

- SUBJECT:** Returning a teacher to probationary status without an open board meeting
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 8 ayes — Grusendorf, Branch, Dawson, Dutton, Eissler, Griggs, Hochberg, Madden
- 0 nays
- 1 absent — Oliveira
- WITNESSES:** For — Juan Cruz, Texas Association of School Boards, Texas Association of School Administrators, and Council of School Attorneys; Chris Borreca, Texas Association of School Boards and Council of School Attorneys; Kevin Lungwitz, Texas Classroom Teachers Association
- Against — Lonnie Hollingsworth, Texas Classroom Teachers Association; Ted Melina Raab, Texas Federation of Teachers
- BACKGROUND:** Education Code, Ch. 21, subch. C sets forth guidelines for public school teachers hired under probationary contracts. Section 21.106 gives districts the option to return a continuing or term contract teacher 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 contract period as provided by Section 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.

In practice, teacher contracts are renegotiated in March of the school year. A superintendent provides the board of trustees with a list of teachers and recommended actions on their contracts, including a list of teachers who are recommended for movement to probationary status in lieu of discharge or non-renewal. The school board meets, usually in a closed session, to discuss such employment matters, after which it sends written notice to the teacher of its intentions. The teacher can negotiate a new probationary contract directly with the superintendent or go before the board to negotiate or protest in an open meeting. No matter what the teacher's final decision or how it is arrived at, the board makes its final decision and votes on it in an open meeting.

DIGEST:

CSHB 1113 would amend Education Code, sec. 21.106(b) to specify that a teacher could agree to be returned to probationary status after receiving written notice by the board of trustees of the teacher's proposed discharge, termination, or non-renewal, except as provided below.

CSHB 1113 would add section 21.106(d), allowing a teacher at least three business days to decide whether to agree to be returned to probationary status after receiving written notice of the superintendent's intent to recommend discharge, termination, or non-renewal. The notice would have to include the school district's offer to return the teacher to probationary status in lieu of a more punitive action, the time period during which the teacher could consider the offer, and the teacher's right to seek counsel. The superintendent would not have to give a teacher notice of his intent to make a recommendation to the school board regarding discharge or a change in contract status.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 1113 would allow superintendents to offer teachers an alternative to going before the board of trustees in an open meeting to discuss potentially embarrassing disciplinary or performance matters. Currently, school superintendents must propose all changes in teacher contract status to the school board first, after which the teacher has an opportunity to have a hearing before the board before final action is taken in an open meeting. This bill would allow superintendents and teachers to come to certain contract agreements in private, thus saving face for teachers while streamlining employment matters for districts.

CSHB 1113 would protect teacher choice as well as due process rights. Written notice of intent by the district would have to include ample time for a teacher to respond to an offer of probationary status while informing the teacher of the right to seek counsel. The bill would be permissive, so a teacher still could request a hearing before the school board, or the teacher could choose to avoid the potentially political process of going before the board. The bill also would give superintendents the option of discussing potential disciplinary or performance matters before a recommendation was made to the board, thus giving the teacher more time to decide. The bill also would preserve the teacher's right to stay in an employment relationship on probationary status, rather than requiring outright dismissal.

**OPPONENTS
SAY:**

CSHB 1113 would allow a superintendent to remove the school board from the loop in employment matters, thus potentially terminating or moving experienced teachers to probationary status without the board's knowledge. Changes made by this bill would eat away at teachers' due process rights by allowing school districts to eliminate public hearings on certain contract status changes in front of the school board. If a teacher's civil rights are going to be violated, it is much more likely to happen in private rather than in an open meeting. School districts are seeking to move experienced teachers to probationary status by written agreement not to protect teachers' privacy or due process rights, but only to make it easier to terminate experienced teachers without due process.

CSHB 1113 would create a reduced standard of consent from the teacher in a serious employment matter. Replacing teacher consent in an open meeting with a private, written agreement could lead to litigation over what constitutes a "written agreement," especially when a teacher was pressured to sign something that was pre-written by the district. By taking away a teacher's right to a board hearing, a district would leave the teacher with no way to defend wrongful termination claims except through the courts.

NOTES:

The bill as introduced differs from the committee substitute in that it would have allowed a district to return a teacher to probationary status in lieu of discharge, termination or non-renewal under a written agreement between the teacher and the school board, if the teacher had received prior written notice of the proposed action or of the superintendent's intent to recommend such an action.

Two other bills dealing with public school teacher contracts are set on the general state calendar this week:

- CSHB 1112 by Crownover, set for Monday, April 28, 2003, would allow an unsatisfactorily rated teacher to be returned to probationary contract status without the teacher's written consent; and
- CSHB 1254 by Crownover, set for Tuesday, April 29, 2003, 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 service, was passed by the house on April 10, 2003, and has been referred to the Senate Education Committee.