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**SENATE BILL 5914**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senators Tom and Zarelli

Read first time 04/05/11. Referred to Committee on Early Learning & K-12 Education.

1 AN ACT Relating to teacher performance; amending RCW 28A.405.140,  
2 28A.405.220, 28A.405.415, 28A.150.410, and 28A.400.200; adding new  
3 sections to chapter 28A.405 RCW; adding a new section to chapter  
4 28A.150 RCW; creating new sections; and providing an effective date.

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

6 **PART I**

7 **SHORT TITLE AND INTENT**

8 NEW SECTION. **Sec. 101.** This act may be known and cited as the  
9 excellent teachers for every student act.

10 NEW SECTION. **Sec. 102.** The legislature finds that in order for  
11 Washington schools to be great places to teach and learn - where all  
12 kids and educators succeed - schools must build cultures where all  
13 students thrive. The legislature intends to respect teachers and  
14 principals first by empowering them to create that culture together,  
15 and then by helping them retain the teachers who are crucial to that  
16 culture. In particular, these policies support practices with a track  
17 record of closing the achievement gap. This is done by:

1 (1) Ensuring that teachers who do the best work are the ones who  
2 keep their jobs when budgets need to be cut, by basing reduction in  
3 force policies on the evaluations the legislature has outlined for  
4 measuring teacher performance. Since the loss of teachers through  
5 layoffs already impacts student learning, there is an urgent need to  
6 conduct layoffs in a way that retains the most effective teachers.  
7 Educators deserve to be recognized for their ability to help students  
8 learn and children deserve the very best and brightest teachers;

9 (2) Empowering principals and teachers with autonomy in challenging  
10 school placement decisions to ensure the creation of school cultures  
11 that both promote the ongoing improvement of teaching and learning and  
12 are committed to closing the achievement gap. The strongest, most  
13 successful school cultures are those in which teachers and principals  
14 work toward shared goals for improving student learning. In order to  
15 create shared cultures, principals and teachers must be able to agree  
16 that a challenging school placement is the best fit for them;

17 (3) Recognizing that for the fair evaluation of a principal based  
18 on the criteria outlined by the legislature, specifically that  
19 principals should be evaluated on creating a school culture that  
20 promotes the ongoing improvement of learning and teaching and managing  
21 both staff and fiscal resources to support student achievement and  
22 legal responsibilities for students and staff, a principal needs the  
23 ability to select teachers who have demonstrated effectiveness and have  
24 demonstrated qualifications and teaching experience that support the  
25 instructional practices of his or her school;

26 (4) Increasing the authority of principals to terminate teachers  
27 upon a finding that, after multiple years of unsuccessful improvement  
28 following training and mentoring, the lack of a teacher's progress in  
29 improving his or her teaching skills is detrimental to the academic  
30 performance of the teacher's students; and

31 (5) Reforming the statewide salary allocation schedule and national  
32 board bonuses to ensure that state appropriations are rationally  
33 allocated using an evidence-based pay schedule that rewards teachers  
34 who are making a positive difference toward educational attainment of  
35 their students.

36 **PART II**

1                   **PERFORMANCE-BASED REDUCTION IN FORCE DUE TO ENROLLMENT**  
2                                   **DECLINE OR REVENUE LOSS**

3           NEW SECTION.   **Sec. 201.** A new section is added to chapter 28A.405  
4 RCW to read as follows:

5           (1) When reductions in the workforce occur due to enrollment  
6 decline or revenue loss, the employment contracts of any certificated  
7 classroom teacher must be nonrenewed in the following manner within  
8 each particular certification or endorsement area. Certificated  
9 classroom teachers who received the lowest evaluation rating, as  
10 described in RCW 28A.405.100 must have their contracts nonrenewed  
11 first.

12           (2) The board of directors of each school district shall adopt a  
13 written policy governing procedures for the nonrenewal of employment  
14 contracts for certificated classroom teachers as provided for in  
15 subsection (1) of this section.

16           (3) Any school district whose board policies or locally bargained  
17 agreement outlines recall rights for certificated classroom teachers  
18 must recall staff in the reverse order contracts were nonrenewed as  
19 provided for in subsection (1) of this section.

20           (4) All collective bargaining agreements and other contracts  
21 entered into between a school district and an employee bargaining unit  
22 or an employee after the effective date of this section, as well as  
23 bargaining agreements existing on the effective date of this section,  
24 but renewed or extended after the effective date of this section, must  
25 be consistent with this section.

26                                   **PART III**  
27                                   **STAFFING PLACEMENTS**

28           NEW SECTION.   **Sec. 301.** A new section is added to chapter 28A.405  
29 RCW to read as follows:

30           Any policy adopted by a school district board of directors after  
31 the effective date of this section under RCW 28A.150.230 or in a  
32 locally bargained agreement must contain provisions that prohibit  
33 assignment of a certificated classroom teacher to a school in the  
34 lowest tier of the state board of education's accountability index,  
35 unless agreed to by the hiring principal and, if applicable to local  
36 policy, the school-based entity charged with hiring decisions.

1 PART IV  
2 AUTHORITY TO REMOVE TEACHERS DETRIMENTAL  
3 TO STUDENT ACADEMIC PERFORMANCE

4 **Sec. 401.** RCW 28A.405.140 and 1993 c 336 s 403 are each amended to  
5 read as follows:

6 (1) After an evaluation conducted pursuant to RCW 28A.405.100, the  
7 principal or the evaluator may require the teacher to take in-service  
8 training provided by the district in the area of teaching skills  
9 needing improvement, and may require the teacher to have a mentor for  
10 purposes of achieving such improvement.

11 (2) Notwithstanding the provisions of RCW 28A.405.210 and  
12 28A.405.220, if for three consecutive years or three nonconsecutive  
13 years within any five-year period, clear improvement is not  
14 demonstrated based on the in-service training and mentoring provided  
15 pursuant to subsection (1) of this section and after a finding that the  
16 lack of a teacher's progress in improving his or her teaching skills is  
17 detrimental to the academic performance of the teacher's students, the  
18 principal may initiate an action to dismiss the teacher. In the event  
19 the principal makes this determination, the teacher shall be notified  
20 in writing. The notification must include a detailed explanation of  
21 the reasons for the principal making this determination.

22 (3) Within ten days of receiving notice pursuant to this section,  
23 every teacher receiving such notice, at his or her request, shall be  
24 provided an opportunity to meet informally with the principal for the  
25 purpose of requesting that the principal reconsider his or her  
26 decision. At the meeting, the teacher must be given the opportunity to  
27 refute any facts upon which the principal's determination was made.

28 (4) Within ten days following the meeting with the teacher, the  
29 principal shall either reinstate the teacher or shall submit to the  
30 school district board of directors for consideration at its next  
31 regular meeting a written report recommending that the employment  
32 contract of the teacher be terminated. A copy of the report must be  
33 delivered to the teacher at least ten days before the scheduled meeting  
34 of the board of directors. At the board of directors' meeting, the  
35 teacher must be given the opportunity to present information and  
36 provide documentation refuting any facts upon which the principal's  
37 determination was made.

1       (5) The board of directors shall notify the teacher in writing of  
2 its final decision within ten days following the meeting at which the  
3 principal's recommendation was considered. The decision of the board  
4 of directors to terminate the contract of a teacher pursuant to this  
5 section shall be final and not subject to appeal.

6       (6) All school district collective bargaining agreements signed,  
7 adopted, or renewed after the effective date of this section, shall  
8 include provisions consistent with this section.

9       **Sec. 402.** RCW 28A.405.220 and 2010 c 235 s 203 are each amended to  
10 read as follows:

11       (1) Notwithstanding the provisions of RCW 28A.405.140 and  
12 28A.405.210, every person employed by a school district in a teaching  
13 or other nonsupervisory certificated position shall be subject to  
14 nonrenewal of employment contract as provided in this section during  
15 the first three years of employment by such district, unless: (a) The  
16 employee has previously completed at least two years of certificated  
17 employment in another school district in the state of Washington, in  
18 which case the employee shall be subject to nonrenewal of employment  
19 contract pursuant to this section during the first year of employment  
20 with the new district; or (b) the school district superintendent may  
21 make a determination to remove an employee from provisional status if  
22 the employee has received one of the top two evaluation ratings during  
23 the second year of employment by the district. Employees as defined in  
24 this section shall hereinafter be referred to as "provisional  
25 employees."

26       (2) In the event the superintendent of the school district  
27 determines that the employment contract of any provisional employee  
28 should not be renewed by the district for the next ensuing term such  
29 provisional employee shall be notified thereof in writing on or before  
30 May 15th preceding the commencement of such school term, or if the  
31 omnibus appropriations act has not passed the legislature by May 15th,  
32 then notification shall be no later than June 15th, which notification  
33 shall state the reason or reasons for such determination. Such notice  
34 shall be served upon the provisional employee personally, or by  
35 certified or registered mail, or by leaving a copy of the notice at the  
36 place of his or her usual abode with some person of suitable age and

1 discretion then resident therein. The determination of the  
2 superintendent shall be subject to the evaluation requirements of RCW  
3 28A.405.100.

4 (3) Every such provisional employee so notified, at his or her  
5 request made in writing and filed with the superintendent of the  
6 district within ten days after receiving such notice, shall be given  
7 the opportunity to meet informally with the superintendent for the  
8 purpose of requesting the superintendent to reconsider his or her  
9 decision. Such meeting shall be held no later than ten days following  
10 the receipt of such request, and the provisional employee shall be  
11 given written notice of the date, time and place of meeting at least  
12 three days prior thereto. At such meeting the provisional employee  
13 shall be given the opportunity to refute any facts upon which the  
14 superintendent's determination was based and to make any argument in  
15 support of his or her request for reconsideration.

16 (4) Within ten days following the meeting with the provisional  
17 employee, the superintendent shall either reinstate the provisional  
18 employee or shall submit to the school district board of directors for  
19 consideration at its next regular meeting a written report recommending  
20 that the employment contract of the provisional employee be nonrenewed  
21 and stating the reason or reasons therefor. A copy of such report  
22 shall be delivered to the provisional employee at least three days  
23 prior to the scheduled meeting of the board of directors. In taking  
24 action upon the recommendation of the superintendent, the board of  
25 directors shall consider any written communication which the  
26 provisional employee may file with the secretary of the board at any  
27 time prior to that meeting.

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

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

1 PART V

2 LINKING YEARLY BONUSES TO TEACHER PERFORMANCE

3 Sec. 501. RCW 28A.405.415 and 2009 c 539 s 6 are each amended to  
4 read as follows:

5 (1) Before the 2013-14 school year, certificated instructional  
6 staff who have attained certification from the national board for  
7 professional teaching standards shall receive a bonus each year in  
8 which they maintain the certification. Beginning in the 2013-14 school  
9 year and each year thereafter, certificated instructional staff who  
10 have received a bonus for at least two years must be evaluated by the  
11 principal as a top tier teacher under RCW 28A.405.100 in order to  
12 receive an annual bonus. The bonus shall be calculated as follows:  
13 The annual bonus shall be five thousand dollars (~~in the 2007-08 school~~  
14 ~~year. Thereafter, the annual bonus shall increase by inflation. For~~  
15 ~~the 2009-10 and 2010-11 school years the annual bonus shall be subject~~  
16 ~~to the availability of amounts appropriated for this purpose. During~~  
17 ~~the 2011-2013 and 2013-2015 fiscal biennia, in addition to annual~~  
18 ~~adjustments for inflation, the bonus amount shall be additionally~~  
19 ~~increased such that, by the end of the 2014-15 school year, national~~  
20 ~~board bonus amounts are, at a minimum, equal to what they would have~~  
21 ~~been if annual adjustments for inflation had not been suspended during~~  
22 ~~the 2009-10 or 2010-11 school year)).~~

23 (2) Before the 2013-14 school year, certificated instructional  
24 staff who have attained certification from the national board for  
25 professional teaching standards shall be eligible for bonuses in  
26 addition to that provided by subsection (1) of this section if the  
27 individual is in an instructional assignment in a school in which at  
28 least seventy percent of the students qualify for the free and reduced-  
29 price lunch program. Beginning in the 2013-14 school year and each  
30 year thereafter, certificated instructional staff who have received a  
31 bonus for at least two years must be evaluated by the principal as a  
32 top tier teacher under RCW 28A.405.100 in order to receive an annual  
33 bonus under this subsection.

34 (3) The amount of the additional bonus under subsection (2) of this  
35 section for those meeting the qualifications of subsection (2) of this  
36 section is five thousand dollars.

37 (4) The bonuses provided under this section are in addition to  
38 compensation received under a district's salary schedule adopted in

1 accordance with RCW 28A.405.200 and shall not be included in  
2 calculations of a district's average salary and associated salary  
3 limitations under RCW 28A.400.200.

4 (5) The bonuses provided under this section shall be paid in a lump  
5 sum amount in July of each school year.

6 (6) The technical working group established in RCW 28A.400.201 must  
7 include an examination of national board certification bonuses.

8 **PART VI**

9 **STATEWIDE SALARY ALLOCATION SCHEDULE**

10 NEW SECTION. **Sec. 601.** The legislature finds the Washington state  
11 institute for public policy has analyzed research on whether having a  
12 graduate degree improves the ability of a teacher to raise the academic  
13 performance of his or her students. The institute concluded that the  
14 average research estimate is that graduate degrees had "essentially  
15 zero" impact on student outcomes, except possibly in the instance of  
16 mathematics and science graduate degrees for teachers in particular  
17 fields. The institute found that, within the context of a single  
18 salary schedule, salary schedules should be adjusted to place less or  
19 no emphasis on graduate degrees. Additionally, the institute found  
20 that the effect of teacher experience on student learning, while quite  
21 significant in the initial years, levels off considerably beyond five  
22 years of experience. The legislature is cognizant of this research and  
23 finds that, at present, it spends more than nine hundred million  
24 dollars per year in higher pay for teachers with educational experience  
25 beyond a bachelor's degree and a significant amount in higher  
26 compensation for teachers beyond their initial years of experience.  
27 The legislature intends to reform the statewide salary schedule to  
28 ensure that dollars spent on education are better allocated to improve  
29 student outcomes.

30 **Sec. 602.** RCW 28A.150.410 and 2010 c 236 s 10 are each amended to  
31 read as follows:

32 (1) The legislature shall establish for each school year in the  
33 appropriations act a statewide salary allocation schedule, for  
34 allocation purposes only, to be used to distribute funds for basic  
35 education certificated instructional staff salaries under RCW



1 28A.150.260. For the purposes of this section, the staff allocations  
2 for classroom teachers, teacher librarians, guidance counselors, and  
3 student health services staff under RCW 28A.150.260 are considered  
4 allocations for certificated instructional staff.

5 (2) Salary allocations for state-funded basic education  
6 certificated instructional staff shall be calculated by the  
7 superintendent of public instruction by determining the district's  
8 average salary for certificated instructional staff, using the  
9 statewide salary allocation schedule and related documents, conditions,  
10 and limitations established by the omnibus appropriations act.

11 (3) ~~Beginning ((January 1, 1992, no more than ninety college~~  
12 ~~quarter-hour credits received by any employee after the baccalaureate~~  
13 ~~degree may be used to determine compensation allocations under the~~  
14 ~~state salary allocation schedule and LEAP documents referenced in the~~  
15 ~~omnibus appropriations act, or any replacement schedules and documents,~~  
16 ~~unless:~~

17 ~~(a) The employee has a master's degree; or~~

18 ~~(b) The credits were used in generating state salary allocations~~  
19 ~~before January 1, 1992)) in the 2013-14 school year, the statewide~~  
20 ~~salary allocation schedule shall phase out in annual proportional~~  
21 ~~decrements additional salary allocations for certificated instructional~~  
22 ~~staff with greater than eight years of service and educational~~  
23 ~~experience beyond a baccalaureate degree plus forty-five credits,~~  
24 ~~unless the employee has a master's degree in mathematics, science, or~~  
25 ~~special education and is teaching in one of those fields, in which case~~  
26 ~~the increased compensation allocation shall reflect only that portion~~  
27 ~~of an employee's workload that is spent teaching those fields.~~

28 (4) By no later than the 2018-19 school year, the maximum college  
29 quarter-hour credits and years of education service used to determine  
30 compensation allocations under the state salary allocation schedule and  
31 LEAP documents referenced in the omnibus appropriations act, or any  
32 replacement schedules and documents, shall be:

33 (a) Forty-five credits after the baccalaureate degree, unless the  
34 employee has a master's degree in mathematics, science, or special  
35 education and is teaching in one of those fields, in which case the  
36 increased compensation allocation shall reflect only that portion of  
37 the employee's workload that is spent teaching in those fields; and

38 (b) Eight years of service.

1       (5) Beginning in the 2007-08 school year, the calculation of years  
2 of service for occupational therapists, physical therapists, speech-  
3 language pathologists, audiologists, nurses, social workers,  
4 counselors, and psychologists regulated under Title 18 RCW may include  
5 experience in schools and other nonschool positions as occupational  
6 therapists, physical therapists, speech-language pathologists,  
7 audiologists, nurses, social workers, counselors, or psychologists.  
8 The calculation shall be that one year of service in a nonschool  
9 position counts as one year of service for purposes of this chapter, up  
10 to a limit of two years of nonschool service. Nonschool years of  
11 service included in calculations under this subsection shall not be  
12 applied to service credit totals for purposes of any retirement benefit  
13 under chapter 41.32, 41.35, or 41.40 RCW, or any other state retirement  
14 system benefits.

15       (6) Fiscal savings from changes to the statewide salary allocation  
16 schedule under this section shall be fully reinvested in compensation  
17 of certificated instructional staff. Beginning in the 2013-14 school  
18 year the statewide salary allocation schedule shall be revised to  
19 incorporate performance pay based on the certificated teacher  
20 evaluation system required under RCW 28A.405.100 and the school  
21 accountability index required under RCW 28A.657.110. Seventy percent  
22 of savings from changes to the statewide salary allocation schedule  
23 shall be directed to certificated instructional staff performance pay  
24 based on the certificated teacher evaluation system required under RCW  
25 28A.405.100 and thirty percent directed to certificated instructional  
26 staff performance pay based on the school accountability index required  
27 under RCW 28A.657.110.

28       **Sec. 603.** RCW 28A.400.200 and 2010 c 235 s 401 are each amended to  
29 read as follows:

30       (1) Every school district board of directors shall fix, alter,  
31 allow, and order paid salaries and compensation for all district  
32 employees in conformance with this section.

33       (2)((+a)) Salaries for certificated instructional staff shall not  
34 be less than the salary provided in the appropriations act in the  
35 statewide salary allocation schedule for an employee with a  
36 baccalaureate degree and zero years of service((+and

1       ~~(b) Salaries for certificated instructional staff with a master's~~  
2 ~~degree shall not be less than the salary provided in the appropriations~~  
3 ~~act in the statewide salary allocation schedule for an employee with a~~  
4 ~~master's degree and zero years of service)).~~

5       (3)(a) The actual average salary paid to certificated instructional  
6 staff shall not exceed the district's average certificated  
7 instructional staff salary used for the state basic education  
8 allocations for that school year as determined pursuant to RCW  
9 28A.150.410.

10       (b) Fringe benefit contributions for certificated instructional  
11 staff shall be included as salary under (a) of this subsection only to  
12 the extent that the district's actual average benefit contribution  
13 exceeds the amount of the insurance benefits allocation provided per  
14 certificated instructional staff unit in the state operating  
15 appropriations act in effect at the time the compensation is payable.  
16 For purposes of this section, fringe benefits shall not include payment  
17 for unused leave for illness or injury under RCW 28A.400.210; employer  
18 contributions for old age survivors insurance, workers' compensation,  
19 unemployment compensation, and retirement benefits under the Washington  
20 state retirement system; or employer contributions for health benefits  
21 in excess of the insurance benefits allocation provided per  
22 certificated instructional staff unit in the state operating  
23 appropriations act in effect at the time the compensation is payable.  
24 A school district may not use state funds to provide employer  
25 contributions for such excess health benefits.

26       (c) Salary and benefits for certificated instructional staff in  
27 programs other than basic education shall be consistent with the salary  
28 and benefits paid to certificated instructional staff in the basic  
29 education program.

30       (4) Except as provided in RCW 28A.150.410, salaries and benefits  
31 for certificated instructional staff may exceed the limitations in  
32 subsection (3) of this section only by separate contract for additional  
33 time, for additional responsibilities, for incentives, or for  
34 implementing specific measurable innovative activities, including  
35 professional development, specified by the school district to: (a)  
36 Close one or more achievement gaps, (b) focus on development of  
37 science, technology, engineering, and mathematics (STEM) learning  
38 opportunities, or (c) provide arts education. Beginning September 1,

1 2011, school districts shall annually provide a brief description of  
2 the innovative activities included in any supplemental contract to the  
3 office of the superintendent of public instruction. The office of the  
4 superintendent of public instruction shall summarize the district  
5 information and submit an annual report to the education committees of  
6 the house of representatives and the senate. Supplemental contracts  
7 shall not cause the state to incur any present or future funding  
8 obligation. Supplemental contracts shall be subject to the collective  
9 bargaining provisions of chapter 41.59 RCW and the provisions of RCW  
10 28A.405.240, shall not exceed one year, and if not renewed shall not  
11 constitute adverse change in accordance with RCW 28A.405.300 through  
12 28A.405.380. No district may enter into a supplemental contract under  
13 this subsection for the provision of services which are a part of the  
14 basic education program required by Article IX, section 3 of the state  
15 Constitution.

16 (5) Employee benefit plans offered by any district shall comply  
17 with RCW 28A.400.350 (~~(and)~~), 28A.400.275, and 28A.400.280.

18 NEW SECTION. **Sec. 604.** A new section is added to chapter 28A.150  
19 RCW to read as follows:

20 Beginning in the 2011-12 school year, the base salary allocation  
21 for school district certificated instructional staff must be reduced  
22 for those grandfathered school districts with allocations above the  
23 minimum salary identified in the statewide salary allocation schedule.  
24 The grandfathered district reduction shall be in annual proportional  
25 decrements that result in the allocation being uniform across all  
26 school districts in the 2013-14 school year. The annual decrement for  
27 each grandfathered school district shall, at a minimum, be the lesser  
28 of (1) the difference between the district's base salary allocation and  
29 the minimum salary identified in the statewide salary allocation  
30 schedule, and (2) one percent of the minimum salary identified in the  
31 statewide salary allocation schedule.

32 **PART VII**  
33 **MISCELLANEOUS**

1        NEW SECTION.   **Sec. 701.**   This act takes effect September 1, 2011.

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