

BILL ANALYSIS

Senate Research Center
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S.B. 418
By: Shapleigh
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The State Board for Educator Certification (board) was created by the legislature and is subject to the Sunset Act. Pursuant to the Sunset Act, the board will be abolished on September 1, 2005, unless continued by the legislature. In a full review of the board conducted in 2003, the Sunset Advisory Commission found that the functions performed by the board remain necessary but certain changes are needed to help the board carry out these functions more efficiently. As proposed, S.B. 418 contains these improvements.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Board for Educator Certification in SECTION 8 (Section 21.0411, Education Code) and SECTION 14 (Section 21.0573, Education Code), of this bill.

Rulemaking authority previously granted to the State Board for Educator Certification is modified in SECTION 7 (Section 21.041, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 7.056(a), Education Code, to provide that a waiver requirement related to educator certification under Subchapter B, Chapter 21, is governed by Section 21.0572.

SECTION 2. Amends Section 21.003(a), Education Code, to prohibit a person from being employed as an educational diagnostician by a school district unless the person holds an appropriate certificate or permit.

SECTION 3. Amends Subchapter B, Chapter, Education Code, by adding Sections 21.0331, 21.0332, and 21.0341, as follows:

Sec. 21.0331. INELIGIBILITY TO SERVE ON BOARD; INELIGIBILITY FOR CERTAIN POSITIONS. Defines "Texas trade association." Prohibits a person from being a member of State Board for Educator Certification (board) and a board employee employed in a certain capacity and under certain conditions. Prohibits a person from being a member of the board or acting as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 21.0332. TRAINING PROGRAM FOR MEMBERS OF BOARD. Prohibits a person who is appointed and qualifies for office as a member of the board from taking certain actions until the person completes a required training program. Requires the training program to provide the person with specific information. Provides that a person appointed to the board is entitled to reimbursement for travel expenses incurred while attending the training program, regardless of whether attendance at the program occurs before or after the person qualifies for office.

Sec. 21.0341. REMOVAL FROM BOARD. Sets forth the grounds for removal of a board member. Provides that a member of the board appointed under Section 21.033(a)(1) who retires from teaching during the member's term of office is entitled to

complete the term. Provides that the validity of an action is not affected by the fact that the action was taken when a ground for removal of a board member existed. Requires the executive director, if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of the board of the potential ground. Requires the presiding officer to notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the board, who then is required to notify the governor and the attorney general that a potential ground for removal exists.

SECTION 4. Amends Section 21.035(a), Education Code, to provide that the board is subject to Chapter 325 (Texas Sunset Act), Government Code. Sets forth that unless continued in existence as provided by this chapter, the board is abolished and this subchapter expires September 1, 2017, rather than 2005.

SECTION 5. Amends Section 21.036, Education Code, as follows:

Sec. 21.036. OFFICERS. Requires the governor to designate, rather than the board to elect, one of the board members to serve as presiding officer of the board. Sets forth that the presiding officer serves at the pleasure of the governor, rather than for a term of two years, and is entitled to vote on all matters before the board. Authorizes the board to elect other officers from among its membership.

SECTION 6. Amends Subchapter B, Chapter 21, Education Code, by adding Sections 21.0401 and 21.0402, as follows:

Sec. 21.0401. COLLECTION OF FINGERPRINTS REQUIRED. Requires the board to obtain a complete set of fingerprints from certain applicants.

Sec. 21.0402. INFORMATIONAL MATERIAL RELATING TO CERTIFICATION REQUIREMENTS. Requires the board to develop and update as necessary informational material regarding the requirements for educator certification, including information related to criminal history checks requirements and the type of criminal history that could prevent a person from becoming certified. Requires the board to make the informational material available to each educator preparation program or alternative certification program.

SECTION 7. Amends Sections 21.041(b) and (c), Education Code, to require the board to propose rules that provide for the investigation of certain types of complaints of disciplinary violations and that provide for disciplinary proceedings including the suspension or revocation of an educator certificate. Requires the board to propose rules adopting certain fees relating to obtaining fingerprints and criminal background checks. Makes conforming changes.

SECTION 8. Amends Subchapter B, Chapter 21, Education Code, by adding Sections 21.0411-21.0414, as follows:

Sec. 21.0411. DEVELOPMENT OF PROPOSED RULES. Sets forth that this section applies to the process by which the board develops proposed rules for the State Board of Education's consideration before the proposed rules are published in the Texas Register and before the board or the State Board of Education complies with the rulemaking requirements of Chapter 2001 (Administrative Procedure), Government Code. Provides that this section does not affect any duty to comply with the rulemaking requirements of the law.

(b) Requires the board to establish a checklist of methods that, to the extent appropriate, the board will follow to obtain early in the rule development process the advice and opinions of the public and of persons who will be most affected by a proposed rule. Sets forth what must be included in the checklist.

(c) Prohibits a rule proposed by the board and adopted by the State Board of Education from being challenged on the grounds that the board did not comply with this section.

(d) Provides that this section does not apply to the proposal of an emergency rule to be adopted in accordance with Section 2001.034 (Emergency Rulemaking), Government Code.

Sec. 21.0412. PUBLIC TESTIMONY. Requires the board to develop and implement policies designed to provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

Sec. 21.0413. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. Requires the board to develop and implement a policy to encourage the use of certain policies and procedures relating to negotiated rulemaking and alternative dispute resolution. Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. Requires the board to designate a trained person to take certain actions relating to negotiated rulemaking and alternative dispute resolution policies and procedures.

Sec. 21.0414. TECHNOLOGY POLICY. Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the board on the Internet.

SECTION 9. Amends Section 21.042, Education Code, as follows:

Sec. 21.042. APPROVAL OF RULES. Requires the board to submit a written copy of each rule it proposes to adopt to the State Board of Education for review. Authorizes the State Board of Education, by a vote of at least two-thirds of the members present and voting, to reject a portion of or an entire proposed rule. Provides that if the State Board of Education fails to reject a proposal before the 90th day after the date on which it receives the proposal, the proposal takes effect as a rule of the board. Prohibits the State Board of Education, except as provided by Subsection (b) (1), from modifying a rule proposed by the board.

SECTION 10. Amends Subchapter B, Chapter 21, Education Code, by adding Section 21.0421, as follows:

Sec. 21.0421. ACCEPTANCE OF GIFTS, DONATIONS, AND GRANTS. Authorizes the board to solicit and accept for the purposes of this subchapter certain gifts, grants, and donations from any source, other than the federal government that the board considers appropriate. Requires the board, not later than December 31 of each year, to report to the lieutenant governor and the speaker of the house of representatives certain information relating to the source and amount of gifts, grants, and donations accepted and offered but not accepted by the board.

SECTION 11. Amends Subchapter B, Chapter 21, Education Code, by adding Sections 21.0485 and 21.0521, as follows:

Sec. 21.0485. EXAMINATION RESULTS. Requires the board, not later than the 30th day after the date the person takes a certification examination under this subchapter, to notify the person of the examination results. Sets for the provisions relating to the examination if the examination is graded or reviewed by a testing service. Authorizes the board to require a testing service to notify a person of the results of the person's examination. Requires the board, if requested in writing by a person who fails a certification examination, to furnish the person with an analysis of the person's performance on the examination.

Sec. 21.0521. PROVISIONAL CERTIFICATE. Authorizes the board, after a satisfactory review of an applicant's educator credentials, to issue a provisional certificate to an applicant who is currently certified or licensed in good standing as an educator in another jurisdiction that meets certain criteria. Provides that a provisional certificate issued under this section is valid for not longer than 12 months from the effective date of the provisional certificate. Requires the board to issue a standard certificate to a provisional certificate holder if the person is eligible to be certified under Section 21.052.

SECTION 12. Amends Sections 21.055(c) and (d), Education Code, to require a school district, promptly after employing a person under this section, to send to the board, rather than the commissioner, the person's fingerprints. Authorizes the person to teach the subject or class pending action by the board, rather than the commissioner. Authorizes the board, rather than the commissioner, not later than the 30th day after the date the board receives the statement under Subsection (c), to inform the district in writing that the board finds the person is not qualified to teach. Makes conforming changes.

SECTION 13. Redefines "inappropriately certified or uncertified teacher."

SECTION 14. Amends Subchapter B, Chapter 21, Education Code, by adding Sections 21.0571-21.0575, as follows:

Sec. 21.0571. COMPLAINTS. Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board. Requires the board to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Requires the board to make information available describing its procedures for complaint investigation and resolution. Requires the board to periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 21.0572. WAIVER OF CERTIFICATION REQUIREMENT. Authorizes a school district to apply to the board for a waiver of a requirement under this subchapter that prohibits a teacher from teaching outside the teacher's area of certification.

Sec. 21.0573. EXPIRATION OF CERTIFICATES. Authorizes the board by rule to adopt rules under which certificates expire on various dates during the year. Requires the board, for the year in which the certificate expiration date is changed, to prorate certification fees on a monthly basis so that each certificate holder pays only that portion of the fee that is allocable to the number of months during which the certificate is valid. Provides that on renewal of the certificate on the new expiration date, the total renewal fee is payable.

Sec. 21.0574. CERTIFICATE RENEWAL. (a) Authorizes a person who is otherwise eligible to renew a certificate to renew an unexpired certificate by paying the required renewal fee to the board before the expiration date of the certificate. Prohibits a person whose certificate has expired from engaging in activities that require a certificate until the certificate has been renewed.

(b) Authorizes a person whose certificate has been expired for 90 days or less to renew the certificate by paying to the board a renewal fee that is equal to one and one-half times the normally required renewal fee.

(c) Authorizes a person whose certificate has been expired for more than 90 days but less than one year to renew the certificate by paying the board a renewal fee that is equal to two times the normally required renewal fee.

(d) Prohibits a person whose certificate has been expired for one year or more from renewing the certificate. Authorizes the person to obtain a new certificate by complying with the requirements and procedures, including examination requirements, for obtaining an original certificate.

(e) Authorizes a person who held a certificate in this state, moved to another state, and currently holds a certificate and has been in practice in the other state for the two years preceding the date of application to obtain a new certificate without reexamination. Requires the person to pay to the board a fee that is equal to two times the normally required renewal fee the certificate.

(f) Requires the board, not later than the 30th day before the date a person's certificate is scheduled to expire, to send written notice of the impending expiration to the person at the person's last known address according to records of the board.

Sec. 21.0575. REVOCATION, MODIFICATION, OR SUSPENSION OF CERTIFICATE GENERALLY. Requires the board to revoke, suspend, or refuse to renew a certificate or reprimand a certificate holder for a violation of this subchapter or a rule of the board. Authorizes the board to place on probation a person whose certificate has been suspended. Authorizes the board, if a certificate suspension is probated, to require the person to take certain actions.

SECTION 15. Amends Section 21.058(b), Education Code, to make a conforming change.

SECTION 16. Amends Section 22.0512(b), Education Code, to make a conforming change.

SECTION 17. Amends Section 22.082, Education Code, to require the board to obtain from any law enforcement or criminal justice agency all state and national criminal history record information that relates to an applicant for or holder of a certificate or permit issued under Subchapter B, Chapter 21. Requires the board to require an applicant or holder to pay any costs related to obtaining criminal history information under this section.

SECTION 18. Amends Subchapter C, Chapter 22, Education Code, by adding Section 22.0821, as follows:

Sec. 22.0821. INITIATION OF CRIMINAL HISTORY CHECK BY CERTAIN STUDENTS. Authorizes the board to allow a person enrolled in an educator preparation program or an alternative certification program, before the person completes the program or submits an application for certification, to submit fingerprints in accordance with Section 21.0401, Education Code, and request that the board begin to obtain criminal history information relating to the person as required by Section 22.082, Education Code.

SECTION 19. Amends Section 411.090, Government Code, as follows:

Sec. 411.090. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION AND FINGERPRINTS: STATE BOARD FOR EDUCATOR CERTIFICATION. Provides that the board is entitled to obtain from the Department of Public Safety (DPS) any criminal history record information maintained by DPS about a person who has applied or intends to apply for a certificate or permit. Provides uses and prohibited uses of criminal history record information obtained by the board under this section. Authorizes the board to keep on file with the department all fingerprints obtained by the board under Section 21.0401, Education Code. Requires DPS to notify the board of the arrest of any educator who has fingerprints on file with DPS. Defines "educator."

SECTION 20. Repealer: Section 21.035(c) (Application of Sunset Act), Education Code.

SECTION 21. (a) Requires the board, not later than January 1, 2006, to propose rules governing the certification of educational diagnosticians. Sets forth that Section 21.003(a), Education Code, as amended by this Act, applies only to the employment of an educational diagnostician by a school district on or after September 1, 2006.

(b) Sets forth that Sections 21.0331 and 21.0332, Education Code, as added by this Act, do not affect the entitlement of a person serving as a member of the board immediately before September 1, 2005, to continue to serve and function as a member of the board for

the remainder of the person's term. Sections 21.0331 and 21.0332, Education Code, as added by this Act, apply only to a person appointed to the board on or after September 1, 2005.

(c) Sets forth that Section 21.0485, Education Code, as added by this Act, applies only to an examination administered under Subchapter B, Chapter 21, Education Code, on or after September 1, 2005.

(d) Sets forth that Section 21.0571, Education Code, as added by this Act, applies only to a complaint filed with the board, on or after September 1, 2005, regardless of whether the conduct or act that is the subject of the complaint was committed before, on, or after that date.

(e) Sets forth that Section 21.0574, Education Code, as added by this Act, applies to fees for renewal of a certificate under Subchapter B, Chapter 21, Education Code, that expires on or after September 1, 2005. Fees for renewal of a certificate that expired before that date are governed by the law in effect on the date the certificate expired, and the former law is continued in effect for that purpose.

SECTION 22. Effective date: September 1, 2005.