

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 289 (Calderon) – As Amended March 4, 2021

[Note: This bill was doubled referred to the Assembly Public Employment and Retirement Committee and has been heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Classified school employees: merit system: adoption and termination.

SUMMARY: Makes changes to existing law relating to the adoption and termination of a merit system election for a school or community college district. Specifically, **this bill:**

- 1) Requires the three- or five-person tabulation committee, as appointed by the governing board of a school or community college district, to include at least one classified employee as a member designated by the largest exclusive representation of classified employees within the school or community college district.
- 2) Prohibits representatives of a school or community college district from making any marks on the envelope or ballot of any employee, except that the tabulation committee may adopt a system of uniformly stamping in a consistent manner and in the same location on all ballots received, counted, or both, to help ensure an accurate count.
- 3) Requires that if a school or community college district communicates with classified employees in opposition to adopting the merit system, the school or community college district must provide at least equal time to any exclusive representative of classified employees within the school or community college district to communicate in favor of the system.
- 4) Specifies that the provisions of this measure must not be construed to limit the rights of an exclusive representative under the Educational Employer-Employee Relations Act (EERA) for access to communicate its position on adopting the merit system.
- 5) Establishes that all election procedures not provided for hereunder, must be within the scope of representation of an exclusive representative, as specified, including the rules for campaigning, the election date, time, place, translation of the ballot, electioneering near the polls, and balloting methods.
- 6) Establishes that the provisions of this measure must be deemed to establish minimum working conditions for the purposes of the EERA relating to certain specified legal rights under existing law, and that certain provisions for these purposes do not constitute a change in, but is declaratory of, existing law.
- 7) Makes technical and clarifying changes to existing law.

EXISTING LAW:

- 1) Authorizes both the adoption and termination of a merit system in a school or community college district by a majority vote of its classified employees, or by a majority vote of the

voting electors of the district. Specifying requirements, including, but not limited to, the following:

- a) Requires, upon the filing of a petition relating to adoption or termination of the merit system for classified employees of a school or community college district, the governing board of the school or community college district to perform specified activities in response, including, in part, devising an identification system to ensure against fraud in the balloting process, and forming a tabulation committee;
 - b) Requires the governing board of a school or community college district to appoint a three- or five-person tabulating committee which must include a member of the governing board, and that if a simple majority votes in favor of adopting the merit system, that system must become applicable in the school or community college district; and,
 - c) Requires the tabulating committee to certify the results of the election to the governing board of the school or community college district at the next regular or special meeting of the board following the date the committee completes tabulating the votes; however, said committee completes the tabulation on the same day that the governing board of the school or community college district meets in regular or special session, the committee must certify the results of the election to the board at that meeting (Education Code (EC) Sections 45220, et seq. and 88050, et seq.).
- 2) Provides for the appointment process of a personnel commission should a school or community college district adopt a merit system election (EC Sections 45240, et seq. and 88060, et seq.).
 - 3) Provides, under the EERA, public school and community college employees the right to form, join, and participate in the activities of employee organizations of their choosing for the purpose of representation on all matters of employer-employee relations. Provides that employee organizations have the right to represent their members in their employment relations with public school employers. Provides that the scope of representation is limited to matters relating to wages, hours of employment, and other terms and conditions of employment (Government Code Section 3540, et seq.).

FISCAL EFFECT: Unknown

COMMENTS: *Merit system.* The Merit System (also known as the civil service system) is a set of laws, rules and procedures similar to the "civil service system" at the Federal and State level and is the method by which classified (non-academic) employees are governed. The Merit System guides the selection and retention of classified employees on the basis of merit, fitness, and the principle of "like pay for like work."

Personnel commission. The Personnel Commission, similar in nature to the California State Personnel Board, was designed to eliminate patronage as basis for selection of government employees. The Personnel Commission was introduced into the school and community college districts in 1935 through Assembly Bill 999 (the "Merit System Act").

The Personnel Commission acts as an independent body within a school or community college district that is a merit system district. The Personnel Commission is charged with ensuring fair and objective treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, sexual orientation, religious creed and with proper regard for their privacy and constitutional rights as citizens.

The Personnel Commission is typically composed of three commissioners (although some are composed of five commissioners) appointed for three-year staggered terms. One commissioner is appointed by the governing board, another by the classified employees of the school or community college district, and the third commissioner is appointed by the first two members. Personnel Commissioners must be known adherents of the principles of merit in employment, registered voters, and reside within the boundaries of the respective district.

In partnership with the trustees of the governing board, the Personnel Commission selects and appoints the Director of the Employment Services/Personnel Commission who, in turn, is responsible for carrying out the day-to-day functions related to maintaining a merit system for the classified employees of the school or community college district.

Committee Staff understands that approximately 100 school districts and/or county offices of education and five community college districts comprise merit system districts.

Purpose of the measure. According to the author, “Assembly Bill 289 seeks to ensure fairness in school district merit system elections. Existing laws have deficiencies that have been exploited by school districts opposed to merit systems. Currently, a school merit based system can be adopted or removed by a majority vote of classified employees, such as paraeducators, transportation specialists, or custodians. It is imperative the laws regarding merit system elections are equal for both school districts and classified employees. This bill accomplishes this by adding important checks and balances to the election process.”

This measure prohibits any markings on ballots and ballot envelopes in merit system elections. Additionally, this measure requires the inclusion of a classified employee on the tabulation committee. Further, the measure clarifies that if a school or community college board communicates a position against the adoption of a merit system, or in favor of the removal of a merit system, the respective governing board must provide equal time and access for classified employees to communicate their response. This measure also specifies that all other election procedures in merit system elections must be within the scope of local bargaining agreements.

Arguments in support. According to the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, “In order to protect classified employees’ right to implement a merit system, AB 289 enhances the integrity and sovereignty of the mechanisms used to voice that decision.”

Additionally, AFSCME contends that, “AB 289 also ensures fair, bilateral communication with employees leading up to a vote. Since the district inherently loses some influence under a more objective system, many districts have demonstrated a bias against merit systems. If those objecting to implementation have the opportunity to communicate their arguments, fairness would require that proponents have that same opportunity.”

Lastly, AFSCME states that, “By maintaining guidelines for fair voting, AB 289 ensures that classified employees are able to decide if a merit system will best serve their district. AFSCME believes that our workforce should be guided by objectivity and fairness, providing opportunities for all workers.”

Committee comments. This measure not only effects community college districts who are merit system districts, but also school districts and/or county offices of education who are merit system districts. This measure was not heard by the Assembly Committee on Education as it relates to matters within its jurisdiction.

REGISTERED SUPPORT / OPPOSITION:**Support**

American Federation of State, County and Municipal Employees, AFL-CIO
California Federation of Teachers, AFT, AFL-CIO
California Labor Federation, AFL-CIO
California School Employees Association, AFL-CIO (Sponsor)
California Teachers Association
Santa Paula Unified School District Personnel Commission

Opposition

None on file.

Analysis Prepared by: Jeanice Warden / HIGHER ED. / (916) 319-3960