

## **BILL ANALYSIS**

Senate Research Center

S.B. 8  
By: Shapiro et al.  
Education  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current Texas law imposes burdensome restrictions on school districts' decision-making power in ways that range from requirements regarding personnel matters to mandates concerning school operation and resource allocation. In addition, state law creates barriers for a school district, both to its sound operation and to its ability to implement necessary changes to improve educational quality and increase efficiency.

S.B. 8 returns control of personnel matters to school districts by pushing back the deadline for notice of contract renewal to the 10th day before the last instructional day and repealing the requirement that teachers receive at least the same salary as earned in 2010-2011. S.B. 8 also allows school districts to implement furloughs as long as funding levels are below 2010-2011 amounts. Additionally, school districts will no longer have to employ teachers who do not maintain their certifications and will no longer be forced to terminate continuing contracts on a "last in, first out" basis.

S.B. 8 returns control over operations to school districts by removing fitness gram mandates in grades when students are not enrolled in physical education courses.

S.B. 8 amends current law relating to the flexibility of the board of trustees of a school district in the management and operation of public schools in the district.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the State Board for Educator Certification (SBEC) in SECTION 2 (Section 21.051, Education Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of education in SECTION 2 (Section 21.051, Education Code) and SECTION 19 (Section 44.011, Education Code) of this bill.

Rulemaking authority previously granted to SBEC is modified in SECTION 2 (Section 21.051, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 21.0031, Education Code, by amending Subsections (a) and (b) and adding Subsection (b-1), as follows:

(a) Provides that an employee's probationary, continuing, or term contract under this chapter is void if the employee:

(1) does not hold a valid certificate or permit issued by the State Board for Educator Certification (SBEC);

(2) fails to fulfill the requirements necessary to renew or extend the employee's temporary, probationary, or emergency certificate or any other certificate or permit issued under Subchapter B (Certification of Educators); or

(3) fails to comply with any requirement under Subchapter C (Criminal History Records), Chapter 22 (School District Employees and Volunteers), if the failure results in suspension or revocation of the employee's certificate under Section 22.0831(f)(2) (relating to certain sanctions for failure to comply with certain requirements).

Makes a nonsubstantive change.

(b) Provides that if a school district has knowledge that an employee's contract, rather than after an employee receives notice that the employee's contract, is void under Subsection (a):

(1) the district is authorized, except as provided by Subsection (b-1), to terminate the employee, suspend the employee with or without pay, or retain the employee for the remainder of the school year on an at-will employment basis in a position other than a position required to be held by an employee under a contract under Section 21.002 (Teacher Employment Contracts), rather than in a position other than classroom teacher, at the employee's existing rate of pay or at a reduced rate; and

(2) the employee is not entitled to the minimum salary prescribed by Section 21.402 (Minimum Salary Schedule for Certain Professional Staff).

(b-1) Prohibits a school district from terminating or suspending under Subsection (b) an employee whose contract is void under Subsection (a)(1) or (2) because the employee failed to renew or extend the employee's certificate or permit if the employee:

(1) requests an extension from SBEC to renew, extend, or otherwise validate the employee's certificate or permit; and

(2) not later than the 10th day after the date the contract is void, takes necessary measures to renew, extend, or otherwise validate the employee's certificate or permit, as determined by SBEC.

SECTION 2. Amends Section 21.051, Education Code, as follows:

Sec. 21.051. New heading: RULES REGARDING FIELD-BASED EXPERIENCE AND OPTIONS FOR FIELD EXPERIENCE AND INTERNSHIPS. (a) Provides that, in this section, "teacher of record" means a person employed by a school district who teaches the majority of the instructional day in an academic instructional setting and is responsible for evaluating student achievement and assigning grades.

(b) Requires the candidate, before a school district may employ a candidate for certification as a teacher of record, to complete at least 15 hours of field-based experience in which the candidate is actively engaged in instructional or educational activities under supervision at:

(1) a public school campus accredited or approved for the purpose by the Texas Education Agency (TEA); or

(2) a private school recognized or approved for the purpose by TEA.

(c) Provides that Subsection (b) applies only to an initial certification issued on or after September 1, 2012. Provides that Subsection (b) does not affect:

(1) the validity of a certification issued before September 1, 2012; or

(2) the eligibility of a person who holds a certification issued before September 1, 2012, to obtain a subsequent renewal of the certification in accordance with SBEC rule.

(d) Provides that Subsection (b) does not affect the period within which an individual must complete field-based experience hours as determined by SBEC rule if the individual is not accepted into an educator preparation program before the deadline prescribed by SBEC rule and is hired for a teaching assignment by a school district after the deadline prescribed by SBEC rule.

(e) Requires SBEC to propose rules relating to the field-based experience required by Subsection (b). Requires the commissioner of education (commissioner) to adopt procedures and standards for recognizing a private school under Subsection (b)(2).

(f) Creates this subsection from existing text. Requires SBEC to propose rules providing flexible options for person for any field-based experience, rather than field experience, or internship required for certification.

SECTION 3. Amends Section 21.103(a), Education Code, as follows:

(a) Requires the board of trustees of a school district to give notice of its decision to terminate the employment of a teacher employed under a probationary contract to the teacher not later than the 10th day, rather than the 45th day, before the last day of instruction required under the contract. Requires that the notice be delivered personally by hand delivery to the teacher on the campus at which the teacher is employed, except that if the teacher is not present on the campus on the date that hand delivery is attempted, the notice be mailed by prepaid certified mail or delivered by express delivery service to the teacher's address of record with the district. Provides that notice that is postmarked on or before the 10th day before the last day of instruction is considered timely given under this subsection.

SECTION 4. Amends Section 21.104(b), Education Code, to authorize a school district, in lieu of discharge or pending discharge, to suspend a teacher without pay for good cause as specified by Subsection (a) (relating to discharging a teacher employed under a probationary contract) for a period not to extend beyond the end of the current school year.

SECTION 5. Amends Subchapter C, Chapter 21, Education Code, by adding Section 21.1041, as follows:

Sec. 21.1041. HEARING UNDER PROBATIONARY CONTRACT. Entitles a teacher to:

(1) a heading as provided by Subchapter F (Hearings Before Hearing Examiners), if the teacher is protesting proposed under Section 21.104 (Discharge During Year or Suspension Without Pay Under Probationary Contract); or

(2) a hearing in a manner provided under Section 21.207 for nonrenewal of a term contract or a hearing provided by Subchapter F, as determined by the board of trustees of the district, if the teacher is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a financial exigency declared under Section 44.011 that requires a reduction in personnel.

SECTION 6. Amends Section 21.156(b), Education Code, to authorize a school district, in lieu of discharge or pending discharge, to suspend a teacher without pay for good cause as specified by Subsection (a) (relating to authorizing a teacher employed under a continuing contract to be discharged at anytime for good cause as determined by the board of trustees) for a period not to extend beyond the end of the current school year.

SECTION 7. Amends Section 21.157, Education Code, as follows:

Sec. 21.157. NECESSARY REDUCTION OF PERSONNEL. Authorizes a teacher employed under a continuing contract to be released at the end of a school year and the teacher's employment with the school district terminated at that time because of a necessary reduction of personnel by the school district, with those reductions made primarily based upon teacher appraisals administered under Section 21.352 in the specific teaching fields and other criteria as determined by SBEC. Deletes existing text authorizing a teacher employed under a continuing contract to be released at the end of a school year and the teacher's employment with the school district terminated at that time because of a necessary reduction of personnel by the school district, with those reductions made in the reverse order of seniority in the specific teaching fields.

SECTION 8. Amends Section 21.159(b), Education Code, as follows:

(b) Entitles a teacher who notifies the board of trustees within the time prescribed by Subsection (a) to:

(1) a hearing as provided by Subchapter F, if the teacher is protesting proposed action under Section 21.156; or

(2) a hearing in a manner provided under Section 21.207 for nonrenewal of a term contract or a hearing provided by Subchapter F, as determined by the board, if the teacher is protesting proposed action under Section 21.157 or proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Section 44.011 that requires a reduction in personnel.

SECTION 9. Amends Section 21.206(a), Education Code, as follows:

(a) Requires the board of trustees, not later than the 10th day, rather than 45th day, after the last day of instruction in a school year, to notify in writing each teacher whose contract is about to expire whether the board proposes to renew or not renew the contract. Requires that the notice be delivered personally by hand delivery to the teacher on the campus at which the teacher is employed, except that if the teacher is not present on the campus on the date that hand delivery is attempted, the notice be mailed by prepaid certified mail or delivered by express delivery service to the teacher's address of record with the district. Provides that notice that is postmarked on or before the 10th day before the last day of instruction is considered timely given under this subsection.

SECTION 10. Amends Section 21.207, Education Code, by amending Subsections (a) and (c) and adding Subsection (b-1), as follows:

(a) Requires the teacher, if the teacher desires a hearing after receiving notice of the proposed nonrenewal, to notify the board of trustees in writing not later than the 15th day after the date the teacher receives hand delivery of the notice of the proposed action, or if the notice is mailed by prepaid certified mail or delivered by express delivery service, not later than the 15th day after the date the notice is delivered to the teacher's address of record with the district.

(b-1) Provides that notwithstanding any other provision of this code, this subsection applies only to a school district with an enrollment of at least 5,000 students. Authorizes the board of trustees to designate an attorney licensed to practice law in this state to hold the hearing on behalf of the board, to create a hearing record for SBEC's consideration and action, and to recommend an action to SBEC. Prohibits the attorney serving as SBEC's designee from being employed by a school district and neither the designee nor a law firm with which the designee is associated is authorized to be serving as an agent or representative of a school district, of a teacher in a dispute between a district and a teacher, or of an organization of school employees, school administrators, or school boards of trustees. Requires SBEC's designee, not later than the 15th day after the completion of the hearing under this subsection, to provide to SBEC a record of the

hearing and the designee's recommendation of whether the contract should be renewed or not renewed. Requires SBEC to consider the record of the hearing and the designee's recommendation at the first SBEC meeting for which notice can be posted in compliance with Chapter 551 (Open Meetings), Government Code, following the receipt of the record and recommendation from SBEC's designee, unless the parties agree in writing to a different date. Requires SBEC, at the meeting, to consider the hearing record and the designee's recommendation and allow each party to present an oral argument to SBEC. Authorizes SBEC by written policy to limit the amount of time for oral argument. Requires that the policy provide equal time for each party. Authorizes SBEC to obtain advice concerning legal matters from an attorney who has not been involved in the proceedings. Authorizes SBEC to accept, reject, or modify the designee's recommendation. Requires SBEC to notify the teacher in writing of SBEC's decision not later than the 15th day after the date of the meeting.

(c) Authorizes the teacher, at the hearing before SBEC or SBEC's designee, to be represented by a representative of the teacher's choice, hear the evidence supporting the reason for nonrenewal, cross-examine adverse witnesses, and present evidence.

SECTION 11. Amends Section 21.212, Education Code, by adding Subsection (f), as follows:

(f) Authorizes the board of trustees of a school district, on the basis of a financial exigency declared under Section 44.011 that requires a reduction in personnel, to choose to amend the terms of the contract of a superintendent employed under a term contract. Authorizes a superintendent whose contract is amended under this subsection to resign without penalty by providing reasonable notice to the board and continue employment for that notice period under the prior contract.

SECTION 12. Amends Section 21.251, Education Code, as follows:

Sec. 21.251. APPLICABILITY. (a) Provides that this subchapter applies if a teacher requests a hearing after receiving notice of the proposed decision to:

- (1) terminate the teacher's continuing contract at any time, except as provided by Subsection (b)(3);
- (2) terminate the teacher's probationary or term contract before the end of the contract period, except as provided by Subsection (b)(3); or
- (3) Makes no changes to this subdivision.

(b) Provides that this subchapter does not apply to:

- (1)-(2) Makes no changes to these subdivisions; or
- (3) a decision, on the basis of a financial exigency declared under Section 44.011 that requires a reduction in personnel, to terminate a probationary or term contract before the end of the contract period or to terminate a continuing contract at any time, unless the board of trustees has decided to use the process prescribed by this subchapter for that purpose.

Makes a nonsubstantive change.

SECTION 13. Amends Section 21.257, Education Code, by adding Subsection (a-1), to provide that a determination by the hearing examiner regarding good cause for the suspension of a teacher without pay or the termination of a probationary, continuing, or term contract is a conclusion of law and may be adopted, rejected, or changed by the board of trustees or board subcommittee as provided by Section 21.259(b).

SECTION 14. Amends Section 21.259(b), Education Code, to authorize the board of trustees or board subcommittee to adopt, reject, or change the hearing examiner's conclusions of law,

including a determination regarding good cause for suspension without pay or termination; or proposal for granting relief.

SECTION 15. Amends Section 21.402(a), Education Code, to require a school district, except as provided by Subsection (e) (relating to minimum monthly salary) or (f) (relating to career ladder supplement), rather than Subsection (d) (relating to entitling certain employees to a salary equal to that of 2010-2011 school year), (e), or (f), to pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience in addition to other factors, as determined by commissioner rule, determined a certain formula set forth under this subsection.

SECTION 16. Amends Subchapter I, Chapter 21, Education Code, by adding Section 21.4021, 21.4022, and 21.4032, as follows:

Sec. 21.4021. FURLOUGHS. (a) Authorizes the board of trustees of a school district, notwithstanding Section 21.401 (Minimum Service Required) and subject to Section 21.4022, in accordance with district policy, to implement a furlough program and reduce the number of days of service otherwise required under Section 21.401 by not more than six days of service during a school year if the commissioner certifies in accordance with Section 42.009 that the district will be provided with less state and local funding for that year than was provided to the district for the 2010-2011 school year.

(b) Authorizes the board of trustees, notwithstanding Section 21.402, to reduce the salary of an employee who is furloughed in proportion to the number of days by which service is reduced, provided that the furlough program is implemented in compliance with this section.

(b-1) Requires that a furlough program subject all contract personnel to the same number of furlough days.

(c) Prohibits an educator from being furloughed on a day that is included in the number of days of instruction required under Section 25.081 (Operation of Schools).

(d) Prohibits an educator from using personal, sick, or any other paid leave while the educator is on a furlough.

(e) Provides that a furlough imposed under this section does not constitute a break in service for purposes of the Teacher Retirement System of Texas. Provides that a furlough day does not constitute a day of service for purposes of the Teacher Retirement System of Texas.

(f) Prohibits implementation of a furlough program from resulting in an increase in the number of required teacher workdays.

(g) Provides that if a board of trustees adopts a furlough program after the date by which a teacher is required to give notice of resignation under Section 21.105 (Resignations Under Probationary Contract), 21.160 (Resignation Under Continuing Contract), or 21.210 (Resignation Under Term Contract), as applicable, a teacher who subsequently resigns is not subject to sanctions imposed by SBEC as otherwise authorized by those sections.

(h) Provides that a decision by the board of trustees to implement a furlough program is final and may not be appealed, and does not create a cause of action or require collective bargaining.

(i) Requires that any reduction under this section in the amount of the annual salary paid to an employee be equally distributed over the course of the employee's current contract with the school district.

Sec. 21.4022. REQUIRED PROCESS FOR DEVELOPMENT OF FURLOUGH PROGRAM OR OTHER SALARY REDUCTION PROPOSAL. (a) Prohibits the board of trustees of a school district from implementing a furlough program under Section 21.4021 or reduce salaries until the district has complied with this section.

(b) Requires a school district must to a process to develop a furlough program or other salary reduction proposal, as applicable, that:

(1) includes the involvement of the district's professional staff; and

(2) provides district employees with the opportunity to express opinions regarding the furlough program or salary reduction proposal, as applicable, at the public meeting required by Subsection (c).

(c) Requires the board of trustees to hold a public meeting at which SBEC and school district administration present:

(1) information regarding the options considered for managing the district's available resources, including consideration of a tax rate increase and use of the district's available fund balance;

(2) an explanation of how the district intends, through implementation of a furlough program under Section 21.4021 or through other salary reductions, as applicable, to limit the number of district employees who will be discharged or whose contracts will not be renewed; and

(3) information regarding the local option residence homestead exemption.

(d) Requires that any explanation of a furlough program under Subsection (c)(2) state the specific number of furlough days proposed to be required.

(e) Requires the public and school district employees to be provided with an opportunity to comment at the public meeting required under Subsection (c).

Sec. 21.4032. REDUCTIONS IN SALARIES OF CLASSROOM TEACHERS AND ADMINISTRATORS. (a) Provides that this section applies only to a widespread reduction in the amount of the annual salaries paid to school district classroom teachers based primarily on district financial conditions rather than on teacher performance.

(b) Requires the district, for any school year in which a school district has reduced the amount of the annual salaries paid to district classroom teachers from the amount paid for the preceding school year, to reduce the amount of the annual salary paid to each district administrator or other professional employee by a percent or fraction of a percent that is equal to the average percent or fraction of a percent by which teacher salaries have been reduced.

SECTION 17. Amends Section 38.101(a), Education Code, to require a school district, except as provided by Subsection (b) (relating to assessments not being required for certain students with certain conditions), to annually assess the physical fitness of students enrolled in grade three or higher in a course that satisfies the curriculum requirements for physical education under Section 28.002(a)(2)(C) (relating to physical education being included in the required enrichment curriculum), rather than enrolled in grades 3 through 12.

SECTION 18. Amends Subchapter A, Chapter 42, Education Code, by adding Section 42.009, as follows:

Sec. 42.009. DETERMINATION OF FUNDING LEVELS. (a) Requires the commissioner, not later than July 1 of each year, to determine for each school district

whether the estimated amount of state and local funding per student in weighted average daily attendance to be provided to the district under the Foundation School Program for maintenance and operations for the following school year is less than the amount provided to the district for the 2010-2011 school year. Requires the commissioner, if the amount estimated to be provided is less, to certify the percentage decrease in funding to be provided to the district.

(b) Requires the commissioner, in making the determinations regarding funding levels required by Subsection (a), to:

(1) make adjustments as necessary to reflect changes in a school district's maintenance and operations tax rate;

(2) for a district required to take action under Chapter 41 (Equalized Wealth Level) to reduce its wealth per student to the equalized wealth level, base the determinations on the district's net funding levels after deducting any amounts required to be expended by the district to comply with Chapter 41; and

(3) determine a district's weighted average daily attendance in accordance with this chapter as it existed on January 1, 2011.

SECTION 19. Amends Subchapter A, Chapter 44, Education Code, by adding Section 44.011, as follows:

Sec. 44.011. FINANCIAL EXIGENCY. (a) Authorizes the board of trustees of a school district to adopt a resolution declaring a financial exigency for the district. Provides that the declaration expires at the end of the fiscal year during which the declaration is made unless the board adopts a resolution before the end of the fiscal year declaring continuation of the financial exigency for the following fiscal year.

(b) Provides that the board is not limited in the number of times the board may adopt a resolution declaring continuation of the financial exigency.

(c) Authorizes the board to terminate a financial exigency declaration at any time if the board considers it appropriate.

(d) Requires the board, each time the board adopts a resolution under this section, to notify the commissioner. Requires the commissioner by rule to prescribe the time and manner in which notice must be given to the commissioner under this subsection.

(e) Requires the commissioner by rule to adopt minimum standards concerning school district financial conditions that must exist for declaration of a financial exigency by the board of trustees of the district.

(f) Authorizes the commissioner to use emergency rulemaking procedures to adopt rules under Subsection (e). Provides that this subsection expires September 1, 2013.

SECTION 20. Amends Subchapter F, Chapter 552, Government Code, by adding Section 552.2661, as follows:

Sec. 552.2661. CHARGE FOR COPY OF PUBLIC INFORMATION PROVIDED BY SCHOOL DISTRICT. Authorizes a school district that receives a request to produce public information for inspection or publication or to produce copies of public information in response to a requestor who, within the preceding 180 days, has accepted but failed to pay written itemized statements of estimated charges from the district as provided under Section 552.261(b) (relating to authorizing a requestor to require a written statement as to the amount of time that was required to produce and provide the



copy) to require the requestor to pay the estimated charges for the request before the request is fulfilled.

SECTION 21. Repealers: Sections 12.1331 (Wage Increase for Certain Professional Staff), 21.402(d) (relating to entitling certain employees to a salary that is equal to the salary the employee received for the 2010-2011 school year), and 33.902(b) (relating to requiring each school district to consider the need for and availability of child care) and (c) (relating to requiring a district to effectively publicize the hearings and hold all the hearings before the start of the school year), Education Code.

SECTION 22. Requires SBEC, on or before January 1, 2012, to propose rules relating to educator certification as prescribed by Section 21.051, Education Code, as amended by this Act.

SECTION 23. Provides that the changes in law made by this Act apply only to a hearing examiner's determination regarding good cause that is contained in a written recommendation under Section 21.257, Education Code, issued on or after the effective date of this Act.

SECTION 24. Effective date: upon passage or the 91st day after the last day of the legislative session.