

AMENDED IN SENATE JUNE 22, 2011

AMENDED IN SENATE JUNE 9, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

AMENDED IN ASSEMBLY MARCH 8, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 5

Introduced by Assembly Member Fuentes

December 6, 2010

An act to amend Section 44661.5 of, to amend and add Sections 44660, 44661, 44662, and 44664 of, and to add Section 44662.5 to, the Education Code, relating to teachers.

LEGISLATIVE COUNSEL'S DIGEST

AB 5, as amended, Fuentes. Teachers: best practices teacher evaluation.

Existing law states the intent of the Legislature that ~~school district~~ governing boards *of school districts* establish a uniform system of evaluation and assessment of the performance of all certificated personnel within each school district of the state. Existing law requires the governing board of each school district to establish standards of expected pupil achievement at each grade level in each area of study and to evaluate and assess certificated employee performance on a continuing basis as it reasonably relates to the progress of pupils toward the established standards and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced

assessments, the instructional techniques and strategies used by the employee, the employee's adherence to curricular objectives, and the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

This bill would provide that the provisions described above would become inoperative on July 1 of the first fiscal year following the fiscal year in which the deficit factor, as specified, is reduced to zero. The bill would state findings and declarations of the Legislature regarding the nature of effective teachers and of the teaching profession. Commencing on July 1 of the first fiscal year following the fiscal year in which the deficit factor, as specified, is reduced to zero, the bill would require the governing board of each school district to adopt and implement a locally negotiated best practices teacher evaluation system, described as one in which each teacher is evaluated on a continuing basis on the degree to which he or she accomplishes specific objectives and multiple observations of instructional and other professional practices are conducted by trained evaluators. The bill would also require the governing board of each school district to establish and define job responsibilities for certificated, noninstructional employees and evaluate and assess their performance in relation to those responsibilities. *The bill would provide that these provisions do not apply to certificated personnel who are employed on an hourly basis in adult education classes.*

By requiring school districts to perform additional duties, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44660 of the Education Code is amended
2 to read:

1 44660. (a) It is the intent of the Legislature that governing
2 boards establish a uniform system of evaluation and assessment
3 of the performance of all certificated personnel within each school
4 district of the state, including schools conducted or maintained by
5 county superintendents of education. The system shall involve the
6 development and adoption by each school district of objective
7 evaluation and assessment guidelines which may, at the discretion
8 of the governing board, be uniform throughout the district or, for
9 compelling reasons, be individually developed for territories or
10 schools within the district, provided that all certificated personnel
11 of the district shall be subject to a system of evaluation and
12 assessment adopted pursuant to this article.

13 (b) This article does not apply to certificated personnel who are
14 employed on an hourly basis in adult education classes.

15 (c) This section shall become inoperative on July 1 of the first
16 fiscal year following the fiscal year in which the deficit factor set
17 forth in Section 42238.146 is reduced to zero.

18 SEC. 2. Section 44660 is added to the Education Code, to read:

19 44660. (a) The Legislature finds and declares all of the
20 following:

21 (1) Teaching is a professional endeavor, in which effective
22 practice is driven by an understanding of knowledge in the field
23 and a commitment to all pupils and their families.

24 (2) Excellent teaching requires knowledge, skills, artistry,
25 passion, and commitment.

26 (3) Effective teachers integrate ethical concern for children and
27 society, extensive subject matter competence, thoughtfully selected
28 pedagogical practices, and a depth of knowledge about their pupils,
29 including knowledge of child and adolescent development and
30 learning, an understanding of their individual strengths, interests,
31 and needs, and knowledge about their families and communities.

32 (4) Effective teachers share a common set of professional and
33 ethical obligations that includes a profound and fundamental
34 commitment to the growth and success of the individual pupils in
35 their care as well as to the strengthening and continual revitalization
36 of our democratic society.

37 (5) Certificated, noninstructional employees share the same
38 deep commitment to children, families, and communities, and they
39 provide essential support and administrative services to pupils and
40 teachers that enable pupils to succeed.

1 (b) The Legislature further finds and declares that because
2 teachers are the most important school-related factor for influencing
3 pupil academic success the primary purpose of an evaluation
4 system is to ensure that teachers meet the highest professional
5 standards of effective teaching, thereby resulting in high levels of
6 pupil learning.

7 (c) *This article does not apply to certificated personnel who are*
8 *employed on an hourly basis in adult education classes.*

9 (e)

10 (d) This section shall become operative on July 1 of the first
11 fiscal year following the fiscal year in which the deficit factor set
12 forth in Section 42238.146 is reduced to zero.

13 SEC. 3. Section 44661 of the Education Code is amended to
14 read:

15 44661. (a) In the development and adoption of guidelines and
16 procedures pursuant to this article, the governing board shall avail
17 itself of the advice of the certificated instructional personnel in the
18 district's organization of certificated personnel; provided, however,
19 that the development and adoption of guidelines pursuant to this
20 article shall also be subject to the provisions of Article 1
21 (commencing with Section 7100) of Chapter 2 of Part 5 of Division
22 1 of Title 1.

23 (b) This section shall become inoperative on July 1 of the first
24 fiscal year following the fiscal year in which the deficit factor set
25 forth in Section 42238.146 is reduced to zero.

26 SEC. 4. Section 44661 is added to the Education Code, to read:

27 44661. (a) The governing board of each school district shall
28 adopt and implement a best practices teacher evaluation system
29 as set forth in this article.

30 (b) The best practices teacher evaluation system required to be
31 adopted pursuant to this article shall be locally negotiated pursuant
32 to Chapter 10.7 (commencing with Section 3540) of Division 4 of
33 Title 1 of the Government Code. If the certificated employees of
34 the school district do not have an exclusive bargaining
35 representative, the governing board of the school district shall
36 adopt objective evaluation and support components, as applicable,
37 that are consistent with this article.

38 (c) This section shall become operative on July 1 of the first
39 fiscal year following the fiscal year in which the deficit factor set
40 forth in Section 42238.146 is reduced to zero.

1 SEC. 5. Section 44661.5 of the Education Code is amended to
2 read:

3 44661.5. (a) When developing and adopting objective
4 evaluation and assessment guidelines pursuant to Section 44660,
5 a school district may, by mutual agreement between the exclusive
6 representative of the certificated employees of the school district
7 and the governing board of the school district, include any objective
8 standards from the National Board for Professional Teaching
9 Standards or any objective standards from the California Standards
10 for the Teaching Profession if the standards to be included are
11 consistent with this article. If the certificated employees of the
12 school district do not have an exclusive representative, the school
13 district may adopt objective evaluation and assessment guidelines
14 consistent with this section.

15 (b) This section shall become inoperative on July 1 of the first
16 fiscal year following the fiscal year in which the deficit factor set
17 forth in Section 42238.146 is reduced to zero.

18 SEC. 6. Section 44662 of the Education Code is amended to
19 read:

20 44662. (a) The governing board of each school district shall
21 establish standards of expected pupil achievement at each grade
22 level in each area of study.

23 (b) The governing board of each school district shall evaluate
24 and assess certificated employee performance as it reasonably
25 relates to:

26 (1) The progress of pupils toward the standards established
27 pursuant to subdivision (a) and, if applicable, the state adopted
28 academic content standards as measured by state adopted criterion
29 referenced assessments.

30 (2) The instructional techniques and strategies used by the
31 employee.

32 (3) The employee's adherence to curricular objectives.

33 (4) The establishment and maintenance of a suitable learning
34 environment, within the scope of the employee's responsibilities.

35 (c) The governing board of each school district shall establish
36 and define job responsibilities for certificated noninstructional
37 personnel, including, but not limited to, supervisory and
38 administrative personnel, whose responsibilities cannot be
39 evaluated appropriately under the provisions of subdivision (b)
40 and shall evaluate and assess the performance of those

1 noninstructional certificated employees as it reasonably relates to
2 the fulfillment of those responsibilities.

3 (d) Results of an employee’s participation in the Peer Assistance
4 and Review Program for Teachers established by Article 4.5
5 (commencing with Section 44500) shall be made available as part
6 of the evaluation conducted pursuant to this section.

7 (e) The evaluation and assessment of certificated employee
8 performance pursuant to this section shall not include the use of
9 publishers’ norms established by standardized tests.

10 (f) Nothing in this section shall be construed as in any way
11 limiting the authority of school district governing boards to develop
12 and adopt additional evaluation and assessment guidelines or
13 criteria.

14 (g) This section shall become inoperative on July 1 of the first
15 fiscal year following the fiscal year in which the deficit factor set
16 forth in Section 42238.146 is reduced to zero.

17 SEC. 7. Section 44662 is added to the Education Code, to read:

18 44662. (a) A best practices teacher evaluation system has the
19 following attributes:

20 (1) Each teacher is evaluated on the degree to which he or she
21 accomplishes the following objectives:

22 (A) Engages and supports all pupils in learning, evidence of
23 which may include, but is not limited to, evidence of high
24 expectations and active pupil engagement for each pupil.

25 (B) Creates and maintains effective environments for pupil
26 learning, to the extent that those environments are within the
27 teacher’s control.

28 (C) Understands and organizes subject matter for pupil learning,
29 evidence of which may include, but is not limited to, extensive
30 subject matter, content standards, and curriculum competence.

31 (D) Plans instruction and designs learning experiences for all
32 pupils, evidence of which may include, but is not limited to, use
33 of differentiated instruction and practices based upon pupil progress
34 and use of culturally responsive instruction, including, but not
35 limited to, incorporation of multicultural information and content
36 into the delivery of curriculum, to eliminate the achievement gap.

37 (E) Uses pupil assessment information to inform instruction
38 and to improve learning, evidence of which shall include, but is
39 not limited to, use of formative and summative assessments to
40 adjust instructional practices to meet the needs of individual pupils.

1 For certified employees who directly instruct English learner pupils
2 in acquiring English language fluency, the assessment information
3 shall include the results of assessments adopted pursuant to Chapter
4 7 (commencing with Section 60810) of Part 33 of Division 4.

5 (F) Develops as a professional educator, evidence of which may
6 include, but is not limited to, consistent and positive relationships
7 with pupils, parents, staff, and administrators, use of collaborative
8 professional practices for improving instructional strategies,
9 participation in identified professional growth opportunities, and
10 use of meaningful self-assessment to improve as a professional
11 educator.

12 (G) (i) Contributes to pupil academic growth based upon
13 multiple measures, which may include, but are not limited to,
14 classroom work, local and state academic assessments, and pupil
15 grades, classroom participation, presentations and performances,
16 and projects and portfolios. ~~Measures~~

17 (ii) *Measures* used for assessing pupil academic growth shall
18 be valid and reliable for the purpose of teacher evaluation, provided
19 that the evaluation and assessment of certificated employee
20 performance pursuant to this section shall not include the use of
21 publisher's norms established by standardized tests. For certificated
22 employees who directly instruct English learner pupils in acquiring
23 English, measures shall include the degree to which pupils acquire
24 the English language development standards adopted pursuant to
25 Section 60811 for the purpose of improving a pupil's English
26 proficiency. Pupil data used for purposes of teacher evaluation
27 shall be confidential in the same manner as all other elements of
28 a teacher's personnel file.

29 (2) Multiple observations of instructional and other professional
30 practices are conducted by evaluators who have ~~received~~
31 ~~appropriate training~~ *been appropriately trained and calibrated to*
32 *ensure consistency* and who have demonstrated competence in
33 teacher evaluation, as determined by the school district.

34 (A) Multiple observations may include, but are not limited to,
35 classroom observations, one-on-one discussions, and review of
36 classroom materials and course of study.

37 (B) Observations shall be conducted using a uniform evaluation
38 tool that is appropriate to the teacher's assignment.

39 (C) Prior to each observation, the observer shall meet with the
40 teacher to discuss the purpose of the observation.

1 (D) After each observation, the observer shall meet with the
2 teacher to discuss recommendations, as necessary, with regard to
3 areas of improvement in the performance of the teacher.

4 (b) This section shall not be interpreted to prohibit a locally
5 negotiated evaluation process from designating certificated
6 employees to conduct, or participate in, evaluations of other
7 certificated employees for purposes of determining needs for
8 professional development or providing corrective advice for the
9 certificated employee being evaluated. A nonsupervisory
10 certificated employee who conducts, or participates in, an
11 evaluation pursuant to this article shall not be deemed to be
12 exercising a management or supervisory function as defined by
13 subdivision (g) or (m) of Section 3540.1 of the Government Code.

14 (c) This section shall become operative on July 1 of the first
15 fiscal year following the fiscal year in which the deficit factor set
16 forth in Section 42238.146 is reduced to zero.

17 SEC. 8. Section 44662.5 is added to the Education Code, to
18 read:

19 44662.5. (a) The governing board of each school district shall
20 establish and define job responsibilities for certificated,
21 noninstructional employees, including, but not limited to,
22 supervisory and administrative personnel, whose responsibilities
23 cannot be evaluated appropriately under the provisions of
24 subdivision (a) of Section 44662. The governing board of each
25 school district shall evaluate and assess the performance of
26 certificated, noninstructional employees as it reasonably relates to
27 the fulfillment of those responsibilities.

28 (b) This section shall become operative on July 1 of the first
29 fiscal year following the fiscal year in which the deficit factor set
30 forth in Section 42238.146 is reduced to zero.

31 SEC. 9. Section 44664 of the Education Code is amended to
32 read:

33 44664. (a) Evaluation and assessment of the performance of
34 each certificated employee shall be made on a continuing basis as
35 follows:

- 36 (1) At least once each school year for probationary personnel.
- 37 (2) At least every other year for personnel with permanent status.
- 38 (3) At least every five years for personnel with permanent status
39 who have been employed at least 10 years with the school district,
40 are highly qualified, if those personnel occupy positions that are

1 required to be filled by a highly qualified professional by the
2 federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301
3 et seq.), as defined in Section 7801 of Title 20 of the United States
4 Code, and whose previous evaluation rated the employee as
5 meeting or exceeding standards, if the evaluator and certificated
6 employee being evaluated agree. The certificated employee or the
7 evaluator may withdraw consent at any time.

8 (b) The evaluation shall include recommendations, if necessary,
9 as to areas of improvement in the performance of the employee.
10 If an employee is not performing his or her duties in a satisfactory
11 manner according to the standards prescribed by the governing
12 board, the employing authority shall notify the employee in writing
13 of that fact and describe the unsatisfactory performance. The
14 employing authority shall thereafter confer with the employee
15 making specific recommendations as to areas of improvement in
16 the employee's performance and endeavor to assist the employee
17 in his or her performance. If a permanent certificated employee
18 has received an unsatisfactory evaluation, the employing authority
19 shall annually evaluate the employee until the employee achieves
20 a positive evaluation or is separated from the district.

21 (c) An evaluation performed pursuant to this article that contains
22 an unsatisfactory rating of an employee's performance in the area
23 of teaching methods or instruction may include the requirement
24 that the certificated employee shall, as determined necessary by
25 the employing authority, participate in a program designed to
26 improve appropriate areas of the employee's performance and to
27 further pupil achievement and the instructional objectives of the
28 employing authority. If a district participates in the Peer Assistance
29 and Review Program for Teachers established pursuant to Article
30 4.5 (commencing with Section 44500), a certificated employee
31 who receives an unsatisfactory rating on an evaluation performed
32 pursuant to this section shall participate in the Peer Assistance and
33 Review Program for Teachers.

34 (d) Hourly and temporary hourly certificated employees, other
35 than those employed in adult education classes who are excluded
36 by the provisions of Section 44660, and substitute teachers may
37 be excluded from the provisions of this section at the discretion
38 of the governing board.

1 (e) This section shall become inoperative on July 1 of the first
2 fiscal year following the fiscal year in which the deficit factor set
3 forth in Section 42238.146 is reduced to zero.

4 SEC. 10. Section 44664 is added to the Education Code, to
5 read:

6 44664. (a) Evaluation and assessment of the performance of
7 each certificated employee shall be made on a continuing basis as
8 follows:

9 (1) At least once each school year for probationary personnel.

10 (2) At least every other year for personnel with permanent status.

11 (3) Except as may be provided in the best practices teacher
12 evaluation system locally negotiated pursuant to subdivision (b)
13 of Section 44661, at least every three years for personnel with
14 permanent status who have been employed at least 10 years with
15 the school district, are highly qualified, if those personnel occupy
16 positions that are required to be filled by a highly qualified
17 professional by the federal No Child Left Behind Act of 2001 (20
18 U.S.C. Sec. 6301 et seq.), as defined in Section 7801 of Title 20
19 of the United States Code, and whose previous evaluation rated
20 the employee as meeting or exceeding standards, if the evaluator
21 and certificated employee being evaluated agree. The certificated
22 employee or the evaluator may withdraw consent at any time.

23 (b) The evaluation shall include recommendations, if necessary,
24 as to areas of improvement in the performance of the employee.
25 If an employee is not performing his or her duties in a satisfactory
26 manner according to the standards prescribed by the governing
27 board, the employing authority shall notify the employee in writing
28 of that fact and describe the unsatisfactory performance. The
29 employing authority shall thereafter confer with the employee
30 making specific recommendations as to areas of improvement in
31 the employee's performance and endeavor to assist the employee
32 in his or her performance. If a permanent certificated employee
33 has received an unsatisfactory evaluation, the employing authority
34 shall annually evaluate the employee until the employee achieves
35 a positive evaluation or is separated from the district.

36 (c) An evaluation performed pursuant to this article that contains
37 an unsatisfactory rating of an employee's performance in the area
38 of teaching methods or instruction may include the requirement
39 that the certificated employee shall, as determined necessary by
40 the employing authority, participate in a program designed to

1 improve appropriate areas of the employee's performance and to
2 further pupil achievement and the instructional objectives of the
3 employing authority. If a district participates in the Peer Assistance
4 and Review Program for Teachers established pursuant to Article
5 4.5 (commencing with Section 44500), a certificated employee
6 who receives an unsatisfactory rating on an evaluation performed
7 pursuant to this section shall participate in the Peer Assistance and
8 Review Program for Teachers.

9 (d) Hourly and temporary hourly certificated employees, other
10 than those employed in adult education classes who are excluded
11 by the provisions of Section 44660, and substitute teachers may
12 be excluded from the provisions of this section at the discretion
13 of the governing board.

14 (e) This section shall become operative on July 1 of the first
15 fiscal year following the fiscal year in which the deficit factor set
16 forth in Section 42238.146 is reduced to zero.

17 SEC. 11. If the Commission on State Mandates determines
18 that this act contains costs mandated by the state, reimbursement
19 to local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.