

## **BILL ANALYSIS**

C.S.H.B. 400  
By: Eissler  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Personnel costs account for a large portion of the budgets of Texas school districts. Interested parties believe that, due to a lack of flexibility in staffing and to outdated administrative expenditures that do not directly benefit student academic achievement, districts have a limited ability to manage revenue shortfalls and to best meet the needs of students. C.S.H.B. 400 seeks to address issues relating to the flexibility for public schools to administer primary and secondary education efficiently, including, among other provisions, teacher contracting, class size limits, and various administrative requirements.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 24 of this bill.

### **ANALYSIS**

C.S.H.B. 400 amends the Education Code to repeal provisions of law relating to the minimum length of a contract between a school district and an educator, the minimum salary schedule for certain district professional staff, the placement of district professional staff on the minimum salary schedule, and district professional staff service records. The bill makes conforming changes to reflect the repeal of these provisions.

C.S.H.B. 400 requires a school district to adopt a strategic plan for determining the compensation of the district's classroom teachers, full-time librarians, full-time certified counselors, and full-time school nurses. The bill requires the strategic compensation plan to be designed to recruit, reward, and retain effective classroom teachers, librarians, counselors, and nurses. The bill requires a school district, in developing the plan, to consider including provisions under which the district may analyze any of several factors when determining compensation, including the following, as applicable: demonstrated effectiveness in improving student achievement; service as a mentor for other classroom teachers; assumption of responsibilities in addition to regular duties; results of performance evaluations; whether a classroom teacher teaches in a subject area or position that is an acute shortage area as determined by the school district board of trustees, if the classroom teacher meets state and federal qualifications to teach in that subject area or position; whether a classroom teacher teaches a greater number of students than the average teacher in the district; whether an employee teaches at or is assigned to a district school at which, as determined by the board of trustees, the district has difficulty hiring or retaining classroom teachers or other professional employees; or other job-related duties, as determined by the district. The bill requires a school district to adopt a process to consider input from classroom teachers, librarians, counselors, and nurses before adoption or revision of such a plan. The bill authorizes the plan to provide for nonfinancial compensation, including flexible scheduling or additional leave, and compensation for employees who meet campus-wide goals. The bill prohibits such a plan from considering athletic coaching or other athletic performance or achievement in determining compensation and requires payment for service as a coach or with regard to extracurricular activities to be

determined separately from the plan. The bill prohibits a plan adopted by a school district from being used by the district for determining employee compensation paid before the 2012-2013 school year.

C.S.H.B. 400 changes the class size limit for a school district from 22 students in a kindergarten, first, second, third, or fourth grade class to a district-wide average of 22 students in kindergarten, first, second, third, and fourth grade classes but not more than 25 students in a class at one of those grade levels. The bill includes among the elements of the written notice of an exception from the limits provided to the parent of or person standing in parental relation to each student affected by the exception a statement that an exception from the district-wide average limit was granted and a statement of the district-wide average number of children in a class for which the exception was granted. The bill removes a provision prohibiting an accelerated instruction group administered by a school district for students who have failed to perform satisfactorily on certain statewide tests from having a ratio of more than 10 students for each teacher.

C.S.H.B. 400 authorizes a school district board of trustees to adopt a resolution declaring a financial exigency for the district that 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. The bill clarifies that the board is not limited in the number of times the board may adopt a resolution declaring such continuation and authorizes the board to terminate a financial exigency declaration at any time if the board considers it appropriate. The bill requires the board to notify the commissioner of education each time the board adopts any such resolution. The bill requires the commissioner by rule to prescribe the time and manner in which such a notice must be given.

C.S.H.B. 400 extends the deadline for a school district board of trustees to give notice to a district teacher whose employment under a probationary contract the board has decided to terminate from the 45th day before the last day of instruction required under the contract to the last day of instruction required under the contract. The bill extends the deadline for a board to notify in writing each teacher whose term contract is about to expire whether the board proposes to renew or not renew the contract from the 45th day before the last day of instruction in a school year to the last day of instruction in a school year. The bill requires the notice given to such teachers to be delivered personally to the teacher or mailed by regular mail or prepaid certified mail or by an express delivery service to the teacher's address of record with the district. The bill provides that such notice is considered given at the time of mailing. The bill makes these provisions applicable beginning with contracts for the 2011-2012 school year if the bill takes effect on or before April 10, 2011, and applicable beginning with contracts for the 2012-2013 school year if the bill takes effect after April 10, 2011.

C.S.H.B. 400 removes a provision specifying that a necessary reduction of teachers employed under continuing contracts made by a school district be in the reverse order of seniority in the specific teaching fields.

C.S.H.B. 400 authorizes a teacher whose term contract is terminated before the end of the contract period for a financial exigency that requires a reduction in personnel to request a hearing before the district board of trustees or the board's designee as provided by provisions of law relating to a hearing on a proposed nonrenewal of a contract. The bill authorizes a teacher who is aggrieved by a decision of the board or the board's designee at a requested hearing to appeal to the commissioner for review of the decision. The bill prohibits the commissioner from substituting the commissioner's judgment for that of the board or the board's designee unless the decision of the board or the board's designee was not supported by substantial evidence based on the record made at the hearing before the board or the board's designee.

C.S.H.B. 400 requires a school district board of trustees to provide notice of a public hearing regarding the district's annual financial management report or annual educational performance report or of a public meeting regarding the district's budget and proposed tax rate by sending the

notice through e-mail to media serving the district; by prominently posting the entire notice, in addition to any required documents or summaries, on the district's website; and by making the notice, in addition to any required documents or summaries, available for public inspection at the district's central administrative office and at each campus in the district. The bill authorizes the board to provide the notices as otherwise permitted by provisions of law, as amended by the bill, relating to such hearings and meetings.

C.S.H.B. 400 authorizes, rather than requires, notice of a public hearing regarding a district's annual financial management report to be provided to a newspaper of general circulation in the district and clarifies that such notice is required to be provided as prescribed by the bill. The bill authorizes, rather than requires, notification of a hearing to discuss a district's annual educational performance report to include notice to a newspaper of general circulation in the district and clarifies that such notification is required to include notice as prescribed by the bill.

C.S.H.B. 400 authorizes, rather than requires, the president of a district board of trustees to provide for publication of the notice of the district's budget and proposed tax rate meeting, if no daily, weekly, or biweekly newspaper is published in the district, to provide for the publication of the notice in at least one newspaper of general circulation in the county in which the district's central administrative office is located. The bill specifies that such notice is to be provided as prescribed by the bill and makes related conforming changes.

C.S.H.B. 400 requires the joint election agreement allocating expenses to provide that a school district is responsible only for the proportion of election expenses that corresponds to the proportion that the number of precincts located within the school district's boundaries bears to the total number of precincts participating in the joint election. The bill requires the polling places in a school district bond or tax election held as a joint election to be designated in the same manner as polling places in an election for district trustees. The bill makes a conforming change to the Election Code.

C.S.H.B. 400 limits a school district's required annual physical fitness assessment of students in grade three or higher to students enrolled in a course that satisfies the curriculum requirements for physical education under the Texas Essential Knowledge and Skills for physical education or that serves as a physical education credit for the recommended and advanced high school programs. The bill repeals provisions of law establishing that stipends to a teacher in the master reading teacher grant program, the master mathematics teacher grant program, the master technology teacher grant program, or the master science teacher grant program not be considered in determining whether the district employing the teacher is paying the teacher the minimum monthly salary. The bill removes a similar provision of law establishing that a stipend to a teacher attending a reading academy is not considered in determining whether a district is paying the teacher the minimum monthly salary. The bill repeals provisions of law authorizing an eligible member of the Teacher Retirement System of Texas (TRS) who is a certified career or technology education teacher to establish equivalent membership service credit in TRS for one or two years of work experience that is required for certification in a career or technological field, and the bill establishes that this repeal does not affect equivalent membership service credit established before the bill's effective date.

C.S.H.B. 400 requires that the operations calendar required to be adopted by the governing board of the Texas School for the Deaf be consistent with the number of days of service in contracts between the school and classroom teachers, in addition to providing for at least the minimum number of required instruction days.

C.S.H.B. 400 amends the Government Code to make provisions requiring an employing school district to pay the state's contribution on the portion of the salary of a member of TRS that exceeds the statutory minimum salary applicable to members in a personnel position that would have been entitled to the minimum salary for certain school personnel, as that minimum salary provision existed on January 1, 2011, to accommodate that provision's repeal by the bill. The bill

sets out the statutory minimum salary schedule for purposes of such provisions based on the member's years of experience and makes a related conforming change. The bill requires the Legislative Budget Board, at least once every four years, to review and make recommendations regarding revision of the portion of the state's contribution for which school districts are responsible.

C.S.H.B. 400 makes its provisions applicable beginning with the 2011-2012 school year, except as otherwise provided, and makes conforming and nonsubstantive changes.

C.S.H.B. 400 repeals Section 823.404, Government Code, and the following provisions of the Education Code:

- Section 21.401
- Section 21.402
- Section 21.403
- Section 21.4031
- Section 21.410(1)
- Section 21.411(1)
- Section 21.412(1)
- Section 21.413(1)
- Section 29.0821(c)
- Section 30.102(b)

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 400 omits provisions included in the original requiring the voters of a joint election for trustees of an independent school district, if the election is held on the November uniform election date, to be served by certain designated polling places and requiring a contract for election services to provide that a school district is responsible for a certain portion of election expenses. The substitute differs from the original by providing that the proportion of expenses for which a school district is responsible in the joint election agreement corresponds to the proportion that the number of precincts located within the school district's boundaries bears to the total number of precincts participating in the joint election, whereas the original provides that such proportion corresponds to the proportion that the number of registered voters in the school district bears to the total number of registered voters in all political subdivisions participating in the joint election.

C.S.H.B. 400 differs from the original by requiring notice of a school district board of trustees' decision to terminate the employment of a teacher employed under a probationary contract or notice to each teacher whose term contract is about to expire whether the board proposes to renew or not renew the contract to be delivered in a certain manner, whereas the original is permissive in authorizing that manner of delivery.

C.S.H.B. 400 differs from the original by expanding the compensation plan required to be adopted by a school district for classroom teachers to include compensation for full-time librarians, full-time certified counselors, and full-time school nurses and by requiring that the compensation plan be strategic, whereas the original sets out the requirement for the district to adopt a plan for determining compensation. The substitute differs from the original by requiring

a school district, in developing the plan, to consider including provisions under which the district may analyze any of certain specified factors when determining compensation, whereas the original requires a district, in developing the compensation plan, to consider including provisions under which the district will pay a bonus to each classroom teacher who meets certain expectations similar in substance to certain specified factors in the substitute. The substitute contains provisions not included in the original expanding, revising, and adding to the factors which may be analyzed in determining compensation. The substitute differs from the original by requiring a school district to adopt a process to consider input from classroom teachers, librarians, counselors, and nurses before adoption or revision of a compensation plan, whereas the original requires an adopted compensation plan to be designed with input from the district's classroom teachers and to base teacher compensation on annual evaluations focused on student achievement. The substitute differs from the original by authorizing a compensation plan to provide for nonfinancial compensation, including flexible scheduling or additional leave, and compensation for employees who meet campus-wide goals, whereas the original authorizes such a plan to provide for paying a bonus to district employees who meet campus goals. The substitute contains provisions not included in the original prohibiting a compensation plan from considering athletic coaching or other athletic performance or achievement in determining compensation and requiring payment for service as a coach or with regard to extracurricular activities to be determined separately from the plan. The substitute omits a provision included in the original requiring the Texas Education Agency to develop a model alternative compensation plan that a school district may use in adopting a compensation plan.

C.S.H.B. 400 contains a provision not included in the original requiring that the operations calendar required to be adopted by the governing board of the Texas School for the Deaf be consistent with the number of days of service in contracts between the school and classroom teachers. The substitute differs from the original, in a provision requiring a school district each year to assess the physical fitness assessment of students enrolled in grade three or higher to students, by limiting that annual assessment to students enrolled either in a course that satisfies the curriculum requirements for physical education under the Texas Essential Knowledge and Skills or a course that serves as a physical education credit for the recommended and advanced high school programs, whereas the original limits that annual assessment to students enrolled in a course that satisfies the curriculum requirements for physical education under the Texas Essential Knowledge and Skills.

C.S.H.B. 400 contains provisions not included in the original requiring a school district board of trustees to notify the commissioner of education each time the board adopts a resolution declaring financial exigency for the district or declaring its continuation and requiring the commissioner by rule to prescribe the time and manner in which such a notice must be given.

C.S.H.B. 400 contains provisions not included in the original setting out a statutory minimum salary schedule based on member's years of experience for purposes of requiring an employing district to pay the state's contribution on the portion of the salary of a member of the Teacher Retirement System of Texas that exceeds the statutory minimum salary, rather than basing the statutory minimum salary on repealed sections of the Education Code. The substitute contains a provision not included in the original requiring the Legislative Budget Board, at least once every four years, to review and make recommendations regarding revision of the portion of the state's contribution for which school districts are responsible.

C.S.H.B. 400 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions and by making clarifying changes and technical corrections to the law.