SUBJECT: Giving parents of special education children time off from work

COMMITTEE: Economic Development —favorable, without amendment

VOTE: 5 ayes — Deshotel, Straus, Dunnam, Ortiz, Veasey

0 nays

2 absent — Kolkhorst, Morrison

WITNESSES: For — (*Registered, but did not testify:* Lindsay Gustafson, Texas Classroom Teachers Association; Rick Levy, Texas AFL-CIO; Ted Melina Raab, Texas Federation of Teachers; Jeanette Rodriguez, Texas State Teachers Association)

Against —Terry Roberts, Texas Employment Law Council; (*Registered, but did not testify:* Mary Miksa, Texas Association of Business)

BACKGROUND: Under the Education Code, every child in a special education program is required to have at least one yearly meeting to review the child's progress. These meetings also must occur before a child is entered into a special education program and before a child leaves a special education program. Under Section 29.004 of the Education Code and 20 U.S.C. sec. 1414(a) of the federal code, the parent, the teacher, and an administrator in attendance must be in attendance at these meetings. Under the Education Code, the teacher, principal, or counselor must supply the parent with at least five days written notice of the occurrence of the meeting.

DIGEST: HB 1392 would amend the Labor Code by adding ch. 83 to require employers to offer to their employees 10 hours of unpaid leave time for every 12 months of work to attend meetings concerning the educational needs of the employee's child in a special education program.

Employees would vest in this program only once they had been employed for six consecutive months with the employer. The employee would not be required to use existing vacation, personal leave, compensatory leave, or other paid leave time for this purpose, but the employee could choose to use paid leave. The leave would be used only for meetings with and

requested by the child's teacher, the school counselor, or the school principal. The employee would have to provide the employer with at least 24 hours written notice before the absence, but would not have to provide notice of a leave of absence for an emergency situation concerning the child.

HB 1392 also would prohibit an employer from retaliating against, suspending, terminating, or otherwise discriminating against an employee who took leave to attend a meeting. Employers who retaliated would be required to:

- reinstate the employee to the previous position or one of similar salary and benefits;
- compensate the employee for lost wages during the unemployment period;
- reimburse the employee for any lost fringe benefits; and
- pay the employee's court costs and attorney's fees if the employee brought a successful action against the employer.

The Texas Workforce Commission would regulate the form and content of signs that employers would be required to post in a prominent place in the workplace to inform employees of their rights under the bill.

The bill would take effect September 1, 2007, and would apply only to conduct on or after that date.

SUPPORTERS SAY:

HB 1392 would benefit an already disadvantaged group of children and would assist in mitigating some of the disadvantages these children face by making it easier for their parents to attend required school meetings. There are about 500,000 special education students in Texas, about 11 percent of the Texas school population. These students have more than 1.5 million meetings to assess the course of their progress in special education programs. While some children need only one meeting a year, these numbers demonstrate that many students need many more meetings a year. This is a group that is already vulnerable and at risk for dropping out or entering the criminal justice system, so parental involvement in their education and progress is critical.

The bill would limit the leave time guaranteed to 10 unpaid hours per year. It is unlikely that this amount of time would cause enough disruption to

imperil a business or to disrupt the employee and employer relations at a workplace. Workplace disruptions also would be unlikely because the bill would require that the parent supply the employer with 24 hours of notice about the need for a leave of absence. The Education Code provides that a parent must have at least five days notice of meetings, so most parents would provide employers with sufficient notice of the need for a leave of absence and adequate time to make appropriate accommodations. These meetings rarely last more than a couple of hours, so it is unlikely that the known absence of an employee for two or three hours would cause much disruption in the business or the workplace.

HB 1392 would not encourage litigation but, in fact, would offer an alternative to it. An employer who retaliated against an employee for attending these meetings would have to reinstate the employee, pay the wages lost during the unemployment period, and pay any lost fringe benefits. These requirements would be a strong disincentive for employees to retaliate, making it unlikely that many employers would be subject to the provisions of the bill. The option to pursue litigation would be a secondary alternative open to the employee.

OPPONENTS SAY:

HB 1392 could undermine the dynamic in the workplace by causing scheduling problems and by disrupting the employer's business and the relationship between the employees and the employer. In some businesses, an employee who is unexpectedly absent could cause significant problems for the operation of the business, and it would be unfair to force employers to face a potential loss of business to accommodate one employee. The bill would make no allowances for when the employee's presence was critically needed. Also, the workplace dynamic could be undermined if other employees became resentful of having to alter their schedules for one person or because the employee with the special needs child was given too many privileges. Employees might be less inclined to hire or retain the parent of a child in special education if faced with the potential burden of dealing with special leave privileges.

This bill's anti-retaliation provision could encourage litigation against employers. The anti-retaliation provision fails to make clear that an employee could recover against an employer who had terminated or discriminated against that employee only if the retaliation occurred because the employee had taken the leave provided for in the bill.