

1-1 By: Shapiro, et al. S.B. No. 12  
1-2 (In the Senate - Filed April 13, 2011; April 13, 2011, read  
1-3 first time and referred to Committee on Education; April 18, 2011,  
1-4 reported adversely, with favorable Committee Substitute by the  
1-5 following vote: Yeas 5, Nays 2; April 18, 2011, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 12 By: Davis

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to the flexibility of the board of trustees of a school  
1-10 district in the management and operation of public schools in the  
1-11 district.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 21.0031, Education Code, is amended by  
1-14 amending Subsections (a) and (b) and adding Subsection (b-1) to  
1-15 read as follows:

1-16 (a) An employee's probationary, continuing, or term  
1-17 contract under this chapter is void if the employee:

1-18 (1) does not hold a valid certificate or permit issued  
1-19 by the State Board for Educator Certification; [or]

1-20 (2) fails to fulfill the requirements necessary to  
1-21 renew or extend the employee's temporary, probationary, or  
1-22 emergency certificate or any other certificate or permit issued  
1-23 under Subchapter B; or

1-24 (3) fails to comply with any requirement under  
1-25 Subchapter C, Chapter 22, if the failure results in suspension or  
1-26 revocation of the employee's certificate under Section  
1-27 22.0831(f)(2).

1-28 (b) If a school district has knowledge that an [After an  
1-29 employee receives notice that the] employee's contract is void  
1-30 under Subsection (a):

1-31 (1) the [a school] district may, except as provided by  
1-32 Subsection (b-1):

1-33 (A) terminate the employee;

1-34 (B) suspend the employee with or without pay; or

1-35 (C) retain the employee for the remainder of the  
1-36 school year on an at-will employment basis in a position other than  
1-37 a position required to be held by an employee under a contract under  
1-38 Section 21.002 [classroom teacher] at the employee's existing rate  
1-39 of pay or at a reduced rate; and

1-40 (2) the employee is not entitled to the minimum salary  
1-41 prescribed by Section 21.402.

1-42 (b-1) A school district may not terminate or suspend under  
1-43 Subsection (b) an employee whose contract is void under Subsection  
1-44 (a)(1) or (2) because the employee failed to renew or extend the  
1-45 employee's certificate or permit if the employee:

1-46 (1) requests an extension from the State Board for  
1-47 Educator Certification to renew, extend, or otherwise validate the  
1-48 employee's certificate or permit; and

1-49 (2) not later than the 10th day after the date the  
1-50 contract is void, takes necessary measures to renew, extend, or  
1-51 otherwise validate the employee's certificate or permit, as  
1-52 determined by the State Board for Educator Certification.

1-53 SECTION 2. Subsection (a), Section 21.103, Education Code,  
1-54 is amended to read as follows:

1-55 (a) The board of trustees of a school district may terminate  
1-56 the employment of a teacher employed under a probationary contract  
1-57 at the end of the contract period if in the board's judgment the  
1-58 best interests of the district will be served by terminating the  
1-59 employment. The board of trustees must give notice of its decision  
1-60 to terminate the employment to the teacher not later than the 10th  
1-61 [45th] day before the last day of instruction required under the  
1-62 contract. The board's decision is final and may not be appealed.

1-63 SECTION 3. Subsection (a), Section 21.105, Education Code,

2-1 is amended to read as follows:

2-2 (a) A teacher employed under a probationary contract for the  
 2-3 following school year may relinquish the position and leave the  
 2-4 employment of the district at the end of a school year without  
 2-5 penalty by filing with the board of trustees or its designee a  
 2-6 written resignation not later than the 30th [~~45th~~] day before the  
 2-7 first day of instruction of the following school year. A written  
 2-8 resignation mailed by prepaid certified or registered mail to the  
 2-9 president of the board of trustees or the board's designee at the  
 2-10 post office address of the district is considered filed at the time  
 2-11 of mailing.

2-12 SECTION 4. Section 21.157, Education Code, is amended to  
 2-13 read as follows:

2-14 Sec. 21.157. NECESSARY REDUCTION OF PERSONNEL. (a) A  
 2-15 teacher employed under a continuing contract may be released at the  
 2-16 end of a school year and the teacher's employment with the school  
 2-17 district terminated at that time because of:

2-18 (1) a necessary reduction of personnel by the school  
 2-19 district; or

2-20 (2) a program change that requires a reduction in  
 2-21 personnel [~~, with those reductions made in the reverse order of~~  
 2-22 ~~seniority in the specific teaching fields].~~

2-23 (b) Notwithstanding Subsection (a)(1), a teacher employed  
 2-24 under a continuing contract may not be released as described by that  
 2-25 subdivision for a school year in which the district is authorized to  
 2-26 implement a furlough program under Section 21.4021 or reduce  
 2-27 salaries under Section 21.4022 unless the district has taken action  
 2-28 under either or both of those sections to achieve the greatest  
 2-29 savings in salary costs permitted by Section 21.4022.

2-30 SECTION 5. Subsection (a), Section 21.160, Education Code,  
 2-31 is amended to read as follows:

2-32 (a) A teacher employed under a continuing contract may  
 2-33 relinquish the position and leave the employment of the district at  
 2-34 the end of a school year without penalty by filing with the board of  
 2-35 trustees or its designee a written resignation not later than the  
 2-36 30th [~~45th~~] day before the first day of instruction of the following  
 2-37 school year. A written resignation mailed by prepaid certified or  
 2-38 registered mail to the president of the board of trustees or the  
 2-39 board's designee at the post office address of the district is  
 2-40 considered filed at time of mailing.

2-41 SECTION 6. Subsection (a), Section 21.206, Education Code,  
 2-42 is amended to read as follows:

2-43 (a) Not later than the 10th [~~45th~~] day before the last day of  
 2-44 instruction in a school year, the board of trustees shall notify in  
 2-45 writing each teacher whose contract is about to expire whether the  
 2-46 board proposes to renew or not renew the contract.

2-47 SECTION 7. Subsection (a), Section 21.210, Education Code,  
 2-48 is amended to read as follows:

2-49 (a) A teacher employed under a term contract with a school  
 2-50 district may relinquish the teaching position and leave the  
 2-51 employment of the district at the end of a school year without  
 2-52 penalty by filing a written resignation with the board of trustees  
 2-53 or the board's designee not later than the 30th [~~45th~~] day before  
 2-54 the first day of instruction of the following school year. A  
 2-55 written resignation mailed by prepaid certified or registered mail  
 2-56 to the president of the board of trustees or the board's designee at  
 2-57 the post office address of the district is considered filed at the  
 2-58 time of mailing.

2-59 SECTION 8. Section 21.211, Education Code, is amended by  
 2-60 amending Subsection (a) and adding Subsection (a-1) to read as  
 2-61 follows:

2-62 (a) The board of trustees may terminate a term contract and  
 2-63 discharge a teacher at any time for:

2-64 (1) good cause as determined by the board; [~~or~~]

2-65 (2) a financial exigency that requires a reduction in  
 2-66 personnel; or

2-67 (3) a program change that requires a reduction in  
 2-68 personnel.

2-69 (a-1) Notwithstanding Subsection (a)(2), the board of

3-1 trustees may not terminate a term contract as described by that  
3-2 subdivision for a school year in which the district is authorized to  
3-3 implement a furlough program under Section 21.4021 or reduce  
3-4 salaries under Section 21.4022 unless the district has taken action  
3-5 under either or both of those sections to achieve the greatest  
3-6 savings in salary costs permitted by Section 21.4022.

3-7 SECTION 9. Subchapter I, Chapter 21, Education Code, is  
3-8 amended by adding Sections 21.4021, 21.4022, and 21.4023 to read as  
3-9 follows:

3-10 Sec. 21.4021. FURLOUGHS. (a) Notwithstanding Section  
3-11 21.401 and subject to Sections 21.4022 and 21.4023, the board of  
3-12 trustees of a school district may, in accordance with district  
3-13 policy, implement a furlough program and reduce the number of days  
3-14 of service otherwise required under Section 21.401 by not more than  
3-15 six days of service during a school year if the commissioner  
3-16 certifies in accordance with Section 42.009 that the district will  
3-17 be provided with less state and local funding for that year than was  
3-18 provided to the district for the 2010-2011 school year.

3-19 (b) Notwithstanding Section 21.402 but subject to Section  
3-20 21.4022, the board of trustees may reduce the salary of an employee  
3-21 who is furloughed in proportion to the number of days by which  
3-22 service is reduced, provided that the furlough program is  
3-23 implemented in compliance with this section.

3-24 (c) A furlough program must subject all contract personnel  
3-25 to the same number of furlough days, except that, for purposes of  
3-26 providing professional development, the board of trustees may  
3-27 exempt from furloughs or subject to a lesser number of required  
3-28 furlough days contract personnel assigned to a campus that:

3-29 (1) does not satisfy performance standards under  
3-30 Section 39.054(e); or

3-31 (2) satisfies performance standards under Section  
3-32 39.054(e) for the current school year but would not satisfy  
3-33 performance standards under Section 39.054(e) if the standards to  
3-34 be used for the following year were applied to the current year.

3-35 (d) An educator may not be furloughed on a day that is  
3-36 included in the number of days of instruction required under  
3-37 Section 25.081.

3-38 (e) An educator may not use personal, sick, or any other  
3-39 paid leave while the educator is on a furlough.

3-40 (f) A furlough imposed under this section does not  
3-41 constitute a break in service for purposes of the Teacher  
3-42 Retirement System of Texas.

3-43 (g) Implementation of a furlough program may not result in  
3-44 an increase in the number of required teacher workdays.

3-45 (h) If a board of trustees adopts a furlough program after  
3-46 the date by which a teacher must give notice of resignation under  
3-47 Section 21.105, 21.160, or 21.210, as applicable, a teacher who  
3-48 subsequently resigns is not subject to sanctions imposed by the  
3-49 State Board for Educator Certification as otherwise authorized by  
3-50 those sections.

3-51 (i) A decision by the board of trustees to implement a  
3-52 furlough program:

3-53 (1) is final and may not be appealed; and

3-54 (2) does not create a cause of action or require  
3-55 collective bargaining.

3-56 Sec. 21.4022. SALARY REDUCTION. (a) Notwithstanding  
3-57 Section 21.402 or any other law, but subject to Section 21.4023, a  
3-58 school district may, if authorized by the board of trustees, reduce  
3-59 for a school year the monthly salary of contract personnel employed  
3-60 by the district during the 2010-2011 school year if the  
3-61 commissioner certifies in accordance with Section 42.009 that the  
3-62 district will be provided with less state and local funding for that  
3-63 year than was provided to the district for the 2010-2011 school  
3-64 year.

3-65 (b) A salary reduction may be achieved through a reduction  
3-66 associated with a furlough as provided by Section 21.4021, through  
3-67 a reduction not associated with a furlough, or through a  
3-68 combination of those reductions.

3-69 (c) A school district may not, through the cumulative effect

4-1 of actions described by Subsection (b), reduce an employee's salary  
4-2 received for the 2010-2011 school year by more than the percentage  
4-3 by which the district's state and local funding is reduced for the  
4-4 applicable school year, as certified by the commissioner under  
4-5 Section 42.009.

4-6 (d) For purposes of this section, an employee's salary does  
4-7 not include any stipends provided by the district to the employee.

4-8 (e) A decision by the board of trustees to authorize a  
4-9 salary reduction:

4-10 (1) is final and may not be appealed; and

4-11 (2) does not create a cause of action or require  
4-12 collective bargaining.

4-13 Sec. 21.4023. REQUIRED PROCESS FOR DEVELOPMENT OF FURLOUGH  
4-14 PROGRAM OR OTHER SALARY REDUCTION PROPOSAL. (a) The board of  
4-15 trustees of a school district may not implement a furlough program  
4-16 under Section 21.4021 or reduce salaries in accordance with Section  
4-17 21.4022 until the district has complied with this section.

4-18 (b) A school district must use a process to develop a  
4-19 furlough program or other salary reduction proposal, as applicable,  
4-20 that:

4-21 (1) includes the involvement of the district's  
4-22 professional staff; and

4-23 (2) provides district employees with the opportunity  
4-24 to express opinions regarding the furlough program or salary  
4-25 reduction proposal, as applicable, at the public meeting required  
4-26 by Subsection (c).

4-27 (c) The board of trustees must hold a public meeting at  
4-28 which the board and school district administration present:

4-29 (1) information regarding the options considered for  
4-30 managing the district's available resources, including  
4-31 consideration of a tax rate increase and use of the district's  
4-32 available fund balance; and

4-33 (2) an explanation of how the district intends,  
4-34 through implementation of a furlough program under Section 21.4021  
4-35 or through other salary reductions authorized under Section  
4-36 21.4022, as applicable, to limit the number of district employees  
4-37 who will be discharged or whose contracts will not be renewed.

4-38 (d) Any explanation of a furlough program under Subsection  
4-39 (c)(2) must state the specific number of furlough days proposed to  
4-40 be required.

4-41 (e) The public and school district employees must be  
4-42 provided with an opportunity to comment at the public meeting  
4-43 required under Subsection (c).

4-44 SECTION 10. Subsection (c), Section 28.021, Education Code,  
4-45 is amended to read as follows:

4-46 (c) In determining promotion under Subsection (a), a school  
4-47 district shall consider:

4-48 (1) the recommendation of the student's teacher;

4-49 (2) the student's grade in each subject or course;

4-50 (3) the student's score on an assessment instrument  
4-51 administered under Section 39.023(a), (b), or (l), to the extent  
4-52 applicable; and

4-53 (4) any other necessary academic information, as  
4-54 determined by the district.

4-55 SECTION 11. Section 28.0211, Education Code, is amended by  
4-56 adding Subsections (c-1), (o), and (p) and amending Subsection (f)  
4-57 to read as follows:

4-58 (c-1) Accelerated instruction required under Subsection (c)  
4-59 after a student fails to perform satisfactorily on an assessment  
4-60 instrument a third time is not required to commence until the  
4-61 beginning of the next school year.

4-62 (f) A school district shall provide to a student who, after  
4-63 three attempts, has failed to perform satisfactorily on an  
4-64 assessment instrument specified under Subsection (a) accelerated  
4-65 instruction commencing at the beginning of ~~during~~ the next school  
4-66 year as prescribed by an educational plan developed for the student  
4-67 by the student's grade placement committee established under  
4-68 Subsection (c). The district shall provide that accelerated  
4-69 instruction regardless of whether the student has been promoted or

5-1 retained. The educational plan must be designed to enable the  
 5-2 student to perform at the appropriate grade level by the conclusion  
 5-3 of the school year. During the school year, the student shall be  
 5-4 monitored to ensure that the student is progressing in accordance  
 5-5 with the plan. The district shall administer to the student the  
 5-6 assessment instrument for the grade level in which the student is  
 5-7 placed at the time the district regularly administers the  
 5-8 assessment instruments for that school year.

5-9 (o) This section does not require the administration of a  
 5-10 fifth or eighth grade assessment instrument in a subject under  
 5-11 Section 39.023(a) to a student enrolled in the fifth or eighth  
 5-12 grade, as applicable, if the student:

5-13 (1) is enrolled in a course in the subject for which  
 5-14 the student will receive high school academic credit; and

5-15 (2) will be administered an end-of-course assessment  
 5-16 instrument adopted under Section 39.023(c) for the course.

5-17 (p) Notwithstanding any other provision of this section, a  
 5-18 student described by Subsection (o) may not be denied promotion on  
 5-19 the basis of failure to perform satisfactorily on an assessment  
 5-20 instrument not required to be administered to the student in  
 5-21 accordance with that subsection.

5-22 SECTION 12. Subsection (a), Section 38.101, Education Code,  
 5-23 is amended to read as follows:

5-24 (a) Except as provided by Subsection (b), a school district  
 5-25 annually shall assess the physical fitness of students enrolled in  
 5-26 grade three or higher in a course that satisfies the curriculum  
 5-27 requirements for physical education under Section 28.002(a)(2)(C)  
 5-28 [~~grades 3 through 12~~].

5-29 SECTION 13. Section 39.023, Education Code, is amended by  
 5-30 amending Subsection (a) and adding Subsection (a-2) to read as  
 5-31 follows:

5-32 (a) The agency shall adopt or develop appropriate  
 5-33 criterion-referenced assessment instruments designed to assess  
 5-34 essential knowledge and skills in reading, writing, mathematics,  
 5-35 social studies, and science. Except as provided by Subsection  
 5-36 (a-2), all [All] students, other than [except] students assessed  
 5-37 under Subsection (b) or (1) or exempted under Section 39.027, shall  
 5-38 be assessed in:

5-39 (1) mathematics, annually in grades three through  
 5-40 seven without the aid of technology and in grade eight with the aid  
 5-41 of technology on any assessment instrument that includes algebra;

5-42 (2) reading, annually in grades three through eight;

5-43 (3) writing, including spelling and grammar, in grades  
 5-44 four and seven;

5-45 (4) social studies, in grade eight;

5-46 (5) science, in grades five and eight; and

5-47 (6) any other subject and grade required by federal  
 5-48 law.

5-49 (a-2) A student is not required to be assessed in a subject  
 5-50 otherwise assessed at the student's grade level under Subsection  
 5-51 (a) if the student:

5-52 (1) is enrolled in a course in the subject for which  
 5-53 the student will receive high school academic credit; and

5-54 (2) will be administered an end-of-course assessment  
 5-55 instrument adopted under Subsection (c) for the course.

5-56 SECTION 14. Section 39.025, Education Code, is amended by  
 5-57 adding Subsection (e-1) to read as follows:

5-58 (e-1) Nothing in this section has the effect of prohibiting  
 5-59 the administration of an end-of-course assessment instrument  
 5-60 listed in Section 39.023(c) to a student enrolled below the high  
 5-61 school level who is enrolled in the course for which the assessment  
 5-62 instrument is adopted. The commissioner shall adopt rules  
 5-63 necessary to ensure that the student's performance on the  
 5-64 assessment instrument is considered in the same manner for purposes  
 5-65 of this section as the performance of a student enrolled at the high  
 5-66 school level.

5-67 SECTION 15. Section 39.053, Education Code, is amended by  
 5-68 adding Subsection (d-1) to read as follows:

5-69 (d-1) In aggregating results of assessment instruments

6-1 across grade levels by subject in accordance with Subsection  
6-2 (c)(1), the performance of a student enrolled below the high school  
6-3 level on an assessment instrument required under Section 39.023(c)  
6-4 is included with results relating to other students enrolled at the  
6-5 same grade level.

6-6 SECTION 16. Section 39.082, Education Code, is amended by  
6-7 adding Subsection (d) to read as follows:

6-8 (d) The commissioner may not use the system developed under  
6-9 this section to evaluate:

6-10 (1) a district during a school year for which the  
6-11 commissioner certifies in accordance with Section 42.009 that the  
6-12 district will be provided with less state and local funding than was  
6-13 provided to the district for the 2010-2011 school year; or

6-14 (2) an open-enrollment charter school during a school  
6-15 year for which the commissioner determines in a manner comparable  
6-16 to the process described in Section 42.009 that the school will be  
6-17 provided with less state and local funding than was provided to the  
6-18 school for the 2010-2011 school year.

6-19 SECTION 17. Section 39.0822, Education Code, is amended by  
6-20 adding Subsection (f) to read as follows:

6-21 (f) The agency may not review a district using the process  
6-22 developed under this section during a school year for which the  
6-23 commissioner certifies in accordance with Section 42.009 that the  
6-24 district will be provided with less state and local funding than was  
6-25 provided to the district for the 2010-2011 school year.

6-26 SECTION 18. Subchapter A, Chapter 42, Education Code, is  
6-27 amended by adding Section 42.009 to read as follows:

6-28 Sec. 42.009. DETERMINATION OF FUNDING LEVELS. (a) Not  
6-29 later than July 1 of each year, the commissioner shall determine for  
6-30 each school district whether the estimated amount of state and  
6-31 local funding per student in weighted average daily attendance to  
6-32 be provided to the district under the Foundation School Program for  
6-33 maintenance and operations for the following school year is less  
6-34 than the amount provided to the district for the 2010-2011 school  
6-35 year. If the amount estimated to be provided is less, the  
6-36 commissioner shall certify the percentage decrease in funding to be  
6-37 provided to the district.

6-38 (b) In making the determinations regarding funding levels  
6-39 required by Subsection (a), the commissioner shall:

6-40 (1) make adjustments as necessary to reflect changes  
6-41 in a school district's maintenance and operations tax rate;

6-42 (2) for a district required to take action under  
6-43 Chapter 41 to reduce its wealth per student to the equalized wealth  
6-44 level, base the determinations on the district's net funding levels  
6-45 after deducting any amounts required to be expended by the district  
6-46 to comply with Chapter 41; and

6-47 (3) determine a district's weighted average daily  
6-48 attendance in accordance with this chapter as it existed on January  
6-49 1, 2011.

6-50 SECTION 19. Section 44.004, Education Code, is amended by  
6-51 adding Subsection (g-1) to read as follows:

6-52 (g-1) If the rate calculated under Subsection  
6-53 (c)(5)(A)(ii)(b) decreases after the publication of the notice  
6-54 required by this section, the president is not required to publish  
6-55 another notice or call another meeting to discuss and adopt the  
6-56 budget and the proposed lower tax rate.

6-57 SECTION 20. Subsection (a), Section 26.05, Tax Code, is  
6-58 amended to read as follows:

6-59 (a) The governing body of each taxing unit, before the later  
6-60 of September 30 or the 60th day after the date the certified  
6-61 appraisal roll is received by the taxing unit, shall adopt a tax  
6-62 rate for the current tax year and shall notify the assessor for the  
6-63 unit of the rate adopted. The tax rate consists of two components,  
6-64 each of which must be approved separately. The components are:

6-65 (1) for a taxing unit other than a school district, the  
6-66 rate that, if applied to the total taxable value, will impose the  
6-67 total amount published under Section 26.04(e)(3)(C), less any  
6-68 amount of additional sales and use tax revenue that will be used to  
6-69 pay debt service, or, for a school district, the rate calculated

7-1 [~~published~~] under Section 44.004(c)(5)(A)(ii)(b), Education Code;  
7-2 and

7-3 (2) the rate that, if applied to the total taxable  
7-4 value, will impose the amount of taxes needed to fund maintenance  
7-5 and operation expenditures of the unit for the next year.

7-6 SECTION 21. Subsection (a), Section 58.258, Utilities Code,  
7-7 is amended to read as follows:

7-8 (a) Notwithstanding the pricing flexibility authorized by  
7-9 this subtitle, an electing company's rates for private network  
7-10 services may not be increased before January 1, 2014 [~~2012~~].  
7-11 However, an electing company may increase a rate in accordance with  
7-12 the provisions of a customer specific contract.

7-13 SECTION 22. Section 58.268, Utilities Code, is amended to  
7-14 read as follows:

7-15 Sec. 58.268. CONTINUATION OF OBLIGATION. Notwithstanding  
7-16 any other provision of this title, an electing company shall  
7-17 continue to comply with this subchapter until January 1, 2014  
7-18 [~~2012~~], regardless of:

7-19 (1) the date the company elected under this chapter;  
7-20 or

7-21 (2) any action taken in relation to that company under  
7-22 Chapter 65.

7-23 SECTION 23. Subsection (a), Section 59.077, Utilities Code,  
7-24 is amended to read as follows:

7-25 (a) Notwithstanding the pricing flexibility authorized by  
7-26 this subtitle, an electing company's rates for private network  
7-27 services may not be increased before January 1, 2014 [~~2012~~].

7-28 SECTION 24. Section 59.083, Utilities Code, is amended to  
7-29 read as follows:

7-30 Sec. 59.083. CONTINUATION OF OBLIGATION. Notwithstanding  
7-31 any other provision of this title, an electing company shall  
7-32 continue to comply with this subchapter until January 1, 2014  
7-33 [~~2012~~], regardless of:

7-34 (1) the date the company elected under this chapter;  
7-35 or

7-36 (2) any action taken in relation to that company under  
7-37 Chapter 65.

7-38 SECTION 25. The change in law made by Subsection (g-1),  
7-39 Section 44.004, Education Code, as added by this Act, applies  
7-40 beginning with adoption of a tax rate for the 2011 tax year.

7-41 SECTION 26. This Act takes effect immediately if it  
7-42 receives a vote of two-thirds of all the members elected to each  
7-43 house, as provided by Section 39, Article III, Texas Constitution.  
7-44 If this Act does not receive the vote necessary for immediate  
7-45 effect, this Act takes effect September 1, 2011.

7-46 \* \* \* \* \*