

SUBJECT: Hearing procedures for school staff reductions based on financial exigency

COMMITTEE: Public Education — favorable, without amendment

VOTE: *(After recommitted:)*
6 ayes — Eissler, Aycock, Huberty, Shelton, T. Smith, Weber

4 nays — Hochberg, Allen, Dutton, Strama

1 absent — Guillen

WITNESSES: For — David Hodgins, Texas Association of School Boards Council of School Attorneys; *(Registered, but did not testify:)* Amy Beneski, Texas Association of School Administrators; Melva Cardenas, Texas Association of School Personnel Administrators; Julie Haney, Texas Association of Community Schools; Don Rogers, Texas Rural Education Association; Julie Shields, Texas Association of School Boards; Maria Whitsett, Texas School Alliance; Gilbert Zavala, Austin Chamber of Commerce)

Against — Portia Bosse, Texas State Teachers Association; Monty Exter, Association of Texas Professional Educators (ATPE); Lonnie Hollingsworth, Texas Classroom Teachers Association; Ted Melina Raab, Texas American Federation of Teachers; *(Registered, but did not testify:)* Zeph Capo, Houston Federation of Teachers; Thomas Carlin; Gwen Dunivent, Transport Workers Union of America; Shannon Jones; Rene Lara, Texas AFL-CIO)

On — David Anderson, Texas Education Agency

BACKGROUND: A principal, teacher, supervisor, counselor, or other full-time professional employee can be employed by a school district through a probationary, continuing, or term contract.

Probationary contracts. Education Code, ch. 21, subch. C requires a full-time professional employee who is new to the school district or in his or her first or second school year to be employed under a one-year probationary contract. Probationary contracts may be renewed for up to three years, but may not exceed one year for an employee who has been a

teacher for at least five of the eight years before employment by the district.

An employee on a probationary contract may be suspended without pay for the remainder of the school year or discharged for good cause at any time during the school year. To terminate an employee on a probationary contract, the school district must notify the employee 45 days before the last day of school. With written consent from the employee, instead of terminating an employee on a term or continuing contract, a school district may return him or her to a probationary contract.

Term contracts. Education Code, ch. 21, subch. E permits a school district to hire a full-time employee for up to five years through a term contract. When a term contract is about to expire, a school district must notify the employee 45 days before the last day of the school year about whether it intends to renew the contract. Employees who desire a hearing after receiving notice of nonrenewal must notify the school district board within 15 days. According to sec. 21.207, the hearing must be closed, unless the employee requests it to be open, and conducted according to rules adopted by the board. The board may use the hearing process involving a hearing examiner described in Education Code, subch. F. The employee may appeal the board's decision after the hearing to the commissioner of education.

The board may terminate a term contract and discharge a teacher at any time for good cause, as determined by the board, or for a financial exigency that requires a reduction in personnel.

Continuing contracts. Education Code, ch. 21, subch. D, permits a school district to hire a full-time employee on a continuing contract, which is valid until the employee resigns, retires, is discharged, is released as a part of a necessary personnel reduction, or is returned to probationary status. Reductions to personnel on continuing contracts must occur based on reverse seniority, often referred to as "first in, first out." If an employee wishes to protest a discharge, suspension, or personnel reduction, the employee must notify the school district board within 10 days after notification and is entitled to a hearing before the board with a hearing examiner.

DIGEST:

Financial exigency. HB 19 would allow the school district board of trustees to adopt a resolution declaring a financial exigency for the district. The declaration would expire at the end of the fiscal year, unless the board adopted a resolution to continue it. The school board would not be limited in the number of times it could declare financial exigency and could terminate the declaration whenever it deemed appropriate. It would have to notify the commissioner of education each time a resolution was adopted. The bill would grant rulemaking authority to the commissioner to prescribe the time and manner of the notification.

Hearings. HB 19 would entitle an employee to a hearing before a hearing examiner if he or she protested a discharge or suspension for good cause. If the employee protested a personnel reduction based on financial exigency, the employee would be entitled to a hearing that was closed unless otherwise requested by the employee (as in Education Code, sec. 21.207) or a hearing before a hearing examiner, as determined by the board.

The bill would allow the school district board to designate an attorney to hold the hearing on behalf of the school board, to create a hearing record for the board's consideration and action, and to recommend an action to the board. The attorney could not be employed by or represent a school district, and could not serve as a representative of a party in a dispute between a district and an employee or of an organization of school employees, school administrators, or school boards of trustees.

By the 15th day after the end of the hearing, the board's designee would have to provide to the board a record of the hearing and recommend either contract renewal or nonrenewal. The board would have to consider the record of the hearing and the recommendation at the next possible board meeting. At the meeting, the board would have to hear oral arguments from each party. The board could place time limits on oral arguments, but would have to afford equal time to each party. The board could obtain external legal advice before accepting, rejecting, or modifying the designee's recommendation. The board would have to notify the teacher in writing of its decision by the 15th day after the meeting.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session.

SUPPORTERS
SAY:

HB 19 would help school districts during the current budget crisis. The bill would not change a contract materially, since the bill would change a procedure and not the terms of the contract itself.

The bill would explicitly grant a school district the ability to declare financial exigency annually and without limitation. Current law only implies authority for a school district to declare financial exigency in relation to terminating term-contract employees for a required personnel reduction. It is important for a school district to have the authority to declare financial exigency so that it can act to prevent a financial disaster, such as by reducing the number of certain employees, changing food contracts, or amending existing contracts.

The bill would not violate the legal terms of a continuing contract because such contract terms no longer continue in effect once the employee leaves voluntarily, is terminated for good cause, or is released as part of a necessary reduction in personnel, such as would be justified by a financial exigency.

OPPONENTS
SAY:

HB 19 would attempt to balance the budget at the expense of teachers. The proposed cuts to education target teachers, when they should be applied across the entire educational system. The bill would not yield any possible savings until the next biennium at the earliest, because teacher contracts have been executed for the next school year and cannot be materially changed.

HB 19 seeks to alter the contract rights of teachers with continuing contracts. It would materially change the terms of the existing contract, violating the precedent set by *Central Education Agency v. George West I.S.D.*, 783 S.W.2d 200 (Tex. 1989), which held that the material terms of a contract cannot be abrogated during the term of a contract. These employees are entitled to the protections afforded by the existing continuing-contract provisions because the district has determined that their performances warrant continuing-contract status.

School districts have demonstrated poor planning by claiming a need to terminate teacher contracts to reduce staff. State law should not make it easier for the school district to terminate a teacher contract if the district has postponed its decision-making.

The bill would allow the school district or its designee, rather than an independent party, to judge the school district's action, which would be a clear conflict of interest. Hearings to protest personnel reductions should occur in front of an independent hearing examiner to preserve fairness in determining if a school district has appropriately followed protocol.

The bill's provisions permitting school districts to declare financial exigency are unnecessary, as districts already are permitted to do this under current law.

OTHER
OPPONENTS
SAY:

The provisions included in HB 19 should only be allowed as temporary solutions during tough economic times. They should expire in two years to allow the next Legislature to evaluate their future necessity.

If school districts were granted the leeway afforded through HB 19, then teachers should have the ability to terminate their contracts mid-contract to pursue higher-paying job offers. Under current law, a teacher can lose his or her teaching certificate for abdicating a contract. HB 19 represents an imbalance of power between school districts and teachers.

NOTES:

HB 19 originally was set on the General State Calendar for June 9. The House recommitted the bill to the Public Education Committee on a motion by Rep. Eissler on June 10, and it was reported again favorably, without amendment, on June 10.