM subjects.

In a 2016 report, “Addressing California’s Emerging Teacher Shortage: An Analysis of Sources and Solutions,” the Learning Policy Institute (LPI) summarizes the problem: “After many years of teacher layoffs in California, school districts around the state are hiring again. With the influx of new K-12 funding, districts are looking to lower student-teacher ratios and reinstate classes and programs that were reduced or eliminated during the Great Recession. However, mounting evidence indicates that teacher supply has not kept pace with the increased demand.” The report also includes the following findings:

- Enrollment in educator preparation programs has dropped by more than 70 percent over the last decade.
- In 2014-15, provisional and short-term permits—intended to help districts hire teachers on an emergency basis, when fully-prepared, credentialed candidates are unavailable—nearly tripled relative to the number issued two years previous, growing from about 850 to more than 2,400.
- The number of teachers hired on substandard permits and credentials nearly doubled in the last two years, to more than 7,700, comprising a third of all the new credentials issued in 2014-15.
- Estimated teacher hires for the 2015-16 school year increased by 25 percent from the previous year, while enrollment in teacher education programs at the University of California (UC) and California State University increased by only about 3.8 percent.

According to the Getting Down to Facts II report, published in 2018 by Policy Analysis for California Education, “In math there are half as many fully prepared teacher candidates with preliminary credentials entering the workforce today as there were six years ago. The drop in science teachers is 40%...The largest number of emergency hires are in special education where

two out of three teachers hired in 2016-17 were not fully certified. Large numbers of underprepared teachers were also hired in mathematics and science. Together, these three fields account for half the state's overall shortage.”

***Retention problems fuel shortages: nine out of ten teacher hires each year are for teachers who have left.*** The Getting Down to Facts II report found:

Teacher turnover currently accounts for about 88% of the annual demand for new teachers. Put another way, nearly nine of 10 hires each year are needed to replace teachers who left. Retirement is just a small piece of this loss. Most attrition is caused by teachers changing districts or leaving the profession. In California, about 8.5% of teachers appear to be leaving the profession (or the state) each year, and another 8% leave their current school to move to another. Principals surveyed for the Getting Down to Facts II project reported that teachers in the shortage areas of special education, mathematics, science, bilingual education, and world languages are most difficult to retain. The highest turnover rates are in districts serving high-poverty students, students of color, and English learners. The main reasons teachers report leaving, according to the 2013 federal Schools and Staffing Survey, are dissatisfaction with testing and accountability pressures, followed by a lack of administrative support; frustration with the teaching career, including lack of opportunities for advancement; and poor working conditions.

The ***Committee may wish to consider*** whether extending the probationary period for beginning teachers will further hamper the State's efforts to attract teachers to the profession. In light of the teacher shortage across the state, this measure could also keep teachers that are sub-par in the classroom longer. Anecdotal evidence from school districts suggests that principals are keeping sub-par first year probationary period teachers employed for a second year, simply because the principal is concerned about whether they will get another applicant for the job. Following this logic, under this measure, a principal could keep a sub-par teacher in the classroom for three years, for fear of not being able to find another qualified teacher to take the position.

***Professional Development:*** Previous versions of this bill provided professional support for employees in year three of their probationary period. The ***Committee may wish to consider*** whether it is important to specify in the bill that teachers in year three should have targeted individualized professional development that would address each teacher's specific needs.

***Arguments in Support:*** The author argues that, teachers in California currently have only two years to demonstrate classroom effectiveness before a decision regarding permanent status is made by a school district (this timeline is actually truncated to 18 months given statutory requirements for notification on March 15<sup>th</sup>). This does not allow sufficient time for a teacher to develop and demonstrate their skills, remedy any shortcomings, complete the induction process or attain a teaching credential. Longer probationary periods are now the norm nationally. Forty-two states provide teachers three to five years to demonstrate classroom success and earn permanent status.

***Arguments in Opposition:*** According to the California Teachers Association, “Teachers can be evaluated every year by their employer by law, and in the first two years they are required to be evaluated annually. The principal observes the teacher in the beginning of the year, and if deficiencies are observed the principal provides the teacher with opportunities to improve their professional practice such as mentoring, coaching etc. During the evaluation process, the

administrator does a second observation later in the year to assess whether there is improvement, and to ensure that every student has a caring, qualified, and committed teacher. If this law is followed, California's probationary law gives a school administrator sufficient time, two years, to determine if a teacher is effective or not."

**Committee Amendments:** *Staff recommends* the bill be amended to:

- 1) Authorize school districts and COEs with ADA greater than 250 students to elect to classify a certificated employee after year 1, 2 or 3 as a permanent status employee. Require school districts and COEs to notify a certificated employee by March 15 of year 1, 2 and 3 of probationary status, if they have been reelected for the next school year.
- 2) Specify that no more than 20% of first year probationary status teachers may be offered a third year of probationary status.
- 3) Require the employer to provide the following to employees who are offered a third year of probationary status:
  - a) An individualized improvement plan in partnership with the employee and the evaluator.
  - b) Provide the employee a copy of all prior evaluations.
  - c) Provide individualized professional development consistent with the improvement plan or, if the employer has a PAR program in place, provide the employee PAR.
- 4) Require county office of education, school district and charter school employers to provide induction to all new teachers who have not completed an induction program, at no cost to the teacher.
- 5) Require, if a charter school offers permanent status to certificated employees, that the provisions that apply to school districts with more than 250 ADA, shall apply to charter schools.
- 6) Specify that small school districts with less than 250 ADA, shall have the choice of either a 3 year probationary period with more due process rights for teachers during dismissal, or a 2 year probationary period with fewer due process rights for teachers during dismissal. This would revert to current law.

**Prior Legislation:** AB 1220 (Weber) from 2017, which was held at the request of the author in the Senate Education Committee, would have extended the probationary period up to three years for certificated employees in school districts and teachers in county offices of education with an ADA greater than 250 pupils.

AB 1164 (Thurmond) from 2017, which was held at the request of the author in Senate Education Committee, would have extended the probationary period up to three years for certificated employees in school districts and teachers in county offices of education with an ADA greater than 250 pupils, and would have increased the cap on school district reserves, changes the conditions that must be met for the cap to be triggered, and exempted small and basic aid school districts from the cap.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file

**Opposition**

California Teachers Association

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