

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 2088 (McCarty) – As Amended March 18, 2024

SUBJECT: K–14 classified employees: part-time or full-time vacancies: public postings.

SUMMARY: Establishes a statutory right of first refusal to current regular nonprobationary classified employees (CRNCEs) of school and California Community College districts (CCD) relating to part-time and full-time vacant positions, and requires educational employers to adhere to certain prescribed requirements. Specifically, **this bill:**

- 1) Requires the governing boards of school and CCD, respectively, including joint powers authorities (JPAs) formed by them, to offer with priority, vacant part- and full-time positions to CRNCEs who meet the minimum job qualifications of the position at the time of application.
- 2) Requires CRNCEs to apply for the position within 10 business days of the required employer notices to qualify for the right of first refusal, and that the employer is not to offer the position to any applicant until the 10-day period has expired, but has the discretion to award the position, as provided.
- 3) Requires education employers to adhere to the following requirements:
 - a) Provide to all of its classified employees and their exclusive representatives notice of, and instructions to apply for, any new classified position at least 10 business days before the general public is authorized to apply for the position. However, if no qualified internal candidate applies for or accepts the new position after the notice and within that timeframe, the employer is authorized to offer the new position to an external applicant;
 - b) Grant the new position, as a right of first refusal, to the CRNCEs, as prescribed. However, if there is more than one applicant for the same position, the right of first refusal must be granted to a qualified internal applicant who is selected according to a collectively bargained selection method, and if no such method has been agreed to, the priority among multiple applicants must be determined by a prescribed process;
 - c) Not select in any case, except as provided, a person for an open position who is not currently employed by the employer if there is at least one CRNCE who, at the time of application, is qualified for the position and has applied for and would accept the position; and,
 - d) Authorize a CRNCE who accepts the new assignment to either add the hours of that assignment to their current assignment, if feasible, or replace the current assignment with the new assignment if the new assignment has more hours than the current assignment. If

the hours of the current and new assignments overlap, the employer must reasonably modify the assignment schedules to allow the employee to work both. However, this must not be construed to require the employer to grant additional hours in a manner that would qualify as overtime pay.

- 4) Requires the employer to accept a current part-time employee's years of service with that employer, regardless of the capacity the years of service were earned, when the part-time employee applies for an additional part-time assignment that requires certain years of service.
- 5) Requires classified employees who work part-time assignments that equal the number of full-time assignment hours for the same employer to receive the same benefits as full-time employees.
- 6) Prohibits retaliation against a classified employee for refusing or accepting a vacancy.
- 7) Expressly prohibits the offer of a vacancy to applicants if the total of the regular hours of two positions would require overtime pay or violate the federal Fair Labor Standards Act of 1938, or any other state or federal law.
- 8) Defines "education employer" to mean a CCD or JPA comprising CCD.
- 9) Establishes that the right of first refusal does not apply to a person who:
 - a) Is in the process of completing a written improvement plan;
 - b) Was previously demoted involuntarily from the same position as the vacancy;
 - c) Has been suspended;
 - d) Is the subject of a pending disciplinary action for suspension or dismissal; and,
 - e) Is a confidential or managerial employee, as defined, nor to vacancies for confidential or management positions.
- 10) Expressly provides that these provisions do not supersede certain rights under existing law, as provided.
- 11) Establishes that to the extent these provisions are in conflict with a valid collective bargaining agreement (CBA) that is in effect as of January 1, 2025, these provisions must not apply to the employer until the expiration or renewal of that agreement, and these provisions may be waived or modified by a CBA provided that the waiver or modification is explicitly stated in the CBA and directly references this statute.

EXISTING LAW:

- 1) Establishes the California Community Colleges (CCC), a postsecondary education system in this state, under the administration of the Board of Governors and specifies that the CCC consist of CCDs.

Establishes the mission and function of the CCC, which, in part is to: 1) offer academic and vocational instruction at the lower division level for both younger and older students, including those persons returning to school; 2) authorizes the CCC to grant the associate in arts and the associate in science degrees; 3) requires the CCC to offer English as a Second Language instruction, adult noncredit instruction, and support services which help students succeed at the postsecondary level; and, 4) advance California's economic growth and global competitiveness through education, training, and services that contribute to continuous work force improvement (Education Code (EC) Sections 66010.4 and 70900).

- 2) Establishes the classified service in school districts and CCDs, as specified, and except as otherwise provided (EC Sections 45100 et seq., and 88000 et seq.).
- 3) Defines, among other terms, the following:
 - a) "Classification" to mean that each position in the classified service must have a designated title; a regular minimum number of assigned hours per days, days per week, and months per year; a specific statement of the duties required to be performed by the employees in the position, and regular monthly salary ranges for the position;
 - b) "Permanent" as used in the phrase "permanent employee" to include tenure in the classification in which the employee passed the required probationary period, and all of the incidents of that classification; and,
 - c) "Regular," as used in the phrase "regular classified employee," or any similar phrase, refers to a classified employee who has probationary or permanent status (EC Sections 45101 and 88001).
- 4) Establishes the Classified Community College Employee Summer Assistance Program effective June 30, 2022. The program provides up to a dollar-for-dollar match on amounts withheld from a participating CCD's classified employees' monthly pay starting the 2023-2024 academic school year. The classified employees' pay withheld, and the state match funds will be paid by districts to the district's eligible classified employees in the summer recess period (June, July, and August when regular classes are not held) following the 2023-2024 academic year. Classified employees can elect to have up to 10% of their monthly pay withheld during the academic year (EC Section 88280).

FISCAL EFFECT: Unknown. This measure is keyed non-fiscal by the Office of Legislative Counsel.

COMMENTS: *Double referral.* This measure was heard in the Assembly Committee on Public Employment and Retirement (P. E. & R.), where it passed with a 5-2 vote on April 3, 2024. Issues germane to the P. E. & R. Committee's jurisdiction are referenced in that Committee's analysis.

Need for the measure. According to the author, “California’s education workforce is in crisis. Districts across the state have countless unfilled positions while jobs are split and districts cannot attract enough applicants willing to work part-time without benefits. The crisis has also led to a revolving door of temporary and substitute workers, creating constant instability at school sites. Not surprisingly student learning and morale has been negatively impacted.”

In March of 2022, the National Center for Education Statistics (NCES) released survey findings, titled, *U.S. Schools Report Increased Teacher Vacancies Due to COVID-19 Pandemic*. The NCES found that nearly 50% of public schools nationwide are experiencing a worker crisis. This crisis is not limited to teachers, but also includes classified employees such as school bus drivers, paraeducators and custodians. As of January 2022, 49% of public schools reported having at least one non-teaching staff vacancy. Further, of the schools reporting at least one vacancy, custodial staff was identified as the staff position with the most vacancies, with 28% of schools-reporting this vacancy.

Transportation staff and nutrition staff positions were each reported as vacant by 14% of schools. For schools who reported having either a teaching or staff vacancy, over 50% of vacancies were due to resignation. Additionally, to cover staffing vacancies, over half of the schools reported the increased need to use school staff outside of their intended duties. Lastly, 61% of schools that reported having at least one vacancy specifically identified the COVID-19 pandemic as a cause of increased teaching and non-teaching staff vacancies.

Classified employees. Traditionally, classified employees are staff at schools, school districts, County Offices of Education or CCCs and CCDs who are in a position not requiring certification. Classified staff include paraprofessionals, office and technical support staff, as well as, custodians, bus drivers, and business managers. In some instances, classified employees also may serve as paraeducators where students may require personalized educational support while the paraeducator is under the tutelage of a certificated employee (i.e., teacher).

The author contends that, “most classified employees are considered to be members of vulnerable communities – many of them low-income and racial and ethnic minorities. The majority of classified employees work part-time, and over half of CSEA [California School Employees Association] members earn less than \$30,000 per year. They are not provided enough hours to make ends meet and do not qualify for benefits like health insurance.”

Additionally, the author states that, “classified employees are the backbone of our TK-14 schools and community colleges, and many are leaving public education due to a lack of support, low pay, and no benefits. AB 2088 will be monumental in helping classified employees sustain themselves and their families. It will be directly uplifting vulnerable communities, as it will ensure they receive better pay and benefits.”

Committee comments. According to the Assembly Committee on Education, “this measure appears to require that a school hire an existing part-time employee instead of a more qualified external candidate. Schools and students could benefit from further discretion in the hiring process, particularly for jobs that require interaction with students.”

For example, it appears that the bill will require a school to hire an existing employee that works in a warehouse for a job as a classroom aide (paraprofessional), even if the person has never worked with children.

Moving forward, the author may wish to further preserve a school's discretion to hire the best candidate, especially when it pertains to jobs that involve interaction with pupils.

Additionally, as drafted, this measure stipulates that the education employer must provide all of its classified employees and their exclusive representatives notice of, and instructions for applying for, any new classified position at least 10 business days before the general public is authorized to apply for the position. The measure also stipulates that in order to qualify for the right of first refusal to that position, an employee must apply for the position within 10 business days of the notice and that the education employer cannot offer the position to any applicant until that 10-day period has expired, and may only award the position in accordance with the requirements, as specified. If no qualified, internal candidate applies for or accepts the new position within at least 10 business days after the education employer provides notice, only then may the education employer offer the new position to an external applicant.

Some stakeholders have expressed concerns with the above; they are not certain of when the posting of the job offer can commence for external candidates. How does the employer offer the job to an external candidate before the position has been posted?

Moving forward, the author may wish to continue to work with all appropriate stakeholder groups in order to provide clarity.

Arguments in support. According to the California Federation of Teachers (CFT), sponsors of this measure, “this bill would require all public local education agencies, county offices of education, community colleges, and joint powers authorities to offer any new part- or full-time classified assignments to existing classified employees who are qualified and can reasonably perform the assignment.”

CFT contends that, “AB 2088 is significantly different from AB 1699 (McCarty, 2023), similar legislation that was vetoed last year. [AB] 2088 specifies that an employee must be qualified at the time of their application, creates a new process for selecting between two or more qualified candidates that uses the selection criteria determined through collective bargaining, and clarifies that LEAs and unions can negotiate alternative agreements to the process specified in the bill, rather than superseding collective bargaining. We believe these amendments address the primary concerns raised last year and over the interim by the opposition while protecting the critically important intent of the bill.”

Lastly, CFT states that, “not only will this bill help classified employees make ends meet, but it will also ensure that more employees have access to key benefits. It will also help school districts and community colleges address the education workforce crisis, given clear new direction to fill open positions quickly and efficiently with existing staff. Fully staffed schools will also create a positive learning environment for our students and help point our education system towards stability and success.”

Arguments in opposition. According to the Association of California Community College Administrators (ACCCA), “AB 2088 would require K-14 employers to offer vacancies for part- or full-time positions to, as a right of first refusal for ten businesses days, current regular non-probationary classified employees who meet the minimum job qualifications of the position at the time of application.”

Further, ACCCA states that, “ACCCA holds steadfast to the principle that local control is fundamental in establishing and operating sound programs for students and creating an infrastructure that supports all community college employees. As currently written, AB 2088 would encroach on the local autonomy of CCDs by mandating district hiring processes and protocols, which is an issue that should be handled in conjunction with our labor partners during the collective bargaining process.”

Lastly, ACCCA contends that, “our CCDs take great pride in the diversity of the workforce at each of our colleges and work hard to hire staff that is reflective of the students that we serve. AB 2088 would inhibit our ability to tap into our local communities by mandating current employees have the first right of refusal for any new position. In order to ensure that our staff remains reflective of the students we serve, we need to have the flexibility to hire from within and outside of our districts.”

Prior legislation. AB 1699 (McCarty), of 2023, which was vetoed by the Governor, is similar to this measure. The Governor’s veto message stated the following:

“This bill provides current non-probationary classified TK-12 and community college classified staff the right of first refusal for certain new classified positions at their education employer. The bill requires an educational employer to provide its classified employees and their union at least 10 business days' notice of a job vacancy before the general public is authorized to apply for the position. This bill only authorizes the employer to offer the new position to an external applicant if no qualified, internal candidate applies for or accepts the new position within the employer notice period.

While I support the author's goal of seeking to provide opportunities for current classified staff to apply for other open positions, this bill may have unintended consequences that are not in the best interest of students. Educational employers and classified staff already have the ability to bargain this issue, and many already have agreements that meet the goals of this bill. Unfortunately, this bill also prohibits future bargaining agreements from implementing their own locally determined process.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers AFL-CIO (Sponsor)
California Labor Federation, AFL-CIO
California School Employees Association (Sponsor)
California Teachers Association
California Teamsters Public Affairs Council
Los Angeles County Superintendent of Schools, Dr. Debra Duardo

Opposition

Association of California Community College Administrators
California Association of School Business Officials (CASBO)
Chabot Las Positas Community College District
Citrus College

Community College League of California
Miracosta Community College District
Mt. San Antonio College
North Orange County Community College District
Palo Verde Community College District
Peralta Community College District
San José-Evergreen Community College District
Shasta College
Sierra Community College District
South Orange County Community College District
Yosemite Community College District

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