

# HOUSE BILL REPORT

## ESSB 5895

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**As Reported by House Committee On:**  
Education  
Ways & Means

**Title:** An act relating to evaluating certificated employees.

**Brief Description:** Regarding certificated employee evaluations.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senator Murray).

**Brief History:**

**Committee Activity:**

Education: 2/16/12, 2/17/12 [DP];

Ways & Means: 2/24/12, 2/27/12 [DP].

### Brief Summary of Engrossed Substitute Bill

- Adds details to revised teacher and principal evaluation systems, including a requirement for the Office of the Superintendent of Public Instruction (OSPI) to adopt up to three preferred instructional and leadership frameworks and requiring school districts to adopt a preferred framework.
- Requires student growth data to be a substantial factor in evaluating teacher and principal performance for at least three evaluation criteria.
- Requires each school district to adopt an implementation schedule that transitions staff to the revised evaluation systems beginning no later than 2013-14, with full transition no later than 2015-16.
- Defines "not satisfactory" performance for teachers and principals, and revises provisions related to probation for teachers.
- Requires annual evaluations under the revised systems, but allows for a focused evaluation for those who have received a Level 3 rating, as long as comprehensive evaluations are completed once every four years.
- Requires evaluation results to be used as one of multiple factors in human resource and personnel decisions beginning in 2015-16.
- Provides that teachers who receive less than a Level 2 rating in their third year remain in provisional status until they receive a Level 3 rating.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Directs the OSPI to develop a professional development program to support implementation of the revised systems if funds are appropriated for this purpose.
- Directs the Professional Educator Standards Board to incorporate continuing education or competencies in the revised evaluation systems as a requirement for renewal of educator certificates beginning September 1, 2016, and for residency principal certification after August 31, 2013.

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## HOUSE COMMITTEE ON EDUCATION

**Majority Report:** Do pass. Signed by 18 members: Representatives Santos, Chair; Lytton, Vice Chair; Dammeier, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Dahlquist, Assistant Ranking Minority Member; Angel, Billig, Fagan, Finn, Haigh, Hargrove, Klippert, Ladenburg, Maxwell, McCoy, Parker, Probst and Wilcox.

**Minority Report:** Do not pass. Signed by 1 member: Representative Hunt.

**Staff:** Barbara McLain (786-7383).

### **Background:**

*Teacher and Principal Evaluation Systems.* Certain aspects of performance evaluation for certificated school employees are specified in statute, such as minimum evaluation criteria and the requirement that probation and nonrenewal of contracts must be based on performance judged "not satisfactory." Beyond the minimums provided in statute, the details of the process and criteria for evaluation are subjects of collective bargaining.

Legislation enacted in 2010 directed development of revised evaluation systems specifically for teachers and principals, including eight new evaluation criteria for teachers, eight criteria for principals, and a four-level rating system. Data on student growth (the change in student achievement between two points in time) may be included in an evaluation if it is based on multiple measures of student achievement.

The revised evaluation systems have been implemented first in eight pilot school districts plus one consortium of small rural school districts, beginning with a design phase in 2010-11 and trial implementation in 2011-12. The Office of the Superintendent of Public Instruction (OSPI), along with a Steering Committee of organizations representing teachers, principals, administrators, and parents, has been overseeing implementation of the Teacher Principal Evaluation Pilot (TPEP).

The pilot districts have been using research-based frameworks that describe the attributes and characteristics of teaching and leadership based on the evaluation criteria and levels of performance. In a July 2011 report, the OSPI recommended that districts should be encouraged to select from a limited number of state-approved models, with a state approval process for districts who wished to use a different system.

Revised teacher and principal evaluation systems must be implemented in all school districts beginning with the 2013-14 school year.

*Evaluation Periods.* Evaluations of teachers and other certificated instructional staff (CIS) must be conducted annually. However, after four years of satisfactory evaluations, the school district may use a short form of evaluation, a locally-bargained professional growth option, a regular evaluation, or some combination of the above. A regular evaluation must be conducted at least once every three years, unless the local bargaining agreement extends this time period.

*Probation.* For teachers and other CIS whose performance is judged "not satisfactory," a probationary period of 60 school days must be established, along with a program for improvement in specific areas of deficiency. The evaluator may authorize an additional certificated employee to evaluate and assist the probationer in improving performance. The probationer may be removed from probation if he or she has demonstrated improvement to the satisfaction of the evaluator in the areas identified in the program of improvement. Lack of improvement is grounds for a finding of probable cause for nonrenewal of contract or discharge.

*Provisional and Continuing Contract Status.* Teachers and other CIS are considered provisional employees during the first three years of employment or during the first year in a new district if they have worked at least two years in another district. While there are some procedures and due process requirements for nonrenewal of a provisional employee's contract, it is not necessary for the district to show probable cause as a justification. All other certificated staff, including administrators, are considered to have continuing contract status where probable cause must be shown for nonrenewal or discharge.

*Reduction in Force and Assignment.* Matters such as order of layoffs or recall in the case of a reduction in force, and transfer or assignment of staff, are not specified in statute. These are determined by school district policies or collective bargaining agreements.

*Evaluation Training.* School districts must require any supervisor with responsibility for evaluation to have training in evaluation procedures, and a supervisor may not evaluate a teacher without having received such training.

*Teacher and Principal Certification.* The Professional Educator Standards Board (PESB) establishes requirements for issuance and renewal of educator certificates. Rather than requiring a certain number of hours of continuing education for renewal, the PESB is moving toward requiring teachers and principals to establish individualized professional growth plans (PGPs) under which a range of planned activities may occur that are intended to improve their knowledge and skills.

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### **Summary of Bill:**

*Teacher and Principal Evaluation Systems.* The following labels are established for the four levels of the teacher and principal rating systems:

- Level 1: Unsatisfactory.
- Level 2: Basic.
- Level 3: Proficient.
- Level 4: Distinguished.

The OSPI must adopt rules by December 1, 2012, establishing descriptors for each level, based on the development work of the pilot districts. Any future revisions must follow consultation with a group similar to the TPEP Steering Committee. The OSPI must also adopt rules prescribing a common method for calculating the performance rating. Each teacher and principal receives one of the four ratings for each of the eight evaluation criteria, and an overall rating for the entire evaluation.

School districts are encouraged to recognize teachers and principals with Distinguished ratings.

The OSPI must also adopt up to three preferred, research-based instructional frameworks and up to three leadership frameworks by September 1, 2012. School districts must adopt one each of the preferred frameworks. The OSPI must establish a process for approving minor modifications.

School districts must adopt an implementation schedule that transitions teachers and principals to the new evaluation systems beginning no later than 2013-14, with all teachers and principals evaluated under the new systems no later than 2015-16. Probationary and provisional teachers, principals with fewer than three years' experience or new to the district, and any principal whose work was judged not satisfactory in the previous year must be transitioned first.

*Student Growth Data.* Student growth data must be a substantial factor in evaluating teachers and principals for at least three of the evaluation criteria. For teachers, student growth data may include the teacher's performance as a member of an instructional or schoolwide team when use of this data is relevant and appropriate. Student input may be included in the evaluation process for teachers, and input from building staff may be included for principals.

*Evaluation Periods.* Annual evaluations must be conducted for teachers and principals who have been transitioned to the new systems. A comprehensive evaluation uses all eight criteria, and must occur at least every four years. Provisional teachers, principals with fewer than three years' experience or new to the district, and any teacher or principal scoring at Level 1 or 2 in the previous year must receive annual comprehensive evaluations.

In the years when a comprehensive evaluation is not required, teachers and principals scoring at Level 3 or above are eligible for an annual focused evaluation, which is based on one selected criteria plus specifically linked professional growth activities. The selected criteria must be approved by the evaluator and may have been identified in previous evaluations. A group of teachers or a group of principals may focus on the same criteria and share professional growth activities.

School districts are encouraged to conduct annual comprehensive evaluations for principals.

*Probation.* For teachers who have been transitioned to the new evaluation system, "not satisfactory" for purposes of probation is defined as:

- a Level 1 rating; or
- a Level 2 rating if the teacher has a continuing contract with more than five years' experience and if the rating is received for either two consecutive years or two out of three years.

"Not satisfactory" performance for principals who have been transitioned to the new evaluation system is defined in the same manner.

Additional days of probation may be added to the required 60 days for teachers and other CIS as long as the probationary period is concluded before May 15 of that year. If a teacher on probation has five or more years of experience and scores below a Level 2 as of May 15, the probationary period may be extended into the following school year. If a procedural error occurs during probation, the error does not invalidate the program of improvement or evaluation unless they are materially affected. If the evaluator does not authorize an additional certificated employee to assist in the evaluation, a probationer may request this, and the request must be implemented by having the Educational Service District (ESD) assign an individual from a list of evaluation specialists compiled by the ESD.

To be removed from probation, a teacher with provisional status, or continuing contract status but five or fewer years' experience, must achieve at least a Level 2 rating. Continuing contract teachers with more than five years' experience must achieve at least a Level 3 rating.

When a continuing contract teacher with five or more years' experience receives a performance rating below Level 2 for two consecutive years, within 10 days of the second evaluation or May 15 (whichever is earlier), the school district must initiate the procedures for notification of discharge.

*Provisional and Continuing Contract Status.* Provisional teachers who receive a rating below Level 2 during the third year of employment remain on provisional status until they receive a Level 2 rating. The TPEP Steering Committee and the pilot school districts must develop recommendations by July 1, 2016, regarding how teacher evaluations could inform state policies for the criteria for obtaining continuing contract status. The experiences of school districts and teachers during the transition phase of implementing new evaluation systems must be considered.

*Reduction in Force and Assignment.* The TPEP Steering Committee and the pilot school districts must develop a report and recommendations by December 1, 2013, regarding best practices for how teacher and principal evaluations and other appropriate elements must inform school district human resource and personnel practices. Beginning with the 2015-16 school year, evaluation results must be used as one of multiple factors in making human resource and personnel decisions, including assignment; the consideration of an agreement to an assignment by a teacher, principal, and superintendent; and reduction in force. This does not limit the ability to collectively bargain how the multiple factors are used, with the exception that evaluation results must be a factor. The OSPI must report on school district implementation of these provisions by December 1, 2017.

*Evaluation Training.* Principals and administrators who are evaluators must engage in professional development to implement the revised evaluation systems before they are implemented and before evaluating teachers.

Subject to funds appropriated for this purpose, the OSPI must develop a professional development program to support implementation of revised evaluation systems, which must include a comprehensive online training package. Topics for the training program are specified.

The OSPI must incorporate or adapt existing online training or curriculum to the maximum extent feasible, including contracting for or purchasing materials within available funds. Multiple modes of instruction should be incorporated, such as videos; participatory exercises; and other combinations of audio, video, and print. The OSPI must also maintain a website that includes the professional development materials along with other evaluation resources to assist school districts. The OSPI must identify the number of inservice training hours associated with each module of the professional development program and develop a way for users to document completion.

The OSPI must also work with the ESDs to provide clearinghouse services for professional development opportunities that align with the evaluation criteria.

*Teacher and Principal Certification.* Beginning September 1, 2016, the PESB must incorporate continuing education or knowledge and competencies related to the revised teacher and principal evaluation systems as a requirement for renewal of a continuing or professional certificate. Professional growth activities under focused evaluations may be used to fulfill the PGP requirements for professional certificate renewal. After August 31, 2013, to receive a residency certificate, principal candidates must have demonstrated knowledge and skills in teacher evaluation.

*Continued Work and Reports.* The TPEP Steering Committee and pilot school districts must continue to examine implementation issues and refine tools for the new evaluation systems through the 2015-16 implementation phase, with particular attention to the following issues:

- taking new evaluation systems to scale and use of best practices for statewide implementation;
- providing guidance for use of student growth data to assure it is used responsibly and with integrity;
- refining evaluation system management tools and training to develop rater reliability;
- reviewing emerging research and similar activities in other states; and
- reviewing the impact of the variable demographic characteristics of students and schools on the objectivity, reliability, validity, and availability of student growth data.

The OSPI may contract with an independent research organization to support these tasks.

The OSPI must monitor statewide implementation of the teacher and principal evaluation systems and provide a report to the Legislature and the Governor on each July 1 between 2013 and 2016, with a final report due on December 1, 2016.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is a negotiated piece of legislation, and thanks go to the two members of this Education Committee who worked very hard to bring this piece of legislation forward. This topic is complicated and dense, and the Committee has already seen many of the pieces in other legislation. This takes the work of the pilot districts and moves it forward to statewide implementation. Information and understanding about these policies continues to evolve. One of the important pieces of this legislation is it continues to use the expertise of the TPEP Steering Committee and the pilot districts to examine and work on issues. A key example is student growth; it is understood that the purpose of schools is to facilitate student learning, but measuring a teacher's impact on student learning is quite complicated. The strength and quality of implementation lies in professional development. This bill sets forth the components of a professional development program.

This takes steps forward to remove low performing teachers, and continues the TPEP Steering Committee to address thorny issues. There are concerns about adequate resources for a professional development system, which is absolutely necessary for success. Some say that this legislation should wait until the pilot projects have been completed, but the students who need to benefit from these changes are in the education system now. There will never be answers to every question, but that must not stop forward momentum.

This is a good compromise that involves key provisions of many of the evaluation bills. Including student data will make evaluations more valid and more objective, as well as ensure that educator performance is being measured on their primary responsibility, which is improved student learning. Using evaluation information for layoffs and school assignments makes evaluations more meaningful. There are two cautions: it will be very important for the Legislature to monitor implementation to assure that the intent of this legislation is met, and funding will be critical to ensure evaluators are prepared for their new responsibilities. The number one priority of parents is to have the most effective teachers in every classroom, everyday. It is very difficult to explain to students and to the community why young, qualified teachers are laid off when more senior teachers who are not performing well are kept on. From a community perspective, there is a desire to use evaluations in positive ways that provide opportunities for growth. This is on the right track.

In businesses and other organizations, performance evaluations are used to inform decisions and provide the training that individuals need to grow professionally. The following features of this legislation make the education system stronger: training, clearly defined performance ratings, use of student performance as a measure of educator performance, requiring evaluation results to be a factor in employment decisions, and the alignment of professional development with performance evaluation. Many individuals have worked hard to develop a fair, equitable, and robust evaluation system. This takes the next step forward. The two most

important aspects of this legislation are to require student growth to be a substantial factor in evaluation, and giving meaning to evaluation results by requiring them to be used in personnel decisions. Concerns are appreciated, but the strength of these items means this legislation truly does move forward.

(In support with concerns) Many of these topics are premature, given that the pilot projects have not yet completed their work. However, there is also a realization that not everything can be resolved. It is good that there is an appropriate phase-in time for school districts to implement the new systems. The recognition of the need for training is appreciated, but funding will be required to implement these provisions. It is appropriate for school districts to be able to use their own instructional and leadership frameworks, so there should be a waiver from the preferred models.

Many elements of this bill are supported, but these are difficult, emotional issues. Two issues must be mentioned: the first is training. Everyone wants to do this right and understands the importance of strong evaluation systems, but there is real concern among districts that they will not have the time or the money to do this right. The second issue is use of evaluations in assignment and reduction in force. This legislation punts the issue to school districts to figure out how to do this. It is understood that for right now, this is a carefully crafted compromise. But it is an issue where districts have concerns, and there may be a need to return to it.

The student growth piece is good, but it is disturbing that 295 school districts will still be able to bargain things locally and differently. By the time parents figure out how the process works, there isn't a place for them to advocate or be influential. More state oversight and parameters are needed. There are not enough checks and balances between school administration and labor. However, this should be moved forward; there may be opportunities for adjustment later.

(With concerns) A school's success is based on the quality of its staff, so it feels odd to be expressing concerns about a bill dealing with teacher and principal quality. One of the things that is troubling is the "last-in, first-out" policy in this bill. The Tacoma School District has a committee who has been working for months to craft a thoughtful solution, and this bill undercuts their work. That work should be able to continue in its current form. Use of evaluations in personnel decisions invalidates the work to develop a unique peer review process, custom-designed to the needs of the district. The issue of whether evaluations belong in the process of school assignment has been discussed at length. There are other ways to judge the best placement of a teacher in a school. Two years ago, this state set out on a journey to discover the best ways to implement new evaluation systems. It has been exciting, complex work. This bill is coming before the first complete evaluations in the pilot districts. There is much yet to learn, and this does not provide an opportunity to learn from that work.

There are major concerns with this bill, and the Legislature should not jeopardize the good, hard, credible work that has gone into developing the four-tiered evaluation system thus far. An amendment is requested to establish a full waiver to the requirement for school districts to use one of the preferred frameworks, rather than allowing only modifications. There are three pilot school districts that are not using one of the preferred frameworks; instead, they

made a good-faith decision based on the best interests of their district. They have already invested a great deal of time and effort in implementation. There is adamant opposition to the provisions that call for use of evaluation results in personnel decisions. This will totally undermine the hard work and purpose of evaluations which are to improve, not penalize, every teacher. There is no evidence that using evaluations for this purpose will be valid, reliable, or objective. The training aspects of the legislation are incredibly important, as is the transitional period for implementation.

(Opposed) There are two vital factors that will lead to a quality evaluation system. One is that it is research-based, peer-reviewed, and thoroughly vetted among education professionals. Second is that there has been an intentional and meaningful process within a school district to adopt the system. This legislation undermines both of these issues. The research-based frameworks that have been adopted do not include student growth data. By changing the framework, it is no longer research-based. Districts have spent literally hundreds of hours looking at different components to include in teacher evaluation, trying to determine for each component the most effective way to measure performance. This is powerful work that must be done at the local level and should not be handed down from the state.

Developing an evaluation process should be a rich endeavor, embedded in research. Student growth data should not be an add-on to an already rigorous instructional framework. Data is already embedded throughout the process. Using data as a substantial factor will create divisiveness among school staff about who is assigned to which students. The Seattle School District has been working on a revised evaluation system based on national research and best practices. There are massive notebooks containing all of the work that has been put into this effort. If this bill passes, a torch might as well be put to them. The problem is that the Legislature set districts on a path to develop new evaluations. Districts adopted rubrics, and they worked on redesign. Now they are being asked to shift to an entirely new direction that is not research-based.

**Persons Testifying:** (In support) Representative Santos; Judy Hartmann, Office of the Governor; Marsha Fromhold, Office of the Superintendent of Public Instruction; Dave Powell, Stand for Children; Eric Dawes, Bellevue Leads; Alison Meryweather; Ramona Hattendorf, Washington State Parent Teacher Association; Sharon Taubel; Anne Luce, Partnership for Learning; and Heather Cope, League of Education Voters.

(In support with concerns) Dan Steele, Washington Association of School Administrators; and Marie Sullivan, Washington State School Directors' Association.

(With concerns) Patrick Irwin and John Prosser, Tacoma Public Schools; Lucinda Young, Washington Education Association; and Gary Kipp, Association of Washington School Principals.

(Opposed) Eric Scaia, Shoreline Education Association; Cindy Waters, Shoreline Public Schools; and Olga Addae, Seattle Education Association.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass. Signed by 23 members: Representatives Hunter, Chair; Darneille, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Chandler, Cody, Dickerson, Haigh, Haler, Hinkle, Kagi, Kenney, Parker, Pettigrew, Ross, Schmick, Seaquist, Springer, Sullivan and Wilcox.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Hasegawa, Vice Chair; Hudgins, Hunt and Ormsby.

**Staff:** Jessica Harrell (786-7349).

### **Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Education:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

### **Staff Summary of Public Testimony:**

(In support) The bill reflects the work of a bipartisan workgroup that creates the next steps to the existing teacher and principal evaluation pilot. It is a new type of evaluation system that evaluates based on a continuum, enabling professionals to know what can be expected of them and how they might improve. The bill is a good compromise that creates increased achievement for our educators and students and provides economic benefits in the long run. This legislation will help to make sure there will be good teachers for the children who will, in turn, be better prepared to enter the workforce. With that being said, it is disappointing that one of the key items of the bill can be negotiated away by the teachers.

(Opposed) None.

**Persons Testifying:** Judy Hartmann, Governor's Policy Office; Dave Powell, Stand For Children; Anne Luce, Partnership For Learning; George Scarola, League of Education Voters; and Amber Carter, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.