

AB 2573 (McCarty and R. Rivas) Response to Opposition Concerns

BILL SUMMARY

This bill is fundamentally about providing California students with stable, experienced, and high-quality teachers. All students deserve to be taught by a qualified educator that has a vested interest in the school community. Providing a pathway for qualified teachers to attain permanent employee status provides greater stability for both teachers and students. However, existing law excludes some groups of educators – including adult education teachers, ROC/P teachers, and teachers at very small districts – from the opportunity to attain permanent status. AB 2573 creates parity by giving *all* qualified teachers the opportunity to earn permanent status.

Opposition to AB 2573 (McCarty, R. Rivas) and previous versions of the bill have made the following arguments:

1. **Concern:** *“Small school districts need more flexibility because their budgets can fluctuate, and student needs can change from year to year. For example, sudden changes in ADA require staffing changes or a particular service is no longer needed because a student graduated or left the district.”*

Response: By providing teachers at small districts a pathway to attain permanent status, AB 2573 will not prevent small school districts from laying off employees; it will simply require them to follow due process when they do so.

Existing law provides a process for laying off permanent and probationary employees, when necessary. This bill will require all districts and county offices of education to use this process, regardless of their size.

Under existing law, a governing board may lay off permanent and probationary teachers during March 15 Layoffs for the following reasons:

1. A particular kind of service will be reduced or discontinued (PKS layoffs);
2. The district’s ADA in the first six months of school declines below either of the previous two school year’s ADA during the same period (ADA layoffs);
3. The board determines that attendance in the district will drop the following year due to termination of an inter-district tuition agreement; or
4. State law requires modification of curriculum. (EDC 44955(b)).

The governing board may also lay off a permanent or probationary employee between five days after the Legislature’s enactment of the Budget Act and August 15, if the district’s total Local Control Funding Formula (LCFF) per unit of ADA has not increased by at least 2% and that it is necessary to decrease the number of permanent employees. (EDC 44955.5.)

2. Concern: “Adult Education and ROC/P programs have unstable funding, so more flexibility is needed.”

Response: Funding for both CTE and Adult Education programs have remained stable or increased for many years. Furthermore, as with LCFF-funded programs, if categorical funding for CTE or Adult Education is cut, AB 2573 stills allow for staff reductions as necessary.

CTE Funding:

The LCFF, enacted in 2013, consolidated funding for the former Career Technical Education (CTE) categorical program into the formula and includes a 2.6% grade span adjustment for grades 9-12 in recognition of the increased costs associated with CTE. Subsequently, the state also created two CTE categorical programs outside the LCFF, including the CTE Incentive Grant Program and the K-12 Strong Workforce Program. LEAs also receive federal funding for CTE programs. While overall funding for education can be “unstable” during recessions, CTE funding provided through the LCFF and categorical programs over the past many years has remained stable, and has actually grown significantly.

Adult Education Funding:

Adult Education was one of the few categorical programs that was maintained outside the LCFF, in recognition that it served a unique population of students and was a high statewide priority. Since 2013, Adult Education funding has remained stable and has consistently received a COLA.

3. Concern: “If instructors who work in Adult Education and CTE programs become permanent, layoffs will be determined by seniority. That could place an instructor in a position very different from their current expertise if they hold the same type of credential as an individual with less seniority.”

Response: While existing law requires more junior permanent certificated employees to be laid off first, there are several exceptions to this rule that ensure positions can be filled by teachers with the appropriate qualifications, regardless of seniority, including:

Skipping. Notwithstanding EDC 44955 (b), legal precedent (Bledsoe v. Biggs, 2009) allows a district to choose to retain a more junior employee despite a more senior employee having the same “qualifications,” so long as the district can demonstrate:

- 1) A specific need for an employee to teach a specific course or course of study; and
- 2) That the more junior employee has the “special training and experience necessary” to teach the course.

Competence. Competence is the threshold inquiry regarding bumping rights. If a permanent teacher “is certificated and competent to render” a service provided by a more junior teacher, the senior teacher is entitled to bump into that position and not be laid off. (EDC 44955(b).) However, the district can adopt competencies, including minimum experience standards, to determine if an employee is competent to render services, as found in Duax v. Kern CCD (1987).

4. Concern: *“This bill would limit a district’s flexibility to provide the career technical education classes that would be in the most demand for today’s workforce needs.”*

Response: As outlined in responses 1 and 3, AB 2573 does not limit a district’s flexibility to change their CTE classes to respond to workforce demand. Even if a CTE teachers has permanent status, the layoff process allows for the reduction of staff if a particular kind of service will be reduced or discontinued. Furthermore, there are exceptions to seniority-based layoffs when a less senior employee has specific qualifications or competencies necessary to teach the class. Providing CTE teachers a path to attain permanent status will simply ensure that they have due process rights, and that these exceptions to seniority layoffs are fair.

5. Concern: *“The dismissal process for permanent employees is too expensive.”*

Response: While the district is responsible for the costs associated with dismissal hearings, this due process is essential in protecting employees from unfair or discriminatory treatment. Permanent employees are entitled to a hearing if disagreements come up and the employee feels that they have been dismissed unlawfully. Some organizations opposed to this bill have claimed this bill is not necessary because they have not laid off teachers impacted by this bill. In those cases, this bill would not result in additional cost.

Additionally, many local educational agencies are experiencing staffing shortages, especially in chronic shortage areas, such as math and science. Recent data released by the EDD identified CTE as among the highest-vacancy education fields. By creating more job security for teachers, AB 2573 will provide districts with an effective tool to better recruit and retain staff, provide cost savings, and improve outcomes for students.

CONCLUSION:

AB 2573 will provide *all* teachers, regardless of what subject they teach or the size of their district/COE, with a path to achieve permanent status and protections from unfair dismissal. Meanwhile, AB 2573 will still allow school districts and COEs the flexibility to adapt to changes in funding, enrollment, or program demand through the existing layoff and dismissal processes for permanent employees.