

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 1699 (McCarty) – As Introduced February 17, 2023

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

SUMMARY: Requires vacancies for part-time or full-time classified service positions of an education employer to be open only to current regular and hourly employees before the vacancy may be publicly posted for the general public to apply. Specifically, **this bill:**

- 1) Establishes that if an employee currently works in the same classification, the employee must have automatic eligibility to add the new assignment to their current assignment.
- 2) Provides that if there is not an employee who works within the same classification who elects to take the additional assignment, the education employer must offer the position to other classified employees in which the position would increase their hours as long as the employee can reasonably perform the new assignment with reasonable accommodation.
- 3) Establishes that an interested part-time employee who does not meet the qualifications for a vacancy must be offered reasonable paid on-the-job training for that vacancy.
- 4) Stipulates that if no current employees want to accept the new assignment, meet the minimum requirements, or will accept reasonable paid on-the-job training for the vacancy, only then may the job be posted for the general public to apply.
- 5) Requires an education employer to accept a current part-time employee's number of years of service with the employer regardless of the capacity in which the service was earned when that part-time employee applies for an additional part-time assignment that requires a certain number of years of service.
- 6) Establishes that classified employees who work part-time assignments that equal the number of hours for a full-time assignment for the same educational employer must receive the same benefits as employees who work a full-time assignment.
- 7) Prohibits retaliation against a classified employee for either refusing a vacancy or accepting a vacancy.
- 8) Prohibits an education employer from disqualifying an applicant who may need reasonable scheduling accommodations to complete more than one assignment.
- 9) Provides that applicants must not be offered a vacancy if the total of two positions would violate the federal Fair Labor Standards Act (FLSA), as specified, or any other state or federal law.
- 10) Establishes that these provisions, as provided, apply to county offices of education (COE); school districts; California Community Colleges (CCC) districts (CCDs), and, joint powers authorities (JPA) comprising COEs, school districts or CCDs, as applicable, regardless of

whether the COE, school district, CCDs, or JPA comprising COEs, school districts, or CCDs, as applicable, has adopted the merit system.

- 11) Defines “education employer” to mean a COE, school district, CCD, or JPA comprised of COEs, school districts, or CCDs.

EXISTING LAW:

- 1) Establishes the 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 community college district’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 12, 2023. 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 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.

The author contends that, “AB 1699 will be monumental in helping classified employees sustain themselves and their families. It will directly uplift vulnerable communities, as it will ensure they receive better pay and benefits.”

Classified employees. Traditionally, classified employees are staff at schools, school districts, COE, or CCCs 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 states 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.”

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 preserving a school's discretion to hire the best candidate, especially when it pertains to jobs that involve interaction with students.

Further, as currently drafted, this measure stipulates that if no current employees want to accept the new assignment, meet the minimum requirements, or will accept reasonable paid on-the-job training for the vacancy, only then may the job be posted for the general public to apply.

How long will the process take? Should there be a specified time frame for current employees to accept the job so that it does not potentially take months to backfill vacant positions, or before the job can be posted for the general public to apply?

Moving forward, the author may wish to work with the appropriate stakeholders to determine if a specified time for job acceptance and/or job posting should be included in this measure.

Arguments in support. The co-sponsors of this measure, California Federation of Teachers, CSEA, and the Service Employees International Union (California), state that, "this bill would require all public local education agencies, county offices of education, community colleges, and joint power authorities to offer any new part- or full-time classified assignments to existing classified employees who are qualified and can reasonably perform the assignment. This bill would also prohibit education employers from disqualifying candidates who may need reasonable scheduling accommodations to complete more than one assignment."

The co-sponsors contend that, "not only will this bill help classified employees make ends meet, but it will also ensure that more employees have access to health insurance and retirement benefits. It will also help school districts and community colleges address the education workforce crisis because they will be able to fill open positions quickly and efficiently with existing staff. Fully staffed schools will create a positive learning environment for our students."

Further, the co-sponsors state that, "this bill would fill vacancies faster because existing classified employees have already gone through the hiring process and background checks. This will help students and other school employees. Some districts already include the right to first refusal in their contracts."

Arguments in opposition. According to a coalition of opponents, including, in part, the Association of California School Administrators, Kern County Superintendent of Schools, and California Association of School Business Officials, "we support LEAs having every suitable candidate available to fill positions. LEA efforts are in action so students do not feel the brunt of staffing shortages. LEAs look to provide existing employees with opportunities for extra hours or overtime as appropriate to support vacancies during the recruitment process. Another hiring factor that LEAs have shared is that their locally bargained agreements prevent them from starting recruitment for the next school year until just a few months before it begins."

The coalition goes on to state that, “unfortunately, AB 1699 would further exacerbate the staffing shortages LEAs face in all regions of the state. Not only would the implementation of AB 1699 be costly and challenging due to the vague terms and protocols set forth in the measure, it would significantly delay how and when LEAs could hire needed staff. Further compounding this issue is that if the classified staff chooses to stop their on-the-job training they would still be entitled to return to their previous position, which presents its own personnel challenges.”

Further, the opponents state, that, “specifically, AB 1699 is unclear on the time period a current employee is afforded to accept or reject a position; what methods are considered adequate notice to existing employees; and how LEAs may address the scenario of an employee not being well-suited for a position even after on-the-job-training is complete. The term ‘reasonable’ is used throughout the bill. While this may be seen as creating flexibility AB 1699 is, as written, ripe for dispute. Implementation would be inequitable across different districts and regions.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers (Co-Sponsor)
California School Employees Association (Co-Sponsor)
Service Employees International Union, California State Council (Co-Sponsor)
American Federation of State, County, and Municipal Employees (AFSCME)
California Federation of Teachers AFL-CIO
California Teachers Association

Opposition

Association of California Community College Administrators
Association of California School Administrators
California Association of School Business Officials (CASBO)
California County Superintendents
California School Boards Association
Kern County Superintendent of Schools
Riverside County Superintendent of Schools
Schools Excess Liability Fund (SELF)
Small School Districts Association

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