

- SUBJECT:** Flexibility in the management and operation of public schools
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 6 ayes — Eissler, Aycock, Huberty, Shelton, T. Smith, Weber  
1 nay — Strama  
4 absent — Hochberg, Allen, Dutton, Guillen
- SENATE VOTE:** On final passage, June 6 — 18-12 (Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini)
- WITNESSES:** No public hearing
- BACKGROUND:** **School employee contracts.** 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.

**Minimum salary schedule.** Education Code, sec. 21.402 requires a school district to pay each classroom teacher or full-time librarian, counselor, or school nurse a minimum monthly salary according to the minimum salary schedule, which is based on the employee's years of service and appropriations to the school finance system. Each employee advances one step on the minimum salary schedule for each year of experience until the maximum step is reached. For each year of work experience required for certification in a career or technological field, up to two years, a certified career or technology education teacher is entitled to salary step credit as if the work experience were teaching experience. A district must credit the teacher, librarian, counselor, or nurse for each year of experience regardless of whether the years are consecutive.

School districts are responsible for paying the portion of the state's contribution to the Teacher Retirement System (TRS) for the amount an employee earns above the minimum salary schedule.

**Class size limits.** Education Code, sec. 25.112 prevents a school district from enrolling more than 22 students in a kindergarten, first, second, third, or fourth grade class. School districts may apply to the commissioner of education for a waiver from the class size limit if it works an undue hardship on the district. A waiver expires at the end of the school year for which it is granted. Districts must notify parents and guardians of students affected by the waiver.

DIGEST:

SB 8 would amend provisions governing certain school district employee contracts, notification provided to employees about contract renewals, and the student-to-teacher ratio in certain classrooms.

**Nonrenewal or termination of certain school district employee contracts.** The bill would change the deadline for a school district to notify classroom teachers and full-time librarians, counselors, and school nurses employed under a probationary contract or whose contract was about to expire if the contract would not be renewed. Rather than 45 days before the last day of the school year, the notification deadline would be the last day on which spring administration of the state assessment instrument may occur.

The bill no longer would require a school district to terminate teachers on continuing contracts according to the reverse order of seniority.

**Financial exigency.** The bill would allow the board of trustees of a school district 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 before that time. The school board would not be limited in the number of times it could declare financial exigency and could terminate it whenever it considered it 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 this notification.

**Hearings.** If an employee protested a personnel reduction based on financial exigency, the employee would be entitled to a hearing before the board or a hearing before a hearing examiner, as determined by the board. A school district with an enrollment of at least 5,000 students could 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.

Within 15 days after 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 15 days after the meeting.

**Minimum salary schedule.** SB 8 would remove the formula calculation of the monthly minimum salary for each classroom teacher, full-time librarian, full-time counselor, and full-time nurse and instead would specify a minimum amount for each level of experience. The bill would repeal Education Code, sec. 21.402(d), which requires that the salary of each classroom teacher, full-time librarian, full-time counselor, and full-time nurse be at least equal to the salary the employee received for the 2010-2011 school year. The bill would preserve a 1994 career ladder supplement hold-harmless.

The education commissioner would be required to submit a report evaluating and providing written recommendations regarding the salary schedule to the governor, the lieutenant governor, the speaker, and the appropriate legislative standing committees by January 1, 2013.

**Employee furloughs.** The bill would permit the board of trustees of a school district to implement a furlough program, according to district policy, and reduce the number of days of service otherwise required during a school year. The school district could not reduce the number of service days by more than six. The school district could reduce the salary of a furloughed employee in proportion to the number of days the employee was furloughed.

The school district would have to subject all contract personnel to the same number of furlough days. An educator could not be furloughed on an instruction day, and a furlough could not result in an increased number of

required teacher workdays. An educator could not use personal, sick, or any other paid leave while on furlough.

The commissioner would have to certify that the district would be provided with less state and local funding for that year than was provided to the district for the 2010-2011 school year.

A furlough imposed by the school district would not constitute a break in service for the purposes of the Teacher Retirement System of Texas. If a school board of trustees were to adopt a furlough program after the date on which a teacher must give notice of resignation, the teacher could resign without consequence.

A decision by the board of trustees of a school district to implement a furlough program would be final, not subject to appeal, and would not create a cause of action or require collective bargaining.

To develop a furlough or other salary reduction program, the board of trustees of a school district would have to include the district professional staff in the development process and hold a public meeting during which district employees and the public could express opinions. At the public meeting, the board and school district administrators would have to state the number of specific furlough days. The board and administrators would present the options considered and an explanation of how the district would implement the furlough program to limit the number of employees who would be discharged or whose contracts would not be renewed.

**Determination of funding levels.** By July 1 of each year, the education commissioner would have to determine whether the estimated amount of state and local funding per student in weighted average daily attendance (WADA) to be provided to a school district for the upcoming school year was less than the amount provided to the district for the 2010-11 school year. The commissioner would have to make adjustments to reflect changes in the district's maintenance and operations tax rate, consider any recapture amount, and determine a district's weighted average daily attendance as it existed on January 1, 2011. If the amount were less, the commissioner would have to certify the percentage decrease in funding.

**Class size limit waivers.** SB 8 would permit the commissioner of education to except a district from the class size limit of 22 if the commissioner determined that, as a result of a reduction in state funding

levels, the amount of state and local funds per weighted student available to the district was less than the amount available to the district in the preceding year. An exception granted for this reason would expire at the end of the school year for which it was granted.

**Retention of an employee without a valid certificate.** Under SB 8, an employee's probationary, continuing, or term contract would be void if the employee did not hold a valid certificate issued by the State Board for Educator Certification (SBEC), failed to renew or extend a certificate or permit, or failed to comply with criminal history checks as required and the failure resulted in revocation or suspension of the certificate. A school district could not terminate or suspend an employee who did not hold a valid certificate if the employee requested an extension from the SBEC to renew, extend, or otherwise validate the employee's certificate or permit and, no later than 10 days after the contract was void, took necessary measures to renew, extend, or otherwise validate the employee's certificate or permit as determined by SBEC.

**Public information requests.** A school district would not be required to produce public information for inspection or duplication or to produce copies of public information in response to a request unless the requestor had paid the charge from the district for costs related to producing information in response to a previous request from the requestor.

**Physical education assessments.** The bill would require school districts to assess annually the physical fitness only of third through 12th grade students enrolled in a physical education course.

**Effective date.** 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:**

SB 8 would provide increased local control and necessary relief from mandates for school districts, whose elected board of trustees and administrators are best equipped to make decisions to benefit their students. It would help school districts weather the current budget crisis, save teacher jobs, help districts balance their budgets efficiently, and mitigate the impact of budget cuts.

The bill would increase the efficiency of school districts. For example, it would eliminate the requirement that every student be tested for physical fitness, a requirement that results in students missing instructional time in core subjects. It would make more sense to test only the physical fitness of those students who were enrolled in a physical education class.

**School district employee contracts.** The bill would increase the time a school district had to develop its budget and would allow decisions to be made with recent state appropriations figures. The current 45-day notification requirement for contract renewal before the end of the school year forces school districts to determine their budgets before knowing the state appropriation for the upcoming school year, which does not equip the district to adapt to changing fiscal climates. During tough economic times, employees may be laid off before it is necessary. The bill no longer would force school districts to rush their decision-making process, which could save jobs.

Receiving notice of nonrenewal of an employee's contract by the last day on which spring administration of the state assessment instrument may occur would permit a teacher to remain focused and engaged. State assessments occur near the end of the year, and it is detrimental to not have the teacher present for these preparations. Current notifications can cause teachers to use paid time off to remain out of the classroom for the remaining 45 days in the school year.

Teacher evaluations are not complete until about 15 days before the end of the year, which coincides with the last day on which spring administration of the state assessment instrument may occur. SB 8 would allow districts to consider these evaluations and more accurately assess teachers, students, and projected student enrollment when making decisions about teacher contracts.

**School district employee compensation.** Current law does not allow a salary decrease from 2010-2011 school year levels. The only legal means by which a district could reduce its costs would be reducing personnel. Under current law, instead of reducing everyone's salaries a small amount, the district's only option is to eliminate positions, which could lead to larger class sizes in secondary grades or reduced services to students. Certain school districts report that the ability to reduce employee salaries by 1 percent would preserve 100 teaching positions.

**Financial exigency.** A school district should 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 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.

The bill would not violate the legal terms of a continuing contract because such contract terms do not 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.

**Furloughs.** Granting school districts the flexibility to implement furlough days would save teacher jobs by allowing salaries to be reduced across the board rather than laying off school employees.

OPPONENTS  
SAY:

SB 8 would not save school districts money or help them mitigate the effects of the budget crisis. Any possible savings would not be realized until the next biennium at the earliest because teacher contracts already have been executed for the next school year and cannot be materially changed. While some claim the bill would save teacher jobs, there is no guarantee its provisions would have been used prior to the recent layoffs to accomplish this.

**Seniority for continuing contracts.** Removing the provision requiring termination in reverse order of seniority would leave veteran teachers vulnerable when a school district sought to alleviate budget constraints because veteran teachers have the highest salaries. Removing this provision would make a material change to the terms of an existing contract, violating precedent set by *Central Education Agency v. George West I.S.D.*, 783 S.W.2d 200 (Tex. 1989), which held that material terms of a contract cannot be abrogated during the term of the contract. These employees have the protections afforded by the existing continuing contract provisions because the district has determined that their performance warrants being placed on a continuing contract.

**School district employee contracts.** Receiving notice on the last day on which spring administration of the state assessment instrument may occur

that an employee's contract would not be renewed would not provide proper notice to the employee. The 45-day rule allows teachers an opportunity to search for a new job. Job fairs occur in the spring semester, and teachers need to know at that time whether they should be looking for a job. The bill would result in more teachers choosing to contest a proposed nonrenewal since they would not have any other viable employment options. Current law provides the proper balance between the teachers' and the districts' interests.

The bill likely would cause a nonrenewal hearing to take place over the summer and conclude well after other districts had already completed their hiring for the following school year.

The implication that teachers choose to take vacation days or slack off from work upon notice of a nonrenewal is untrue and offensive. Teachers care about their students and want them to succeed and have a vested interest in excelling on the job to facilitate being hired in another district.

**Minimum salary schedule.** The bill no longer would tie the minimum salary schedule to the school finance system, which would mean the schedule amounts would go unchanged. If these amounts did not increase and employee salaries increased over time, the school district's portion of the TRS contribution would increase disproportionately.

**Hearings.** SB 8 would make it easier for a school district to lay off employees due to financial exigency by amending the hearing provisions. The bill would encourage a school district to make these decisions mid-year instead of in the spring, due to an easier hearing process being available.

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.

**Furloughs.** SB 8 would invite the Legislature to pass on responsibility for dealing with severe budget reductions to school districts by saying the districts had tools, such as furloughs, that gave them more flexibility to make cuts. Districts already have laid off teachers, and the bill would not take into account reductions that have already been made.

OTHER  
OPPONENTS  
SAY:

The drastic changes proposed in SB 8 should be temporary during the budget crisis and examined more closely in more prosperous times, especially the changes to the class-size requirements.

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

**Hearings.** If school districts were granted the leeway afforded through SB 8, 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 a teaching certificate for abdicating a contract. SB 8 represents an imbalance of power between school districts and teachers.

NOTES:

As passed by the Senate, SB 8 contained similar provisions on allowing furloughs, repealing the guaranteed salary level, repealing the reverse order of seniority for terminating teachers on continuing contracts, requiring the commissioner to determine funding levels per student, retaining employees without valid certification, and revising the physical education requirements.

The Senate-passed version of SB 8 would change the deadline for nonrenewal or termination of contracts to 10 days, rather than the current 45 days, before the end of the school year. The House committee substitute would change the deadline to the last day on which spring administration of the state assessment instrument may occur.

The House committee substitute added the provisions for financial exigency, contract hearings, minimum salaries, class size limit waivers, and public information requests. Similar provisions are included in HB 17 by Callegari and HB 19 by Aycock, which also are on today's calendar, and HB 20 by Huberty and HB 21 by Shelton, which were placed on the June 9 General State Calendar and postponed until June 17.