

- SUBJECT:** Returning poorly performing teachers to probationary contract status
- COMMITTEE:** Public Education — favorable, without amendment
- VOTE:** 6 ayes — Grusendorf, Branch, Dawson, Eissler, Griggs, Madden
0 nays
2 present not voting — Dutton, Hochberg
1 absent — Oliveira
- WITNESSES:** For — Juan Cruz, Texas Association of School Boards and Council of School Attorneys; Karen Soehnge, Texas Association of School Administrators

Against — Kevin Lungwitz, Texas State Teachers Association; Ted Melina Raab, Texas Federation of Teachers

On — Lonnie Hollingsworth, Texas Classroom Teachers Association
- BACKGROUND:** Education Code, ch. 21, subch. C sets forth guidelines for public school teachers hired under probationary contracts. Sec. 21.106 gives districts the option to return teachers under contract to probationary status in lieu of discharge, termination, or non-renewal. The teacher must be notified in writing of the impending action and then must agree in writing to be returned to probationary status. A teacher who is returned to probationary status must serve a new probationary period as provided by sec. 21.102, as if the teacher were employed the district for the first time.
- Under Education Code, sec. 21.102, a first-time teacher in a school district or a teacher who has not been employed by a district for two consecutive years must be employed under a probationary contract. A teacher may remain on probation for up to three years, after which a district must decide whether to let the probationary contract expire or to grant a new contract on a term or continuing basis. Under certain circumstances a teacher may be kept on a probationary contract a fourth year. However, if a teacher has been employed

in a district for at least five of the preceding eight years, the district may not employ the teacher on a probationary contract for longer than one year.

Education Code, sec. 21.351 sets forth a recommended appraisal process and performance criteria for teachers. The commissioner of education must solicit teacher input when developing the recommended process and criteria. An appraisal must be given by either the teacher's supervisor or by a person approved to give appraisals by the board of trustees. The teacher is guaranteed a conference with the appraiser, in which the appraiser gives feedback that is both diagnostic and prescriptive regarding needed remediation.

The commissioner's Professional Development Appraisal System (PDAS) rates teachers in eight performance "domains" or skill categories:

- active, successful student participation in the learning process;
- learner-centered instruction;
- evaluation and feedback on student progress;
- management of student discipline, instructional strategies, time, and materials;
- professional communication;
- professional development;
- compliance with policies, operating procedures, and requirements; and
- improvement of student academic performance

DIGEST:

CSHB 1112 would allow a school district to return a continuing or term contract teacher to probationary contract status without the teacher's written consent if the teacher were designated a "teacher in need of assistance" under the commissioner's recommended appraisal process, and if the teacher were rated unsatisfactory in one of the following areas:

- achieving active student participation in the learning process;
- providing learner-centered instruction;
- providing evaluation of student progress; or
- managing student discipline, instructional strategies, time, and materials.

A teacher also could be returned to probationary status without the teacher's written consent if designated as a "teacher in need of assistance" for two consecutive school years.

For any teacher rated unsatisfactory or designed as a "teacher in need of assistance" under this bill, probationary contract status would commence in the next school year following the unsatisfactory appraisal.

The bill would take effect September 1, 2003, and would apply to appraisals beginning with the 2003-04 school year.

**SUPPORTERS
SAY:**

CSHB 1112 would allow school districts to work with poorly performing teachers for a significant period of time prior to altering their contract status. A district could work with a teacher for up to two years before returning a teacher to probationary status, after which a teacher would have another year to improve his or her performance before the district decided whether to discharge the teacher. This would be more than enough time to know if a teacher could to turn things around and return to being an asset in the classroom.

CSHB 1112 would save districts money by circumventing the lengthy and often expensive non-renewal or termination process for teachers employed under continuing or term contracts. Currently, if a teacher is not performing well and a district wishes to terminate a contract, the cost of going through due process can run into thousands of dollars. Districts that cannot afford the legal expenses may end up keeping poorly performing teachers on staff in the hopes that they will improve or retire before too many students suffer performance setbacks. Allowing a district to move a teacher to probationary status would make it easier to terminate a contract if the teacher did not improve over time.

CSHB 1112 clearly would link the triggering events for altering teacher contract status to classroom instruction skills and student performance. If a teacher is not performing well in any one of the four PDAS domains related to classroom instruction and student performance, then students are being affected and action is needed. Each PDAS domain contains a number of performance indicators, so if a teacher scores unsatisfactorily on one domain,

it means that the teacher is having trouble with a majority of the indicators within the domain.

The bill only would remove the condition for obtaining a teacher's written consent to move to probationary status when the teacher had a clear performance problem. PDAS is an ongoing evaluation system and not an annual event, so a teacher's score results from performance throughout the school year and not from a single evaluation. Thus, a teacher has many opportunities for performance improvement before the final summative report. Further, teachers have the right to request outside appraisals if they feel that the school district's appraisal is unfair.

CSHB 1112 would allow teachers to continue teaching while maintaining most of the rights they had before being moved to a probationary contract. Teachers on probationary contracts have nearly all the rights of term contract teachers under ch. 21 of the Education Code, including being subject to the minimum salary schedule. The only difference is that districts may allow a probationary contract to expire without going through lengthy due process hearings. A teacher who is let go at the end of a probationary contract may file a grievance before the board of trustees, and should a district decide to fire a teacher before the end of the contract, the teacher would be granted full due process rights.

CSHB 1112 still would leave teachers with much greater protections than the average employee in the private sector. There is nothing wrong with holding teachers to high standards. The future of children and their education is at stake. If teachers knew the potential consequences of continued poor performance, they would be better motivated to improve their performance before being moved to probationary status. This bill would hold all teachers to high standards and thus would enhance the teaching profession.

**OPPONENTS
SAY:**

CSHB 1112 would seek to create an end-run around the termination process. By moving experienced teachers to probationary status without their written consent, districts more easily could take contract rights away from term or continuing contract teachers, thus making it easier to fire them. Probationary contracts do not provide teachers with the added protection of due process rights in the termination process.

CSHB 1112 inappropriately would reduce the burden on administrators of documenting teacher performance. Non-renewal is not a burdensome or expensive process if a school district has been documenting teacher performance all along. Well kept management records are the main reason that very few teachers ever request a due process hearing when a contract is terminated or not renewed.

CSHB 1112 would do nothing to protect teachers from poorly performing administrators. There are very few performance problems a teacher might have that could not be addressed by a caring, competent administrator. Appraisals can be a subjective process, and the teacher's final score is up to the subjective determination of the appraiser. Under this bill, districts arbitrarily could use a poor performance score on only one domain of PDAS to move an experienced teacher to probationary status, rather than be required to coach the teacher back to an acceptable level of performance.

OTHER
OPPONENTS
SAY:

CSHB 1112 would not go far enough to hold poorly performing teachers responsible. Districts should be able to move teachers to probationary status if they scored unsatisfactorily on any one of the eight PDAS domains, including noncompliance with administrative procedures. Teachers must be very bad to be moved to probationary status under this bill, which begs the question, why would a district want to hire them back? In the private sector, a poorly performing employee wouldn't make it two months, let alone two years, before answering for the consequences of his or her behavior.

NOTES:

Two other bills dealing with public school teacher contracts are set on the General State Calendar for Tuesday, April 29:

- CSHB 1113 by Crownover would allow a teacher to be returned to probationary contract status without the school board taking action in an open meeting; and
- CSHB 1254 by Crownover would require an independent hearing examiner to consider school board policies when determining good cause for terminating a teacher contract.

CSHB 558 by Grusendorf, which would allow school districts to hire returning teachers under probationary contracts after a two-year lapse in

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service, passed the House on April 10, and has been referred to the Senate Education Committee.