

## **BILL ANALYSIS**

Senate Research Center  
82R22934 E

C.S.S.B. 12  
By: Shapiro et al.  
Education  
4/15/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.S.B. 12 amends current law relating to the flexibility of the board of trustees of a school district in the management and operation of public schools in the district.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education in SECTION 14 (Section 39.025, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 21.0031, Education Code, by amending Subsections (a) and (b) and adding Subsection (b-1), as follows:

(a) Provides that an employee's probationary, continuing, or term contract under this chapter is void if the employee:

(1) does not hold a valid certificate or permit issued by the State Board for Educator Certification (SBEC);

(2) fails to fulfill the requirements necessary to renew or extend the employee's temporary, probationary, or emergency certificate or any other certificate or permit issued under Subchapter B (Certification of Educators); or

(3) fails to comply with any requirement under Subchapter C (Criminal History Records), Chapter 22 (Educators and School District Employees and Volunteers), if the failure results in suspension or revocation of the employee's certificate under Section 22.0831(f)(2) (relating to sanctions for failure to comply with certain requirements).

Makes a nonsubstantive change.

(b) Provides that if a school district has knowledge that an employee's contract, rather than after an employee receives notice that the employee's contract, is void under Subsection (a):

(1) the district is authorized, except as provided by Subsection (b-1), to terminate the employee, suspend the employee with or without pay, or retain the employee for the remainder of the school year on an at-will employment basis in a position other than a position required to be held by an employee under a contract under Section 21.002 (Teacher Employment Contracts), rather than in a position other than classroom teacher, at the employee's existing rate of pay or at a reduced rate; and

(2) the employee is not entitled to the minimum salary prescribed by Section 21.402 (Minimum Salary Schedule for Certain Professional Staff).

(b-1) Prohibits a school district from terminating or suspending under Subsection (b) an employee whose contract is void under Subsection (a)(1) or (2) because the employee failed to renew or extend the employee's certificate or permit if the employee:

(1) requests an extension from SBEC to renew, extend, or otherwise validate the employee's certificate or permit; and

(2) not later than the 10th day after the date the contract is void, takes necessary measures to renew, extend, or otherwise validate the employee's certificate or permit, as determined by SBEC.

SECTION 2. Amends Section 21.103(a), Education Code, to require the board of trustees of a school district to give notice of its decision to terminate the employment to the teacher not later than the 10th day, rather than the 45th day, before the last day of instruction required under the contract.

SECTION 3. Amends Section 21.105(a), Education Code, to authorize a teacher employed under a probationary contract for the following school year to relinquish the position and leave the employment of the district at the end of a school year without penalty by filing with the board of trustees or its designee a written resignation not later than the 30th day, rather than the 45th day, before the first day of instruction of the following school year.

SECTION 4. Amends Section 21.157, Education Code, as follows:

Sec. 21.157. NECESSARY REDUCTION OF PERSONNEL. (a) Creates this subsection from existing text. Authorizes a teacher employed under a continuing contract to be released at the end of a school year and the teacher's employment with the school district terminated at that time because of:

(1) a necessary reduction of personnel by the school district; or

(2) a program change that requires a reduction in personnel, rather than because of a necessary reduction of personnel by the school district, with those reductions made in the reverse order of seniority in the specific teaching fields.

(b) Prohibits a teacher employed under a continuing contract, notwithstanding Subsection (a)(1), from being released as described by that subdivision for a school year in which the district is authorized to implement a furlough program under Section 21.4021 or reduce salaries under Section 21.4022 unless the district has taken action under either or both of those sections to achieve the greatest savings in salary costs permitted by Section 21.4022.

SECTION 5. Amends Section 21.160(a), Education Code, to authorize a teacher employed under a continuing contract to relinquish the position and leave the employment of the district at the end of a school year without penalty by filing with the board of trustees or its designee a written resignation not later than the 30th day, rather than the 45th day, before the first day of instruction of the following the school year.

SECTION 6. Amends Section 21.206(a), Education Code, to require the board of trustees, not later than the 10th day, rather than the 45th day, before the last day of instruction in a school year, to notify in writing each teacher whose contract is about to expire whether the board proposes to renew or not renew the contract.

SECTION 7. Amends Section 21.210(a), Education Code, to authorize a teacher employed under a term contract with a school district to relinquish the teaching position and leave the employment of the district at the end of a school year without penalty by filing a written resignation with the board of trustees or the board's designee not later than the 30th day, rather than the 45th day, before the first day of instruction of the following school year.

SECTION 8. Amends Section 21.111, Education Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes the board of trustees to terminate a term contract and discharge a teacher at any time for:

- (1) good cause as determined by the board;
- (2) a financial exigency that requires a reduction in personnel; or
- (3) a program change that requires a reduction in personnel.

(a-1) Prohibits the board of trustees, notwithstanding Subsection (a)(2), from terminating a term contract as described by that subdivision for a school year in which the district is authorized to implement a furlough program under Section 21.4021 or reduce salaries under Section 21.4022, unless the district has taken action under either or both of those sections to achieve the greatest savings in salary costs permitted by Section 21.4022.

SECTION 9. Amends Subchapter I, Chapter 21, Education Code, by adding Sections 21.4021, 21.4022, and 21.4023, as follows:

Sec. 21.4021. FURLOUGHS. (a) Authorizes the board of trustees of a school district, notwithstanding Section 21.401 (Minimum Service Required) and subject to Sections 21.4022 and 21.4023, in accordance with district policy, to implement a furlough program and reduce the number of days of service otherwise required under Section 21.401 by not more than six days of service during a school year if the commissioner of education (commissioner) certifies in accordance with Section 42.009 that the district will be provided with less state and local funding for that year than was provided to the district for the 2010-2011 school year.

(b) Authorizes the board of trustees, notwithstanding Section 21.402 but subject to Section 21.4022, to reduce the salary of an employee who is furloughed in proportion to the number of days by which service is reduced, provided that the furlough program is implemented in compliance with this section.

(c) Requires that a furlough program subject all contract personnel to the same number of furlough days, except that, for the purposes of providing professional development, the board of trustees is authorized to exempt from furloughs or subject to a lesser number of required furlough days contract personnel assigned to a campus that:

- (1) does not satisfy performance standards under Section 39.054(e) (relating to certain information required to be included in annual performance reviews); or
- (2) satisfies performance standards under Section 39.054(e) for the current school year but would not satisfy performance standards under Section 39.054(e) if the standards to be used for the following year were applied to the current year.

(d) Prohibits an educator from being furloughed on a day that is included in the number of days of instruction required under Section 25.081 (Operation of Schools).

(e) Prohibits an educator from using personal, sick, or any other paid leave while the educator is on a furlough.

(f) Provides that a furlough imposed under this section does not constitute a break in service for purposes of the Teacher Retirement System of Texas.

(g) Prohibits implementation of a furlough program from resulting in an increase in the number of required teacher workdays.

(h) Provides that if a board of trustees adopts a furlough program after the date by which a teacher is required to give notice of resignation under Section 21.105 (Resignations Under Probationary Contract), 21.160 (Resignation Under Continuing Contract), or 21.210 (Resignation Under Term Contract), as applicable, a teacher who subsequently resigns is not subject to sanctions imposed by SBEC as otherwise authorized by those sections.

(i) Provides that a decision by the board of trustees to implement a furlough program is final and may not be appealed, and does not create a cause of action or require collective bargaining.

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

(b) Authorizes a salary reduction to be achieved through a reduction associated with a furlough as provided by Section 21.4021, through a reduction not associated with a furlough, or through a combination of those reductions.

(c) Prohibits a school district, through the cumulative effect of actions described by Subsection (b), from reducing an employee's salary received for the 2010-2011 school year by more than the percentage by which the district's state and local funding is reduced for the applicable school year, as certified by the commissioner under Section 42.009.

(d) Provides that for purposes of this section, an employee's salary does not include any stipends provided by the district to the employee.

(e) Provides that a decision by the board of trustees to authorize a salary reduction is final and may not be appealed, and does not create a cause of action or require collective bargaining.

Sec. 21.4023. REQUIRED PROCESS FOR DEVELOPMENT OF FURLOUGH PROGRAM OR OTHER SALARY REDUCTION PROPOSAL. (a) Prohibits the board of trustees of a school district from implementing a furlough program under Section 21.4021 or reducing salaries in accordance with Section 21.4022 until the district has complied with this section.

(b) Requires a school district to use a process to develop a furlough program or other salary reduction proposal, as applicable, that:

(1) includes the involvement of the district's professional staff; and

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

(c) Requires the board of trustees to hold a public meeting at which the board and school district administration present:

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

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

(d) Requires that any explanation of a furlough program under Subsection (c)(2) state the specific number of furlough days proposed to be required.

(e) Requires the public and school district employees to be provided with an opportunity to comment at the public meeting required under Subsection (c).

SECTION 10. Amends Section 28.021(c), Education Code, to require a school district, in determining promotion under Subsection (a) (relating to the promotion of a student to the next grade level on the basis of academic achievement or demonstrated proficiency), to consider certain factors, including the student's score on an assessment instrument administered under Section 39.023(a), (b) (relating to appropriate criterion-referenced alternative assessment instruments), or (l) (relating to assessment instruments in Spanish for students who are of limited English proficiency), to the extent applicable.

SECTION 11. Amends Section 28.0211, Education Code, by adding Subsections (c-1), (o), and (p) and amending Subsection (f), as follows:

(c-1) Provides that accelerated instruction required under Subsection (c) (relating to a student failing to perform satisfactorily on an assessment instrument) after a student fails to perform satisfactorily on an assessment instrument a third time is not required to commence until the beginning of the next school year.

(f) Requires a school district to provide to a student who, after three attempts, has failed to perform satisfactorily on an assessment instrument specified under Subsection (a) (relating to promotion of a student to certain grade levels) accelerated instruction commencing at the beginning of the next school year, rather than during the next school year, as prescribed by an educational plan developed for the student by the student's grade placement committee established under Subsection (c).

(o) Provides that this section does not require the administration of a fifth or eighth grade assessment instrument in a subject under Section 39.023(a) to a student enrolled in the fifth or eighth grade, as applicable, if the student:

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

(2) will be administered an end-of-course assessment instrument adopted under Section 39.023(c) (relating to end-of-course assessments for certain secondary-level courses) for the course.

(p) Prohibits a student described by Subsection (o), notwithstanding any other provision of this section, from being denied promotion on the basis of failure to perform satisfactorily on an assessment instrument not required to be administered to the student in accordance with that subsection.

SECTION 12. Amends Section 38.101(a), Education Code, to require a school district, except as provided by Subsection (b) (relating to assessments not being required for certain students with certain conditions), to annually assess the physical fitness of students enrolled in grade three or higher in a course that satisfies the curriculum requirements for physical education under Section 28.002(a)(2)(C) (relating to physical education as a required course), rather than grades 3 through 12.

SECTION 13. Amends Section 39.023, Education Code, by amending Subsection (a) and adding Subsection (a-2), as follows:

(a) Requires all students, except as provided by Subsection (a-2), other than students assessed under Subsection (b) or (l) or exempted under Section 39.027 (Exemption), to be assessed in certain subjects in certain grade levels. Makes nonsubstantive changes.

(a-2) Provides that a student is not required to be assessed in a subject otherwise assessed at the student's grade level under Subsection (a) if the student:

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

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

SECTION 14. Amends Section 39.025, Education Code, by adding Subsection (e-1), as follows:

(e-1) Provides that nothing in this section has the effect of prohibiting the administration of an end-of-course assessment instrument listed in Section 39.023(c) to a student enrolled below the high school level who is enrolled in the course for which the assessment instrument is adopted. Requires the commissioner to adopt rules necessary to ensure that the student's performance on the assessment instrument is considered in the same manner for purposes of this section as the performance of a student enrolled at the high school level.

SECTION 15. Amends Section 39.053, Education Code, by adding Subsection (d-1), to provide that in aggregating results of assessment instruments across grade levels by subject in accordance with Subsection (c)(1) (relating to aggregated results of certain assessment results), the performance of a student enrolled below the high school level on an assessment instrument required under Section 39.023(c) is included with the results relating to other students enrolled at the same grade level.

SECTION 16. Amends Section 39.082, Education Code, by adding Subsection (d), as follows:

(d) Prohibits the commissioner from using the system developed under this section to evaluate:

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

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

SECTION 17. Amends Section 39.0822, Education Code, by adding Subsection (f), to prohibit the Texas Education Agency from reviewing a district using the process developed under this section during a school year for which the commissioner certifies in accordance with Section 42.009 that the district will be provided with less state and local funding than was provided to the district for the 2010-2011 school year.

SECTION 18. Amends Subchapter A, Chapter 42, Education Code, by adding Section 42.009, as follows:

Sec. 42.009. DETERMINATION OF FUNDING LEVELS. (a) Requires the commissioner, not later than July 1 of each year, to determine for each school district whether the estimated amount of state and local funding per student in weighted average

daily attendance to be provided to the district under the Foundation School Program for maintenance and operations for the following school year is less than the amount provided to the district for the 2010-2011 school year. Requires the commissioner, if the amount estimated to be provided is less, to certify the percentage decrease in funding to be provided to the district.

(b) Requires the commissioner, in making the determinations regarding funding levels required by Subsection (a), to:

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

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

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

SECTION 19. Amends Section 44.004, Education Code, by adding Subsection (g-1), to provide that if the rate calculated under Section 44.004(c)(5)(A)(ii)(b) (relating to certain calculations regarding the case of "Interest & Sinking Fund" rates) decreases after the publication of the notice required by this section, the president of the board of trustees is not required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate.

SECTION 20. Amends Section 26.05(a), Tax Code, to provide that the components of the tax rate are, for a taxing unit other than a school district, the rate that, if applied to the total taxable value, will impose the total amount published under Section 26.04(e)(3)(C) (relating to the schedule of obligations and certain calculations), less any amount of additional sales and use tax revenue that will be used to pay debt service, or, for a school district, the rate calculated, rather than published, under Section 44.004(c)(5)(A)(ii)(b), Education Code; and the rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures for the unit for the next year.

SECTION 21. Amends Section 58.258(a), Utilities Code, to prohibit an electing company's rates for private network services, notwithstanding the pricing flexibility authorized by this subtitle, from being increased before January 1, 2014, rather than January 1, 2012.

SECTION 22. Amends Section 58.268, Utilities Code, to require an electing company, notwithstanding any other provision of this title, to continue to comply with this subchapter until January 1, 2014, rather than January 1, 2012, regardless of the date the company elected under this chapter, or any action taken in relation to that company under Chapter 65 (Deregulation of Certain Incumbent Local Exchange Company Markets).

SECTION 23. Amends Section 59.077(a), Utilities Code, to prohibit an electing company's rates for private network services, notwithstanding the pricing flexibility authorized by this subtitle, from being increased before January 1, 2014, rather than January 1, 2012.

SECTION 24. Amends Section 59.083, Utilities Code, to require an electing company, notwithstanding any other provision of this title, to continue to comply with this subchapter until January 1, 2014, rather than January 1, 2012, regardless of the date the company elected under this chapter, or any action taken in relation to that company under Chapter 65.

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

SECTION 26. Effective date: upon passage or September 1, 2011.