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HOUSE BILL 1936

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Muri and Magendanz

Read first time 02/03/15. Referred to Committee on Labor.

1 AN ACT Relating to the hearing process for adverse changes to  
2 certificated employees' contracts; amending RCW 28A.405.210,  
3 28A.405.300, 28A.405.320, 28A.405.330, 28A.405.340, and 42.30.110;  
4 adding a new section to chapter 28A.405 RCW; adding a new section to  
5 chapter 41.59 RCW; creating a new section; and repealing RCW  
6 28A.405.310.

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

8 NEW SECTION. **Sec. 1.** The Washington supreme court has held  
9 that, under Article IX, section 1 of the state Constitution, the  
10 state has an obligation to provide an opportunity for all children  
11 within its borders to obtain a basic education and that this  
12 obligation is the state's paramount duty. The legislature finds,  
13 similarly to what the California trial court found in *Vergara v.*  
14 *California*, that competent teachers are a critical component of  
15 students' success and that grossly ineffective teachers substantially  
16 undermine the ability of students to take full advantage of  
17 educational opportunity. The legislature further finds that it is too  
18 time consuming and too expensive to go through the hearing process  
19 required by current statutes to rid school districts of grossly  
20 ineffective teachers, and that such time and cost causes districts,  
21 in many cases, to be reluctant to even commence the process. As a

1 result, grossly ineffective teachers are left in the classroom, to  
2 the detriment of the students. The legislature intends to amend the  
3 process in order to make it less time consuming and expensive, thus  
4 affording all children the opportunity to obtain a basic education,  
5 while still providing due process.

6 **Sec. 2.** RCW 28A.405.210 and 2010 c 235 s 303 are each amended to  
7 read as follows:

8 No teacher, principal, supervisor, superintendent, or other  
9 certificated employee, holding a position as such with a school  
10 district, hereinafter referred to as "employee", shall be employed  
11 except by written order of a majority of the directors of the  
12 district at a regular or special meeting thereof, nor unless he or  
13 she is the holder of an effective teacher's certificate or other  
14 certificate required by law or the Washington professional educator  
15 standards board for the position for which the employee is employed.

16 The board shall make with each employee employed by it a written  
17 contract, which shall be in conformity with the laws of this state,  
18 and except as otherwise provided by law, limited to a term of not  
19 more than one year. Every such contract shall be made in duplicate,  
20 one copy to be retained by the school district superintendent or  
21 secretary and one copy to be delivered to the employee. No contract  
22 shall be offered by any board for the employment of any employee who  
23 has previously signed an employment contract for that same term in  
24 another school district of the state of Washington unless such  
25 employee shall have been released from his or her obligations under  
26 such previous contract by the board of directors of the school  
27 district to which he or she was obligated. Any contract signed in  
28 violation of this provision shall be void.

29 In the event it is determined that there is probable cause or  
30 causes that the employment contract of an employee should not be  
31 renewed by the district for the next ensuing term such employee shall  
32 be notified in writing on or before May 15th preceding the  
33 commencement of such term of that determination, or if the omnibus  
34 appropriations act has not passed the legislature by May 15th, then  
35 notification shall be no later than June 15th, which notification  
36 shall specify the cause or causes for nonrenewal of contract. Such  
37 determination of probable cause for certificated employees, other  
38 than the superintendent, shall be made by the superintendent. Such  
39 notice shall be served upon the employee personally, or by certified

1 or registered mail, or by leaving a copy of the notice at the house  
2 of his or her usual abode with some person of suitable age and  
3 discretion then resident therein. Every such employee so notified, at  
4 his or her request made in writing and filed with the president,  
5 chair or secretary of the board of directors of the district within  
6 ten days after receiving such notice, shall be granted opportunity  
7 for hearing pursuant to (~~RCW 28A.405.310~~) section 4 of this act to  
8 determine whether there is sufficient cause or causes for nonrenewal  
9 of contract: PROVIDED, That any employee receiving notice of  
10 nonrenewal of contract due to an enrollment decline or loss of  
11 revenue may, in his or her request for a hearing, stipulate that  
12 (~~initiation of the arrangements for a hearing officer as provided~~  
13 ~~for by RCW 28A.405.310(4)~~) the hearing shall occur within (~~ten~~)  
14 fourteen days following (~~July 15~~) June 30th rather than the day  
15 that the employee submits the request for a hearing. If any such  
16 notification or opportunity for hearing is not timely given, the  
17 employee entitled thereto shall be conclusively presumed to have been  
18 reemployed by the district for the next ensuing term upon contractual  
19 terms identical with those which would have prevailed if his or her  
20 employment had actually been renewed by the board of directors for  
21 such ensuing term.

22 This section shall not be applicable to "provisional employees"  
23 as so designated in RCW 28A.405.220; transfer to a subordinate  
24 certificated position as that procedure is set forth in RCW  
25 28A.405.230 or 28A.405.245 shall not be construed as a nonrenewal of  
26 contract for the purposes of this section.

27 **Sec. 3.** RCW 28A.405.300 and 2010 c 235 s 305 are each amended to  
28 read as follows:

29 In the event it is determined that there is probable cause or  
30 causes for a teacher, principal, supervisor, superintendent, or other  
31 certificated employee, holding a position as such with the school  
32 district, hereinafter referred to as "employee", to be discharged or  
33 otherwise adversely affected in his or her contract status, such  
34 employee shall be notified in writing of that decision, which  
35 notification shall specify the probable cause or causes for such  
36 action. Such determinations of probable cause for certificated  
37 employees, other than the superintendent, shall be made by the  
38 superintendent. Such notices shall be served upon that employee  
39 personally, or by certified or registered mail, or by leaving a copy

1 of the notice at the house of his or her usual abode with some person  
2 of suitable age and discretion then resident therein. Every such  
3 employee so notified, at his or her request made in writing and filed  
4 with the president, chair of the board or secretary of the board of  
5 directors of the district within ten days after receiving such  
6 notice, shall be granted opportunity for a hearing pursuant to ((RCW  
7 ~~28A.405.310~~)) section 4 of this act to determine whether or not there  
8 is sufficient cause or causes for his or her discharge or other  
9 adverse action against his or her contract status.

10 In the event any such notice or opportunity for hearing is not  
11 timely given, or in the event cause for discharge or other adverse  
12 action is not established by a preponderance of the evidence at the  
13 hearing, such employee shall not be discharged or otherwise adversely  
14 affected in his or her contract status for the causes stated in the  
15 original notice for the duration of his or her contract.

16 If such employee does not request a hearing as provided herein,  
17 such employee may be discharged or otherwise adversely affected as  
18 provided in the notice served upon the employee.

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

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.405  
24 RCW to read as follows:

25 (1) If a timely request for a hearing is received pursuant to RCW  
26 28A.405.210 or 28A.405.300, the school district board of directors  
27 shall schedule a hearing to commence within fourteen days after the  
28 date upon which the request for a hearing was received.

29 (2) The employee shall have the right to:

30 (a) Inspect in advance of the hearing any documentary and other  
31 physical evidence which the school district intends to introduce at  
32 the hearing;

33 (b) Be represented by legal counsel;

34 (c) Request either an open or closed hearing. The hearing shall  
35 be open or closed as requested by the employee, but if the employee  
36 fails to make such a request, the board of directors may determine  
37 whether the hearing shall be open or closed;

38 (d) Present his or her explanation of the alleged misconduct; and

1 (e) Make such relevant showings by way of witnesses and the  
2 introduction of documentary and other physical evidence as he or she  
3 desires.

4 (3) The designees of the school district assigned to present the  
5 district's case shall have the right to inspect, in advance of the  
6 hearing, any documentary and other physical evidence that the  
7 employee intends to introduce at the hearing.

8 (4) The school district directors hearing the case shall not be  
9 witnesses and the final decision shall be determined by a  
10 preponderance of the evidence and solely on the basis of the evidence  
11 presented at the hearing.

12 (5) Within ten days following the conclusion of the hearing, the  
13 board of directors shall transmit in writing to the employee findings  
14 of fact, conclusions of law, and final decision. If the final  
15 decision is in favor of the employee, the employee must be restored  
16 to his or her employment position.

17 (6) Any final decision by the board of directors to nonrenew the  
18 employment contract of the employee, or to discharge the employee, or  
19 to take other action adverse to the employee's contract status as the  
20 case may be, shall be based solely upon the cause or causes specified  
21 in the notice to the employee and shall be established by a  
22 preponderance of the evidence at the hearing to be sufficient cause  
23 or causes for such action.

24 (7) A complete record shall be made of the hearing, including  
25 either a tape-recorded or verbatim record, and all decisions, orders,  
26 and rulings.

27 **Sec. 5.** RCW 28A.405.320 and 1990 c 33 s 397 are each amended to  
28 read as follows:

29 Any teacher, principal, supervisor, superintendent, or other  
30 certificated employee, desiring to appeal from (~~any action or~~  
31 ~~failure to act upon the part~~) the final decision of a school board  
32 relating to the discharge or other action adversely affecting his or  
33 her contract status, or failure to renew that employee's contract for  
34 the next ensuing term, within thirty days after his or her receipt of  
35 such decision (~~or order~~), may serve upon the chair of the school  
36 board and file with the clerk of the superior court in the county in  
37 which the school district is located a notice of appeal which shall  
38 set forth also in a clear and concise manner the errors complained  
39 of.

1       **Sec. 6.** RCW 28A.405.330 and 1990 c 33 s 398 are each amended to  
2 read as follows:

3       The clerk of the superior court, within ten days of receipt of  
4 the notice of appeal from the final decision of the school board  
5 shall notify in writing the chair of the school board of the taking  
6 of the appeal, and within twenty days thereafter the school board  
7 shall at its expense file the complete transcript of the evidence and  
8 the papers and exhibits relating to the decision complained of, all  
9 properly certified to be correct.

10       **Sec. 7.** RCW 28A.405.340 and 1975-'76 2nd ex.s. c 114 s 6 are  
11 each amended to read as follows:

12       Any appeal to the superior court by an employee shall be heard by  
13 the superior court without a jury. Such appeal shall be heard  
14 expeditiously. The superior court's review shall be confined to the  
15 verbatim transcript of the hearing and the papers and exhibits  
16 admitted into evidence at the hearing, except that in cases of  
17 alleged irregularities in procedure not shown in the transcript or  
18 exhibits and in cases of alleged abridgment of the employee's  
19 constitutional free speech rights, the court may take additional  
20 testimony on the alleged procedural irregularities or abridgment of  
21 free speech rights. The court shall hear oral argument and receive  
22 written briefs offered by the parties.

23       The court may affirm the decision of the board (~~or hearing~~  
24 ~~officer~~) or remand the case for further proceedings; or it may  
25 reverse the decision if the substantial rights of the employee may  
26 have been prejudiced because the decision was:

- 27       (1) In violation of constitutional provisions; or  
28       (2) In excess of the statutory authority or jurisdiction of the  
29 board (~~or hearing officer~~); or  
30       (3) Made upon unlawful procedure; or  
31       (4) Affected by other error of law; or  
32       (5) Clearly erroneous in view of the entire record as submitted  
33 and the public policy contained in the act of the legislature  
34 authorizing the decision or order; or  
35       (6) Arbitrary or capricious.

36       **Sec. 8.** RCW 42.30.110 and 2014 c 174 s 4 are each amended to  
37 read as follows:

1 (1) Nothing contained in this chapter may be construed to prevent  
2 a governing body from holding an executive session during a regular  
3 or special meeting:

4 (a) To consider matters affecting national security;

5 (b) To consider the selection of a site or the acquisition of  
6 real estate by lease or purchase when public knowledge regarding such  
7 consideration would cause a likelihood of increased price;

8 (c) To consider the minimum price at which real estate will be  
9 offered for sale or lease when public knowledge regarding such  
10 consideration would cause a likelihood of decreased price. However,  
11 final action selling or leasing public property shall be taken in a  
12 meeting open to the public;

13 (d) To review negotiations on the performance of publicly bid  
14 contracts when public knowledge regarding such consideration would  
15 cause a likelihood of increased costs;

16 (e) To consider, in the case of an export trading company,  
17 financial and commercial information supplied by private persons to  
18 the export trading company;

19 (f) To receive and evaluate complaints or charges brought against  
20 a public officer or employee. However, upon the request of such  
21 officer or employee, a public hearing or a meeting open to the public  
22 shall be conducted upon such complaint or charge;

23 (g) To evaluate the qualifications of an applicant for public  
24 employment or to review the performance of a public employee.  
25 However, subject to RCW 42.30.140(4), discussion by a governing body  
26 of salaries, wages, and other conditions of employment to be  
27 generally applied within the agency shall occur in a meeting open to  
28 the public, and when a governing body elects to take final action  
29 hiring, setting the salary of an individual employee or class of  
30 employees, or discharging or disciplining an employee, that action  
31 shall be taken in a meeting open to the public;

32 (h) To evaluate the qualifications of a candidate for appointment  
33 to elective office. However, any interview of such candidate and  
34 final action appointing a candidate to elective office shall be in a  
35 meeting open to the public;

36 (i) To discuss with legal counsel representing the agency matters  
37 relating to agency enforcement actions, or to discuss with legal  
38 counsel representing the agency litigation or potential litigation to  
39 which the agency, the governing body, or a member acting in an  
40 official capacity is, or is likely to become, a party, when public

1 knowledge regarding the discussion is likely to result in an adverse  
2 legal or financial consequence to the agency.

3 This subsection (1)(i) does not permit a governing body to hold  
4 an executive session solely because an attorney representing the  
5 agency is present. For purposes of this subsection (1)(i), "potential  
6 litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a)  
7 concerning:

8 (i) Litigation that has been specifically threatened to which the  
9 agency, the governing body, or a member acting in an official  
10 capacity is, or is likely to become, a party;

11 (ii) Litigation that the agency reasonably believes may be  
12 commenced by or against the agency, the governing body, or a member  
13 acting in an official capacity; or

14 (iii) Litigation or legal risks of a proposed action or current  
15 practice that the agency has identified when public discussion of the  
16 litigation or legal risks is likely to result in an adverse legal or  
17 financial consequence to the agency;

18 (j) To consider, in the case of the state library commission or  
19 its advisory bodies, western library network prices, products,  
20 equipment, and services, when such discussion would be likely to  
21 adversely affect the network's ability to conduct business in a  
22 competitive economic climate. However, final action on these matters  
23 shall be taken in a meeting open to the public;

24 (k) To consider, in the case of the state investment board,  
25 financial and commercial information when the information relates to  
26 the investment of public trust or retirement funds and when public  
27 knowledge regarding the discussion would result in loss to such funds  
28 or in private loss to the providers of this information;

29 (l) To consider proprietary or confidential nonpublished  
30 information related to the development, acquisition, or  
31 implementation of state purchased health care services as provided in  
32 RCW 41.05.026;

33 (m) To consider in the case of the life sciences discovery fund  
34 authority, the substance of grant applications and grant awards when  
35 public knowledge regarding the discussion would reasonably be  
36 expected to result in private loss to the providers of this  
37 information;

38 (n) To consider in the case of a health sciences and services  
39 authority, the substance of grant applications and grant awards when  
40 public knowledge regarding the discussion would reasonably be

1 expected to result in private loss to the providers of this  
2 information;

3 (o) To hear an appeal brought by an employee pursuant to section  
4 4 of this act, however, upon the request of the employee a public  
5 hearing open to the public must be conducted.

6 (2) Before convening in executive session, the presiding officer  
7 of a governing body shall publicly announce the purpose for excluding  
8 the public from the meeting place, and the time when the executive  
9 session will be concluded. The executive session may be extended to a  
10 stated later time by announcement of the presiding officer.

11 NEW SECTION. Sec. 9. A new section is added to chapter 41.59  
12 RCW to read as follows:

13 Nothing in chapter ..., Laws of 2015 (this act) is intended to  
14 alter or affect existing collective bargaining agreements.  
15 Chapter ..., Laws of 2015 (this act) applies to all collective  
16 bargaining agreements ratified after the effective date of this  
17 section.

18 NEW SECTION. Sec. 10. RCW 28A.405.310 (Adverse change in  
19 contract status of certificated employee, including nonrenewal of  
20 contract—Hearings—Procedure) and 1990 c 33 s 396, 1987 c 375 s 1,  
21 1977 ex.s. c 7 s 1, & 1975-'76 2nd ex.s. c 114 s 5 are each repealed.

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