

SUBJECT: Requirements for schools and teacher contracts and compensation

COMMITTEE: Public Education — committee substitute recommended

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

1 nay — Strama

4 absent — Hochberg, Allen, Dutton, Guillen

WITNESSES: For — HD Chambers; Jesus Chavez, Texas School Alliance; Lloyd Graham, La Porte ISD; Bill Hammond, Texas Association of Business; Michael Hinojosa, Texas School Alliance; Richard Middleton, North East ISD and Texas School Alliance, and Texas Association of School Administrators; Drew Scheberle, Greater Austin Chamber of Commerce; Charles Stafford, Denton ISD, Texas Association of School Boards, Communities in Schools of North Texas; David Thompson, Texas Association of School Administrators and TASB Council of School Attorneys; James Windham, Texas Institute for Education Reform; Howell Wright, Rockdale ISD, Texas Association of Mid-size Schools, Texas Association of Community Schools, and Texas Rural Education Association (*Registered, but did not testify*: Amanda Brownson, Fort Bend ISD; Patti Clapp, Dallas Regional Chamber; David Dunn, Texas Charter Schools Association; Andrew Erben, Texas Institute for Education Reform; Bill Grusendorf, Texas Association of Rural Schools; Lori Moya, Austin ISD; Sheryl Pace, Texas Taxpayers and Research Association; Don Rogers, Texas Rural Education Association.; Debbie Seeger, Corpus Christi ISD; Justin Yancy, Governor's Business Council)

Against — Portia Bosse, Texas State Teachers Association; Lauren Dimitry, Texans Care for Children; Traci Dunlap, Education Austin, Texas American Federation of Teachers; Keith Elkins, Freedom of Information Foundation of Texas; Monty Exter, Association of Texas Professional Educators; Lonnie Hollingsworth, Texas Classroom Teachers Association; Judith Hutchinson, Education Austin and Texas AFT; Ted Melina Raab, Martha Owen, Texas American Federation of Teachers; Ken Whalen, Texas Daily Newspaper Association and Texas Press Association (*Registered, but did not testify*: Harley Eckhart, Texas Elementary

Principals and Supervisors Association; Carrie Kroll, Texas Pediatric Society, Texas Medical Association, Texas Academy of Family Physicians, Texas Public Health Coalition; Martin Pena, South Texas Association of Schools; Joel Romo, American Heart Association; Michael Schneider, Texas Association of Broadcasters; Michelle Smith, Partnership for a Healthy Texas)

On — Kyle Ward, Texas PTA

BACKGROUND: **Minimum service requirement.** Education Code, sec. 21.401 requires a contract between a school district and an educator to be for a minimum of 10 months' service. An educator under a 10-month contract must provide a minimum of 187 days of service, except as provided by the commissioner of education in the case of a disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causing the closing of schools.

Certain school district employee contracts. There are three contracts by which a principal, teacher, supervisor, counselor, or other full-time professional employee can be employed by a school district — probationary, continuing, or term.

Probationary contracts. Education Code, sec. 21.102 requires a principal, teacher, supervisor, counselor, or other full-time professional employee who is new to the school district or who is in that employee's first or second school year to be employed under a one-year probationary contract. Probationary contracts may be used for up to three years for these employees, but may not be used for more than one year for an employee who has been employed as a teacher for at least five of the preceding eight years.

An employee on a probationary contract may be suspended without pay for the remainder of the school year or terminated 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 prior to the last day of school. With written consent from the employee, a school district may return an employee employed on a term or continuing contract to a probationary contract in lieu of termination.

Term contracts. Education Code, subch. E permits a school to employ a principal, teacher, supervisor, counselor, or other full-time professional

employee for up to five years through a term contract. A school district must notify these employees 45 days prior to the last of day of the school year in which a contract expires whether the school district will be renewing the employee's contract. Employees who would wish to contest the nonrenewal of their contract must notify the school district board of trustees 15 days after receipt of the nonrenewal. The school board of trustees holds a hearing with a hearing examiner and the board determines whether the employee's contract will be renewed. The employee may appeal the board's decision to the commissioner of education.

Continuing contracts. Education Code, subch. D, permits a school to employ a principal, teacher, supervisor, counselor, or other full-time professional employee on continuing contract, which employs an employee until the person resigns, retires, is terminated for good cause, is released as a part of a necessary reduction of personnel, or is returned to probationary status. These contracts do not require an annual renewal. 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 without pay, or release due to a necessary reduction in personnel, the employee must notify the school district board of trustees by the 10th day after notification and receive 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 a maximum of 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 is required to credit the teacher, librarian, counselor, or nurse for each year of experience without regard to whether the years are consecutive.

TRS contributions. 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.

Minimum 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 commission 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:

CSHB 400 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.

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.

School district employee compensation. The bill would repeal the minimum salary schedule as the determinant of salaries for classroom teachers and full-time librarians, counselors, and school nurses.

A school district would have to adopt a strategic plan for determining compensation for the district's classroom teachers and full-time librarians, counselors, and school nurses, with the input of those employees. The plan would have to be designed to recruit, reward, and retain effective classroom teachers, librarians, counselors, and nurses. A school district would have to consider including provisions in its plan that took into account:

- demonstrated effectiveness in improving student achievement;
- service as a mentor to other classroom teachers;
- assumption of additional responsibilities;
- performance evaluations;
- whether the teacher taught a subject area or position in an acute shortage area if the teacher was highly qualified to teach that subject;

- whether the teacher taught more students than the average district teacher;
- whether the teacher was at a district school that had difficulty retaining classroom teachers or other professional employees; or
- other job-related duties, as determined by the district.

A school district's overall compensation plan could include nonfinancial compensation, including flexible scheduling or additional leave, and compensation for employees who met campus-wide goals.

The plan could not consider athletic coaching or athletic performance in determining compensation, and payment for service as a coach or with regard to extracurricular activities would have to be determined separately.

A school district would not be allowed to use this compensation plan to determine employee compensation before the 2012-2013 school year.

Certain school district employee contracts. The bill would repeal the requirement that teachers work for a minimum of 187 days over a 10-month contract.

The bill would require 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 by the last day of school if the contract would not be renewed. The notice would have to be delivered personally to the teacher or mailed by regular mail or prepaid certified mail or by an express delivery service to the teacher's address on record. The notice would be considered given at the time of mailing.

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

The bill would allow a teacher who was terminated because the school district declared a financial exigency to request a hearing before the district's board of trustees or its designee. The teacher could appeal that decision to the commissioner. The commissioner could not substitute the commissioner's judgment for that of the board's unless the board's decision were not supported by substantial evidence.

State contribution to TRS for existing members. The bill would maintain the current minimum salary schedule only for use in determining the state's contribution to the Teacher Retirement System for current and future classroom teachers and full-time librarians, counselors, and school nurses.

The Legislative Budget Board would be required to review and make recommendations regarding this provision every four years.

Minimum class-size requirements. The bill would repeal the maximum limit of 22 students per class and instead require school districts to maintain a district-wide average of 22 students for each kindergarten through fourth grade class. A district could not assign more than 25 students per class in those grade levels. Any campus or district granted a waiver from these requirements by the commissioner of education would have to include in the notification to parents and guardians the district-wide average number of children in a class.

The bill also would remove the current requirement that there be no more than 10 students for each teacher in an accelerated instruction group administered by the school district.

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.

Public notice. The bill would amend the manner in which a school district notified the public of a budget and tax rate meeting, a hearing on the educational performance of the school district, and a financial management hearing. The board of trustees of a school district would have to provide notice of a hearing by sending an e-mail to media that serve the district, posting the notice and any required documents or summaries on the school district's website, and making the notice and any required documents or summaries available to the public at the district's central administrative office and at each campus in the school district. The bill no longer would require notice through a newspaper.

These requirements would apply to any meeting for which notice was required on or after the bill's effective date.

Joint elections. The bill would require that joint election agreements entered into with school districts include a provision that held a school district financially responsible for the proportion of expenses that corresponded to the proportion of the number of precincts within the school district's boundaries compared to the total number of precincts participating in the election.

The polling places for a bond election held as a part of a joint election would have to adequately and conveniently serve the voters and facilitate orderly conduct of the election.

Texas School for the Deaf. The bill would require the operating calendar for the Texas School for the Deaf to reflect the number of service days in a classroom teacher's contract, as well as provide the minimum number of required instructional days.

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 September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 400 would transform schools by providing necessary relief from mandates and increased local control to school districts, whose administrators are best equipped to make decisions to benefit their students. It would help school districts during the current budget crisis and save teacher jobs. It would 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. The current requirement results in students missing instructional time in core subjects. It makes more sense to only test the physical fitness of those students in a physical education class.

Financial exigency. The bill would explicitly grant a school district the ability to declare financial exigency annually and without limitation. Current law implies authority for a school district to declare financial exigency only when it permits a term contract employee to be released for financial exigency reasons. It is important for school districts to have this authority because by declaring financial exigency, a district could take certain actions to prevent a financial disaster. The actions include reducing

the number of certain school district employees, changing food contracts, and amending existing contracts.

Class-size requirements. A slight increase in the number of students per class would not hurt the quality of the student's education. There is no definitive research that shows that 22 students per teacher is the ideal number.

The bill would allow school districts to assign teachers to classrooms based on the student population, rather than to meet a 22-to-1 student-to-teacher ratio. Many school districts would benefit from being able to add a couple of students to a lower grade level class, decreasing the total number of classes for that grade level to place a teacher in a higher grade level classroom to reduce its class size. The ability to do so would increase the quality of education for the students in higher grades, but would not hurt the quality of education for the other students.

The requirement for school districts to notify parents if the district were to obtain a waiver for the class size requirements would bring transparency to waiver system. Parents have an inherent right to know these kinds of details about their children's lives and education.

School district employee compensation. The bill would allow school districts to set teachers', counselors', nurses', and librarians' salaries according to job market conditions instead of state mandates. 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.

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 prior to knowing the state appropriation for the upcoming school year, which does not equip the school 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 would save jobs.

Receiving notice by the last day of school that an employee's contract would not be renewed would permit a teacher to remain focused and engaged for the entirety of the school year. 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. State assessments occur near the end of the year, and it is detrimental to not have the teacher present for these preparations.

State contributions to TRS. Since the state's and the school districts' contributions to the Teacher Retirement System for classroom teachers and full-time librarians, counselors, and school nurses is based on the minimum salary schedule, it is necessary for it to remain in statute for this purpose only.

Public notice. The bill would allow school districts to communicate with the public more easily and cost-effectively. Allowing school districts to post notice for certain meetings electronically makes sense because many people read the news online rather than in newspapers.

OPPONENTS
SAY:

CSHB 400 is an attempt to balance the budget at the expense of teachers and the quality of education. All aspects of education should be impacted instead of relying on teachers to teach successfully in strained conditions and with decreased compensation.

This bill would not save school districts' money, nor would it help districts mitigate the effects of the budget crisis. The bill would not provide 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.

Class-size requirements. The bill would harm the quality of public education by steering the system away from research-based practices. The majority of educational research demonstrates that smaller student-to-teacher ratios positively impact student learning.

Maintaining the current 22-student class-size limit for the early grades would save the state money in the long term. When the Legislature enacted the class-size requirements in 1984, the Perot Commission found

that it was better to invest money in more teachers for the early grades in order to prepare those students for later years by ensuring that they acquired literacy, reading comprehension, analytical skills, and other basic learning skills. Since the requirements were enacted, student performance has risen steadily over the past 26 years.

If school districts need flexibility in student-to-teacher ratios to save money or balance out teacher placement, school districts already can apply for a waiver from the commissioner of education. In the past five years, zero waivers have been denied, and only five have been denied since the requirement's inception. School districts could achieve the required flexibility and the state could maintain its high standards by maintaining the current 22-to-1 student-to-teacher requirement.

There should at least be an exemption for special education and special classrooms with few students to ensure an accurate district wide average.

Minimum salary schedule. The minimum salary schedule should be maintained because it protects school employees and ensures a baseline salary and longevity increases.

Maintaining the minimum salary schedule and flexibility are not mutually exclusive. A small tweak to the statute—deleting sec. 21.402, Education Code, which requires that an employee's salary remain at the level of the 2010-2011 school year— would allow school districts to reduce teachers' and certain other employees' salaries, if necessary.

The bill instead would guarantee a permanent decrease in teacher salaries. The minimum salary schedule is tied to the school finance formulas, so an increase in that appropriation would increase the baseline minimum salaries. When given the choice, school districts have not chosen to spend money on teachers. The longevity increases afforded in the minimum salary schedule amount to a cost of living increase for these employees. Without a mandatory increase in salary for longevity, school districts would not provide periodic and deliberate cost of living increases.

The state struggles to retain highly qualified teachers with proven track records of increasing student achievement. Decreasing teacher pay would exacerbate the problem. To attract the top students in the state to become teachers, their salary must compete with that of corporate jobs. If we have

the best people as teachers, the state would not have to worry about issues such as class size.

Some claim that the bill would allow school districts to supplement the compensation plan with incentive pay for teacher performance. That assumption would not address the lower salaries that counselors, librarians, and nurses would face. The state is too focused on incentive pay for teachers as the miracle solution for public education. Education research does not present compelling evidence that this approach makes any meaningful change to student performance. To improve student performance, the state should be investing in teacher salaries to make the profession attractive to college students.

Seniority for continuing contracts. The removal of the seniority provision would leave veteran teachers vulnerable when a school district sought to alleviate budget constraints since they have the highest salaries.

The removal of this provision would illegally alter the contract rights of teachers who had a continuing contract. This change would make a material change to the terms of the existing contract, which is prohibited as determined 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 a contract. *James v. Hitchcock I.S.D.*, 742 S.W.2d 701 (Tex. App. – Houston [1st Dist.] 1987, writ denied) held that continuing contract terms continue in effect until the employee resigns, retires, is terminated for good cause, is released as a part of a necessary reduction of personnel, or is returned to probationary status. These employees have the protections afforded by the existing continuing contract provisions because the district has chosen to employ its teachers under continuing contracts and the district has determined that the teacher's performance warrants being placed on a continuing contract.

School district employee contracts. Receiving notice on the last day of school 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.

State contribution to TRS for existing members. 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.

Public notice. The bill should not remove the requirement that notices be printed in the local newspaper because 27 percent of Texans do not have Internet service. There is no assurance that those with Internet service would see the posting unless they were deliberately looking for it.

Physical fitness. The state should continue to assess each student for physical fitness. Obesity is a significant problem, and obese children are likely to be sick adults, which ultimately would mean higher health-care costs for the state.

OTHER
OPPONENTS
SAY:

The drastic changes proposed in CSHB 400 should be temporary during the budget crisis and examined more closely in more prosperous times, especially the changes to the class-size requirements.

School district employee compensation. The implementation time frame for the strategic compensation plan should be two years to ensure that research and stakeholder input were adequately considered.

School district employee contracts. The bill should ensure that the delivery of the notice was considered received when the employee had actually received the notice by the deadline, not just that the district put the notice in the mail.

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

NOTES:

HB 400 originally was reported from the Public Education Committee on April 5 and set on the Major State Calendar for April 26, when it was returned to committee after a point of order was sustained. The bill was

reported from committee again on April 26, then on April 27 was returned to committee a second time on a motion by Rep. Eissler and was reported again. The bill was set on the Major State Calendar for May 6, and after floor consideration of several amendments, it was returned to the Calendars Committee after a point of order against the bill was sustained. After a corrected committee report was distributed, the bill was set on the May 9 Major State Calendar. After another point of order was sustained, the bill was again returned to the Calendars Committee, and after a corrected committee report was distributed, the bill was set on the May 12 Major State Calendar.