

By: Shapiro, et al.
(Eissler)

S.B. No. 8

Substitute the following for S.B. No. 8:

By: Aycock

C.S.S.B. No. 8

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the flexibility of the board of trustees of a school
3 district in the management and operation of public schools in the
4 district.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 21.0031, Education Code, is amended by
7 amending Subsections (a) and (b) and adding Subsection (b-1) to
8 read as follows:

9 (a) An employee's probationary, continuing, or term
10 contract under this chapter is void if the employee:

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

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

17 (3) fails to comply with any requirement under
18 Subchapter C, Chapter 22, if the failure results in suspension or
19 revocation of the employee's certificate under Section
20 22.0831(f)(2).

21 (b) If a school district has knowledge that an ~~[After an~~
22 ~~employee receives notice that the]~~ employee's contract is void
23 under Subsection (a):

24 (1) the ~~[a school]~~ district may, except as provided by

1 Subsection (b-1):

2 (A) terminate the employee;

3 (B) suspend the employee with or without pay; or

4 (C) retain the employee for the remainder of the
5 school year on an at-will employment basis in a position other than
6 a position required to be held by an employee under a contract under
7 Section 21.002 [~~classroom teacher~~] at the employee's existing rate
8 of pay or at a reduced rate; and

9 (2) the employee is not entitled to the minimum salary
10 prescribed by Section 21.402.

11 (b-1) A school district may not terminate or suspend under
12 Subsection (b) an employee whose contract is void under Subsection
13 (a)(1) or (2) because the employee failed to renew or extend the
14 employee's certificate or permit if the employee:

15 (1) requests an extension from the State Board for
16 Educator Certification to renew, extend, or otherwise validate the
17 employee's certificate or permit; and

18 (2) not later than the 10th day after the date the
19 contract is void, takes necessary measures to renew, extend, or
20 otherwise validate the employee's certificate or permit, as
21 determined by the State Board for Educator Certification.

22 SECTION 2. Subsection (a), Section 21.103, Education Code,
23 is amended to read as follows:

24 (a) The board of trustees of a school district may terminate
25 the employment of a teacher employed under a probationary contract
26 at the end of the contract period if in the board's judgment the
27 best interests of the district will be served by terminating the

1 employment. The board of trustees must give notice of its decision
2 to terminate the employment to the teacher not later than the last
3 day on which the spring administration of an assessment instrument
4 under Section 39.023 may occur during the school year, as
5 determined by commissioner rule [~~45th day before the last day of~~
6 ~~instruction required under the contract~~]. The board's decision is
7 final and may not be appealed.

8 SECTION 3. Subchapter C, Chapter 21, Education Code, is
9 amended by adding Section 21.1041 to read as follows:

10 Sec. 21.1041. HEARING UNDER PROBATIONARY CONTRACT. A
11 teacher is entitled to:

12 (1) a hearing as provided by Subchapter F, if the
13 teacher is protesting proposed action under Section 21.104; or

14 (2) a hearing in a manner provided under Section
15 21.207 for nonrenewal of a term contract or a hearing provided by
16 Subchapter F, as determined by the board of trustees of the
17 district, if the teacher is protesting proposed action to terminate
18 a probationary contract before the end of the contract period on the
19 basis of a financial exigency declared under Section 44.011 that
20 requires a reduction in personnel.

21 SECTION 4. Section 21.157, Education Code, is amended to
22 read as follows:

23 Sec. 21.157. NECESSARY REDUCTION OF PERSONNEL. A teacher
24 employed under a continuing contract may be released at the end of a
25 school year and the teacher's employment with the school district
26 terminated at that time because of a necessary reduction of
27 personnel by the school district[, ~~with those reductions made in~~

1 ~~the reverse order of seniority in the specific teaching fields]~~.

2 SECTION 5. Subsection (b), Section 21.159, Education Code,
3 is amended to read as follows:

4 (b) A teacher who notifies the board of trustees within the
5 time prescribed by Subsection (a) is entitled to:

6 (1) a hearing as provided by Subchapter F, if the
7 teacher is protesting proposed action under Section 21.156; or

8 (2) a hearing in a manner provided under Section
9 21.207 for nonrenewal of a term contract or a hearing provided by
10 Subchapter F, as determined by the board, if the teacher is
11 protesting proposed action under Section 21.157 or proposed action
12 to terminate a term contract at any time on the basis of a financial
13 exigency declared under Section 44.011 that requires a reduction in
14 personnel.

15 SECTION 6. Subsection (a), Section 21.206, Education Code,
16 is amended to read as follows:

17 (a) Not later than the last day on which the spring
18 administration of an assessment instrument under Section 39.023 may
19 occur during the school year, as determined by commissioner rule
20 ~~[45th day before the last day of instruction in a school year]~~, the
21 board of trustees shall notify in writing each teacher whose
22 contract is about to expire whether the board proposes to renew or
23 not renew the contract.

24 SECTION 7. Section 21.207, Education Code, is amended by
25 adding Subsection (b-1) and amending Subsection (c) to read as
26 follows:

27 (b-1) Notwithstanding any other provision of this code,

1 this subsection applies only to a school district with an
2 enrollment of at least 5,000 students. The board of trustees may
3 designate an attorney licensed to practice law in this state to hold
4 the hearing on behalf of the board, to create a hearing record for
5 the board's consideration and action, and to recommend an action to
6 the board. The attorney serving as the board's designee may not be
7 employed by a school district and neither the designee nor a law
8 firm with which the designee is associated may be serving as an
9 agent or representative of a school district, of a teacher in a
10 dispute between a district and a teacher, or of an organization of
11 school employees, school administrators, or school boards of
12 trustees. Not later than the 15th day after the completion of the
13 hearing under this subsection, the board's designee shall provide
14 to the board a record of the hearing and the designee's
15 recommendation of whether the contract should be renewed or not
16 renewed. The board shall consider the record of the hearing and the
17 designee's recommendation at the first board meeting for which
18 notice can be posted in compliance with Chapter 551, Government
19 Code, following the receipt of the record and recommendation from
20 the board's designee, unless the parties agree in writing to a
21 different date. At the meeting, the board shall consider the
22 hearing record and the designee's recommendation and allow each
23 party to present an oral argument to the board. The board by written
24 policy may limit the amount of time for oral argument. The policy
25 must provide equal time for each party. The board may obtain advice
26 concerning legal matters from an attorney who has not been involved
27 in the proceedings. The board may accept, reject, or modify the

1 designee's recommendation. The board shall notify the teacher in
2 writing of the board's decision not later than the 15th day after
3 the date of the meeting.

4 (c) At the hearing before the board or the board's designee,
5 the teacher may:

6 (1) be represented by a representative of the
7 teacher's choice;

8 (2) hear the evidence supporting the reason for
9 nonrenewal;

10 (3) cross-examine adverse witnesses; and

11 (4) present evidence.

12 SECTION 8. Section 21.251, Education Code, is amended to
13 read as follows:

14 Sec. 21.251. APPLICABILITY. (a) This subchapter applies
15 if a teacher requests a hearing after receiving notice of the
16 proposed decision to:

17 (1) terminate the teacher's continuing contract at any
18 time, except as provided by Subsection (b)(3);

19 (2) terminate the teacher's probationary or term
20 contract before the end of the contract period, except as provided
21 by Subsection (b)(3); or

22 (3) suspend the teacher without pay.

23 (b) This subchapter does not apply to:

24 (1) a decision to terminate a teacher's employment at
25 the end of a probationary contract; [~~or~~]

26 (2) a decision not to renew a teacher's term contract,
27 unless the board of trustees of the employing district has decided

1 to use the process prescribed by this subchapter for that purpose;
2 or

3 (3) a decision, on the basis of a financial exigency
4 declared under Section 44.011 that requires a reduction in
5 personnel, to terminate a probationary or term contract before the
6 end of the contract period or to terminate a continuing contract at
7 any time, unless the board of trustees has decided to use the
8 process prescribed by this subchapter for that purpose.

9 SECTION 9. Section 21.402, Education Code, is amended by
10 amending Subsection (a) and adding Subsection (i) to read as
11 follows:

12 (a) Except as provided by Subsection (d) [~~-(e)-~~] or (f), a
13 school district must pay each classroom teacher, full-time
14 librarian, full-time counselor certified under Subchapter B, or
15 full-time school nurse not less than the following minimum monthly
16 salary, based on the employee's level of experience:

17	<u>Years of</u>	<u>Monthly</u>
18	<u>Experience</u>	<u>Salary</u>
19	<u>0</u>	<u>2,732</u>
20	<u>1</u>	<u>2,791</u>
21	<u>2</u>	<u>2,849</u>
22	<u>3</u>	<u>2,908</u>
23	<u>4</u>	<u>3,032</u>
24	<u>5</u>	<u>3,156</u>
25	<u>6</u>	<u>3,280</u>
26	<u>7</u>	<u>3,395</u>
27	<u>8</u>	<u>3,504</u>

1	<u>9</u>	<u>3,607</u>
2	<u>10</u>	<u>3,704</u>
3	<u>11</u>	<u>3,796</u>
4	<u>12</u>	<u>3,884</u>
5	<u>13</u>	<u>3,965</u>
6	<u>14</u>	<u>4,043</u>
7	<u>15</u>	<u>4,116</u>
8	<u>16</u>	<u>4,186</u>
9	<u>17</u>	<u>4,251</u>
10	<u>18</u>	<u>4,313</u>
11	<u>19</u>	<u>4,372</u>
12	<u>20 & Over</u>	<u>4,427</u>

13 ~~[in addition to other factors, as determined by commissioner rule,~~
 14 ~~determined by the following formula:~~

15 ~~[MS - SF x FS~~

16 ~~where:~~

17 ~~["MS" is the minimum monthly salary,~~

18 ~~["SF" is the applicable salary factor specified by Subsection~~
 19 ~~(c), and~~

20 ~~["FS" is the amount, as determined by the commissioner under~~
 21 ~~Subsection (b), of state and local funds per weighted student,~~
 22 ~~including funds provided under Section 42.2516, available to a~~
 23 ~~district eligible to receive state assistance under Section 42.302~~
 24 ~~with a maintenance and operations tax rate per \$100 of taxable value~~
 25 ~~equal to the product of the state compression percentage, as~~
 26 ~~determined under Section 42.2516, multiplied by \$1.50, except that~~
 27 ~~the amount of state and local funds per weighted student does not~~

1 ~~include the amount attributable to the increase in the guaranteed~~
2 ~~level made by Chapter 1187, Acts of the 77th Legislature, Regular~~
3 ~~Session, 2001.]~~

4 (i) Not later than January 1, 2013, the commissioner shall
5 review the minimum salary schedule and submit to the governor, the
6 lieutenant governor, the speaker of the house of representatives,
7 and the presiding officer of each legislative standing committee
8 with primary jurisdiction over primary and secondary education a
9 written report that recommends the method to be used to determine
10 the schedule. This subsection expires September 1, 2013.

11 SECTION 10. Subchapter I, Chapter 21, Education Code, is
12 amended by adding Sections 21.4021 and 21.4022 to read as follows:

13 Sec. 21.4021. FURLOUGHS. (a) Notwithstanding Section
14 21.401 and subject to Section 21.4022, the board of trustees of a
15 school district may, in accordance with district policy, implement
16 a furlough program and reduce the number of days of service
17 otherwise required under Section 21.401 by not more than six days of
18 service during a school year if the commissioner certifies in
19 accordance with Section 42.009 that the district will be provided
20 with less state and local funding for that year than was provided to
21 the district for the 2010-2011 school year.

22 (b) Notwithstanding Section 21.402, the board of trustees
23 may reduce the salary of an employee who is furloughed in proportion
24 to the number of days by which service is reduced, provided that the
25 furlough program is implemented in compliance with this section.

26 (b-1) A furlough program must subject all contract
27 personnel to the same number of furlough days.

1 (c) An educator may not be furloughed on a day that is
2 included in the number of days of instruction required under
3 Section 25.081.

4 (d) An educator may not use personal, sick, or any other
5 paid leave while the educator is on a furlough.

6 (e) A furlough imposed under this section does not
7 constitute a break in service for purposes of the Teacher
8 Retirement System of Texas.

9 (f) Implementation of a furlough program may not result in
10 an increase in the number of required teacher workdays.

11 (g) If a board of trustees adopts a furlough program after
12 the date by which a teacher must give notice of resignation under
13 Section 21.105, 21.160, or 21.210, as applicable, a teacher who
14 subsequently resigns is not subject to sanctions imposed by the
15 State Board for Educator Certification as otherwise authorized by
16 those sections.

17 (h) A decision by the board of trustees to implement a
18 furlough program:

19 (1) is final and may not be appealed; and

20 (2) does not create a cause of action or require
21 collective bargaining.

22 Sec. 21.4022. REQUIRED PROCESS FOR DEVELOPMENT OF FURLOUGH
23 PROGRAM OR OTHER SALARY REDUCTION PROPOSAL. (a) The board of
24 trustees of a school district may not implement a furlough program
25 under Section 21.4021 or reduce salaries until the district has
26 complied with this section.

27 (b) A school district must use a process to develop a

1 furlough program or other salary reduction proposal, as applicable,
2 that:

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

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

9 (c) The board of trustees must hold a public meeting at
10 which the board and school district administration present:

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

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

20 (d) Any explanation of a furlough program under Subsection
21 (c)(2) must state the specific number of furlough days proposed to
22 be required.

23 (e) The public and school district employees must be
24 provided with an opportunity to comment at the public meeting
25 required under Subsection (c).

26 SECTION 11. Section 25.112, Education Code, is amended by
27 amending Subsection (d) and adding Subsection (d-1) to read as

1 follows:

2 (d) On application of a school district, the commissioner
3 may except the district from the limit in Subsection (a) if the
4 commissioner:

5 (1) finds the limit works an undue hardship on the
6 district; or

7 (2) determines that as a result of a reduction in state
8 funding levels, the amount of state and local funds per weighted
9 student available to the district is less than the amount of state
10 and local funds per weighted student available to the district in
11 the preceding school year.

12 (d-1) An exception under Subsection (d) expires at the end
13 of the school year for which it is granted.

14 SECTION 12. Subsection (a), Section 38.101, Education Code,
15 is amended to read as follows:

16 (a) Except as provided by Subsection (b), a school district
17 annually shall assess the physical fitness of students enrolled in
18 grade three or higher in a course that satisfies the curriculum
19 requirements for physical education under Section 28.002(a)(2)(C)
20 [grades 3 through 12].

21 SECTION 13. Subchapter A, Chapter 42, Education Code, is
22 amended by adding Section 42.009 to read as follows:

23 Sec. 42.009. DETERMINATION OF FUNDING LEVELS. (a) Not
24 later than July 1 of each year, the commissioner shall determine for
25 each school district whether the estimated amount of state and
26 local funding per student in weighted average daily attendance to
27 be provided to the district under the Foundation School Program for

1 maintenance and operations for the following school year is less
2 than the amount provided to the district for the 2010-2011 school
3 year. If the amount estimated to be provided is less, the
4 commissioner shall certify the percentage decrease in funding to be
5 provided to the district.

6 (b) In making the determinations regarding funding levels
7 required by Subsection (a), the commissioner shall:

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

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

15 (3) determine a district's weighted average daily
16 attendance in accordance with this chapter as it existed on January
17 1, 2011.

18 SECTION 14. Subchapter A, Chapter 44, Education Code, is
19 amended by adding Section 44.011 to read as follows:

20 Sec. 44.011. FINANCIAL EXIGENCY. (a) The board of trustees
21 of a school district may adopt a resolution declaring a financial
22 exigency for the district. The declaration expires at the end of the
23 fiscal year during which the declaration is made unless the board
24 adopts a resolution before the end of the fiscal year declaring
25 continuation of the financial exigency for the following fiscal
26 year.

27 (b) The board is not limited in the number of times the board

1 may adopt a resolution declaring continuation of the financial
2 exigency.

3 (c) A board may terminate a financial exigency declaration
4 at any time if the board considers it appropriate.

5 (d) Each time the board adopts a resolution under this
6 section, the board must notify the commissioner. The commissioner
7 by rule shall prescribe the time and manner in which notice must be
8 given to the commissioner under this subsection.

9 SECTION 15. Subchapter F, Chapter 552, Government Code, is
10 amended by adding Section 552.2661 to read as follows:

11 Sec. 552.2661. CHARGE FOR COPY OF PUBLIC INFORMATION
12 PROVIDED BY SCHOOL DISTRICT. A school district is not required to
13 produce public information for inspection or duplication or to
14 produce copies of public information in response to a request
15 unless the requestor has paid the charge from the district for costs
16 related to producing public information in response to a previous
17 request from that requestor.

18 SECTION 16. Subsections (b), (c), (c-1), (c-2), (c-3), (d),
19 and (e), Section 21.402, Education Code, are repealed.

20 SECTION 17. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect on the 91st day after the last day of
25 the legislative session.