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

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

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

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

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

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

(3) fails to comply with any requirement under
Subchapter C, Chapter 22, if the failure results in suspension or
revocation of the employee's certificate under Section

22.0831(f)(2).

(b) If a school district has knowledge that an employee receives notice that the employee's contract is void
under Subsection (a):

(1) the district may, except as provided by
Subsection (b-1):

(A) terminate the employee;
(B) suspend the employee with or without pay; or
(C) retain the employee for the remainder of the school year on an at-will employment basis in a position other than a position required to be held by an employee under a contract under Section 21.002 [classroom teacher] at the employee's existing rate of pay or at a reduced rate; and
(2) the employee is not entitled to the minimum salary prescribed by Section 21.402.

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

(1) requests an extension from the State Board for Educator Certification to renew, extend, or otherwise validate the employee's certificate or permit; and
(2) not later than the 10th day after the date the contract is void, takes necessary measures to renew, extend, or otherwise validate the employee's certificate or permit, as determined by the State Board for Educator Certification.

SECTION 2. Section 21.051, Education Code, is amended to read as follows:
Sec. 21.051. RULES REGARDING FIELD-BASED EXPERIENCE AND OPTIONS FOR FIELD EXPERIENCE AND INTERNSHIPS. (a) In this section, "teacher of record" means a person employed by a school district who teaches the majority of the instructional day in an
academic instructional setting and is responsible for evaluating student achievement and assigning grades.

(b) Before a school district may employ a candidate for certification as a teacher of record, the candidate must complete at least 15 hours of field-based experience in which the candidate is actively engaged in instructional or educational activities under supervision at:

(1) a public school campus accredited or approved for the purpose by the agency; or

(2) a private school recognized or approved for the purpose by the agency.

(c) Subsection (b) applies only to an initial certification issued on or after September 1, 2012. Subsection (b) does not affect:

(1) the validity of a certification issued before September 1, 2012; or

(2) the eligibility of a person who holds a certification issued before September 1, 2012, to obtain a subsequent renewal of the certification in accordance with board rule.

(d) Subsection (b) does not affect the period within which an individual must complete field-based experience hours as determined by board rule if the individual is not accepted into an educator preparation program before the deadline prescribed by board rule and is hired for a teaching assignment by a school district after the deadline prescribed by board rule.

(e) The board shall propose rules relating to the
field-based experience required by Subsection (b). The commissioner by rule shall adopt procedures and standards for recognizing a private school under Subsection (b)(2).

(f) The board shall propose rules providing flexible options for persons for any field-based experience or internship required for certification.

SECTION 3. Subsection (a), Section 21.103, Education Code, is amended to read as follows:

(a) The board of trustees of a school district may terminate the employment of a teacher employed under a probationary contract at the end of the contract period if in the board's judgment the best interests of the district will be served by terminating the employment. The board of trustees must give notice of its decision to terminate the employment to the teacher not later than the 10th [45th] day before the last day of instruction required under the contract. The notice must be delivered personally by hand delivery to the teacher on the campus at which the teacher is employed, except that if the teacher is not present on the campus on the date that hand delivery is attempted, the notice must be mailed by prepaid certified mail or delivered by express delivery service to the teacher's address of record with the district. Notice that is postmarked on or before the 10th day before the last day of instruction is considered timely given under this subsection. The board's decision is final and may not be appealed.

SECTION 4. Subsection (b), Section 21.104, Education Code, is amended to read as follows:

(b) In lieu of discharge or pending discharge, a school
district may suspend a teacher without pay for good cause as
specified by Subsection (a) for a period not to extend beyond the
end of the current school year.

SECTION 5. Subchapter C, Chapter 21, Education Code, is
amended by adding Section 21.1041 to read as follows:

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

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

(2) a hearing in a manner provided under Section
21.207 for nonrenewal of a term contract or a hearing provided by
Subchapter F, as determined by the board of trustees of the
district, 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 under Section 44.011 that
requires a reduction in personnel.

SECTION 6. Subsection (b), Section 21.156, Education Code,
is amended to read as follows:

(b) In lieu of discharge or pending discharge, a school
district may suspend a teacher without pay for good cause as
specified by Subsection (a) for a period not to extend beyond the
end of the current school year.

SECTION 7. Section 21.157, Education Code, is amended to
read as follows:

Sec. 21.157. NECESSARY REDUCTION OF PERSONNEL. A teacher
employed under a continuing contract may be released at the end of a
school year and the teacher's employment with the school district
terminated at that time because of a necessary reduction of personnel by the school district, with those reductions made primarily based upon teacher appraisals administered under Section 21.352 [in the reverse order of seniority] in the specific teaching fields and other criteria as determined by the board.

SECTION 8. Subsection (b), Section 21.159, Education Code, is amended to read as follows:

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

1. a hearing as provided by Subchapter F, if the teacher is protesting proposed action under Section 21.156; or
2. a hearing in a manner provided under Section 21.207 for nonrenewal of a term contract or a hearing provided by Subchapter F, as determined by the board, if the teacher is protesting proposed action under Section 21.157 or proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Section 44.011 that requires a reduction in personnel.

SECTION 9. Subsection (a), Section 21.206, Education Code, is amended to read as follows:

(a) Not later than the 10th [45th] day before the last day of instruction in a school year, the board of trustees shall notify in writing each teacher whose contract is about to expire whether the board proposes to renew or not renew the contract. The notice must be delivered personally by hand delivery to the teacher on the campus at which the teacher is employed, except that if the teacher is not present on the campus on the date that hand delivery is
attempted, the notice must be mailed by prepaid certified mail or
delivered by express delivery service to the teacher's address of
record with the district. Notice that is postmarked on or before
the 10th day before the last day of instruction is considered timely
given under this subsection.

SECTION 10. Section 21.207, Education Code, is amended by
amending Subsections (a) and (c) and adding Subsection (b-1) to
read as follows:

(a) If the teacher desires a hearing after receiving notice
of the proposed nonrenewal, the teacher shall notify the board of
trustees in writing not later than the 15th day after the date the
teacher receives hand delivery of the notice of the proposed
action, or if the notice is mailed by prepaid certified mail or
delivered by express delivery service, not later than the 15th day
after the date the notice is delivered to the teacher's address of
record with the district. The board shall provide for a hearing to
be held not later than the 15th day after the date the board
receives the request for a hearing unless the parties agree in
writing to a different date. The hearing must be closed unless the
teacher requests an open hearing.

(b-1) Notwithstanding any other provision of this code,
this subsection applies only to a school district with an
enrollment of at least 5,000 students. The board of trustees may
designate an attorney licensed to practice law in this state to hold
the hearing on behalf of the board, to create a hearing record for
the board's consideration and action, and to recommend an action to
the board. The attorney serving as the board's designee may not be
employed by a school district and neither the designee nor a law
firm with which the designee is associated may be 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. Not later than the 15th day after the completion of the
hearing under this subsection, the board's designee shall provide
to the board a record of the hearing and the designee's
recommendation of whether the contract should be renewed or not
renewed. The board shall 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 Chapter 551, Government
Code, following the receipt of the record and recommendation from
the board's designee, unless the parties agree in writing to a
different date. At the meeting, the board shall consider the
hearing record and the designee's recommendation and allow each
party to present an oral argument to the board. The board by
written policy may limit the amount of time for oral argument. The
policy must provide equal time for each party. The board may obtain
advice concerning legal matters from an attorney who has not been
involved in the proceedings. The board may accept, reject, or
modify the designee's recommendation. The board shall notify the
teacher in writing of the board's decision not later than the 15th
day after the date of the meeting.

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

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

(2) hear the evidence supporting the reason for nonrenewal;
(3) cross-examine adverse witnesses; and
(4) present evidence.

SECTION 11. Section 21.212, Education Code, is amended by adding Subsection (f) to read as follows:

(f) On the basis of a financial exigency declared under Section 44.011 that requires a reduction in personnel, the board of trustees of a school district may choose to amend the terms of the contract of a superintendent employed under a term contract. A superintendent whose contract is amended under this subsection may resign without penalty by providing reasonable notice to the board and may continue employment for that notice period under the prior contract.

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

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

(1) terminate the teacher's continuing contract at any time, except as provided by Subsection (b)(3);
(2) terminate the teacher's probationary or term contract before the end of the contract period, except as provided by Subsection (b)(3); or
(3) suspend the teacher without pay.

(b) This subchapter does not apply to:
a decision to terminate a teacher's employment at
the end of a probationary contract; or
(2) a decision not to renew a teacher's term contract,
unless the board of trustees of the employing district has decided
to use the process prescribed by this subchapter for that purpose;
or
(3) a decision, on the basis of a financial exigency
declared under Section 44.011 that requires a reduction in
personnel, to terminate a probationary or term contract before the
end of the contract period or to terminate a continuing contract at
any time, unless the board of trustees has decided to use the
process prescribed by this subchapter for that purpose.

SECTION 13. Section 21.257, Education Code, is amended by
adding Subsection (a-1) to read as follows:

(a-1) A determination by the hearing examiner regarding
good cause for the suspension of a teacher without pay or the
termination of a probationary, continuing, or term contract is a
conclusion of law and may be adopted, rejected, or changed by the
board of trustees or board subcommittee as provided by Section
21.259(b).

SECTION 14. Subsection (b), Section 21.259, Education Code,
is amended to read as follows:

(b) The board of trustees or board subcommittee may adopt,
reject, or change the hearing examiner's:
(1) conclusions of law, including a determination
regarding good cause for suspension without pay or termination; or
(2) proposal for granting relief.
SECTION 15. Subsection (a), Section 21.402, Education Code, is amended to read as follows:

(a) Except as provided by Subsection [(d)](e) or (f), a school district must pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience in addition to other factors, as determined by commissioner rule, determined by the following formula:

\[ MS = SF \times FS \]

where:

"MS" is the minimum monthly salary;

"SF" is the applicable salary factor specified by Subsection (c); and

"FS" is the amount, as determined by the commissioner under Subsection (b), of state and local funds per weighted student, including funds provided under Section 42.2516, available to a district eligible to receive state assistance under Section 42.302 with a maintenance and operations tax rate per $100 of taxable value equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by $1.50, except that the amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 16. Subchapter I, Chapter 21, Education Code, is amended by adding Sections 21.4021, 21.4022, and 21.4032 to read as
follows:

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

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

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

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

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

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

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

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

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

(1) is final and may not be appealed; and
(2) does not create a cause of action or require collective bargaining.

(i) Any reduction under this section in the amount of the annual salary paid to an employee must be equally distributed over the course of the employee's current contract with the school district.

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

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

(1) includes the involvement of the district's professional staff; and
(2) provides district employees with the opportunity
to express opinions regarding the furlough program or salary reduction proposal, as applicable, at the public meeting required by Subsection (c).

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

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

(2) an explanation of how the district intends, through implementation of a furlough program under Section 21.4021 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; and

(3) information regarding the local option residence homestead exemption.

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

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

Sec. 21.4032. REDUCTIONS IN SALARIES OF CLASSROOM TEACHERS AND ADMINISTRATORS. (a) This section applies only to a widespread reduction in the amount of the annual salaries paid to school district classroom teachers based primarily on district financial conditions rather than on teacher performance.
For any school year in which a school district has reduced the amount of the annual salaries paid to district classroom teachers from the amount paid for the preceding school year, the district shall reduce the amount of the annual salary paid to each district administrator or other professional employee by a percent or fraction of a percent that is equal to the average percent or fraction of a percent by which teacher salaries have been reduced.

SECTION 17. Subsection (a), Section 38.101, Education Code, is amended to read as follows:

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

SECTION 18. Subchapter A, Chapter 42, Education Code, is amended by adding Section 42.009 to read as follows:

Sec. 42.009. DETERMINATION OF FUNDING LEVELS. (a) Not later than July 1 of each year, the commissioner shall 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. If the amount estimated to be provided is less, the commissioner shall certify the percentage decrease in funding to be provided to the district.
(b) In making the determinations regarding funding levels required by Subsection (a), the commissioner shall:

1. make adjustments as necessary to reflect changes in a school district's maintenance and operations tax rate;
2. for a district required to take action under Chapter 41 to reduce its wealth per student to the equalized wealth level, base the determinations on the district's net funding levels after deducting any amounts required to be expended by the district to comply with Chapter 41; and
3. determine a district's weighted average daily attendance in accordance with this chapter as it existed on January 1, 2011.

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

Sec. 44.011. FINANCIAL EXIGENCY. (a) The board of trustees of a school district may adopt a resolution declaring a financial exigency for the district. The 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.

(b) The board is not limited in the number of times the board may adopt a resolution declaring continuation of the financial exigency.

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

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

(e) The commissioner by rule shall adopt minimum standards concerning school district financial conditions that must exist for declaration of a financial exigency by the board of trustees of the district.

(f) The commissioner may use emergency rulemaking procedures to adopt rules under Subsection (e). This subsection expires September 1, 2013.

SECTION 20. Subchapter F, Chapter 552, Government Code, is amended by adding Section 552.2661 to read as follows:

Sec. 552.2661. CHARGE FOR COPY OF PUBLIC INFORMATION PROVIDED BY SCHOOL DISTRICT. A school district that receives a request to produce public information for inspection or publication or to produce copies of public information in response to a requestor who, within the preceding 180 days, has accepted but failed to pay written itemized statements of estimated charges from the district as provided under Section 552.261(b) may require the requestor to pay the estimated charges for the request before the request is fulfilled.

SECTION 21. The following provisions of the Education Code are repealed:

(1) Section 12.1331;
(2) Subsection (d), Section 21.402; and
(3) Subsections (b) and (c), Section 33.902.

SECTION 22. On or before January 1, 2012, the State Board
for Educator Certification shall propose rules relating to educator
certification as prescribed by Section 21.051, Education Code, as
amended by this Act.

SECTION 23. The changes in law made by this Act apply only
to a hearing examiner's determination regarding good cause that is
contained in a written recommendation under Section 21.257,
Education Code, issued on or after the effective date of this Act.

SECTION 24. This Act takes effect immediately if it
receives a vote of two-thirds of all the members elected to each
house, as provided by Section 39, Article III, Texas Constitution.
If this Act does not receive the vote necessary for immediate
effect, this Act takes effect on the 91st day after the last day of
the legislative session.
I hereby certify that S.B. No. 8 passed the Senate on June 6, 2011, by the following vote: Yeas 18, Nays 12; June 20, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; June 21, 2011, House granted request of the Senate; June 27, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 19, Nays 11.

I hereby certify that S.B. No. 8 passed the House, with amendments, on June 16, 2011, by the following vote: Yeas 88, Nays 55, one present not voting; June 21, 2011, House granted request of the Senate for appointment of Conference Committee; June 27, 2011, House adopted Conference Committee Report by the following vote: Yeas 80, Nays 63, one present not voting.