

BILL BRADBURY
SECRETARY OF STATE



JOHN LINDBACK
DIRECTOR

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ELECTIONS — (503) 986-1518

January 5, 2005

To All Interested Parties:

Secretary of State Bill Bradbury is responsible for the pre-election review of proposed initiative petitions for compliance with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. This review will be completed before approving the form of the cover and signature sheets for the purpose of circulating the proposed initiative petition to gather signatures.

The Secretary of State is seeking public input on whether proposed initiative petition (#22), satisfies the procedural constitutional requirements for circulation as a proposed initiative petition. Petition #22 was filed in our office on January 4, 2005, by Bill Sizemore and Grace I. Sizemore, for the General Election of November 7, 2006.

Enclosed is a copy of the text of this proposed initiative petition. If you are interested in providing comments on whether the proposed initiative petition meets the procedural constitutional requirements, please write to the secretary at the Elections Division in the State Capitol. Your comments, if any, must be received by the Elections Division no later than January 27, 2005, in order for them to be considered in the review.

BILL BRADBURY
Secretary of State

BY:

Summer Davis
Compliance Specialist

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:

The Oregon Revised Statutes are amended by eliminating some of the language of the existing ORS 342.934 and adding new language. In the following section, which is enacted as amended hereby, the existing language being eliminated is printed in parentheses and in italics, and the new language being added is printed in bold:

342.934 Procedure for reduction of teacher staff due to funding or administrative decision. (1) The procedure for reduction in teacher staff positions resulting from the school district's lack of funds to continue its educational program at its anticipated level or resulting from the district's elimination or adjustment of classes due to administrative decision shall be as provided in this section. However, nothing in this section is intended to interfere with the right of a fair dismissal district to discharge, remove or fail to renew the contract of a probationary teacher pursuant to ORS 342.835.

(2) The school district shall make every reasonable effort to:

(a) Transfer teachers of courses scheduled for discontinuation to other teaching positions for which they are licensed and qualified.

(b) Combine teaching positions in a manner which allows teachers to remain qualified so long as the combined positions meet the curriculum needs of the district and the competence consideration specified in subsection (4) of this section.

(3) In determining teachers to be retained when a school district reduces its staff under this section, the school district shall:

(a) Determine whether teachers to be retained hold proper licenses at the time of layoff to fill the remaining positions.

(b) *(Determine seniority of teachers to be retained, calculated from the first day of actual service as teachers with the school district inclusive of approved leaves of absence. Ties shall be broken by drawing lots.)* **Disregard seniority as a factor and retain the teachers who are the most qualified and competent to fill the remaining positions.**

((c) Determine competence and merit of teachers, if necessary, under subsection (4) of this section.)

(4) If a school district desires to retain a teacher with less seniority than a teacher being released under this section, the district shall **only be required to** determine that the teacher being retained has more competence or merit than the teacher with more seniority who is being released.

(5) An administrator shall retain status *(and seniority)* as a contract teacher and voluntarily may return to teaching in a reduction in staff situation. However, an administrator who was never employed as a teacher in the district shall not be eligible to become a nonadministrative teacher in the district if the effect is to displace a nonadministrative contract teacher, **unless the administrator is more qualified and competent to fill the position.**

(6) In consultation with its employees or, for those employees in a recognized or certified collective bargaining unit, with the exclusive bargaining representative of that unit, each school district shall establish a procedure for recalling teachers to employment

in the district who have been released because of a prospective or actual reduction in staff. The procedure so established shall define the criteria for recall and the teacher shall have the right of recall thereunder for 27 months after the last date of release by the district unless waived as provided in such procedure by rejection of a specific position. A contract teacher who is recalled shall retain the status obtained before the release. A probationary teacher who is recalled shall have years taught for the district counted as if the employment had been continuous for purposes of obtaining contract teacher status.

(7) An appeal from a decision on reduction in staff or recall under this section shall be by arbitration under the rules of the Employment Relations Board or by a procedure mutually agreed upon by the employee representatives and the employer, **except in no circumstance shall seniority be basis for challenging a school district's decision on reduction in staff or recall.** The results of the procedure shall be final and binding on the parties. Appeals from multiple reductions may be considered in a single arbitration. The arbitrator is authorized to reverse the staff reduction decision or the recall decision made by the district only if the district:

- (a) Exceeded its jurisdiction;
- (b) Failed to follow the procedure applicable to the matter before it;
- (c) Made a finding or order not supported by substantial evidence in the whole record;

or

- (d) Improperly construed the applicable law.

(8) After January 1, 2007, a school district shall not agree in any collective bargaining agreement to waive the right to consider **competence and merit** in making decisions about the order of reduction in staff or recall of staff. Nothing in this subsection shall prevent a school district and the exclusive bargaining representative from agreeing to alternative criteria for competence determinations under this subsection so long as the criteria ensure that all retained teachers are **the most qualified and competent** for the positions they fill. As used in this subsection, "qualified" means the measurement of the teacher's ability to teach the particular grade level or subject matter in which the teacher is placed after the reduction in force. Qualifications (*shall be measured by more than seniority and licensure, but*) may include other criteria that reasonably measure the teacher's fitness to teach the relevant grade or subject level. Determinations of competence or qualifications under this subsection may take into account requirements for any special needs students.

(9) As used in this section:

(a) "Competence" means the ability to teach **effectively** a subject or grade level based on recent teaching experience related to that subject or grade level within the last five years, (*or including* educational attainments, (*or both,*) but not based solely on being licensed to teach. The district may consider a teacher's willingness to undergo additional training or pursue additional education, **if two or more teachers are equally competent to fill the same position** (*in deciding upon questions of competence*).

(b) "Merit" means the measurement of one teacher's ability and effectiveness against the ability and effectiveness of another teacher. [1981 c.569 §3; 1983 s.s. c.1 §1; 1989 c.282 §1; 1993 c.480 §1; 1997 c.864 §15]

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