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November 24, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative pertaining to certain teacher employment laws (A.G. File No. 15-0078, Amendment No. 1).

Background

State laws govern various employment processes for teachers hired by public local educational agencies (LEAs). Some of the state's major teacher employment laws are highlighted below. The state also has rules for determining how much total funding goes to LEAs. These rules are described in the final paragraph of this section.

Establishes 18-Month Probationary Period. State law requires LEAs to notify teachers of whether they are to be granted permanent status by March 15 of their second year of employment (with permanent status then granted at the beginning of their third year of employment). Evaluations serve as the main factor in determining whether to retain teachers. State law requires LEAs to evaluate probationary teachers every year. Upon attaining permanent status, teachers are to be evaluated every other year for the next eight years of employment, with evaluations every five years thereafter. In contrast to probationary teachers, permanent teachers receive certain job protections, including the right to a hearing prior to being dismissed.

Requires Districts to Make Certain Employment Decisions Based on Seniority. State law specifies that LEAs may undertake layoffs only due to lack of funds or appropriate work in a certain subject area. State law requires school districts to conduct layoffs in reverse-seniority order, with the newest teachers laid off first. Seniority also largely directs reemployment decisions, such that laid-off teachers with more seniority are rehired first.

Requires Districts to Collectively Bargain With Teachers' Unions. State law specifies that school districts must collectively bargain with union representatives on employment issues. Teacher employment issues that may be collectively bargained include salary, health benefits, evaluation procedures, hours of employment, start date of work year, process for transferring and reassigning teachers, class size, safety conditions, and teacher discipline procedures. In these negotiations, a District Superintendent (or his or her designees) typically represents the local school governing board. The union selects the teachers that will represent it.

State Constitution Establishes Minimum Funding Requirement for LEAs. State budgeting for LEAs is governed by Proposition 98, passed by voters in 1988. The measure establishes a minimum funding requirement, commonly referred to as the minimum guarantee. Though the calculation of the minimum guarantee is formula-driven, a majority of the Legislature can choose in any given year to provide more than the minimum guarantee. With a supermajority, the Legislature can vote to suspend the formulas and provide less funding than they require.

Proposal

This measure would change state law in the following ways:

- ***Lengthens Probationary Period to Five Years.*** The measure requires teachers to complete five consecutive years of satisfactory teaching performance, as determined by the school board, prior to being granted permanent status.
- ***Limits the Use of Seniority in Certain Employment Decisions.*** The measure specifies that seniority shall not be "the sole or primary consideration" in the determination of teacher layoffs, reemployment decisions, transfers, and reassignments.
- ***Ends Collective Bargaining for Specified Labor Decisions.*** This measure ends collective bargaining for the following areas affecting certificated staff—layoffs and reemployment, transfers, reassignments, instructional hours during a normal school day, and the start date of instruction for the school year. The measure gives the local school board full discretion in these matters. The board, however, must enact its policy decisions in these areas by resolution in an open public meeting.

Fiscal Effect

This measure would have various fiscal effects, as described below.

Increase in Employee Evaluation Costs. This measure would require school districts to conduct two additional evaluations within a teachers' first five years of employment. Whereas teachers currently are evaluated in years one, two, and four of their employment, this measure would require them to be evaluated in each of their first five years. The cost of a teacher evaluation tends to range from $500 to $1,200, with an average cost of roughly $600. Annual evaluation costs statewide likely would increase in the low tens of millions of dollars. If existing principals do not have the time or capacity to conduct the additional evaluations, LEAs would have to hire additional administrators to undertake this work.

Increase in Administrative Costs for Developing and Implementing New Employment Policies. Seniority is an objective and relatively low-cost method of determining layoff, reemployment, transfer, and reassignment decisions. Without the use of seniority as the primary determinant in these decisions, districts likely will have to adopt a subjective, more comprehensive, and time-intensive process for making these determinations. Developing the new policies would be a one-time cost, likely in the low tens of millions of dollars. Districts also could incur higher associated ongoing implementation costs, perhaps in the low millions of dollars annually.

Other Potential Fiscal Effects of Measure. Whereas the measure very likely would result in higher costs for LEAs to conduct more frequent teacher evaluations as well as develop and implement more multifaceted employment policies, the measure affects school spending in the following ways:

- ***Potential Increase in Teacher Compensation Costs.*** As the measure reduces job security for newer teachers, some school districts might find that they need to raise beginning salaries to attract teachers.
- ***Potential Change in Teacher Turnover.*** As the measure allows districts to dismiss third, fourth, and fifth-year teachers more easily, some districts might experience greater teacher turnover, with correspondingly higher recruitment, hiring, and training costs. (These higher costs could be partially offset by compensation-related savings due to replacing higher-salaried teachers with lower-salaried ones.) Alternatively, some districts might experience less teacher turnover as a result of having a longer period to assess and support junior teachers, with the opposite fiscal effect.
- ***Potential Reduction in Bargaining Costs.*** Fewer items to negotiate between unions and LEAs likely would reduce the time needed to negotiate. In instances when an impasse in negotiations occurs under current law, this measure also might reduce the likelihood of Public Employment Relations Board hearings, which can be time-consuming and costly.
- ***Potential Minor Net Increase in Layoff and Dismissal Proceedings.*** The Office of Administrative Hearings might experience some minor costs due to lengthier layoff hearings resulting from more multifaceted layoff policies but achieve some minor savings due to fewer dismissal hearings for third, fourth, and fifth-year teachers. Similarly, schools districts might experience higher layoff-related costs but lower dismissal-related costs.

The net impact of all these other effects is unknown but could be substantial.

Measure Does Not Change the Minimum Guarantee. The measure makes no change to the constitutional formulas the state uses to establish the minimum funding requirement for LEAs. As a result, any costs noted above likely would be accommodated within the minimum guarantee. This higher spending likely would come at the expense of other school spending priorities. Though less likely, the state could decide to accommodate these higher costs by providing more than the minimum guarantee requires in any given year.

Summary of Fiscal Effects

We summarize the major fiscal effects of this measure below.

- Local educational agencies (LEAs) likely would experience net higher costs in the low tens of millions of dollars statewide due to conducting more frequent teacher evaluations and having to modify their employment policies.
- LEAs might incur various other fiscal effects relating to teacher compensation, teacher turnover, collective bargaining, and employment hearings, but the net impact of all these factors is difficult to determine.

Sincerely,

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Mac Taylor
Legislative Analyst

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Michael Cohen
Director of Finance