

## **BILL ANALYSIS**

C.S.S.B. 8  
By: Shapiro  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current Texas law imposes burdensome restrictions on school districts' decision-making power in ways that range from requirements regarding personnel matters to mandates concerning school operation and resource allocation. In addition, state law creates barriers for a school district, both to its sound operation and to its ability to implement necessary changes to improve educational quality and increase efficiency. C.S.S.B. 8 seeks to address these issues.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTIONS 2, 6, and 14 of this bill.

### **ANALYSIS**

C.S.S.B. 8 amends the Education Code to specify that a school district employee's probationary, continuing, or term contract is void if the employee either does not hold a valid certificate or permit issued by the State Board for Educator Certification (SBEC) or 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, Chapter 21, Education Code. The bill establishes as an additional ground for rendering such a contract void the employee's failure to comply with any requirement under provisions of law governing criminal history records if the failure results in suspension or revocation of the employee's certificate.

C.S.S.B. 8 makes a school district's authority to terminate an employee whose contract is void, suspend the employee with or without pay, or retain the employee for the remainder of the school year on an at-will basis under certain conditions contingent on the district having knowledge that the employee's contract is void, rather than authorizing a school district to take such action after an employee receives notice that the employee's contract is void. The bill specifies that the authorized retention of such employee for the remainder of the school year on an at-will employment basis applies to the employee's retention in a position other than that of a classroom teacher, principal, librarian, nurse, or counselor who must be employed under a probationary, continuing, or term contract, rather than the employee's retention in a position other than that of a classroom teacher.

C.S.S.B. 8 prohibits a school district from terminating or suspending an employee whose contract is void under certain conditions because of the employee's failure to renew or extend the employee's certificate or permit if the employee requests an extension from SBEC to renew, extend, or otherwise validate the certificate or permit and, not later than the 10th day after the date the contract is void, takes necessary measures to renew, extend, or otherwise validate that certificate or permit, as determined by SBEC.

C.S.S.B. 8 changes the deadline by which a school district board of trustees is required to notify

a teacher employed under a probationary contract of its decision to terminate the teacher's employment at the end of the contract period from not later than the 45th day before the last day of instruction required under the contract to not later than the last day on which the spring administration of an assessment instrument under Section 39.023, Education Code, may occur during the school year, as determined by commissioner rule.

C.S.S.B. 8 entitles a teacher employed under a probationary contract to a hearing before a hearing examiner if the teacher is protesting a proposed discharge or suspension without pay. The bill entitles a teacher employed under a probationary contract to a hearing in the manner provided for a hearing regarding the nonrenewal of a term contract or to a hearing before a hearing examiner, as determined by the board of trustees, if the teacher is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a financial exigency declared by the board that requires a reduction in personnel.

C.S.S.B. 8 removes the requirement that a school district make reductions of personnel in reverse order of seniority in the specific teaching fields for a teacher employed under a continuing contract authorized to be released at the end of a school year whose employment with the district is terminated at that time because of a necessary reduction of personnel by the school district.

C.S.S.B. 8 specifies that a teacher employed under a continuing contract is entitled to a hearing before a hearing examiner if the teacher is protesting a proposed discharge or suspension without pay. The bill entitles a teacher employed under a continuing contract to a hearing in the manner provided for a hearing regarding the nonrenewal of a term contract or to a hearing before a hearing examiner, as determined by the board of trustees, if the teacher is protesting proposed action to terminate the continuing contract at the end of the school year because of a necessary reduction of personnel or proposed action to terminate a term contract at any time on the basis of a financial exigency declared by the board that requires a reduction in personnel.

C.S.S.B. 8 changes the deadline by which a school district board of trustees is required to notify in writing each teacher whose contract is about to expire regarding whether the board proposes to renew or not renew the contract from not later than the 45th day before the last day of instruction in a school year to not later than the last day on which the spring administration of an assessment instrument under Section 39.023, Education Code, may occur during the school year, as determined by commissioner rule.

C.S.S.B. 8 authorizes the board of trustees of a school district with an enrollment of at least 5,000 students to designate an attorney licensed to practice law in Texas to hold a hearing on a proposed nonrenewal of a teacher's term contract on the board's behalf, to create a hearing record for the board's consideration and action, and to recommend an action to the board. The bill prohibits the attorney serving as the board's designee from being employed by a school district and prohibits either the designee or a law firm with which the designee is associated from serving as an agent or representative of a school district, of a teacher in a dispute between a district and a teacher, or of an organization of school employees, school administrators, or school boards of trustees. The bill requires the board's designee to provide to the board, not later than the 15th day after the completion of a hearing, a record of the hearing and the designee's recommendation whether the contract should be renewed or not renewed.

C.S.S.B. 8 requires the board to consider the record of the hearing and the designee's recommendation at the first board meeting for which notice can be posted in compliance with state open meetings law following the receipt of the record and recommendation, unless the parties agree in writing to a different date. The bill requires the board to consider the hearing record and the designee's recommendation and allow each party to present an oral argument to the board at the meeting. The bill authorizes the board to limit the amount of time for oral argument by written policy that provides equal time for each party. The bill authorizes the board to obtain advice concerning legal matters from an attorney who has not been involved in the

proceedings. The bill authorizes the board to accept, reject, or modify the designee's recommendation and requires the board to notify the teacher in writing of the board's decision not later than the 15th day after the date of the meeting. The bill makes a conforming change.

C.S.S.B. 8 exempts a decision to terminate a probationary or term contract before the end of the contract period or to terminate a continuing contract at any time, on the basis of a declared financial exigency that requires a reduction in personnel, from statutory provisions governing a hearing before a hearing examiner unless the board of trustees has decided to use the process prescribed for such a hearing for that purpose.

C.S.S.B. 8 replaces the formula for determining the minimum salary schedule for certain professional staff with a fixed minimum monthly salary for such staff based on an employee's years of experience. The bill adds a temporary provision, set to expire September 1, 2013, requiring the commissioner of education, not later than January 1, 2013, to review the minimum salary schedule and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with primary jurisdiction over primary and secondary education a written report that recommends the method to be used to determine the schedule.

C.S.S.B. 8 authorizes a school district board of trustees, in accordance with district policy, to implement a furlough program and reduce the number of days of service otherwise required by law by not more than six days of service during a school year if the commissioner certifies 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. The bill authorizes the board of trustees to reduce the salary of a furloughed employee in proportion to the number of days by which service is reduced, provided that the furlough program is implemented in compliance with the bill's provisions.

C.S.S.B. 8 requires a furlough program to subject all contract personnel to the same number of furlough days and prohibits an educator from being furloughed on a day that is included in the number of days of instruction required under provisions of law governing the operation of schools. The bill prohibits an educator from using personal, sick, or any other paid leave while the educator is on a furlough and establishes that a furlough imposed under the bill's provisions does not constitute a break in service for purposes of the Teacher Retirement System of Texas.

C.S.S.B. 8 prohibits implementation of a furlough program from resulting in an increase in the number of required teacher workdays. The bill establishes 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 state law, a teacher who subsequently resigns is not subject to sanctions imposed by SBEC as otherwise authorized by law. The bill establishes 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.

C.S.S.B. 8 prohibits a school district board of trustees from implementing a furlough program or reducing salaries until the district has complied with the bill's procedural requirements for the development of the furlough program or other salary reduction proposal. The bill requires a school district to use a process to develop a furlough program or other salary reduction proposal, as applicable, that includes the involvement of the district's professional staff and provides district employees with the opportunity to express opinions regarding the furlough program or salary reduction proposal, as applicable, at a required public meeting. The bill requires the board of trustees to hold a public meeting at which the board and school district administration present 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 an explanation of how the district intends, through implementation of a furlough program or through other salary reductions, as applicable, to limit the number of district employees who will be discharged or whose contracts will not be renewed. The bill requires any explanation of a

furlough program to state the specific number of furlough days proposed to be required and requires the public and school district employees to be provided with an opportunity to comment at such public meeting.

C.S.S.B. 8 authorizes the commissioner, on application of a school district, to except the district from the statutory limit on class size in kindergarten through fourth grade if the commissioner determines 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 is less than the amount of state and local funds per weighted student available to the district in the preceding school year.

C.S.S.B. 8 limits a school district's required annual physical fitness assessment of students in grade three or higher to students enrolled in a course that satisfies the curriculum requirements for physical education.

C.S.S.B. 8 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. The bill requires the commissioner to certify the percentage decrease in funding to be provided to the district if the amount estimated to be provided is less than the district's funding for the 2010-2011 school year. The bill requires the commissioner, in making the determinations regarding such funding levels, to make adjustments as necessary to reflect changes in a school district's maintenance and operations tax rate; to base the determinations regarding the funding levels for a district required to take action to reduce its wealth per student to the equalized wealth level on the district's net funding levels after deducting any amounts required to be expended by the district to reduce its wealth per student to the equalized wealth level; and to determine a district's weighted average daily attendance in accordance with the Foundation School Program provisions as they existed on January 1, 2011.

C.S.S.B. 8 authorizes a school district board of trustees to adopt a resolution declaring a financial exigency for the district. The bill provides that such a declaration expires at the end of the fiscal year during which the declaration is made unless the board adopts a resolution before the end of the fiscal year declaring continuation of the financial exigency for the following fiscal year. The bill specifies that the board is not limited in the number of times the board may adopt a resolution declaring continuation of the financial exigency. The bill authorizes the board to terminate a financial exigency declaration at any time if the board considers it appropriate. The bill requires the board to notify the commissioner each time the board adopts a resolution and requires the commissioner by rule to prescribe the time and manner in which notice must be given to the commissioner.

C.S.S.B. 8 establishes that a school district is not required to produce public information for inspection or duplication or to produce copies of public information in response to a request unless the requestor has paid the charge from the district for costs related to producing public information in response to a previous request from that requestor.

C.S.S.B. 8 repeals Section 21.402(b), (c), (c-1), (c-2), (c-3), (d), and (e), Education Code, relating to the minimum salary schedule for certain professional staff.

#### **EFFECTIVE DATE**

On passage or, if the bill does not receive the necessary vote, on the 91st day after the last day of the legislative session.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 8 differs from the original by changing the deadline for notifying a teacher employed

under a probationary contract of a board of trustees decision to terminate the teacher's employment at the end of the contract period from not later than the 45th day before the last day of instruction required under the contract to not later than the last day on which the spring administration of an assessment instrument under Section 39.023, Education Code, may occur, as determined by commissioner rule, whereas the original changes that deadline to not later than the 10th day before the last day of instruction required under such a contract.

C.S.S.B. 8 contains provisions not included in the original entitling a teacher employed under a probationary contract to a hearing before a hearing examiner if the teacher is protesting a proposed discharge or suspension without pay and entitling such a teacher to a hearing in the manner provided for a hearing regarding the nonrenewal of a term contract or to a hearing before a hearing examiner, as determined by the board, if the teacher is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a declared financial exigency requiring a reduction in personnel.

C.S.S.B. 8 contains provisions not included in the original specifying that a teacher employed under a continuing contract is entitled to a hearing before a hearing examiner if the teacher is protesting a proposed discharge or suspension without pay and entitling such a teacher to a hearing in the manner provided for a hearing regarding the nonrenewal of a term contract or to a hearing before a hearing examiner, as determined by the board, if the teacher is protesting proposed action to terminate the continuing contract at the end of the school year because of a necessary reduction of personnel or proposed action to terminate a term contract at any time on the basis of a financial exigency declared by the board requiring a reduction in personnel.

C.S.S.B. 8 differs from the original by changing the deadline by which a school district board of trustees is required to notify each teacher whose contract is about to expire whether the board proposes to renew or not renew the contract from not later than the 45th day before the last day of instruction in a school year to not later than the last day on which the spring administration of an assessment instrument under Section 39.023, Education Code, may occur, as determined by commissioner rule, whereas the original changes that deadline to not later than the 10th day before the last day of instruction in a school year.

C.S.S.B. 8 contains provisions not included in the original authorizing the board of trustees of a school district with an enrollment of at least 5,000 students to designate an attorney licensed to practice law in Texas to hold a hearing on a proposed nonrenewal of a teacher's term contract on the board's behalf, to create a hearing record for the board's consideration and action, and to recommend an action to the board and establishing certain conflict of interest provisions for such a designee or a law firm with which the designee is associated. The substitute contains provisions not included in the original relating to the designee's provision of a record of the hearing and a recommendation regarding whether the contract should be renewed or not renewed; the board's consideration of the record and recommendation at the first board meeting for which notice can be posted following the receipt of the record and the designee's recommendation unless the parties agree in writing to a different date; the provision of an opportunity for each party to present an oral argument to the board at such meeting; and the limitation of oral arguments under a board policy that provides equal time for each party. The substitute contains provisions not included in the original authorizing the board to obtain advice concerning legal matters from an attorney not involved in the proceedings; authorizing the board to accept, reject, or modify the designee's recommendation; and establishing a deadline for notifying the teacher of the board's decision.

C.S.S.B. 8 contains a provision not included in the original exempting a decision to terminate a probationary or term contract before the end of the contract period or to terminate a continuing contract at any time, on the basis of a declared financial exigency that requires a reduction in personnel, from statutory provisions governing a hearing before a hearing examiner on a proposed action regarding a teacher's employment, unless the board of trustees has decided to use the process prescribed for a hearing before a hearing examiner for that purpose.

C.S.S.B. 8 contains provisions not included in the original replacing the formula for determining the minimum salary schedule for certain professional staff with a fixed minimum monthly salary for such staff based on an employee's years of experience. The substitute contains a temporary provision not included in the original requiring the commissioner of education, not later than January 1, 2013, to review the minimum salary schedule and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with primary jurisdiction over primary and secondary education a written report recommending the method to be used to determine the schedule.

C.S.S.B. 8 contains a provision not included in the original authorizing the commissioner, on application of a school district, to except the district from the statutory limit on class size in certain grade levels if the commissioner determines 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 is less than the amount of such funds available to the district in the preceding school year.

C.S.S.B. 8 contains provisions not included in the original authorizing a school district board of trustees to adopt a resolution declaring a financial exigency for the district; providing for the expiration of such a declaration at the end of the fiscal year during which the declaration is made unless the board adopts a resolution before the end of the fiscal year declaring continuation of the financial exigency for the following fiscal year; and specifying that the board is not limited in the number of times the board may adopt a resolution declaring continuation of the financial exigency. The substitute contains provisions not included in the original authorizing the board to terminate such a declaration at any time if the board considers it appropriate; requiring the board to notify the commissioner each time the board adopts such a resolution; and requiring the commissioner by rule to prescribe the time and manner for giving notice.

C.S.S.B. 8 contains a provision not included in the original establishing that a school district is not required to produce public information for inspection or duplication or to produce copies of public information in response to a request unless the requestor has paid the charge from the district for costs related to producing public information in response to a previous request from that requestor.

C.S.S.B. 8 differs from the original by repealing Section 21.402(b), (c), (c-1), (c-2), (c-3), (d), and (e), Education Code, relating to the minimum salary schedule for certain professional staff, whereas the original repeals only Section 21.402(d), entitling an employee to a salary at least equal to the salary received in the 2010-2011 school year as long as the employee is employed by the same district that employed the individual during the 2010-2011 school year.