

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 1220 (Weber) – As Amended April 18, 2017

SUBJECT: Certificated school employees: permanent status

SUMMARY: Extends the probationary period to five years for certificated employees in school districts and teachers in county offices of education with an average daily attendance greater than 250 pupils; and, requires employees to receive "effective" evaluations for two consecutive years prior to earning permanent status. Specifically, **this bill:**

County Office of Education Process

- 1) Authorizes a county superintendent of schools (CS) with an average daily attendance greater than 250 pupils to classify teachers as permanent employees after the teacher's third complete consecutive school year.
- 2) Requires the CS to notify a teacher on or before March 15 of the teacher's third complete consecutive school year of the decision to reelect or not reelect the teacher for the next school year and, specifies if the CS does not give notice, the employee shall be deemed reelected for the next school year.
- 3) Authorizes the CS to offer a teacher to continue for up to five complete consecutive school years as a probationary employee.
- 4) Requires the CS to give notice to the teacher, on or before March 15 of the employee's preceding complete consecutive school year of the offer of an additional complete consecutive school year as a probationary employee.
- 5) Requires, if the CS does not give notice on or before March 15, the teacher shall be deemed reelected for the next succeeding school year and, at the commencement of the succeeding school year, be classified as and become a permanent employee.
- 6) Specifies that a teacher who has not already attained classification as a permanent employee at the conclusion of five complete consecutive school years shall not be classified as a permanent employee of the county superintendent of schools.
- 7) Specifies employees shall have the same rights and duties as employees of school districts to which Section 44929.21 applies. Sections 44842, 44929.21, 44929.24, 44948.3, and 44948.5 apply to these employees.
- 8) Requires the CS to provide professional support, including priority in the allocation of existing professional development funding to a probationary employee in his or her fourth or fifth complete consecutive school year of employment.
- 9) Specifies to the extent that this measure conflicts with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2018, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the changes made to this section by

the act adding this subdivision shall not apply until the expiration or renewal of that collective bargaining agreement.

School District Process

- 10) Authorizes school districts with an average daily attendance greater than 250 pupils to classify employees as permanent employees after the employee's third complete consecutive school year.
- 11) Requires the governing board of a school district (school district) to notify a certificated employee on or before March 15 of the employee's third complete consecutive school year of the decision to reelect or not reelect the employee for the next school year; and specifies if the school district does not give notice, the employee shall be deemed reelected for the next school year.
- 12) Authorizes the school district to offer a certificated employee to continue for up to five complete consecutive school years as a probationary employee.
- 13) Requires the school district to give notice to the certificated employee, on or before March 15 of the employee's preceding complete consecutive school year of the offer of an additional complete consecutive school year as a probationary employee.
- 14) Requires, if the school district does not give notice on or before March 15, the certificated employee shall be deemed reelected for the next succeeding school year and, at the commencement of the succeeding school year, be classified as and become a permanent employee.
- 15) Specifies that a credentialed employee who has not already attained classification as a permanent employee at the conclusion of five complete consecutive school years shall not be classified as a permanent employee of the school district.
- 16) Requires the school district to provide professional support, including priority in the allocation of existing professional development funding to a probationary employee in his or her fourth or fifth complete consecutive school year of employment.
- 17) Specifies that to the extent that this measure conflicts with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2018, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the changes made to this section by the act adding this subdivision shall not apply until the expiration or renewal of that collective bargaining agreement.

Evaluation

- 18) Specifies, before a certificated employee of a school is classified as a permanent employee, the school district or CS shall determine that the employee has demonstrated two complete consecutive school years of effective teaching; and, specifies that the two complete consecutive school years of effective teaching shall occur in the employee's most recent two years of probationary employment.

- 19) Requires the governing board of a school district or CS to adopt rules and regulations for determining whether a probationary employee of the school district has demonstrated effective teaching; and, requires an evaluation of a probationary employee's teaching effectiveness to include the progress of pupils toward standards of expected pupil achievement at each grade level in each area of study.
- 20) Requires an evaluation of a probationary employee who has not attained classification as a permanent employee of the school district or CS after having been employed by the school district for three complete consecutive school years to be conducted by multiple trained observers to ensure fairness to the probationary employee under evaluation.
- 21) Specifies that to the extent that this section conflicts with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2018, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, this section shall not apply until the expiration or renewal of that collective bargaining agreement.

Dismissal

- 22) Authorizes a 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) The superintendent of the school district or the superintendent's designee shall give 30 days' prior written notice of dismissal, not later than March 15 in the case of a probationary employee in the third, fourth, or fifth complete consecutive school year of probationary employment. The notice shall 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, a copy of the evaluation conducted pursuant to Section 44664 shall accompany the written notice.
 - b) The probationary employee shall have 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. The governing board of the school district may establish procedures for the appointment of an administrative law judge to conduct the hearing and submit a recommended decision to the governing board. 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.

EXISTING LAW:

- 1) Requires that a certificated employee of a school district or a teacher at a county office of education (COE) having an average daily attendance 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 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 shall 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 average daily attendance 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 shall, 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.
- 4) 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. 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. 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. 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 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.)
- 5) 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) The superintendent of the school district or the superintendent's designee shall 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. The notice shall 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, a copy of the evaluation conducted pursuant to Section 44664 shall accompany the written notice.

- b) The probationary employee shall have 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. The governing board of the school district may establish procedures for the appointment of an administrative law judge to conduct the hearing and submit a recommended decision to the governing board. 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 five years for certificated employees in school districts and teachers in county offices of education with an average daily attendance greater than 250 pupils. Specifically, the bill authorizes an employee to earn permanent status after years three, four or five of employment. Further, the bill requires probationary employees to receive "effective" evaluations for two consecutive years prior to earning permanent status. The committee should consider whether a 5 year probationary period for teachers is an appropriate length of time and also consider whether a teacher should be in this profession if they have not demonstrated competence by year 4 or 5?

This measure makes several policy changes that are concerning:

- Extends the probationary period for teachers from 2 years to 5 years, which will hamper recruiting efforts for new teachers entering the field and, lead to ineffective teachers staying employed longer because principals are fearful that they won't find qualified candidates due to the severe teacher shortage.
- Requires probationary period teachers to be evaluated as "effective" for two years before earning permanent status, however, without a uniform state-wide teacher evaluation system, this will create inconsistent policies across the state.
- Requires traditional public schools to evaluate probationary period teachers but does not provide charter school teachers with the same opportunity for support prior to earning permanent status.
- Requires professional support be provided to teachers in years 4 & 5 of the probationary period, but does not require individualized professional development to meet the unique needs of each teacher.

According to the author, California has one of the shortest probationary periods of any state, with the deadline for notification of "reelection" of March 15th 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 1220 provides a commonsense fix by giving teachers an extra year to develop and demonstrate – and for administrators to assess - classroom effectiveness. The bill's optional fourth and fifth year would provide school districts the flexibility to give teachers who may have the potential for excellence the additional time and professional support they need."

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

Certainly some states have shifted their policies in the past decade, but this demonstrates a significant bell curve with the vast majority of states having 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 should 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.

Evaluation: This bill requires a probationary employee to demonstrate two complete consecutive school years of effective teaching before earning permanent status. Further, the bill requires the school board to determine whether a probationary employee has demonstrated effective teaching using student test scores. Finally, the bill requires multiple trained observers to evaluate a probationary employee in their fourth and fifth probationary years. Without a consistent state-wide evaluation system, it is unclear how this will be implemented at districts across the state. The committee should consider whether a uniform teacher evaluation system should first be implemented before requiring evaluation outcomes to affect a teacher's permanent status.

Teacher Recruitment during a Shortage: The California Commission on Teacher Credentialing reports a staggering 70% decline in the number of students enrolled in teacher preparation

programs in the last decade. There has been a sharp increase in hiring in recent years (from 13,000 in 2014 to 17,000 in 2015) and a large increase in emergency permits this past year. Further the ACT test reports that only 5% of its test-takers report an interest in becoming teachers. And those that are interested have lower grade point averages than their peers. Not only is the teaching profession attracting fewer people, it is becoming even less attractive to the "best and brightest," the very people we should be attracting. The committee should 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. If that logic continues, under this measure, a principal could keep a sub-par teacher in the classroom for 5 years, for fear of not being able to find another qualified teacher to take the position. Five years is far too long to keep an ineffective teacher in front of children.

Professional Development: This bill requires professional support for employees in years four and five of their probationary period including priority in the allocation of existing professional development funding. Because the state no longer pays for professional development in a separate categorical program, it is unclear what requirement will actually be imposed on districts and CSs if there isn't separate funding specifically for professional development. While professional support is required for employees in year four and five in the measure, the committee should consider whether it is important to specify in the bill that these teachers should have targeted individualized professional development that would address each teacher's specific needs.

Charter Schools: This bill requires all traditional public schools in the state to adopt the changes to the evaluation process for probationary teachers, but the committee should note that these provisions do not apply to charter schools. The committee should consider whether charter school teachers should be left out of this opportunity for evaluation and support prior to earning permanent status.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for A Better Community
Association of California School Administrators
Children Now
Community Coalition
Educators for Excellence
EdVoice
Families in Schools
Innecity Struggle
Orange County Business Council
Riverside County Superintendent of Schools
Silicon Valley Leadership Group
Teach Plus California

The Education Trust-West
United Way Greater Los Angeles
Several individuals

Opposition

California Federation of Teachers
California Teachers Association

Analysis Prepared by: Chelsea Kelley / ED. / (916) 319-2087