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**SUBSTITUTE SENATE BILL 5896**

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**State of Washington                      62nd Legislature                      2012 Regular Session**

**By Senate Ways & Means (originally sponsored by Senator Murray)**

READ FIRST TIME 02/07/12.

1            AN ACT Relating to implementing and using the results of educator  
2 evaluation systems; amending RCW 28A.405.100, 28A.405.140, and  
3 28A.405.220; adding a new section to chapter 28A.405 RCW; creating a  
4 new section; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.**    The legislature finds that the single  
7 largest school-based factor affecting student academic success is the  
8 quality of instruction. Establishing policies that support and advance  
9 educator performance based on objective and rigorous evaluations will  
10 help assure that every student has the opportunity for academic  
11 success.

12            **Sec. 2.**    RCW 28A.405.100 and 2010 c 235 s 202 are each amended to  
13 read as follows:

14            (1)(a) Except as provided in subsection (2) of this section, the  
15 superintendent of public instruction shall establish and may amend from  
16 time to time minimum criteria for the evaluation of the professional  
17 performance capabilities and development of certificated classroom  
18 teachers and certificated support personnel. For classroom teachers

1 the criteria shall be developed in the following categories:  
2 Instructional skill; classroom management, professional preparation and  
3 scholarship; effort toward improvement when needed; the handling of  
4 student discipline and attendant problems; and interest in teaching  
5 pupils and knowledge of subject matter.

6 (b) Every board of directors shall, in accordance with procedure  
7 provided in RCW 41.59.010 through 41.59.170, 41.59.910, and 41.59.920,  
8 establish evaluative criteria and procedures for all certificated  
9 classroom teachers and certificated support personnel. The evaluative  
10 criteria must contain as a minimum the criteria established by the  
11 superintendent of public instruction pursuant to this section and must  
12 be prepared within six months following adoption of the superintendent  
13 of public instruction's minimum criteria. The district must certify to  
14 the superintendent of public instruction that evaluative criteria have  
15 been so prepared by the district.

16 (2)(a) Pursuant to the implementation schedule established in  
17 subsection (7)(b) of this section, every board of directors shall, in  
18 accordance with procedures provided in RCW 41.59.010 through 41.59.170,  
19 41.59.910, and 41.59.920, establish revised evaluative criteria and a  
20 four-level rating system for all certificated classroom teachers.

21 (b) The minimum criteria shall include: (i) Centering instruction  
22 on high expectations for student achievement; (ii) demonstrating  
23 effective teaching practices; (iii) recognizing individual student  
24 learning needs and developing strategies to address those needs; (iv)  
25 providing clear and intentional focus on subject matter content and  
26 curriculum; (v) fostering and managing a safe, positive learning  
27 environment; (vi) using multiple student data elements to modify  
28 instruction and improve student learning; (vii) communicating and  
29 collaborating with parents and ~~((the))~~ the school community; and  
30 (viii) exhibiting collaborative and collegial practices focused on  
31 improving instructional practice and student learning.

32 (c) The four-level rating system used to evaluate the certificated  
33 classroom teacher must describe performance along a continuum that  
34 indicates the extent to which the criteria have been met or exceeded.  
35 ~~((When))~~ Student growth data ~~((, if available and))~~ that is relevant to  
36 the teacher and subject matter ~~((, is referenced))~~ must be a significant  
37 factor in the evaluation process ~~((it))~~ and must be based on multiple  
38 measures that can include classroom-based, school-based, district-

1 based, and state-based tools. Student input may also be included in  
2 the evaluation process. As used in this subsection, "student growth"  
3 means the change in student achievement between two points in time.

4 (d) The superintendent of public instruction shall establish common  
5 components of the teacher evaluation systems that must be used by  
6 school districts beginning in the 2013-14 school year in order to  
7 assure fairness in the conduct of evaluations and comparability of  
8 evaluation results across the state.

9 (3)(a) Except as provided in subsection (10) of this section, it  
10 shall be the responsibility of a principal or his or her designee to  
11 evaluate all certificated personnel in his or her school. During each  
12 school year all classroom teachers and certificated support personnel  
13 shall be observed for the purposes of evaluation at least twice in the  
14 performance of their assigned duties. Total observation time for each  
15 employee for each school year shall be not less than sixty minutes. An  
16 employee in the third year of provisional status as defined in RCW  
17 28A.405.220 shall be observed at least three times in the performance  
18 of his or her duties and the total observation time for the school year  
19 shall not be less than ninety minutes. Following each observation, or  
20 series of observations, the principal or other evaluator shall promptly  
21 document the results of the observation in writing, and shall provide  
22 the employee with a copy thereof within three days after such report is  
23 prepared. New employees shall be observed at least once for a total  
24 observation time of thirty minutes during the first ninety calendar  
25 days of their employment period.

26 (b) As used in this subsection and subsection (4) of this section,  
27 "employees" means classroom teachers and certificated support  
28 personnel.

29 (4)(a) At any time after October 15th, an employee whose work is  
30 not judged satisfactory based on district evaluation criteria shall be  
31 notified in writing of the specific areas of deficiencies along with a  
32 reasonable program for improvement. During the period of probation,  
33 the employee may not be transferred from the supervision of the  
34 original evaluator. Improvement of performance or probable cause for  
35 nonrenewal must occur and be documented by the original evaluator  
36 before any consideration of a request for transfer or reassignment as  
37 contemplated by either the individual or the school district. A  
38 probationary period of sixty school days shall be established. The

1 establishment of a probationary period does not adversely affect the  
2 contract status of an employee within the meaning of RCW 28A.405.300.  
3 The purpose of the probationary period is to give the employee  
4 opportunity to demonstrate improvements in his or her areas of  
5 deficiency. The establishment of the probationary period and the  
6 giving of the notice to the employee of deficiency shall be by the  
7 school district superintendent and need not be submitted to the board  
8 of directors for approval. During the probationary period the  
9 evaluator shall meet with the employee at least twice monthly to  
10 supervise and make a written evaluation of the progress, if any, made  
11 by the employee. The evaluator may authorize one additional  
12 certificated employee to evaluate the probationer and to aid the  
13 employee in improving his or her areas of deficiency; such additional  
14 certificated employee shall be immune from any civil liability that  
15 might otherwise be incurred or imposed with regard to the good faith  
16 performance of such evaluation. The probationer may be removed from  
17 probation if he or she has demonstrated improvement to the satisfaction  
18 of the principal in those areas specifically detailed in his or her  
19 initial notice of deficiency and subsequently detailed in his or her  
20 improvement program. Lack of necessary improvement during the  
21 established probationary period, as specifically documented in writing  
22 with notification to the probationer and shall constitute grounds for  
23 a finding of probable cause under RCW 28A.405.300 or 28A.405.210.

24 (b) Immediately following the completion of a probationary period  
25 that does not produce performance changes detailed in the initial  
26 notice of deficiencies and improvement program, the employee may be  
27 removed from his or her assignment and placed into an alternative  
28 assignment for the remainder of the school year. This reassignment may  
29 not displace another employee nor may it adversely affect the  
30 probationary employee's compensation or benefits for the remainder of  
31 the employee's contract year. If such reassignment is not possible,  
32 the district may, at its option, place the employee on paid leave for  
33 the balance of the contract term. Effective September 1, 2014, an  
34 employee who received a personnel evaluation identified as  
35 unsatisfactory or received the lowest evaluation rating under the four-  
36 level rating system in the previous year and receives an unsatisfactory  
37 or lowest evaluation rating as a result of not producing performance

1 changes detailed in the initial notice of deficiencies and improvement  
2 program shall immediately be considered a provisional employee in  
3 accordance with RCW 28A.405.220.

4 (5) Every board of directors shall establish evaluative criteria  
5 and procedures for all superintendents, principals, and other  
6 administrators. It shall be the responsibility of the district  
7 superintendent or his or her designee to evaluate all administrators.  
8 Except as provided in subsection (6) of this section, such evaluation  
9 shall be based on the administrative position job description. Such  
10 criteria, when applicable, shall include at least the following  
11 categories: Knowledge of, experience in, and training in recognizing  
12 good professional performance, capabilities and development; school  
13 administration and management; school finance; professional preparation  
14 and scholarship; effort toward improvement when needed; interest in  
15 pupils, employees, patrons and subjects taught in school; leadership;  
16 and ability and performance of evaluation of school personnel.

17 (6)(a) Pursuant to the implementation schedule established by  
18 subsection (7)(b) of this section, every board of directors shall  
19 establish revised evaluative criteria and a four-level rating system  
20 for principals.

21 (b) The minimum criteria shall include: (i) Creating a school  
22 culture that promotes the ongoing improvement of learning and teaching  
23 for students and staff; (ii) demonstrating commitment to closing the  
24 achievement gap; (iii) providing for school safety; (iv) leading the  
25 development, implementation, and evaluation of a data-driven plan for  
26 increasing student achievement, including the use of multiple student  
27 data elements; (v) assisting instructional staff with alignment of  
28 curriculum, instruction, and assessment with state and local district  
29 learning goals; (vi) monitoring, assisting, and evaluating effective  
30 instruction and assessment practices; (vii) managing both staff and  
31 fiscal resources to support student achievement and legal  
32 responsibilities; and (viii) partnering with the school community to  
33 promote student learning.

34 (c) The four-level rating system used to evaluate the principal  
35 must describe performance along a continuum that indicates the extent  
36 to which the criteria have been met or exceeded. ~~((When available,))~~  
37 Student growth data ((that is referenced)) must be a significant factor  
38 in the evaluation process and must be based on multiple measures that

1 can include classroom-based, school-based, district-based, and state-  
2 based tools. Input from building staff may also be included in the  
3 evaluation process. As used in this subsection, "student growth" means  
4 the change in student achievement between two points in time.

5 (d) The superintendent of public instruction shall establish common  
6 components of the principal evaluation systems that must be used by  
7 school districts beginning in the 2013-14 school year in order to  
8 assure fairness in the conduct of evaluations and comparability of  
9 evaluation results across the state.

10 (7)(a) The superintendent of public instruction, in collaboration  
11 with state associations representing teachers, principals,  
12 administrators, and parents, shall create models for implementing the  
13 evaluation system criteria, student growth tools, professional  
14 development programs, and evaluator training for certificated classroom  
15 teachers and principals. Human resources specialists, professional  
16 development experts, and assessment experts must also be consulted.  
17 Due to the diversity of teaching assignments and the many developmental  
18 levels of students, classroom teachers and principals must be  
19 prominently represented in this work. The models must be available for  
20 use in the 2011-12 school year.

21 (b) A new certificated classroom teacher evaluation system that  
22 implements the provisions of subsection (2) of this section and a new  
23 principal evaluation system that implements the provisions of  
24 subsection (6) of this section shall be phased-in beginning with the  
25 2010-11 school year by districts identified in (c) of this subsection  
26 and implemented in all school districts beginning with the 2013-14  
27 school year.

28 (c) A set of school districts shall be selected by the  
29 superintendent of public instruction to participate in a collaborative  
30 process resulting in the development and piloting of new certificated  
31 classroom teacher and principal evaluation systems during the 2010-11  
32 and 2011-12 school years. These school districts must be selected  
33 based on: (i) The agreement of the local associations representing  
34 classroom teachers and principals to collaborate with the district in  
35 this developmental work and (ii) the agreement to participate in the  
36 full range of development and implementation activities, including:  
37 Development of rubrics for the evaluation criteria and ratings in  
38 subsections (2) and (6) of this section; identification of or

1 development of appropriate multiple measures of student growth in  
2 subsections (2) and (6) of this section; development of appropriate  
3 evaluation system forms; participation in professional development for  
4 principals and classroom teachers regarding the content of the new  
5 evaluation system; participation in evaluator training; and  
6 participation in activities to evaluate the effectiveness of the new  
7 systems and support programs. The school districts must submit to the  
8 office of the superintendent of public instruction data that is used in  
9 evaluations and all district-collected student achievement, aptitude,  
10 and growth data regardless of whether the data is used in evaluations.  
11 If the data is not available electronically, the district may submit it  
12 in nonelectronic form. The superintendent of public instruction must  
13 analyze the districts' use of student data in evaluations, including  
14 examining the extent that student data is not used or is underutilized.  
15 The superintendent of public instruction must also consult with  
16 participating districts and stakeholders, recommend appropriate  
17 changes, and address statewide implementation issues. The  
18 superintendent of public instruction shall report evaluation system  
19 implementation status, evaluation data, and recommendations to  
20 appropriate committees of the legislature and governor by July 1, 2011,  
21 and at the conclusion of the development phase by July 1, 2012. In the  
22 July 1, 2011, report, the superintendent shall include recommendations  
23 for whether a single statewide evaluation model should be adopted,  
24 whether modified versions developed by school districts should be  
25 subject to state approval, and what the criteria would be for  
26 determining if a school district's evaluation model meets or exceeds a  
27 statewide model. The report shall also identify challenges posed by  
28 requiring a state approval process.

29 (8) Each certificated classroom teacher and certificated support  
30 personnel shall have the opportunity for confidential conferences with  
31 his or her immediate supervisor on no less than two occasions in each  
32 school year. Such confidential conference shall have as its sole  
33 purpose the aiding of the administrator in his or her assessment of the  
34 employee's professional performance.

35 (9) The failure of any evaluator to evaluate or supervise or cause  
36 the evaluation or supervision of certificated classroom teachers and  
37 certificated support personnel or administrators in accordance with  
38 this section, as now or hereafter amended, when it is his or her

1 specific assigned or delegated responsibility to do so, shall be  
2 sufficient cause for the nonrenewal of any such evaluator's contract  
3 under RCW 28A.405.210, or the discharge of such evaluator under RCW  
4 28A.405.300.

5 (10) After a certificated classroom teacher or certificated support  
6 personnel has four years of satisfactory evaluations under subsection  
7 (1) of this section or has received one of the two top ratings for four  
8 years under subsection (2) of this section, a school district may use  
9 a short form of evaluation, a locally bargained evaluation emphasizing  
10 professional growth, an evaluation under subsection (1) or (2) of this  
11 section, or any combination thereof. The short form of evaluation  
12 shall include either a thirty minute observation during the school year  
13 with a written summary or a final annual written evaluation based on  
14 the criteria in subsection (1) or (2) of this section and based on at  
15 least two observation periods during the school year totaling at least  
16 sixty minutes without a written summary of such observations being  
17 prepared. A locally bargained short-form evaluation emphasizing  
18 professional growth must provide that the professional growth activity  
19 conducted by the certificated classroom teacher be specifically linked  
20 to one or more of the certificated classroom teacher evaluation  
21 criteria. However, the evaluation process set forth in subsection (1)  
22 or (2) of this section shall be followed at least once every three  
23 years unless this time is extended by a local school district under the  
24 bargaining process set forth in chapter 41.59 RCW. The employee or  
25 evaluator may require that the evaluation process set forth in  
26 subsection (1) or (2) of this section be conducted in any given school  
27 year. No evaluation other than the evaluation authorized under  
28 subsection (1) or (2) of this section may be used as a basis for  
29 determining that an employee's work is not satisfactory under  
30 subsection (1) or (2) of this section or as probable cause for the  
31 nonrenewal of an employee's contract under RCW 28A.405.210 unless an  
32 evaluation process developed under chapter 41.59 RCW determines  
33 otherwise.

34 **Sec. 3.** RCW 28A.405.140 and 1993 c 336 s 403 are each amended to  
35 read as follows:

36 (1) After an evaluation conducted pursuant to RCW 28A.405.100, the  
37 principal or the evaluator may require the teacher to take in-service



1 training provided by the district in the area of teaching skills  
2 needing improvement, and may require the teacher to have a mentor for  
3 purposes of achieving such improvement.

4 (2) Each teacher and principal must have an individual professional  
5 growth plan that is informed by the results of the evaluation conducted  
6 pursuant to RCW 28A.405.100 and designed to assist the teacher or  
7 principal in increasing skills and competencies identified in the  
8 evaluation.

9 (3) The office of the superintendent of public instruction and  
10 educational service districts shall act as clearinghouses for  
11 identifying and publicizing professional development opportunities for  
12 teachers and principals to access in meeting their professional growth  
13 plans, including identifying opportunities that are aligned with the  
14 performance evaluation criteria. To the extent funds are available,  
15 the office and the educational service districts may offer professional  
16 development opportunities, including on a fee-for-service basis.

17 NEW SECTION. Sec. 4. A new section is added to chapter 28A.405  
18 RCW to read as follows:

19 (1) School board policies or collective bargaining agreements that  
20 specify procedures and criteria for identifying principals or  
21 certificated classroom teachers within an endorsement area to receive  
22 a notice of nonrenewal of contract due to enrollment decline or loss of  
23 revenue must contain provisions that require consideration of the  
24 results of performance evaluations under RCW 28A.405.100 before other  
25 factors such as seniority may be considered.

26 (2) School board policies or collective bargaining agreements that  
27 specify recall rights for principals or certificated classroom teachers  
28 must recall staff in the reverse order that contracts were nonrenewed  
29 under subsection (1) of this section.

30 (3) School board policies or collective bargaining agreements  
31 regarding school assignment, transfer, and placement decisions for  
32 principals and certificated classroom teachers must contain provisions  
33 that require consideration of the results of performance evaluations  
34 under RCW 28A.405.100 before other factors such as seniority may be  
35 considered and must incorporate analysis by the district of the best  
36 match between the needs of the assignment and the skills of the  
37 principal or teacher. The policies or agreements must provide a

1 process for making school assignment, transfer, and placement decisions  
2 for certificated classroom teachers that includes the mutual agreement  
3 of the superintendent, the principal, and the teacher unless there are  
4 exceptional circumstances.

5 (4) The provisions of this section apply to school board policies  
6 or collective bargaining agreements no later than September 1, 2014.  
7 However, nothing in this section precludes a policy or agreement from  
8 being consistent with this section before September 1, 2014.

9 (5) Nothing in this section may be construed as altering the terms,  
10 conditions, or practices contained in any collective bargaining  
11 agreement or employment contract in effect on the effective date of  
12 this section until the expiration date of the agreement or contract.  
13 All collective bargaining agreements and other contracts entered into,  
14 extended, or amended after the effective date of this section must be  
15 consistent with this section.

16 **Sec. 5.** RCW 28A.405.220 and 2010 c 235 s 203 are each amended to  
17 read as follows:

18 (1)(a) Notwithstanding the provisions of RCW 28A.405.210, every  
19 person employed by a school district in a teaching or other  
20 nonsupervisory certificated position shall be subject to nonrenewal of  
21 employment contract as provided in this section (~~(during the first~~  
22 ~~three years of employment by such district, unless: (a) The employee~~  
23 ~~has previously completed at least two years of certificated employment~~  
24 ~~in another school district in the state of Washington, in which case~~  
25 ~~the employee shall be subject to nonrenewal of employment contract~~  
26 ~~pursuant to this section during the first year of employment with the~~  
27 ~~new district; or (b) the school district superintendent may make a~~  
28 ~~determination to remove an employee from provisional status if the~~  
29 ~~employee has received one of the top two evaluation ratings during the~~  
30 ~~second year of employment by the district.))):~~

31 (i) If the employee is a teacher, until the employee has received  
32 one of the top two evaluation ratings under the four-level rating  
33 system in RCW 28A.405.100 for three years within a five-year period,  
34 excluding years of nonemployment or leaves of absence but including  
35 years of employment in more than one school district;

36 (ii) If the employee is other than a teacher, until the employee

1 has received a satisfactory rating for three years within a five-year  
2 period, excluding years of nonemployment or leaves of absence but  
3 including years of employment in more than one school district;

4 (iii) During the first year of employment with a new district if  
5 the employee has previously achieved nonprovisional status in another  
6 school district in the state of Washington; and

7 (iv) Immediately after receiving a second consecutive annual  
8 personnel evaluation identified as unsatisfactory or with the lowest  
9 evaluation rating under the four-level rating system in RCW  
10 28A.405.100.

11 (b) Employees as defined in this section shall hereinafter be  
12 referred to as "provisional employees."

13 (2) In the event the superintendent of the school district  
14 determines that the employment contract of any provisional employee  
15 should not be renewed by the district for the next ensuing term such  
16 provisional employee shall be notified thereof in writing on or before  
17 May 15th preceding the commencement of such school term, or if the  
18 omnibus appropriations act has not passed the legislature by May 15th,  
19 then notification shall be no later than June 15th, which notification  
20 shall state the reason or reasons for such determination. Such notice  
21 shall be served upon the provisional employee personally, or by  
22 certified or registered mail, or by leaving a copy of the notice at the  
23 place of his or her usual abode with some person of suitable age and  
24 discretion then resident therein. The determination of the  
25 superintendent shall be subject to the evaluation requirements of RCW  
26 28A.405.100.

27 (3) Every such provisional employee so notified, at his or her  
28 request made in writing and filed with the superintendent of the  
29 district within ten days after receiving such notice, shall be given  
30 the opportunity to meet informally with the superintendent for the  
31 purpose of requesting the superintendent to reconsider his or her  
32 decision. Such meeting shall be held no later than ten days following  
33 the receipt of such request, and the provisional employee shall be  
34 given written notice of the date, time and place of meeting at least  
35 three days prior thereto. At such meeting the provisional employee  
36 shall be given the opportunity to refute any facts upon which the  
37 superintendent's determination was based and to make any argument in  
38 support of his or her request for reconsideration.

1 (4) Within ten days following the meeting with the provisional  
2 employee, the superintendent shall either reinstate the provisional  
3 employee or shall submit to the school district board of directors for  
4 consideration at its next regular meeting a written report recommending  
5 that the employment contract of the provisional employee be nonrenewed  
6 and stating the reason or reasons therefor. A copy of such report  
7 shall be delivered to the provisional employee at least three days  
8 prior to the scheduled meeting of the board of directors. In taking  
9 action upon the recommendation of the superintendent, the board of  
10 directors shall consider any written communication which the  
11 provisional employee may file with the secretary of the board at any  
12 time prior to that meeting.

13 (5) The board of directors shall notify the provisional employee in  
14 writing of its final decision within ten days following the meeting at  
15 which the superintendent's recommendation was considered. The decision  
16 of the board of directors to nonrenew the contract of a provisional  
17 employee shall be final and not subject to appeal.

18 (6) This section applies to any person employed by a school  
19 district in a teaching or other nonsupervisory certificated position  
20 after June 25, 1976. This section provides the exclusive means for  
21 nonrenewing the employment contract of a provisional employee and no  
22 other provision of law shall be applicable thereto, including, without  
23 limitation, RCW 28A.405.210 and chapter 28A.645 RCW.

24 NEW SECTION. **Sec. 6.** Sections 3 and 5 of this act take effect  
25 September 1, 2014.

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