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## SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair  
2017 - 2018 Regular

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<b>Bill No:</b>	AB 1164	<b>Hearing Date:</b>	July 12, 2017
<b>Author:</b>	Thurmond		
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<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
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**Subject:** Public school administration.

**NOTE:** This bill has been amended to replace its contents and this is the first time the bill is being heard in its current form.

### SUMMARY

This bill: (1) extends the probationary period up to three years for certificated employees in school districts and teachers in county offices of education with an average daily attendance(ADA) greater than 250 pupils, and (2) increases the cap on school district reserves, changes the conditions that must be met for the cap to be triggered, and exempts small and basic aid school districts from the cap.

### BACKGROUND

Existing law related to probationary employees and teachers:

- 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 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 county superintendent 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.
- 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 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.
- 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.

Existing law related to school district reserves:

- 1) Places a cap on school district reserves in years following a deposit in the Public School System Stabilization Account (PSSSA), established by Proposition 2 (2014). Additionally, districts are required to disclose certain information about their reserves each year. Specifically, in a fiscal year immediately after a fiscal year in which a transfer is made to the PSSSA, a school district budget that is adopted or revised may not have a combined assigned or unassigned ending fund balance that is in excess of the following:
  - a) For school districts with fewer than 400,000 units of average daily attendance (ADA), the sum of the school district's applicable minimum recommended reserve for economic uncertainties adopted by the State Board of Education (SBE), as specified, multiplied by two.
  - b) For school districts with more than 400,000 units of ADA, the sum of the school district's applicable minimum recommended reserve for economic uncertainties adopted by the SBE, as specified, multiplied by three.
- 2) Authorizes a county superintendent of schools to grant a school district under its jurisdiction an exemption from the cap for up to two consecutive fiscal years within a three-year period if the school district provides documentation indicating that extraordinary fiscal circumstances, including, but not limited to, multi-year infrastructure or technology projects, substantiate the need for a combined assigned or unassigned ending fund balance that is in excess of the minimum recommended reserve for economic uncertainties. As a condition of receiving an exemption, a school district shall do all of the following:
  - a) Provide a statement that substantiates the need for an assigned and unassigned ending fund balance that is in excess of the minimum recommended reserve for economic uncertainties.
  - b) Identify the funding amounts in the budget adopted by the school district that are associated with the extraordinary fiscal circumstances.
  - c) Provide documentation that no other fiscal resources are available to fund the extraordinary fiscal circumstances.

## ANALYSIS

This bill:

- 1) Authorizes a county superintendent of schools (CS) with an ADA greater than 250 pupils to classify teachers as permanent employees after the teacher's second complete consecutive school year, unless the CS offers that employee a third complete consecutive school year of employment as a probationary employee.
- 2) Requires the CS to notify a teacher on or before March 15 of the teacher's second complete consecutive school year of the decision to reelect or not reelect the teacher for the next school year, or offer a third year of probation.

- 3) Requires the county superintendent of schools (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.
- 4) 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.
- 5) Specifies employees shall have the same rights and duties as employees of school districts to which Education Code (EC) Section 44929.21 applies. EC Sections 44842, 44929.21, 44948.3, and 44948.5 apply to these employees.
- 6) Specifies that the CS may offer an employee up to three complete consecutive school years as a probationary employee only if: (1) the employee has received unsatisfactory evaluations during his or her first and second complete consecutive school years as a probationary employee, and (2) the employee participated in a program of beginning teacher induction, if the employee does not already possess a clear teaching credential.
- 7) Specifies that, before offering a third complete consecutive school year of employment as a probationary employee, the CS shall provide the employee with written notice that includes, at a minimum, specific information on what performance-related improvements the probationary employee must achieve to obtain permanent employment status.
- 8) Requires a CS that offers a third complete consecutive school year of probationary employment to refer the employee to a California Peer Assistance and Review Program for Teachers (PAR), for the purpose of providing the probationary employee with individualized coaching, assistance, and professional development.
- 9) Specifies that teacher participants in PAR are permanent or probationary employees and volunteers or those referred to the program.
- 10) Authorizes school districts with an average daily attendance greater than 250 pupils to classify employees as permanent employees after the employee's second complete consecutive school year, unless the school district offers that employee a third complete consecutive school year of employment as a probationary employee.
- 11) Requires the governing board of a school district to notify a certificated employee on or before March 15 of the employee's second complete consecutive school year of the decision to reelect or not reelect the employee for the next school year, or offer a third year of probation.
- 12) Requires the school district 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 employee for the next school year.

- 13) 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.
- 14) Specifies that the school district may offer an employee up to three complete consecutive school years as a probationary employee only if: (1) the employee has received unsatisfactory evaluations during his or her first and second complete consecutive school years as a probationary employee, and (2) the employee participated in a program of beginning teacher induction, if the employee does not already possess a clear teaching credential.
- 15) Specifies that, before offering a third complete consecutive school year of employment as a probationary employee, the school district shall provide the employee with written notice that includes, at a minimum, specific information on what performance-related improvements the probationary employee must achieve to obtain permanent employment status.
- 16) Requires a school district that offers a third complete consecutive school year of probationary employment to refer the employee to a California Peer Assistance and Review Program for Teachers (PAR), for the purpose of providing the probationary employee with individualized coaching, assistance, and professional development.
- 17) Requires each county superintendent of schools (CS) and school district to annually report to the Commission on Teacher Credentialing (CTC) on, at a minimum, the number of probationary employees offered a third year of probationary employment and the number of third-year probationary employees dismissed during the school year. The CTC shall annually compile this information into a single report and provide it to the Legislature, the Governor, and the Legislative Analyst's Office by August 1 of each year.
- 18) 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.
- 19) Clarifies that the existing procedures for a probationary employee that is dismissed during the school year for unsatisfactory performance apply to third-year probationary employees.
- 20) Applies the current due process dismissal procedures provided for probationary employees of school districts with less than 250 pupils to probationary employees of school districts and schools maintained by a county superintendent of schools with 250 pupils or more employed for a third complete consecutive school year. A county superintendent of schools or a school district with 250 pupils or more who employ a probationary employee for a third complete consecutive school year may collectively bargain an alternative process through

which a third-year probationary employee may challenge his or her nonreelection to certificated employment.

- 21) Provides that the cap on local school district reserves will be imposed whenever the level of funding in the Public School System Stabilization Account (PSSSA) is equal to or exceeds 3 percent of the combined total General Fund revenues and local proceed of taxes for school districts for that fiscal year.
- 22) Increases the cap on school district reserves up to 10 percent.
- 23) Clarifies that the cap applies to the total of assigned and unassigned ending balances in the general fund accounts of school districts, including in the Special Fund for Other Than Capital Outlay.
- 24) Exempts basic aid districts and small school districts from the cap.
- 25) Requires the Superintendent of Public Instruction to notify school districts and county superintendents of schools when the conditions for imposing the reserve cap have been met and when they are no longer in effect.

#### STAFF COMMENTS

- 1) ***Need for the bill.*** As it relates to probationary employees, supporters of this measure state that "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 1220 provides a commonsense fix by giving teachers an extra year to develop and demonstrate – and for administrators to assess - classroom effectiveness."

As it relates to school district reserve caps, supporters of this measure state that "Neither the Department of Finance nor the Legislative Analyst forecast that the reserve cap will be in effect in the foreseeable future. However, if imposed, a cap could impose a hardship on small districts, which have small budgets. A 6 percent cap on such districts would result in a small dollar reserve that may not provide adequate protection against economic uncertainty.

The cap could also pose a unique hardship for basic aid districts, which do not receive Local Control Funding Formula allocations from the state. This means there is no statutory mechanism to transfer funds from the PSSSA to basic aid districts should the need arise, so the Public School System Stabilization

Account (PSSSA) does not necessarily provide them with the same level of protection against funding shortfalls.

Finally, under existing law, the cap takes effect whenever a transfer is made into the PSSSA, regardless of the amount. This may not provide a sufficient reserve to protect districts from low revenue years.”

- 2) ***What do teachers say about tenure and the current system?*** As part of their 2015 publication “Raising the Bar: The Views of California Teachers on Tenure, Layoffs, and Dismissal”, Teach Plus noted that “Judges and lawyers are just one set of actors in a large cast of stakeholders who have a significant public voice in how teachers are hired, retained and dismissed. Legislators, school and district administrators, state department of education officials, researchers, parents and assorted policy experts and school reformers have all stepped to the metaphorical microphone to weigh in with an opinion. Yet the voice that has arguably been the least present is that of actual practicing public school teachers.”

For this publication, Teach Plus conducted an online survey of over 500 California traditional K-12 public school teachers. The composition of the responding teachers included 15 percent with five or fewer years of teaching experience, 21 percent with six to 10 years of experience, 34 percent with 11 to 19 years of experience and 30 percent with 20 or more years of experience. The key findings from the publication are:

- a) Teachers highly value tenure but strongly support making tenure a more performance-based, professional benchmark.
- b) Teachers believe that classroom performance should be an important element in any layoff decision.
- c) The current system needs to better support struggling teachers while setting a clear time frame for exiting persistently ineffective teachers from the profession.
- d) Teachers must play a central role in both the development of policy around tenure, layoff, and dismissal systems and in the execution of these policies.

Another particularly notable finding related to this bill is that teachers strongly support a period of time beyond the current 18 months for an administrator to determine whether or not a teacher should be granted tenure. In fact, 72 percent of teachers believe that 18 months is not enough time for an administrator to make a tenure determination. A separate question found that, on average, teachers believe that five years is the appropriate length of time before an administrator makes a decision about whether or not a teacher should be granted tenure. Only 15 percent of teachers believed that the appropriate amount of time should be two years or less.

- 3) ***Extending the probationary period.*** This bill allows the probationary period for certificated staff and teachers to last for three years, which is an increase of one year over the existing two-year period. For the third year of probation, school districts and county superintendents would be required to (1) provide unsatisfactory evaluations during the employee's first and second school years, (2) ensure the employee participated in a program of beginning teacher induction, (3) provide specific information on what performance-related improvements the probationary employee must achieve to obtain permanent employment status, and (4) refer the employee to a California Peer Assistance and Review Program for Teachers (PAR). Further, if the employee is not reelected after the third year, the employee would be afforded due process rights, including a hearing with an administrative law judge.

Currently, during the two-year probationary period, the law does not require a school district or county superintendent to demonstrate cause or provide due process for employees that are not reelected within this period. This would change significantly for the third year of probation under this measure. While providing specific information related to nonelection, professional development, and due process would help struggling teachers, the Committee should consider whether including all of these as baseline conditions for extending the current probationary period will be overly burdensome for schools.

- 4) ***Research on the Peer Assistance and Review Program for Teachers.*** The PAR Program for teachers was established in statute in 1999. The program was developed to assist teachers whose bi-annual personnel reviews were not satisfactory. Assistance and support are provided by exemplary teachers and include subject matter knowledge, teaching strategies, or both. While school districts no longer receive dedicated state funding to administer PAR, they can continue to support the program with discretionary funding under the Local Control Funding Formula.

A 2011 report by SRI International and J. Koppich and Associates titled "Peer Review: Getting Serious About Teacher Support and Evaluation" examined the PAR programs in the Poway and San Juan school districts in California. After evaluating these districts' programs, which are known to be of high quality, the report included two key conclusions:

- a) Peer support and evaluation can and should exist as a more effective approach to improving instructional practice than isolating teachers.
- b) PAR is a rigorous alternative to traditional forms of teacher evaluation and development, with research showing that peer review is far superior to principals' evaluations in terms of rigor and comprehensiveness. Equally important, peer review offers a possible solution to the lack of capacity of the current system to both provide adequate teacher support and conduct thorough performance evaluations.

The report also included the following key recommendations for the state, and districts and their local unions to consider:

- a) The state should eliminate current statutory barriers to comprehensive PAR programs, including expanding the programs to non-tenured teachers.
  - b) Local districts and unions interested in the PAR model should reexamine their teacher evaluation policies. This reexamination should have an eye toward implementing the kinds of in-depth support and evaluation that are the hallmarks of these exemplary programs in Poway and San Juan.
  - c) Local districts and their unions should use lessons learned from the work of the Poway and San Juan Governance Boards to improve labor-management collaboration. They can work to form cooperative union-management partnerships authorized to make decisions about high-stakes matters.
- 5) ***Vergara v. California.*** The Vergara case was filed here in California by nine public school children from around the state in May 2012. The case challenges various state employment provisions of the education code related to the way the teacher workforce is managed, including seniority and last in, first out statutes, and whether they protect incompetent teachers and disproportionately hurt low-income and minority children. The plaintiffs argue that these laws play out in classrooms and schools in ways that violate students' rights to access equal education under the California constitution. A decision was reached in August 2014 with the plaintiffs prevailing. However, the decision was appealed and the state appeals court reversed the trial court's decision on April 14, 2016. The plaintiffs subsequently filed a petition for review with the Supreme Court, which was denied on August 22, 2016, validating many of the arguments made by educators and civil rights groups that the state statutes affirming educator rights do not harm students.
- 6) ***Existing conditions for reserve cap requirement unlikely to be met in the near term.*** The reserve cap requirement is triggered once the state makes a deposit into the Public School System Stabilization Account, which only occurs when certain conditions are met. Among these conditions, Test 1 must be the applicable Proposition 98 test level and the state must have paid off all maintenance factor created before 2014-15. According to multi-year forecasts published as part of the 2017-18 Governor's Budget, no Test 1 operative years are projected through 2020-21, making a state deposit very unlikely in the near term.
- 7) ***Exemptions for school districts from reserve caps already in law?*** To the extent that school districts are concerned about the potential impact the cap would have on their ability to maintain adequate reserve levels and save for future and unanticipated expenditures, existing law provides two types of exemptions for school districts. First, school districts can change the way in which they treat their reserves, increasing the amount of their committed reserves and decreasing the amount of assigned and/or unassigned reserves. Reserves become committed for a specific purpose upon a vote of the district governing board. Second, a county superintendent of schools is authorized to

grant a school district under its jurisdiction an exemption if a school district is able to provide documentation that demonstrates extraordinary fiscal circumstances.

8) ***Related legislation.***

AB 235 (O'Donnell) adds a minimum fund balance in the Public School System Stabilization Account (PSSSA) to the conditions that must be met for the cap on school district reserves to be triggered and exempts small and basic aid school districts from the reserve cap requirement.

AB 1220 (Weber) extends the probationary period up to three years for certificated employees in school districts and teachers in county offices of education with an average daily attendance greater than 250 pupils.

SB 590 (Moorlach) repeals the current maximum reserve level school districts are allowed to maintain in any year following a deposit being made into the PSSSA. The measure was held by this Committee.

SB 751 (Hill and Glazer) increases the cap on school district reserves, exempts small and basic aid school districts from the reserve cap requirement, and specifies that only unassigned general fund and a portion of special reserve fund ending balances are counted for purposes of the reserve cap requirement. The measure is currently pending before the Assembly Education Committee.

**SUPPORT**

California Teachers Association

**OPPOSITION**

Association of California School Administrators  
California Association of School Business Officials  
California Association of Suburban Schools  
California County Superintendents Educational Services Association  
EdVoice  
Kern County Superintendent of Schools  
Orange County Department of Education  
Riverside County Office of Education  
San Joaquin County Office of Education  
Small School Districts Association  
The Association of Career and College Readiness Organizations

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