

IN THE SENATE

SENATE BILL NO. 1327

BY EDUCATION COMMITTEE

AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-513, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DELIVERY OF A CONTRACT, TO PROVIDE THAT A DESIGNEE OF THE BOARD MAY DECLARE A POSITION VACANT, TO REVISE PROVISIONS RELATING TO A DISTRICT COURT ORDER AND TO REVISE PROVISIONS RELATING TO THE DISTRICT PLACING AN EMPLOYEE ON INVOLUNTARY UNPAID LEAVE OR UNPAID SUSPENSION; AMENDING SECTION 33-514, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO A REDUCTION IN FORCE, TO REVISE PROVISIONS RELATING TO A CATEGORY B CONTRACT AND TO REVISE A DATE; AMENDING SECTION 33-515, IDAHO CODE, TO REVISE A PROVISION RELATING TO CERTIFICATED EMPLOYEES EMPLOYED PURSUANT TO A GRANDFATHERED RENEWABLE CONTRACT AND TO REVISE PROVISIONS RELATING TO REASSIGNMENT OF AN ADMINISTRATIVE EMPLOYEE; AMENDING SECTION 33-1271, IDAHO CODE, TO REVISE PROVISIONS RELATING TO FINAL OFFERS OF SETTLEMENT, TO REVISE PROVISIONS RELATING TO THE SUBJECT MATTER OF NEGOTIATIONS AND TO PROVIDE FOR RULES; AMENDING SECTION 33-1272, IDAHO CODE, TO REVISE A DEFINITION; DECLARING AN EMERGENCY; AND PROVIDING A CONTINGENT SUNSET DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-513, Idaho Code, be, and the same is hereby amended to read as follows:

33-513. PROFESSIONAL PERSONNEL. The board of trustees of each school district including any specially chartered district shall have the following powers and duties:

1. To employ professional personnel, on written contract in form approved by the state superintendent of public instruction, conditioned upon the provisions of section 33-523, Idaho Code, and a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder. Should the board of trustees fail to enter into written contract for the employment of any such person, the state superintendent of public instruction shall withhold ensuing apportionments until such written contract be entered into. When the board of trustees has delivered a proposed contract for the next ensuing year to any such person, such person shall have a period of time to be determined by the board of trustees in its discretion, but in no event less than ten (10) days from the date the contract is delivered, in which to sign the contract and return it to the board. If the board of trustees does not make a determination as to how long the person has to sign and return the contract, the default time limit shall be twenty-one (21) days after it is delivered to the person. Delivery of a contract may be made only in person, ~~or~~ by certified mail, return receipt requested, or electronically, return receipt requested. When delivery is made in person, delivery of the contract must be acknowledged by a signed receipt. When delivery is made by certified mail or electronically, delivery must be acknowledged by

1 the return of the certified mail receipt or return electronic receipt from  
2 the person to whom the contract was sent. Should the person willfully refuse  
3 to acknowledge receipt of the contract or the contract is not signed and re-  
4 turned to the board in the designated period of time, or if no designated pe-  
5 riod of time is set by the board, the default time, the board or a designee of  
6 the board may declare the position vacant.

7 (a) The board of trustees shall withhold the salary of any teacher who  
8 does not hold a teaching certificate valid in this state. No teacher  
9 whose salary is withheld pursuant to this provision shall have the right  
10 to any amounts owed, notwithstanding the provisions of the Idaho wage  
11 claims act or any other provision of law. Provided however, that fol-  
12 lowing a determination by the board that a teacher does not hold a teach-  
13 ing certificate valid in this state, no moneys shall be expended or dis-  
14 tributed by the state department of education or other appropriate en-  
15 tity to the district for the salary of such teacher.

16 (b) The board of trustees shall not contract to require any teacher to  
17 make up time spent in attending any meeting called by the state board  
18 of education or by the state superintendent of public instruction; nor  
19 while attending regularly scheduled official meetings of the state  
20 teachers' association.

21 2. In the case of school districts other than elementary school dis-  
22 tricts, to employ a superintendent of schools for a term not to exceed three  
23 (3) years, who shall be the executive officer of the board of trustees with  
24 such powers and duties as the board may prescribe. The superintendent shall  
25 also act as the authorized representative of the district whenever such is  
26 required, unless some other person shall be named by the board of trustees to  
27 act as its authorized representative. The board of trustees shall conduct  
28 an annual, written formal evaluation of the work of the superintendent of  
29 the district. The evaluation shall indicate the strengths and weaknesses  
30 of the superintendent's job performance in the year immediately preceding  
31 the evaluation and areas where improvement in the superintendent's job  
32 performance, in the view of the board of trustees, is called for. For all  
33 evaluations conducted after June 30, 2012, at least fifty percent (50%) of  
34 the evaluation shall be based on objective measure(s) of growth in student  
35 achievement, as determined by the board of trustees.

36 3. To employ through written contract principals who shall hold a valid  
37 certificate appropriate to the position for which they are employed, who  
38 shall supervise the operation and management of the school in accordance  
39 with the policies established by the board of trustees and who shall be under  
40 the supervision of the superintendent.

41 4. To employ assistant superintendents, directors, principals and  
42 other district administrative employees for a term not to exceed two (2)  
43 years. A teacher holding renewable contract status in Idaho pursuant to  
44 section 33-515, Idaho Code, immediately previous to such administrative  
45 employment shall retain such eligibility. The superintendent, the superin-  
46 tendent's designee, or in a school district that does not employ a superin-  
47 tendent, the board of trustees, shall conduct an annual, written evaluation  
48 of each such employee's performance. For all evaluations conducted after  
49 June 30, 2012, at least fifty percent (50%) of the evaluation shall be based  
50 on objective measure(s) of growth in student achievement, as determined by

1 the board of trustees. In addition, input from the parents and guardians of  
 2 students shall be considered as a factor in the evaluation of principals and  
 3 any other school-based administrative employees' evaluation.

4 5. To suspend, grant leave of absence, place on probation or discharge  
 5 certificated professional personnel for a material violation of any lawful  
 6 rules or regulations of the board of trustees or of the state board of edu-  
 7 cation, or for any conduct which could constitute grounds for revocation of  
 8 a teaching certificate. Any certificated professional employee, except the  
 9 superintendent, may be discharged during a contract term under the following  
 10 procedures:

11 (a) The superintendent or any other duly authorized administrative of-  
 12 ficer of the school district may recommend the discharge of any certifi-  
 13 cated employee by filing with the board of trustees written notice spec-  
 14 ifying the alleged reasons for discharge.

15 (b) Upon receipt of such notice the board, acting through their duly  
 16 authorized administrative official, shall give the affected employee  
 17 written notice of the allegations and the recommendation of discharge,  
 18 along with written notice of a hearing before the board prior to any de-  
 19 termination by the board of the truth of the allegations.

20 (c) The hearing shall be scheduled to take place not less than six (6)  
 21 days nor more than twenty-one (21) days after receipt of the notice by  
 22 the employee. The date provided for the hearing may be changed by mutual  
 23 consent.

24 (d) The hearing shall be public unless the employee requests in writing  
 25 that it be in executive session.

26 (e) All testimony at the hearing shall be given under oath or affirma-  
 27 tion. Any member of the board, or the clerk of the board, may administer  
 28 oaths to witnesses or affirmations by witnesses.

29 (f) The employee may be represented by legal counsel and/or by a repre-  
 30 sentative of a local or state teachers association.

31 (g) The chairman of the board or the designee of the chairman shall con-  
 32 duct the hearing.

33 (h) The board shall cause an electronic record of the hearing to be made  
 34 or shall employ a competent reporter to take stenographic or steno-  
 35 type notes of all the testimony at the hearing. A transcript of the hearing  
 36 shall be provided at cost by the board upon request of the employee.

37 (i) At the hearing the superintendent or other duly authorized adminis-  
 38 trative officer shall present evidence to substantiate the allegations  
 39 contained in such notice.

40 (j) The employee may produce evidence to refute the allegations. Any  
 41 witness presented by the superintendent or by the employee shall be sub-  
 42 ject to cross-examination. The board may also examine witnesses and be  
 43 represented by counsel.

44 (k) The affected employee may file written briefs and arguments with  
 45 the board within three (3) days after the close of the hearing or such  
 46 other time as may be agreed upon by the affected employee and the board.

47 (l) Within fifteen (15) days following the close of the hearing, the  
 48 board shall determine and, acting through their duly authorized ad-  
 49 ministrative official, shall notify the employee in writing whether  
 50 the evidence presented at the hearing established the truth of the

1 allegations and whether the employee is to be retained, immediately  
2 discharged, or discharged upon termination of the current contract.

3 (m) If the employee appeals the decision of the board of trustees to the  
4 district court, the district court may affirm the board's decision or  
5 set it aside and remand the matter to the board of trustees upon the fol-  
6 lowing grounds, and shall not set the same aside for any other grounds:

7 (i) That the findings of fact are not based on any substantial,  
8 competent evidence;

9 (ii) That the board of trustees has acted without jurisdiction or  
10 in excess of its authority;

11 (iii) That the findings by the board of trustees as a matter of law  
12 do not support the decision.

13 (n) The determination of the board of trustees shall be affirmed un-  
14 less the employee's substantial rights, as that term is used in section  
15 67-5279, Idaho Code, are violated.

16 6. The board of trustees has the authority to grant any employee's re-  
17 quest for a leave of absence. The board may also delegate this authority  
18 to the district superintendent or any other individual so designated by the  
19 board. If the board delegates this authority to the district superintendent  
20 or any other individual, the board shall ratify or nullify the action regard-  
21 ing the request for a leave of absence at the next regularly scheduled board  
22 meeting or at a special board meeting should the next regularly scheduled  
23 board meeting not be within a period of twenty-one (21) days from the date of  
24 such action.

25 7. The board of trustees has the authority to delegate its authority  
26 to the district superintendent or any other individual so designated by the  
27 board. If the board delegates this authority to the district superinten-  
28 dent or any other individual, the board shall ratify or nullify the action  
29 of placing an employee on a period of suspension, or involuntary leave of  
30 absence at the next regularly scheduled board meeting or at a special board  
31 meeting should the next regularly scheduled board meeting not be within a pe-  
32 riod of twenty-one (21) days from the date of such action.

33 (a) Should an employee of the district be in a position where there  
34 is a court order preventing the employee from being in the presence of  
35 minors, ~~or students~~ or any other employee assigned to the same build-  
36 ing, the district may place such an employee on a period of involuntary  
37 unpaid leave of absence or probation unpaid suspension due to the em-  
38 ployee's inability to perform the essential functions of the employee's  
39 position.

40 SECTION 2. That Section 33-514, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

42 33-514. ISSUANCE OF ANNUAL CONTRACTS ~~--- SUPPORT PROGRAMS ---~~ CATE-  
43 GORIES OF CONTRACTS -- OPTIONAL PLACEMENT -- WRITTEN EVALUATION. (1) The  
44 board of trustees shall establish criteria and procedures for the super-  
45 vision and evaluation of certificated employees who are not employed on a  
46 renewable contract, as provided for in section 33-515, Idaho Code.

47 (2) There shall be two (2) categories of annual contracts available to  
48 local school districts under which to employ certificated personnel:

(a) A category A contract is a limited one (1) year contract for certificated personnel in the first or greater years of continuous employment with the same school district. Upon the decision by a local school board not to reemploy the person for the following year, the certificated employee shall be provided a written statement of reasons for non-reemployment by no later than July 1. Provided however, that no such decision shall be made until after the completion of the written evaluation required by subsection (4) of this section, ~~unless such decision is being made pursuant to a reduction in force.~~ No property rights shall attach to a category A contract and therefore the employee shall not be entitled to a review by the board of trustees of the reasons or decision not to reemploy.

(b) A category B contract is a limited two (2) year contract that may be offered at the sole discretion of the board of trustees for certificated personnel in their fourth or greater year of continuous employment with the same school district. The board of trustees may, at its sole discretion, add an additional year to such a contract upon the expiration of the first year, resulting in a new two (2) year contract. The board of trustees may, at its sole discretion, terminate the second year of a category B contract upon the conclusion of the first year, in the event of a reduction in force. Upon the decision by a board of trustees not to reemploy the person employed on a category B contract ~~for the following year~~ beyond the conclusion of the second year of the contract, the certificated employee shall be provided a written statement of reasons for non-reemployment by no later than July 1. The employee shall, upon request, be given the opportunity for an informal review of such decision by the board of trustees. The parameters of an informal review shall be determined by the local board. Provided however, that no such decision shall be made until after the completion of the written evaluation required by subsection (4) of this section, ~~unless such decision is being made pursuant to a reduction in force.~~ No property rights shall attach to a category B contract and therefore the employee shall not be entitled to a formal review by the board of trustees of the reasons or decision not to reemploy.

(3) School districts hiring an employee who has been on renewable contract status as provided in section 33-515, Idaho Code, with another Idaho district shall have the option to immediately grant renewable contract status, or to place the employee on a category A or B contract. A certificated instructional employee hired with previous out-of-state experience shall not be eligible to receive a renewable contract, but may be offered a category A or B contract, based on the employee's years of experience, including out-of-state years of experience as if such years had been worked in Idaho.

(4) There shall be a minimum of one (1) written evaluation in each of the annual contract years of employment, the first portion of which shall be completed ~~before February~~ by March 1 of each year, and shall include input from parents and guardians of students as a factor. A second portion shall be included for all evaluations conducted after June 30, 2012. This second portion shall comprise at least fifty percent (50%) of the total written evaluation and shall be based on objective measure(s) of growth in student achievement. The requirement to provide at least one (1) written evaluation does

1 not exclude additional evaluations that may be performed. No civil action  
2 for money damages shall arise for failure to comply with this subsection.

3 SECTION 3. That Section 33-515, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

5 33-515. ISSUANCE OF RENEWABLE CONTRACTS. (1) It is the intent of the  
6 legislature that after January 31, 2011, no new employment contract between  
7 a school district and a certificated employee shall result in the vesting of  
8 tenure, continued expectations of employment or property rights in an em-  
9 ployment relationship. Therefore, no board of trustees shall have the au-  
10 thority to enter into any renewable contract with any certificated or other  
11 employee hired by such district, except as specifically addressed by this  
12 section and section 33-514(3), Idaho Code. For any certificated employees  
13 already holding renewable contract status with a district as of January 31,  
14 2011, the provisions of this section shall apply.

15 (2) ~~At least once annually,~~ The performance of each certificated em-  
16 ployee employed pursuant to a grandfathered renewable contract shall be  
17 evaluated according to criteria and procedures established by the board  
18 of trustees in accordance with section 33-514(4), Idaho Code, and general  
19 guidelines approved by the state board of education. Except as otherwise  
20 provided, the employee employed pursuant to a grandfathered renewable  
21 contract shall have the right to the continued automatic renewal of that  
22 employee's employment contract by giving notice, in writing, of acceptance  
23 of renewal. Such notice shall be given to the board of trustees of the school  
24 district then employing such person not later than the twentieth day of July.  
25 Except as otherwise provided by this paragraph, the board of trustees shall  
26 notify each person entitled to be employed on a grandfathered renewable con-  
27 tract of the requirement that such person must give the notice hereinabove  
28 and that failure to do so may be interpreted by the board as a declination  
29 of the right to automatic renewal or the offer of another contract. Such  
30 notification shall be made, in writing, not later than the first day of July,  
31 in each year, except to those persons to whom the board, prior to said date,  
32 has sent proposed contracts for the next ensuing year, or to whom the board  
33 has given the notice required by this section. These deadlines may not be  
34 altered by contract, including any currently existing or future negotiated  
35 agreement or master contract entered into pursuant to the professional ne-  
36 gotiations act, sections 33-1271 through 33-1276, Idaho Code. Should any  
37 master agreement or negotiated contract contain a provision which conflicts  
38 with provisions of title 33, Idaho Code, such provision in the master agree-  
39 ment or negotiated contract is hereby declared to be null and void and of no  
40 force and effect as of January 31, 2011.

41 (3) Any contract automatically renewed under the provisions of this  
42 section may be renewed for a shorter term, longer term or the same length of  
43 term as the length of term stated in the current contract, and at a greater,  
44 lesser or equal salary to that stated in the current contract.

45 (4) Should the board of trustees determine to reassign an administra-  
46 tive employee who, prior to being employed as an administrative employee was  
47 employed pursuant to a renewable contract to a nonadministrative position,  
48 the board of trustees, at its discretion, shall employ such nonadministra-  
49 tive employee pursuant to a grandfathered renewable contract. Such contract

1 shall be deemed to have continued in place as if the nonadministrative em-  
2 ployee was employed by the district pursuant to a renewable contract since  
3 January 31, 2011. Such grandfathered renewable contract is subject to the  
4 provisions of this section.

5 (a) If the board of trustees reassigns an administrative employee to  
6 a nonadministrative position, the board shall give written notice to  
7 the employee which contains a statement of the reasons for the reassign-  
8 ment. The employee, upon written request to the board, shall be enti-  
9 tled to an informal review of that decision. The process and procedure  
10 for the informal review shall be determined by the board of trustees.  
11 Such a reassignment may include changes in contractual terms, including  
12 the changes described in subsection (3) of this section.

13 (b) Nothing in this section shall prevent the board of trustees from of-  
14 fering a grandfathered renewable contract increasing the salary of any  
15 certificated person who is eligible to receive such a contract.

16 (5) Before a board of trustees can determine not to renew for the unsat-  
17 isfactory performance of any certificated person who holds a grandfathered  
18 renewable contract, such person shall be entitled to a defined period of pro-  
19 bation as established by the board, following an observation, evaluation or  
20 partial evaluation. This period of probation shall be preceded by a writ-  
21 ten notice from the board of trustees or its designee with reasons for such  
22 probationary period and with provisions for adequate supervision and evalu-  
23 ation of the person's performance during the probationary period. Such pe-  
24 riod of probation shall not affect the person's grandfathered renewable con-  
25 tract status. Consideration of probationary status for certificated per-  
26 sonnel is consideration of the status of an employee within the meaning of  
27 section 67-2345, Idaho Code, and the consideration and decision to place an  
28 employee on probation may be held in executive session. If the considera-  
29 tion results in probationary status, the individual on probation shall not  
30 be named in the minutes of the meeting. A record of the decision shall be  
31 placed in the teacher's personnel file.

32 (6) If the board of trustees takes action to immediately discharge  
33 or discharge upon termination of the current contract a certificated per-  
34 son whose contract would otherwise be automatically renewed, the action  
35 of the board shall be consistent with the procedures specified in section  
36 33-513(5), Idaho Code, unless the decision to discharge upon termination  
37 has been made as part of a reduction in force, or the decision to immediately  
38 discharge has been made pursuant to section 33-515B, Idaho Code.

39 (7) If the board of trustees determines to change the length of the term  
40 stated in the current contract or reduce the salary of a certificated person  
41 whose contract is being automatically renewed, nothing herein shall require  
42 any due process proceedings or probationary period.

43 (8) If the board of trustees, for reason of a reduction in force, for the  
44 ensuing contract year determines not to renew the grandfathered renewable  
45 contract of a certificated person whose contract would otherwise be automat-  
46 ically renewed, nothing herein shall require any probationary period.

47 SECTION 4. That Section 33-1271, Idaho Code, be, and the same is hereby  
48 amended to read as follows:

33-1271. SCHOOL DISTRICTS -- PROFESSIONAL EMPLOYEES -- NEGOTIATION AGREEMENTS. The board of trustees of each school district, including specially chartered districts, or the designated representative(s) of such district, is hereby empowered to and shall, upon its own initiative or upon the request of a local education organization representing a majority of the professional employees, request negotiations with the local education organization or the designated representative(s) of such organization on behalf of the professional employees employed by the school district and negotiate with such party in good faith on matters related to compensation of professional employees. A request for negotiations may be initiated by either the local education organization or entity seeking to be designated the local education organization, or the board of trustees.

(1) Accurate records or minutes of the proceedings shall be kept and shall be available for public inspection at the office of the affected school district during normal business hours.

(2) Joint ratification of all final offers of settlement shall be made in open meetings and written notice of the ratification activity shall be provided to the parties to the agreement.

(3) As the only subject matter of negotiations is compensation provided through public funding, all negotiation sessions of the parties shall be conducted in open session, with all members of the public able to attend.

(4) The state board of education may promulgate rules to effect the clear, consistent implementation of all laws relating to labor agreements between boards of trustees and professional employees.

SECTION 5. That Section 33-1272, Idaho Code, be, and the same is hereby amended to read as follows:

33-1272. DEFINITIONS. Definition of terms as used in this act:

1. "Professional employee" means any certificated employee of a school district, including charter districts; provided, however, that superintendents, supervisors or principals may be excluded from the professional employee group if a negotiation agreement between the board and local education organization so specifies.

2. "Local education organization" means any local district organization duly chosen and selected by a majority of the professional employees as their representative organization for negotiations under this act. For the purposes of this definition, "majority" shall mean one (1) nonadministrative certificated professional employee more than fifty percent (50%) or greater of the nonadministrative professional employees in the district.

3. "Negotiations" means meeting and conferring in good faith in open session by a local board of trustees and the authorized local education organization, or the respective designated representatives of both parties, for the purpose of reaching an agreement related to the compensation of professional employees.

4. "Compensation" means salary and benefits for the professional employee.

5. "Benefits" ~~includes~~ is limited to employee insurance, leave time and sick leave benefits.



1       SECTION 6. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after its  
3 passage and approval.

4       SECTION 7. If Chapter 96, Laws of 2011, is rejected through voter refer-  
5 endum in November 2012, the provisions of this act shall be null, void and of  
6 no further force or effect.