House Engrossed Senate Bill

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 297

SENATE BILL 1040

AN ACT

AMENDING SECTION 15-203, ARIZONA REVISED STATUTES; AMENDING SECTION 15-536, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 98, SECTION 5; AMENDING SECTION 15-536, ARIZONA REVISED STATUTES, AS AMENDED BY SECTION 2 OF THIS ACT; REPEALING SECTION 15-536, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 98, SECTION 6; REPEALING SECTION 15-536, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 98, SECTION 7; AMENDING SECTION 15-538.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 98, SECTION 8; AMENDING SECTION 15-538.01, ARIZONA REVISED STATUTES, AS AMENDED BY SECTION 6 OF THIS ACT; REPEALING SECTION 15-538.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 98, SECTION 9; REPEALING SECTION 15-538.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 98, SECTION 10; RELATING TO EDUCATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 15-203, Arizona Revised Statutes, is amended to read:

15-203. Powers and duties

A. The state board of education shall:

1. Exercise general supervision over and regulate the conduct of the public school system and adopt any rules and policies it deems necessary to accomplish this purpose.

2. Keep a record of its proceedings.

3. Make rules for its own government.

4. Determine the policy and work undertaken by it.

5. Appoint its employees, on the recommendation of the superintendent of public instruction.

6. Prescribe the duties of its employees if not prescribed by statute.

7. Delegate to the superintendent of public instruction the execution of board policies and rules.

8. Recommend to the legislature changes or additions to the statutes pertaining to schools.

9. Prepare, publish and distribute reports concerning the educational welfare of this state.

10. Prepare a budget for expenditures necessary for proper maintenance of the board and accomplishment of its purposes and present the budget to the legislature.

11. Aid in the enforcement of laws relating to schools.

12. Prescribe a minimum course of study in the common schools, minimum competency requirements for the promotion of pupils from the third grade and minimum course of study and competency requirements for the promotion of pupils from the eighth grade. The state board of education shall prepare a fiscal impact statement of any proposed changes to the minimum course of study or competency requirements and, on completion, shall send a copy to the director of the joint legislative budget committee and the executive director of the school facilities board. The state board of education shall not adopt any changes in the minimum course of study or competency requirements in effect on July 1, 1998 that will have a fiscal impact on school capital costs.

13. Prescribe minimum course of study and competency requirements for the graduation of pupils from high school. The state board of education shall prepare a fiscal impact statement of any proposed changes to the minimum course of study or competency requirements and, on completion, shall send a copy to the director of the joint legislative budget committee and the executive director of the school facilities board. The state board of education shall not adopt any changes in the minimum course of study or competency requirements in effect on July 1, 1998 that will have a fiscal impact on school capital costs.

14. Supervise and control the certification of persons engaged in instructional work directly as any classroom, laboratory or other teacher or indirectly as a supervisory teacher, speech therapist, principal or superintendent in a school district, including school district preschool programs, or any other educational institution below the community college, college or university level, and prescribe rules for certification, including rules for certification of teachers who have teaching experience and who are trained in other states, which are not unnecessarily restrictive and are substantially similar to the rules prescribed for the certification of teachers trained in this state. The rules shall require applicants for all certificates for common school instruction to complete a minimum of forty-five classroom hours or three college level credit hours, or the equivalent, of training in research based systematic phonics instruction from a public or private provider. The rules shall not require a teacher to obtain a master's degree or to take any additional graduate courses as a condition of certification or recertification. The rules shall allow a general equivalency diploma to be substituted for a high school diploma in the certification of emergency substitute teachers. The rules shall allow but shall not require the superintendent of a school district to obtain certification from the state board of education.

15. Adopt a list of approved tests for determining special education assistance to gifted pupils as defined in and as provided in chapter 7, article 4.1 of this title. The adopted tests shall provide separate scores for quantitative reasoning, verbal reasoning and nonverbal reasoning and shall be capable of providing reliable and valid scores at the highest ranges of the score distribution.

16. Adopt rules governing the methods for the administration of all proficiency examinations.

17. Adopt proficiency examinations for its use. The state board of education shall determine the passing score for the proficiency examination.

18. Include within its budget the cost of contracting for the purchase, distribution and scoring of the examinations as provided in paragraphs 16 and 17 of this subsection.

19. Supervise and control the qualifications of professional nonteaching school personnel and prescribe standards relating to qualifications. The standards shall not require the business manager of a school district to obtain certification from the state board of education.

20. Impose such disciplinary action, including the issuance of a letter of censure, suspension, suspension with conditions or revocation of a certificate, upon a finding of immoral or unprofessional conduct.

21. Establish an assessment, data gathering and reporting system for pupil performance as prescribed in chapter 7, article 3 of this title.

22. Adopt a rule to promote braille literacy pursuant to section 15-214.

23. Adopt rules prescribing procedures for the investigation by the department of education of every written complaint alleging that a certificated person has engaged in immoral conduct.

24. For purposes of federal law, serve as the state board for vocational and technological education and meet at least four times each year solely to execute the powers and duties of the state board for vocational and technological education.

25. Develop and maintain a handbook for use in the schools of this state that provides guidance for the teaching of moral, civic and ethical education. The handbook shall promote existing curriculum frameworks and shall encourage school districts to recognize moral, civic and ethical values within instructional and programmatic educational development programs for the general purpose of instilling character and ethical principles in pupils in kindergarten programs and grades one through twelve.

26. Require pupils to recite the following passage from the declaration of independence for pupils in grades four through six at the commencement of the first class of the day in the schools, except that a pupil shall not be required to participate if the pupil or the pupil's parent or guardian objects:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. . . .

27. Adopt rules that provide for teacher certification reciprocity. The rules shall provide for a one year reciprocal teaching certificate with minimum requirements including valid teacher certification from a state with substantially similar criminal history or teacher fingerprinting requirements and proof of the submission of an application for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

28. Adopt rules that provide for the presentation of an honorary high school diploma to a person who has never obtained a high school diploma and who meets both of the following requirements:

(a) Currently resides in this state.

(b) Provides documented evidence from the Arizona department of veterans' services that the person enlisted in the armed forces of the United States and served in World War I, World War II, the Korean conflict or the Vietnam conflict.

29. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the duties of the department of education and that relate to quality of life, trade and economic development in this state in a manner

that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

30. Adopt rules to define and provide guidance to schools as to the activities that would constitute immoral or unprofessional conduct of certificated persons.

31. Adopt guidelines to encourage pupils in grades nine, ten, eleven and twelve to volunteer for twenty hours of community service before graduation from high school. A school district that complies with the guidelines adopted pursuant to this paragraph is not liable for damages resulting from a pupil's participation in community service unless the school district is found to have demonstrated wanton or reckless disregard for the safety of the pupil and other participants in community service. For the purposes of this paragraph, "community service" may include service learning. The guidelines shall include the following:

(a) A list of the general categories in which community service may be performed.

(b) A description of the methods by which community service will be monitored.

(c) A consideration of risk assessment for community service projects.

(d) Orientation and notification procedures of community service opportunities for pupils entering grade nine, including the development of a notification form. The notification form shall be signed by the pupil and the pupil's parent or guardian, except that a pupil shall not be required to participate in community service if the parent or guardian notifies the principal of the pupil's school in writing that the parent or guardian does not wish the pupil to participate in community service.

(e) Procedures for a pupil in grade nine to prepare a written proposal that outlines the type of community service that the pupil would like to perform and the goals that the pupil hopes to achieve as a result of community service. The pupil's written proposal shall be reviewed by a faculty advisor, a guidance counselor or any other school employee who is designated as the community service program coordinator for that school. The pupil may alter the written proposal at any time before performing community service.

(f) Procedures for a faculty advisor, a guidance counselor or any other school employee who is designated as the community service program coordinator to evaluate and certify the completion of community service performed by pupils.

32. To facilitate the transfer of military personnel and their dependents to and from the public schools of this state, pursue, in cooperation with the Arizona board of regents, reciprocity agreements with other states concerning the transfer credits for military personnel and their dependents. A reciprocity agreement entered into pursuant to this paragraph shall:

(a) Address procedures for each of the following:
(i) The transfer of student records.
(ii) Awarding credit for completed course work.
(iii) Permitting a student to satisfy the graduation requirements prescribed in section 15-701.01 through the successful performance on comparable exit-level assessment instruments administered in another state.
(b) Include appropriate criteria developed by the state board of education and the Arizona board of regents.

33. Adopt guidelines that school district governing boards shall use in identifying pupils who are eligible for gifted programs and in providing gifted education programs and services. The state board of education shall adopt any other guidelines and rules that it deems necessary in order to carry out the purposes of chapter 7, article 4.1 of this title.

34. For each of the alternative textbook formats of human-voiced audio, large-print and braille, designate alternative media producers to adapt existing standard print textbooks or to provide specialized textbooks, or both, for pupils with disabilities in this state. Each alternative media producer shall be capable of producing alternative textbooks in all relevant subjects in at least one of the alternative textbook formats. The board shall post the designated list of alternative media producers on its website.

35. Adopt a list of approved professional development training providers for use by school districts as provided in section 15-107, subsection J. The professional development training providers shall meet the training curriculum requirements determined by the state board of education in at least the areas of school finance, governance, employment, staffing, inventory and human resources, internal controls and procurement.

36. Adopt rules to prohibit a person who violates the notification requirements prescribed in section 15-183, subsection C, paragraph 7 or section 15-550, subsection C from certification pursuant to this title until the person is no longer charged or is acquitted of any offenses listed in section 41-1758.03, subsection B. The board shall also adopt rules to prohibit a person who violates the notification requirements, certification surrender requirements or fingerprint clearance card surrender requirements prescribed in section 15-183, subsection C, paragraph 8 or section 15-550, subsection D from certification pursuant to this title for at least ten years after the date of the violation.

37. Adopt rules for the alternative certification of teachers of nontraditional foreign languages that allow for the passing of a nationally accredited test to substitute for the education coursework required for certification.

38. ON OR BEFORE DECEMBER 15, 2011, ADOPT AND MAINTAIN A MODEL FRAMEWORK FOR A TEACHER AND PRINCIPAL EVALUATION INSTRUMENT THAT INCLUDES QUANTITATIVE DATA ON STUDENT ACADEMIC PROGRESS THAT ACCOUNTS FOR BETWEEN THIRTY-THREE PER CENT AND FIFTY PER CENT OF THE EVALUATION OUTCOMES AND BEST PRACTICES FOR PROFESSIONAL DEVELOPMENT AND EVALUATOR TRAINING. SCHOOL

DISTRICTS AND CHARTER SCHOOLS SHALL USE AN INSTRUMENT THAT MEETS THE DATA REQUIREMENTS ESTABLISHED BY THE STATE BOARD OF EDUCATION TO ANNUALLY EVALUATE INDIVIDUAL TEACHERS AND PRINCIPALS BEGINNING IN SCHOOL YEAR 2012-2013.

B. The state board of education may:

1. Contract.

2. Sue and be sued.

3. Distribute and score the tests prescribed in chapter 7, article 3 of this title.

4. Provide for an advisory committee to conduct hearings and screenings to determine whether grounds exist to impose disciplinary action against a certificated person, whether grounds exist to reinstate a revoked or surrendered certificate and whether grounds exist to approve or deny an initial application for certification or a request for renewal of a certificate. The board may delegate its responsibility to conduct hearings and screenings to its advisory committee. Hearings shall be conducted pursuant to title 41, chapter 6, article 6.

5. Proceed with the disposal of any complaint requesting disciplinary action or with any disciplinary action against a person holding a certificate as prescribed in subsection A, paragraph 14 of this section after the suspension or expiration of the certificate or surrender of the certificate by the holder.

6. Assess costs and reasonable attorney fees against a person who files a frivolous complaint or who files a complaint in bad faith. Costs assessed pursuant to this paragraph shall not exceed the expenses incurred by the state board in the investigation of the complaint.

Sec. 2. Section 15-536, Arizona Revised Statutes, as amended by Laws 2010, chapter 98, section 5, is amended to read:

15-536. <u>Offer of contract to certificated teacher who has not been employed more than three consecutive school years; acceptance; notice to teacher of intention not to reemploy</u>

A. Subject to ~~the provisions of~~ sections 15-539, 15-540, 15-541, 15-544 and 15-549, the governing board shall~~, between March 15 and May 15~~ offer a teaching contract for the next ensuing school year to each certificated teacher who has not been employed by the school district for more than the major portion of three consecutive school years and who is under a contract of employment with the school district for the current school year, unless~~, on or before April 15,~~ the governing board, a member of the board acting on behalf of the board or the superintendent of the school district gives notice to the teacher of the board's intention not to offer a teaching contract~~,~~ OR unless such teacher has been dismissed pursuant to section 15-538, 15-539, 15-541 or 15-544. The teacher's acceptance of the contract for the ensuing year must be indicated within thirty days from the date of the written contract or the offer is revoked. ~~Receipt under this subsection will be deemed to have occurred when the written contract is~~

~~personally delivered, placed in the teacher's school provided mailbox, including electronic mail, or two days after being placed in a United States postal service mail box.~~ The teacher accepts the contract by signing the contract and returning it to the governing board or by making a written instrument which accepts the terms of the contract and delivering it to the governing board. If the written instrument includes terms in addition to the terms of the contract offered by the board, the teacher fails to accept the contract.

B. Notice of the board's intention not to reemploy the teacher shall be by delivering it personally to the teacher or by sending it by registered or certified mail ~~bearing a postmark of on or before April 15, directed~~ to the teacher at ~~his~~ THE TEACHER'S place of residence as recorded in the school district records. The notice shall incorporate a statement of reasons for not reemploying the teacher. If the reasons are charges of inadequacy of classroom performance as defined by the governing board pursuant to section 15-539, subsection D, the board~~,~~ or its authorized representative, ~~shall,~~ at least ninety days prior to such notice, SHALL give the teacher written preliminary notice of ~~his~~ inadequacy, specifying the nature of the inadequacy with such particularity as to furnish the teacher an opportunity to correct ~~his~~ THE inadequacies and overcome the grounds for such charge. The governing board may delegate to employees of the governing board the general authority to issue preliminary notices of inadequacy of classroom performance to teachers pursuant to this subsection without the need for prior approval of each notice by the governing board. In all cases in which an employee of the governing board issues a preliminary notice of inadequacy of classroom performance without prior approval by the governing board, the employee shall report its issuance to the governing board within five school days. The written notice of intention not to reemploy shall include a copy of any evaluation pertinent to the charges made and filed with the board.

C. Nothing in this section shall be construed ~~so as~~ to provide a certificated teacher who has not been employed by the school district for more than the major portion of three consecutive school years and who has received notice of the board's intention not to offer a teaching contract with the right to a hearing pursuant to ~~the provisions of~~ section 15-539, subsection G.

Sec. 3. Section 15-536, Arizona Revised Statutes, as amended by section 2 of this act, is amended to read:

15-536. <u>Offer of contract to certificated teacher who has not been employed more than three consecutive school years; acceptance; notice to teacher of intention not to reemploy</u>

A. Subject to sections 15-539, 15-540, 15-541, 15-544 and 15-549, the governing board shall offer a teaching contract for the next ensuing school year to each certificated teacher who has not been employed by the school district for more than the major portion of three consecutive school years

and who is under a contract of employment with the school district for the current school year, unless the governing board, a member of the board acting on behalf of the board or the superintendent of the school district gives notice to the teacher of the board's intention not to offer a teaching contract or unless such teacher has been dismissed pursuant to section 15-538, 15-539, 15-541 or 15-544. The teacher's acceptance of the contract for the ensuing year must be indicated within ~~thirty~~ FIFTEEN BUSINESS days from the date of the TEACHER'S RECEIPT OF THE written contract or the offer is revoked. RECEIPT UNDER THIS SUBSECTION WILL BE DEEMED TO HAVE OCCURRED WHEN THE WRITTEN CONTRACT IS PERSONALLY DELIVERED, PLACED IN THE TEACHER'S SCHOOL PROVIDED MAILBOX, INCLUDING ELECTRONIC MAIL, OR TWO DAYS AFTER BEING PLACED IN A UNITED STATES POSTAL SERVICE MAIL BOX. The teacher accepts the contract by signing the contract and returning it to the governing board or by making a written instrument which accepts the terms of the contract and delivering it to the governing board. If the written instrument includes terms in addition to the terms of the contract offered by the board, the teacher fails to accept the contract.

B. Notice of the board's intention not to reemploy the teacher shall be by delivering it personally to the teacher or by sending it by registered or certified mail to the teacher at the teacher's place of residence as recorded in the school district records. The notice shall incorporate a statement of reasons for not reemploying the teacher. If the reasons are charges of inadequacy of classroom performance as defined by the governing board pursuant to section 15-539, subsection D, the board or its authorized representative, at least ninety days prior to such notice, shall give the teacher written preliminary notice of inadequacy, specifying the nature of the inadequacy with such particularity as to furnish the teacher an opportunity to correct the inadequacies and overcome the grounds for such charge. The governing board may delegate to employees of the governing board the general authority to issue preliminary notices of inadequacy of classroom performance to teachers pursuant to this subsection without the need for prior approval of each notice by the governing board. In all cases in which an employee of the governing board issues a preliminary notice of inadequacy of classroom performance without prior approval by the governing board, the employee shall report its issuance to the governing board within five school days. The written notice of intention not to reemploy shall include a copy of any evaluation pertinent to the charges made and filed with the board.

C. Nothing in this section shall be construed to provide a certificated teacher who has not been employed by the school district for more than the major portion of three consecutive school years and who has received notice of the board's intention not to offer a teaching contract with the right to a hearing pursuant to section 15-539, subsection G.

Sec. 4. <u>Repeal</u>

Section 15-536, Arizona Revised Statutes, as amended by Laws 2010, chapter 98, section 6, is repealed.

Sec. 5. Repeal

Section 15-536, Arizona Revised Statutes, as amended by Laws 2010, chapter 98, section 7, is repealed.

Sec. 6. Section 15-538.01, Arizona Revised Statutes, as amended by Laws 2010, chapter 98, section 8, is amended to read:

15-538.01. Offer of contract to certificated teacher employed more than three consecutive school years

A. Subject to ~~the provisions of~~ sections 15-539, 15-540, 15-541, 15-544 and 15-549, the governing board shall~~, between March 15 and May 15,~~ offer to each certificated teacher who has been employed by the school district for more than the major portion of three consecutive school years and who is under contract of employment with the school district for the current year a contract renewal for the next ensuing school year unless ~~on or before May 15~~ the governing board, a member of the board acting on behalf of the board or the superintendent of the school district gives notice to the teacher of the board's intent not to offer a contract and to dismiss the teacher as provided in section 15-539.

B. The teacher's acceptance of the contract must be indicated within ~~fifteen business~~ THIRTY days from the date of the ~~teacher's receipt of the~~ written contract or the offer of a contract is revoked. ~~Receipt under this subsection will be deemed to have occurred when the written contract is personally delivered, placed in the teacher's school provided mailbox, including electronic mail, or two days after being placed in a United States postal service mail box.~~ The teacher accepts the contract by signing the contract and returning it to the governing board or by making a written instrument which accepts the terms of the contract and delivering it to the governing board. If the written instrument includes terms in addition to the terms of the contract offered by the board, the teacher fails to accept the contract.

~~C. If dismissal proceedings in reference to the teacher cannot be completed by May 15 through no fault of the governing board or the superintendent, or if the incidents relied on in whole or in part occurred after May 15, dismissal proceedings may continue or be initiated.~~

Sec. 7. Section 15-538.01, Arizona Revised Statutes, as amended by section 6 of this act, is amended to read:

15-538.01. Offer of contract to certificated teacher employed more than three consecutive school years

A. Subject to sections 15-539, 15-540, 15-541, 15-544 and 15-549, the governing board shall offer to each certificated teacher who has been employed by the school district for more than the major portion of three consecutive school years and who is under contract of employment with the school district for the current year a contract renewal for the next ensuing school year unless the governing board, a member of the board acting on behalf of the board or the superintendent of the school district gives notice

to the teacher of the board's intent not to offer a contract and to dismiss the teacher as provided in section 15-539.

B. The teacher's acceptance of the contract must be indicated within ~~thirty~~ FIFTEEN BUSINESS days from the date of the TEACHER'S RECEIPT OF THE written contract or the offer of a contract is revoked. RECEIPT UNDER THIS SUBSECTION WILL BE DEEMED TO HAVE OCCURRED WHEN THE WRITTEN CONTRACT IS PERSONALLY DELIVERED, PLACED IN THE TEACHER'S SCHOOL PROVIDED MAILBOX, INCLUDING ELECTRONIC MAIL, OR TWO DAYS AFTER BEING PLACED IN A UNITED STATES POSTAL SERVICE MAIL BOX. The teacher accepts the contract by signing the contract and returning it to the governing board or by making a written instrument which accepts the terms of the contract and delivering it to the governing board. If the written instrument includes terms in addition to the terms of the contract offered by the board, the teacher fails to accept the contract.

Sec. 8. Repeal

Section 15-538.01, Arizona Revised Statutes, as amended by Laws 2010, chapter 98, section 9, is repealed.

Sec. 9. Repeal

Section 15-538.01, Arizona Revised Statutes, as amended by Laws 2010, chapter 98, section 10, is repealed.

Sec. 10. Retroactivity

A. Section 15-536, Arizona Revised Statutes, as amended by section 2 of this act, applies retroactively to November 24, 2009.

B. Section 15-538.01, Arizona Revised Statutes, as amended by section 6 of this act, applies retroactively to November 24, 2009.

C. Sections 4 and 8 of this act are effective retroactively to November 24, 2009.

APPROVED BY THE GOVERNOR MAY 10, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2010.